

1 ENVIRONMENTAL RULES BOARD MEETING

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11 Transcript of the proceedings held on the 13th
12 day of February, 2019, at 402 West Washington Street,
13 Conference Center Room A, Indianapolis, Indiana,
14 before Heather S. Orbaugh, Notary Public in and for
15 the County of Boone, State of Indiana, CCR: LA.

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ACCURATE REPORTING OF INDIANA
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1 A P P E A R A N C E S

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3 Members

4 Sen. Beverly Gard, Chair, General Public

5 William Etzler, Small Business

6 Dr. Joanne Alexandrovich, Local Government

7 Ken Rulon, Agriculture

8 Cal Davidson, Solid Waste

9 Chris Horn, Labor

10 RT Green, Citizens

11 Dr. Ted Niemiec, Medical

12 Jeffrey Cummins, Proxy, Lt. Governor

13 Cameron Clark, IDNR

14 Devin Hillsdon-Smith, Proxy, IEDC

15 Brian Rockensuess, IDEM

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FEBRUARY 13, 2019

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SENATOR GARD: I will call the meeting

of February 13, 2019, of the Indiana Environmental

Rules Board to order. There is a quorum present. We

do have a new member but he is not here so we will

introduce him the next time. I would like for the

Board to each introduce themselves. We will start

down here and tell who you represent.

MR. ROCKENSUESS: Brian Rockensuess,

chief of staff of the Department of Environmental

Management.

MR. CLARK: Cameron Clark, Director of

the Indiana Department of Natural Resources.

MR. HORN: Chris Horn representing

Labor.

MR. CUMMINS: Counsel, Indiana State

Department of Agriculture, proxy for Lt. Governor

Crouch.

SENATOR GARD: Beverly Gard, general

public.

MR. ETZLER: Bill Etzler, small

1 business.

2 MR. DAVIDSON: Calvin Davidson, solid

3 waste.

4 MR. RULON: Ken Rulon, agriculture. a

5 DR. NIEMI EC: Ted Niemi ec, health.

6 DR. ALEXANDROVI CH: Joanne

7 Alexandrovi ch, local government.

8 MR. GREEN: R.T. Green, general public.

9 SENATOR GARD: Thank you all. Our first
10 order of business today is the approval of the summary
11 of the November 14, 2018, board meeting. Are there
12 any additions or corrections to the summary as
13 presented? If not, is there a motion to approve?

14 DR. NIEMI EC: So moved.

15 DR. ALEXANDROVI CH: Second.

16 SENATOR GARD: All in favor, say aye.

17 (All responded aye.)

18 SENATOR GARD: Opposed, nay.

19 (No response.)

20 SENATOR GARD: Motion is approved.

21 Brian Rockensuess, Commissioner's Report.

22 MR. ROCKENSUESS: Thank you, Chairman

23 Gard. So my report today is going to be focused on

1 the legislative things we are dealing with this year,
2 basically what we have been working on since the last
3 time the board had met. We have three bills moving
4 forward from the General Assembly, soon there will
5 probably be two because one is getting evolved into
6 the other.

7 The first one I want to talk about is our fee
8 situation. Currently our fees are set by statute and
9 they have not been raised or done anything with them
10 since they were set in statute in 1994. So this
11 biennium we are fully funded. Coming up in the future
12 biennium we are going to have some financial struggles
13 making ends meet with the current staffing and current
14 level of activity that we have had.

15 So we worked with the Office of Management and
16 Budget, the Governor's Office, and then have been
17 working over at the State House to propose an idea
18 that we do fees by rule, so this Board would be
19 setting our fees. We feel you guys have all the
20 expertise and knowledge to do so and you represent all
21 the major industries that actually pay our fees.

22 SENATOR GARD: I don't know whether to
23 thank you or not.

1 MR. ROCKENSUESS: So the way the
2 language is currently set up is we would be able to do
3 one, a one-time fee increase that would get us up to
4 the level we need to be to operate at our current
5 staffing and activity levels, and then every year,
6 every time after that we could only increase fees once
7 every five years and not more than 10 percent.

8 So that's what the fee legislation would be.
9 That is going to be likely amended into our omnibus
10 bill. We have an omnibus bill every year. It looks
11 at a lot of times technical corrections that we either
12 goofed up, the legislature goofed up the year before.

13 So some of those are last year we allowed or
14 we made clear that steel mills and other places with
15 incinerators could take drugs from police and put them
16 in there and burn them. It is the easiest way to get
17 rid of them. We cited the wrong federal code and so
18 we are addressing that. We are continually finding
19 the term "wastewater" in the statute and we changed
20 that to septage in 2011. So as we find them we
21 continually change those.

22 We are changing the date for hazardous waste
23 operation fees. The way it is currently done is we

1 have to have information by January to assess the
2 fees, but then they don't have actual information
3 until later in the year. So sometimes that
4 information is off and then we have to give them money
5 back or they may owe us more money. We are pushing
6 that date back so that it is accurate reporting and we
7 can accurately assess the fee.

8 We are requiring electronic submission of
9 drinking water lab reports. So currently a water
10 system has to do the different tests, they hire a lab to
11 do so, the lab gives them back that information, and
12 then they send it to us in paper format. And then we
13 have to take that information and then type it back
14 into our system. So what we are doing is saying,
15 okay, utility or lab, whoever, send us that
16 electronically and then it just frees up some activity
17 on our end, redemptive activity.

18 We are getting rid of the quarterly report for
19 solid waste haulers. One company in history has ever
20 sent us that report, we do nothing with it, and if we
21 need that information we go to the surrounding states
22 and they have information should we need it.

23 And then we are simplifying solid waste

1 management fee. Currently it is 50 cents per car or
2 50 cents per ton. It is hard for the solid waste
3 management companies to rectify the two when they are
4 submitting their report to IDEM and so we are just
5 saying it is going to be 50 cents a ton and leave it
6 at that.

7 And then our final bill we have has to do with
8 Excess Liability Trust Fund. There is an alpha bill
9 every year because we seem to find issues every year.
10 We are hoping to clarify responsible party. We are
11 restructuring the cap, how much can be spent per site.
12 Currently in code it is 2.5 million per site, that's
13 the highest in the country. And what I meant by
14 restructuring is we are going to divide that cap from
15 just 2.5 million to say 1.5 million for corrective
16 action costs and then 1 million for third-party
17 claims, like if the contamination went off site and
18 somebody sues that operator, there is a pot of money
19 that could be spent.

20 Because what we are seeing is sites don't
21 close quickly, there is no incentive for the
22 consultants to close out sites because they are
23 getting money from the fund. So they will run it up

1 to two and a half million bucks and then there is no
2 money left over should that responsible party get
3 sued. So we are restructuring that.

4 It allows the agency to cost guidelines so
5 that we can have caps on activities. We currently
6 have rates in the rule for activity, we don't have a
7 cap. Other states have a cap. And this goes to one
8 of our issues where we are the highest in the country
9 for claims paid out. We on average pay out between 4
10 and \$500,000 per site, and on average for the rest of
11 the country it is \$147,000 per site. So we are
12 grossly over what the rest of the country is doing.

13 And then if individuals or business owners buy
14 a property that has had a contamination on it and they
15 would like to take over that clean-up effort, we set
16 up a process in the bill that they can do that by
17 submitting an agreed order. So that's our
18 legislation. I am happy to answer any questions about
19 this or anything else we are doing at the agency.

20 SENATOR GARD: Brian, on the fee
21 legislation, would that go through the normal
22 rulemaking process, the long rulemaking process.

23 MR. ROCKENSUESS: It is actually a

1 little more, I don't know if stringent is the right
2 word, than the actual rulemaking process. So in order
3 to even start a rulemaking, we have to come before the
4 board.

5 We have to show the board a cost of service
6 study that we have a third party do. We have to show
7 the board comparisons of what other states charge for
8 similar activities. And then after that the board can
9 tell us to go ahead and start the process or not. And
10 then we will go through the rulemaking process like
11 usual, the usual 16-18 month rulemaking process.

12 SENATOR GARD: So during the time the
13 fees stay as they were passed in 1994?

14 MR. ROCKENSUESS: That's correct.

15 SENATOR GARD: Okay.

16 MR. DAVIDSON: I have a question on the
17 fund. You stated that we pay out more than any other
18 state. Is like considering the size or the number of
19 sites or gross payout is larger even than California
20 or somebody?

21 MR. ROCKENSUESS: You know, we are 200
22 percent more than California. We are 400 percent more
23 than Ohio. We are 380 percent more than Illinois.

1 And gas station contamination is the same no matter
2 what state you are in. The soils may be different,
3 the way that petroleum travels may be a little
4 different, the activities that you do are the same no
5 matter what state you are in.

6 SENATOR GARD: Any other questions?

7 MR. RULON: So the legislature has been
8 pretty receptive to these three?

9 MR. ROCKENSUESS: Yeah, so far. It has
10 been -- fees by rule was a little contentious at
11 first, but I have -- we have met with all the
12 stakeholders, they understand the need, they
13 understand how complicated our funding structures are
14 and by setting it by statute you could be missing out
15 or overcharging on activities to cover other
16 activities that aren't necessarily given a fee number
17 in the statute. And so they are comfortable with that
18 number.

19 SENATOR GARD: I remember that 1994 fee
20 legislation. That was really hard. It was really,
21 really hard. So, you know, to really keep kind of
22 politics out, I think this is probably a good idea.
23 It will take a little time for this board but --

1 MR. ROCKENSUESS: Well, we think that's
2 a positive. The time it takes to do a rulemaking
3 gives every stakeholder that wants to have a say-so
4 the ability to have a say-so rather than a three- or
5 four-month session which is quick.

6 SENATOR GARD: Okay. I think it is
7 probably a good idea. Any other questions?

8 MR. RULON: So totally different topic,
9 but I keep seeing Franklin on the news, that they are
10 still testing and working with people. Any more
11 developments on that?

12 MR. ROCKENSUESS: So we committed to
13 doing air testing at the homes that were tested by
14 another environmental consultant. We have done all
15 those. Those have shown nondetect or very low under
16 limit levels, TCE or PCE.

17 We have tested the air around Amphenol and the
18 strippers to make sure that whatever they were
19 emitting was okay. We tested Hurricane Creek to make
20 sure contamination wasn't moving through creek. We
21 have been testing everywhere and so far what we have
22 been finding is the levels are nondetect or they are
23 lower than what our action levels would be.

1 We are continually engaging with the community
2 when needed and everything we do is on our website in
3 chronological order to make sure everybody understands
4 how involved we have been.

5 MR. RULON: Thank you.

6 SENATOR GARD: Any other questions?

7 Thank you.

8 MR. ROCKENSUESS: Thank you.

9 SENATOR GARD: Chris Peterson,
10 rulemaking report.

11 MS. PETERSON: Can everyone hear me
12 okay? I am Chris Peterson in the Rules Development
13 Branch of the Office of Legal Counsel. Today's
14 planned presentation of the hazardous waste updates
15 rule is being postponed. The department received no
16 comments on this rule during the comment period, but
17 an issue with draft ruling which was brought to our
18 attention this week.

19 As currently written the draft rule
20 inadvertently pulls in vacated federal language
21 related to the definition of solid waste for purposes
22 of hazardous waste management. After considering the
23 situation, staff determined that additional time is

1 needed to revise the draft rule language. IDEM plans
2 to present the revised rule at the next board meeting.

3 As far as our next board meeting, right now we
4 are anticipating May 8th as a likely time when we
5 would be ready, and at that time one of the emergency
6 rules will need to be adopted again to maintain
7 certain provisions until the regular rulemaking is
8 completed and that is the ozone designations for Clark
9 and Floyd Counties. These designations are included
10 in a Section 8 notice for the regular rulemaking that
11 was going to be published today, and that's the 2015
12 ozone standards designations. That regular rulemaking
13 includes all the designations for all the counties
14 including Clark and Floyd.

15 Also, if preliminary adopted today, three
16 rules may be ready for final adoption at the next
17 meeting. These are the Short Term Backup Units, Great
18 Lakes Combined Sewer Overflow Public Notification, and
19 the Portland Cement Monitoring Rule. In addition to
20 those, we wouldn't anticipate preliminary adoption of
21 the hazardous waste updates rulemaking that's been
22 postponed from today.

23 That rule incorporates federal rules by

1 updating references to the code of federal regulations
2 from 2015 to 2017. It is to maintain equivalency and
3 consistency with the federal requirements for state
4 authorization purposes. And there is also some
5 technical amendments and corrections in that rule.

6 And then the other one is the adoption of the
7 2015 ozone designations that I mentioned. That adds
8 the 2015 eight-hour ozone designations for each county
9 into the rule. For most counties the designation is
10 the same as for the previous standard, so no change to
11 permitting was necessary for sources in those
12 counties. The non-attainment designations for Clark
13 and Floyd Counties and part of Lake County will be
14 included and those are different.

15 It will allow permits affected by the federal
16 designations to continue to be issued by IDEM. Once
17 this rule is effective the emergency rule for Clark
18 and Floyd Counties can be discontinued. And I will be
19 happy to answer any questions about upcoming rules.

20 SENATOR GARD: Any questions for Chris?
21 Thank you. And if there was anyone here that wanted
22 to speak on the hazardous waste issue, you still can
23 under Open Forum at the end of the agenda.

1 Today we have two emergency rules that the
2 board will be asked to adopt, Clark and Floyd Counties
3 2015 Ozone Designation and UST Compliance Date
4 Corrections. We will also have hearings for the
5 following board actions: Preliminary adoption of
6 Short Term Backup Units, Great Lakes Basin CSO Public
7 Notice and Portland Cement Monitoring and final
8 adoption Asbestos Management Revisions. Please fill
9 out any comment cards and give them to Janet at the
10 sign in table if you wish to testify on any of our
11 agenda today.

12 The rules being considered in today's meeting
13 were included in board packets and are available for
14 public inspection at the Office of Legal Counsel, 13th
15 Floor, Indiana Government Center North. The entire
16 board packet is also available on IDEM's website at
17 least one week prior to each board meeting. A written
18 transcript of today's meeting will be made. The
19 transcript and any written submissions will be open
20 for public inspection at the Office of Legal Counsel.
21 A copy of the transcript will be posted on the rules
22 page of the agency website when it becomes available.

23 Will the official reporter for the cause

1 please stand and raise your right hand and state your
2 name?

3 COURT REPORTER: Heather Orbaugh.

4 SENATOR GARD: Do you solemnly affirm
5 that you will keep complete and true notes of all that
6 transpires and prepare a transcript thereof and
7 faithfully perform all duties imposed upon you as
8 official reporter of the state of Indiana?

9 COURT REPORTER: I do.

10 SENATOR GARD: Thank you. The Board
11 will now consider adoption of the emergency rules to
12 adopt, the 2015 Ozone Designations for Clark and Floyd
13 Counties. This emergency rule temporarily
14 incorporates the current federal designation. I will
15 enter Exhibit A, the draft emergency rule, into the
16 record of the meeting. Krystal Hackney will present
17 the rule.

18 MS. HACKNEY: Good afternoon members of
19 the board. My name is Krystal Hackney and I am a rule
20 writer in the rules development branch in the Office
21 of Legal Counsel. I am here to present the emergency
22 rule to designate Clark and Floyd County to
23 nonattainment for the 2015 eight-hour ozone standard.

1 This rule temporarily revises 326 IAC 1-4-11
2 and 326 IAC 1-4-23 designate Clark County and Floyd
3 County to non-attainment for the 2015 8-hour ozone
4 standard until the regular rulemaking is completed.
5 On June 4 of 2018 the US EPA published a final rule to
6 establish air quality designations for the 2015 8-hour
7 ozone standard.

8 In Indiana, Clark, Floyd, and a part of Lake
9 County have been designated nonattainment, while the
10 remainder of the state has been classified
11 attainment/unclassifiable. IDEM is proposing the
12 temporary nonattainment designations to Clark and
13 Floyd Counties so that affected sources in that area
14 can be permitted under the appropriate state
15 permitting rule. Because all of Lake County is
16 currently designated nonattainment for the 2008 8-hour
17 ozone standard, action through this emergency rule is
18 not necessary.

19 The formal rulemaking for designations under
20 the 2015 8-hour ozone standard includes designations
21 for all Indiana counties and is scheduled to be
22 presented for adoption at the next board meeting.
23 This emergency rule was originally adopted on August

1 8, 2018, and adopted again on November 14th of 2018.

2 If readopted, this emergency rule will be
3 filed and become effective immediately for 90 days, at
4 which time the emergency rule will be brought to you
5 for re-adoption again since the regular rulemaking
6 will not be completed by that time. IDEM requests
7 that the Board adopt this emergency rule as presented,
8 and program staff are available to answer any further
9 questions that you may have. Thank you.

10 SENATOR GARD: Are there any questions
11 from the Board? Is there a motion to adopt the
12 emergency rule?

13 DR. ALEXANDROVICH: So moved.

14 SENATOR GARD: Is there a second?

15 MR. CUMMINS: Second.

16 SENATOR GARD: All in favor, say aye.

17 (All responded aye.)

18 SENATOR GARD: Opposed, nay.

19 (No response.)

20 SENATOR GARD: The emergency rule is
21 adopted. The Board will now consider adoption of the
22 emergency rule to adopt the UST Compliance Date
23 Corrections. This emergency rule temporarily directs

1 compliance dates for the State rule. I will enter
2 Exhibit B, the draft emergency rule, into the record
3 of the meeting. Dan Watts will present the rule.

4 MR. WATTS: Good afternoon, Chairwoman
5 Gard, Members of the Board. I am Dan Watts of the
6 Rules Development Branch and I am presenting for
7 adoption an emergency rule that proposes temporary
8 amendments in 329 IAC 9 to the compliance dates for
9 underground storage tank requirements. This emergency
10 rule is an extension of the amendments that were in a
11 previous emergency rule adopted at the November 14,
12 2018, ERB meeting.

13 IDEM is proposing to immediately adopt an
14 extension of the compliance dates for UST requirements
15 because some of the compliance dates occur before the
16 anticipated effective date of April 2019 for LSA
17 Document 18-281, a regular rulemaking which also was
18 adopted at the November board meeting. This emergency
19 rule will enable the compliance dates to be effective
20 and enforceable as soon as possible rather than a few
21 months from now.

22 The proposed amendments in the emergency rule
23 extend these compliance dates for UST requirements

1 that were adopted in that more comprehensive UST
2 rulemaking that incorporated federal UST standards and
3 became effective on June 28th of last year. The
4 incorporated federal UST standards included compliance
5 dates that were linked to the effective date of
6 USEPA's final rule which was published in July of
7 2015. Because these compliance dates were linked to
8 the 2015 effective date, many of the dates had passed
9 or were too soon in the future when IDEM's UST
10 rulemaking became effective last June.

11 In order to allow adequate compliance time to
12 regulate entities and enable IDEM to enforce the
13 compliance dates, IDEM is proposing this emergency
14 rule to extend those compliance dates and align them
15 with the effective date of the UST rulemaking adopted
16 last year.

17 The amendments in this emergency rule will be
18 effective for 90 days until the rule expires or is
19 superseded by another rule. Myself and other
20 representatives from IDEM are available to answer
21 questions you may have for this rulemaking.

22 Hopefully this is the last time we do an
23 emergency rule. We anticipate April as the effective

1 date of the other UST rulemaking. And the department
2 respectfully requests that the board adopt this rule
3 as presented. Thank you.

4 SENATOR GARD: Any questions? Any Board
5 discussion? Is there a motion to adopt the emergency
6 rule?

7 MR. RULON: So moved.

8 MR. CUMMINS: Second.

9 SENATOR GARD: All in favor, say aye.

10 (All responded aye.)

11 SENATOR GARD: Opposed, nay.

12 (No response.)

13 SENATOR GARD: The emergency rule is
14 adopted. This is a public hearing before the
15 Environmental Rules Board of the State of Indiana
16 concerning final adoption of amendments to the rules
17 at 326 IAC 14-10 and 326 IAC 18 regarding revisions to
18 Asbestos Management. I will now introduce Exhibit C,
19 the preliminarily adopted rule with suggested changes
20 into the record of the hearing. Kris Peterson will
21 present the rule.

22 MS. PETERSON: Kris Peterson with the
23 Rules Development Branch of the Office of Legal

1 Counsel and I am here to present the asbestos
2 management program updates rule for final adoption.
3 This rulemaking revises the existing provisions in two
4 areas of Indiana's Asbestos Management Program.

5 First, the requirements in 326 IAC 14-10 are
6 for the delegated asbestos program that applies to
7 demolition and renovation activities. This includes
8 providing notifications to IDEM as well as controlling
9 emissions during demolition and renovation activities.
10 The second part is the asbestos licensing and training
11 requirements in 326 IAC 18. They are based on various
12 federal requirements and include procedures for
13 obtaining a license to perform asbestos related work
14 and application procedures for training course
15 providers and course content requirements.

16 The majority of the revisions in this
17 rulemaking are administrative in nature. They are to
18 make corrections, increase clarity, and update
19 obsolete language. The rule also in various places
20 adds an option to submit notifications and information
21 to IDEM electronically rather than just through paper.

22 The licensing and training requirements have
23 been restructured for clarity and include three

1 substantive changes that will simplify existing
2 processes and provide a modest cost savings to the
3 regulated individuals or the company for which they
4 work. These include removal of the requirement to
5 submit a photograph with a license application, less
6 burdensome training requirements for a person coming
7 to Indiana to do asbestos work that has already passed
8 a training course approved by USEPA, and an increased
9 amount of time to retake a refresher course if you
10 have an expired license rather than having to retake
11 the initial training course.

12 A few revisions have been made to the proposed
13 rule since it was preliminarily adopted. These are
14 only minor clarifications and corrections for
15 consistency within the rule. The amendments in this
16 rulemaking will clarify and update Indiana's existing
17 asbestos management program rules, provide a modest
18 cost savings for certain licensing functions, and
19 ensure consistency within the program and with federal
20 requirements.

21 IDEM requests that the board final adopt this
22 rule as presented. I will be happy to answer any
23 questions.

1 SENATOR GARD: Are there any questions
2 for Kris? Thank you. I don't have any speaker cards
3 but is there anyone out there that wanted to speak on
4 this rule? Okay. The hearing is concluded. The
5 Board will now consider final adoption of the
6 amendments to 326 IAC 14-10 and 326 IAC 18 of the
7 Asbestos Management Rules. Is there any Board
8 discussion? Motion should be made to adopt IDEM'S
9 suggested changes. Is there a motion?

10 MR. DAVIDSON: So moved.

11 SENATOR GARD: Second?

12 MR. CUMMINS: Second.

13 SENATOR GARD: All in favor, say aye.

14 (All responded aye.)

15 SENATOR GARD: Opposed, nay.

16 (No response.)

17 SENATOR GARD: The suggested changes are
18 adopted. We need a motion to adopt the final rule as
19 amended.

20 MR. RULON: So moved.

21 MR. CUMMINS: Second.

22 SENATOR GARD: This is roll call vote.

23 Dr. Alexandrovich?

1 DR. ALEXANDROVICH: Yes.

2 SENATOR GARD: Mr. Horn.

3 MR. HORN: Yes.

4 SENATOR GARD: Mr. Hillson-Smith?

5 (No response.)

6 SENATOR GARD: Dr. Niemi ec?

7 DR. NIEMI EC: Aye.

8 SENATOR GARD: Mr. Rulon?

9 MR. RULON: Yes.

10 SENATOR GARD: Mr. Etzler?

11 MR. ETZLER: Yes.

12 SENATOR GARD: Mr. Davidson?

13 MR. DAVIDSON: Yes.

14 SENATOR GARD: Mr. Cummins?

15 MR. CUMMINS: Aye.

16 SENATOR GARD: Mr. Green?

17 MR. GREEN: Yes.

18 SENATOR GARD: Mr. Clark?

19 MR. CLARK: Yes.

20 SENATOR GARD: The chair votes aye. I

21 didn't miss anybody, did I? The final vote is 10

22 ayes, zero nays. The rule is final adopted.

23 This is the public hearing for the

1 Environmental Rules Board of the State of Indiana
2 concerning preliminary adoption of amendments to the
3 rules at 326 IAC 2-1.1-3 regarding short term backup
4 units. I will now introduce Exhibit D, the draft
5 rules into the record of the hearing. Keelyn Walsh
6 will present the rule.

7 MS. WALSH: Good afternoon, Members of
8 the Board. I am Keelyn Walsh with the rules
9 development section of the Office of Legal Counsel and
10 I am here to present Rule Number 16-309, Short Term
11 Backup Units, for your consideration.

12 The provisions of 326 IAC 2-1.1-3 identify
13 specific conditions under which emission units,
14 operations, or processes are exempt from construction
15 or modification requirements in Indiana's air
16 permitting rules. This rulemaking proposes to change
17 326 IAC 2-1.1-3 to add a provision to the list of
18 exemptions that allows the operation of the short term
19 backup unit for sources under certain circumstances
20 without first requiring them to seek a permit
21 modification.

22 When an existing permitted emission unit or
23 its control device at a source needs to be taken

1 offline due to either a failure or a planned
2 maintenance event to prevent an operational failure, a
3 different emission unit or control device often needs
4 to be inserted in its place in order for the process
5 to continue operating while the repair or emission or
6 maintenance event is complete.

7 The repairs to these permitted units often
8 lasts longer than 30 days. Indiana's current rules do
9 not allow an exemption for this scenario even though
10 the short term backup unit is often nearly identical
11 to the permitted emission unit taken offline for
12 repair, and there would be no increase in emissions or
13 decrease in control levels.

14 A source needing to obtain a short term backup
15 unit for this purpose must currently submit a request
16 for a modification of its registration or permit and
17 get approval prior to bringing the short term backup
18 unit on site or operating it. For the source, this
19 can result in additional downtime, lost productivity,
20 extra costs, and the risk of being in violation of the
21 rule if a short term backup unit is used to continue
22 operations.

23 By updating the state rule at 326 IAC 2-1.1-3

1 to allow for the operation of short term backup units
2 in these circumstances, the units could be used as
3 part of normal operations while repairs or maintenance
4 are being completed on the original equipment without
5 the loss of efficiency or extra administrative costs
6 for IDEM or the source, and the source would still be
7 required to comply with all existing permit terms,
8 limits, and requirements imposed by the rule.

9 Additionally, this rulemaking would have a
10 positive fiscal impact for each source operating a
11 short term backup unit that would save on the cost and
12 time of applying for a registration, permit
13 modification, or variance for the repair or
14 maintenance event each time there is an occurrence.

15 Without this rulemaking, sources would not be
16 able to operate as efficiently and would continue
17 experiencing lost productivity and extra costs.
18 Therefore, IDEM requests that the board preliminarily
19 adopt this rule as presented and program staff are
20 available to answer any further questions you may
21 have. Thank you.

22 SENATOR GARD: Are there any questions?

23 MR. ETZLER: I have some.

1 SENATOR GARD: Yes, sir.

2 MR. ETZLER: I was trying to understand
3 the reason for the limitation of 180 days, first of
4 all. So if someone could explain why that limitation
5 is placed. And then secondly there is the limitation
6 that once the unit is decommissioned, the temporary
7 unit has to leave the premises within 14 days?

8 MS. WALSH: Correct.

9 MR. ETZLER: And I guess, again, the
10 question is why would the unit have to be removed from
11 the property?

12 MS. WALSH: That might be something
13 program staff is better able to answer.

14 MR. PERRY: Hi. I am Phil Perry. I am
15 with the compliance and enforcement branch and it is a
16 combination of permitting and compliance activities
17 and the rule is designed to actually help people get
18 out of permitting requirements. And so the 180 days
19 is designed to allow an operation for a short period
20 of time for emergency purposes.

21 For example, somebody may have a boiler like
22 in a university or such, if it goes out at the last
23 minute you can't have students that are getting cold

1 and if you have the Polar Vortex, you need to bring a
2 temporary unit on site for a period of time. However,
3 if the unit continues to remain on site for more than
4 180 days, then you actually need to get a permit under
5 the regular permit rules. And it depends on what
6 level of permit, but that could take much longer than
7 the period of time in which they just need to do
8 short-term operations and such.

9 And then the 14 days is basically for the same
10 purpose. The units need to be removed so that they
11 don't have to get the permitting that would be
12 required. The rest of the permitting rules require
13 that you get a permit and this is just a provision
14 similar to -- it is an exemption basically that you
15 qualify for that if you operate under these
16 circumstances you don't need to get a permit.

17 MR. ETZLER: Okay. So you cleared that
18 piece up, but if that unit is not operating and let's
19 say that there is concern that that unit that they
20 repaired goes down again, I guess my question is why
21 do you have to remove it when you potentially may have
22 to bring it back?

23 MR. PERRY: Well, again, under the

1 permitting provisions you are required to permit all
2 units that are on site.

3 MR. ETZLER: Operational or not?

4 MR. PERRY: Operational or not, right.

5 SENATOR GARD: Does that come from a
6 federal rule or is that --

7 MR. PERRY: It comes from -- it is state
8 and federal rules where our rules are federally
9 approved.

10 SENATOR GARD: Okay.

11 MR. ETZLER: Is it a federal rule?

12 MR. PERRY: It is not a direct federal
13 rule, it is part of the Clean Air Act. There are
14 provisions in the Clean Air Act that require you to
15 permit the units and then states seek approval of
16 their permit program through EPA.

17 MR. ETZLER: So basically we are writing
18 our rule to comply?

19 MR. PERRY: Correct.

20 MR. ETZLER: With the provision that is
21 in the Clean Air Act?

22 MR. PERRY: Correct.

23 MR. ETZLER: But the EPA doesn't have a

1 rule that says thou shalt do it this way?

2 MR. PERRY: That is correct.

3 SENATOR GARD: Any other questions?

4 MR. RULON: If they wanted to keep an
5 extra unit around, isn't there an additional permit?

6 MR. PERRY: Sources could do that and
7 actually some companies have generators would be a
8 good example where companies have several generators
9 on site and they may have an extra generator that they
10 keep on site as an emergency generator that is limited
11 to operate say 500 hours per year and that's
12 incorporated into their permit. They could do that,
13 they could use that unit at any point in time.

14 The short term units are generally for
15 emergency situations that are unforeseen where people
16 are not planning an outage or something like that. It
17 does include where people are doing same maintenance
18 work and they may be doing maintenance on a boiler or
19 something may go down once every five years or
20 something like that, it is very short term if they
21 don't want to get a permit to include a backup unit
22 for that duration or that period of time.

23 MR. ETZLER: So another question, if I

1 wanted to have a backup unit available, can I have it
2 on another piece of property across the street that if
3 something happened I could bring it in because it is
4 not on the site that --

5 MR. PERRY: Well, it would have to be --
6 and we run into this with --

7 MR. ETZLER: And I will say it
8 differently. If it was a -- if I were a rental
9 company, do I have to have a permit for that unit?

10 MR. PERRY: Generally, no. There are
11 certain situations companies do and this gets into the
12 complexity of the permitting requirements. Generally
13 a rental company would not need to have that because
14 they are not the -- they don't operate the units per
15 se and that's actually some short term units.

16 Many of the short term units come from rental
17 companies, but once it is brought onto a site of a
18 permitted facility, then it is obligated to be
19 permitted. We run into this with say asphalt plants
20 or something that may do certain type of operations
21 that are short-term, but it needs to be included in
22 their permit. So they may rotate a piece of equipment
23 around to each of their facilities throughout the year

1 but it has to be permitted to be able to use it at
2 each site.

3 MR. ETZLER: Okay. Thank you.

4 MR. PERRY: Okay. Other questions?

5 SENATOR GARD: Any other questions?

6 Okay. Thank you. Is there anyone that wants to speak
7 on this? I don't have any speaker cards. Okay. This
8 hearing is concluded. The board will now consider
9 preliminary adoption of amendments to rules at 326 IAC
10 2-1.1-3 regarding short-term backup units. Is there
11 any board discussion? The motion should be made to
12 preliminarily adopt the rule.

13 MR. CUMMINS: So moved.

14 SENATOR GARD: Second?

15 DR. ALEXANDROVICH: Second.

16 SENATOR GARD: All in favor, say aye.

17 (All responded aye.)

18 SENATOR GARD: Opposed, nay.

19 (No response.)

20 SENATOR GARD: Preliminary adoption of
21 the rule is passed.

22 This is a public hearing before the
23 Environmental Rules Board of the State of Indiana

1 concerning preliminary adoption of the amendments to
2 the rules at 327 IAC 5-2.1-2 regarding public
3 notification of Combined Sewer Overflow in the Great
4 Lakes Basin. I will now introduce Exhibit E, the
5 Draft Rules, into the record of the hearing. Mary Ann
6 Stevens will present the rule.

7 MS. STEVENS: Good afternoon, members of
8 the Board. I am Mary Ann Stevens, rulewriter in the
9 Office of Legal Counsel, Rules Development Branch.

10 The United States Environmental Protection
11 Agency published a new final rule at 40 CFR 122.38 in
12 the Federal Register on January 8, 2018, regarding
13 public notification for combined sewer overflow in the
14 Great Lakes Basin.

15 The public notification requirements of this
16 federal rule apply to NPDES permittees authorized to
17 discharge combined sewer overflow to the Great Lakes
18 Basin. To include the federal public notification
19 requirements in our state rules, this rulemaking
20 proposes a new rule at 327 IAC 5-2.2 to incorporate 40
21 CFR 122.38 by reference. It also amends 327 IAC 5-2-3
22 and 5-2-10, and amends one section and repeals another
23 of 327 IAC 5-2.1, which is the existing state CSO

1 public notification rule.

2 The purpose of this new rule or proposed rule
3 is to protect public health by ensuring that the
4 affected Great Lakes Basin CSO communities with
5 authorized CSO discharges for which there are
6 currently 16 provide timely notification to the
7 public, public health departments, public drinking
8 water facilities, and other potentially affected
9 public entities of the occurrence of combined sewer
10 overflows into the communities' waterbodies so that
11 the public can take steps to reduce its potential
12 exposure to pathogens associated with human sewage.

13 The federal CSO public notification rule
14 requires states with delegated NPDES programs to
15 include the federal requirements in state rules, to
16 implement the public notification program, and include
17 the CSO public notification requirements in NPDES
18 permits. The federal rule includes several dates for
19 achieving the required milestones of the program and
20 our Office of Water Quality, Permits Branch is
21 monitoring and implementing the required milestones .

22 Overall, the federal CSO public notification
23 rule closely matches the intention of the existing

1 state rule that has been in effect all Indiana CSO
2 communities since 2003 with the exception that the
3 federal rule applies only to a CSO community with
4 authorized CSO discharges in the Great Lakes Basin.

5 IDEM is proposing that permittees with
6 authorized CSO discharges or the combination of
7 authorized and unauthorized CSO discharges to the
8 Great Lakes Basin will be required to meet the federal
9 requirements being proposed for preliminary adoption,
10 but will no longer be required to comply with the
11 existing state CSO public notification rule. All
12 other CSO communities, which includes those not
13 discharging to the Great Lakes Basin and those having
14 only unauthorized CSO outfalls, will continue to be
15 required to meet the existing state rule.

16 IDEM believes the draft rule meets the federal
17 requirements for Great Lakes Basin Combined Sewer
18 Overflow Public Notification, and, therefore, asks for
19 the board's vote for preliminary adoption. I am
20 available for questions and we also have Martha and
21 Jason House from the Office of Water Quality.

22 SENATOR GARD: Are there any questions?

23 DR. ALEXANDROVICH: I do have one. How

1 many sources does this impact?

2 MS. STEVENS: Well, as I said, we
3 currently have 16 CSO communities in the Great Lake
4 Basin that would be required to comply with this rule.

5 DR. ALEXANDROVICH: Okay. Those
6 communities are already reporting them, correct?

7 MS. STEVENS: Many of them -- well, the
8 state requirements, and these are additional federal
9 requirements for just the Great Lakes Basin so they
10 have to do a few additional things, but they were
11 already reporting.

12 DR. ALEXANDROVICH: And can you just
13 explain the difference between authorized and
14 unauthorized?

15 MS. STEVENS: I knew that question was
16 coming. Shall I make an attempt at it? I will go to
17 the end of the process. Once the CSO community has
18 final completion of its long term control plan, which
19 is a plan that they have been required for how many
20 years back is it now for elimination of combined sewer
21 overflows. Once they have completed their long term
22 control plan full implementation, they are supposed to
23 not have any more combined sewer overflows happening

1 during rain fall, snow melt. But the reality is they
2 may. So apparently they are hanging onto these
3 outfalls but they will not be considered authorized.
4 An authorized permit is listed in the NPDES permit.
5 Am I getting far afield or am I on track?

6 MS. METTLER: So during the
7 implementation of the long term control plan and they
8 are working towards eliminating, they are going to
9 have some overflows that we would consider authorized.
10 Correct, Jason? And so those would be authorized and
11 others may be completely unexpected or from other
12 facilities that would not be authorized. They still
13 have to report them, though. They all have to be
14 reported one way or another.

15 MS. KING: If I could just also add
16 related to authorized discharges, each of these CSO
17 communities is required to be under either a state
18 judgment or a federal consent decree pertaining to
19 these outfall control plans. And through the
20 negotiation pertaining to what a community can achieve
21 based on financials and a very sort of complex formula
22 related to the Clean Water Act, these consent decrees
23 essentially will allow for a community to have up to

1 stay, for example, four overflows per year coming down
2 from many, many more to that.

3 So those would be considered authorized under
4 whatever judgment or consent decree is in place for
5 that community. So that's another aspect of an
6 authorized overflow.

7 MS. STEVENS: Other questions?

8 MR. RULON: Another simple question. So
9 just under the state rule or this rule, how do I find
10 this state -- there is supposed to be public
11 notification, right? How is the best way to find it?
12 Because I have tried to find my local wastewater plant
13 which I know has discharges and I haven't been able to
14 find it. Is that on the IDEM website somewhere?

15 MS. METTLER: Do you want the actual
16 existing -- do you want to see the language of the
17 rule?

18 MR. RULON: No, I want to see --

19 MS. KING: He wants to see the reported
20 overflows which is it required by newspaper or
21 other --

22 MR. HOUSE: Under the current statewide
23 rule, they are required to publish in the local

1 newspaper once a year how the public can go about
2 getting those notifications. So your municipality,
3 wherever you are at, you need to contact them directly
4 on how to go about getting on their contact list and
5 if they are a lot of different ways. So a lot of them
6 do newspaper notifications and then E-mail
7 notifications.

8 SENATOR GARD: How hard would it be for
9 IDEM to put on a website that information, at least in
10 abbreviated form so that people might know?

11 MS. METTLER: The information of how
12 they report them?

13 SENATOR GARD: No, how difficult would
14 it be for IDEM to put that on a website, that
15 information?

16 MR. ROCKENSUESS: The reported
17 information.

18 MS. METTLER: Well, I don't know if it
19 is all reported to us.

20 MR. HOUSE: It is not all reported to
21 IDEM. It goes directly to the public that is
22 interested in knowing about those.

23 MS. KING: The existing -- this is what

1 we are talking about the existing rule -- by the way,
2 what Martha was describing is coming up next month.
3 March is the date according to the existing rule for
4 currently all communities in Indiana, CSO communities,
5 to publish in a local paper some kind of notice that
6 says to the public we have a process for alerting the
7 public of combined sewer overflow events when they
8 occur.

9 If you want to know about these things, here
10 is the contact information of how you can get on our
11 list. And then again under our current CSO public
12 notification rule, each individual CSO community set
13 up their procedures under that rulemaking, their CSO
14 notification procedures, and it was -- it became
15 effective in 2003 which was a time before everything
16 was electronic and every single person on earth had
17 E-mail apparently. So there were different processes
18 put in place that allowed the community to decide
19 interacting with each individual who wanted to be on
20 the list how they would receive their notification.

21 MS. METTLER: So we could try to make an
22 effort to compile those procedures for each of the 100
23 plus discharging communities, but we wouldn't have the

1 actual -- all the actual overflow information.

2 MS. KING: Right.

3 MR. RULON: I get it. We just got
4 sucked into letting IDEM do it electronically at the
5 last meeting and it seemed like such a great idea. It
6 seems like this should be done the same way.

7 MS. KING: That was for air rules.

8 MR. RULON: The reason I bring this up
9 is I have contacted locally and you know what? It is
10 really hard to get them to tell me how they are going
11 to tell me they have an overflow. I keep getting
12 passed back and forth between three different people
13 that live in my community and I still don't know how
14 they are going to tell me --

15 MS. KING: Where was your initial call?
16 Did you call city hall, town hall?

17 MR. RULON: I called the sewer
18 department.

19 MS. KING: Well, that's who should know
20 best.

21 MR. RULON: But they have changed
22 employees and they are trying to -- they have got a
23 new guy, and you know --

1 MS. KING: They should at least be able
2 to tell you how many CSO outfalls the community has
3 that they are monitoring and each one of them is
4 required under the rule to have a physical sign out
5 there that says something of the order of this is a
6 CSO outfall, beware if you see water discharging from
7 this point.

8 MR. RULON: Okay. The rule is great,
9 I'm not --

10 MS. METTLER: Jason has something to add
11 here.

12 MR. HOUSE: I would also recommend that
13 the public can always contact IDEM and we can gather
14 that information because that sort of information is
15 also required to be under combined sewer overflow
16 operational plans. The State might have the Great
17 Lakes basin rules set up a little bit differently than
18 the statewide ones, but we do have that sort of
19 information available to us. We just have to go dig
20 through it and find out how that particular community
21 chose to contact the general public and how you can go
22 about getting on their list?

23 MR. RULON: Thank you very much.

1 SENATOR GARD: Any other questions?

2 MR. ETZLER: I have one.

3 SENATOR GARD: Yes.

4 MR. ETZLER: Some of the dates that
5 are -- were in the federal rule are passed. Why
6 haven't we adopted an emergency rule like we had to do
7 for other rules to make sure that you could enforce
8 this?

9 MS. KING: Well, because this is
10 federal ly required the entities that are regulated
11 under it have to apply whether or not we have it as a
12 state rule or not.

13 MR. ETZLER: Okay.

14 MS. METTLER: And they did.

15 MS. KING: And they did.

16 MS. METTLER: One of them submitted late
17 and that late submission was deficient, but overall
18 the 16 complied but with the dates that have come
19 around so far.

20 MR. HOUSE: We work individually with
21 all of our communities that were impacted by this so
22 we are well aware and worked diligently.

23 MS. KING: Yes. I could add in that it

1 is second notice, I received no comments which I think
2 is an indication that communities that are affected
3 were well-educated by permits branch and Jason doing
4 so much interaction with them.

5 SENATOR GARD: Any other questions?

6 Thank you. We have one speaker card.

7 MR. QUINN: Chairman Gard, members of
8 the committee, I am Bowden Quinn and I am the state
9 director of the Sierra Club Hoosier Chapter. We are
10 actually in support of this rule. Informing the
11 public about environmental problems is the best way of
12 finding equitable solutions to them. And I will note
13 this has been discussed and IDEM has had similar rules
14 since 2003.

15 As it happens, I was a member of the Water
16 Pollution Control Board in 2003, one of your
17 predecessor boards, and I assumed they voted for it
18 back then and so it is -- I congratulate IDEM. IDEM
19 has normally been very good in addressing and
20 responding to requesting the public for more
21 information and for better mechanisms to provide
22 public information. So I thank IDEM for what it has
23 done and it is nice to see the federal government

1 finally catch up with us. Thank you.

2 SENATOR GARD: Thank you. Is there
3 anybody out there that didn't fill out a card that
4 wants to speak? Okay. Thank you. The hearing is
5 concluded. The Board will now consider preliminary
6 adoption of amendments to rules at 327 IAC 5-2 and 2.1
7 regarding public notification of combined sewer
8 overflows in the Great Lake Basin. Board discussion?
9 Is there a motion to preliminarily adopt the rules?

10 MR. HORN: So moved.

11 MR. CUMMINS: Second.

12 SENATOR GARD: All in favor, say aye.

13 (All responded aye.)

14 SENATOR GARD: Opposed, nay.

15 (No response.)

16 SENATOR GARD: The preliminary rules are
17 adopted. This is a public hearing before the
18 Environmental Rules Board for the State of Indiana
19 concerning preliminary adoption of amendments to rules
20 at 326 IAC 3-5-1 regarding Portland Cement Monitoring.
21 I will now introduce Exhibit F, the draft rules, into
22 the record of the hearing. Keelyn Walsh will present
23 the rule.

1 MS. WALSH: Hello again. I am Keelyn
2 Walsh and I am here to present Rule Number 18-364,
3 Portland Cement Monitoring for your consideration.
4 Continuous monitoring requirements in 326 IAC 3-5
5 currently apply to Portland Cement plants operating in
6 Indiana. Under the current rule -- under the current
7 state rule Portland Cement plants may choose to use
8 either a continuous opacity monitoring system, known
9 as a COMS, or a continuous emission monitoring system
10 for particulate matter to monitor emissions from kilns
11 and clinker coolers.

12 In 2013 USEPA revised the National Emission
13 Standards for Hazardous Air Pollutants, or NESHAP, for
14 Portland cement plants to require a continuous
15 parametric monitoring system, known as a CPMS. Lehigh
16 Hanson, Inc. and Buzzi Unicem USA requested removal of
17 the COMS requirement for Portland Cement Plants based
18 on these revisions to the NESHAP at 40 DFR 63, Subpart
19 LLL.

20 Revising the COMS requirement to allow the use
21 of a CPMS to be consistent with federal regulations
22 will allow Portland Cement Plants to operate more
23 efficiently and keep operating costs low by allowing

1 sources to utilize existing equipment to monitor
2 emissions and ensure compliance with emission
3 regulations in the NESHAP. Updating the rules at 326
4 IAC 3-5 will not impose any additional costs for the
5 regulated industry or IDEM.

6 In conclusion, this rulemaking proposes to
7 revise 326 IAC 3-5-1 to allow the use of a CPMS to
8 monitor emissions based on the updated federal rule.
9 IDEM requests that the board preliminarily adopt this
10 rule as presented, and program staff are available to
11 answer any further questions you may have. Thank you.

12 SENATOR GARD: Are there any questions
13 for Keelyn? Thank you. I have no speaker cards. Is
14 there anyone that would like to speak on this issue?
15 This hearing is concluded. The Board will now
16 consider preliminary adoption of the amendments to the
17 rules at 326 IAC 3-5-1 regarding Portland Cement
18 Monitoring. Is there board discussion? I need a
19 motion to preliminarily adopt the rule.

20 MR. CUMMINS: So moved.

21 SENATOR GARD: Is there a second?

22 MR. HORN: Second.

23 SENATOR GARD: All in favor, say aye.

1 (All responded aye.)

2 SENATOR GARD: Opposed, nay.

3 (No response.)

4 SENATOR GARD: The rules are adopted.

5 This is an open forum for anyone who wishes to speak
6 today on the hazardous waste rule that we didn't talk
7 about or anything else. No? Well, the next meeting
8 of the Environmental Rules Board is to be set for May
9 8 at 1:30 in this conference room subject to change so
10 we will keep everyone updated when that is confirmed
11 or another date is chosen. Is there a motion to
12 adjourn?

13 DR. NIEMI EC: So moved.

14 SENATOR GARD: Second?

15 MR. CLARK: Second.

16 SENATOR GARD: All in favor, say aye.

17 (All responded aye.)

18 SENATOR GARD: Opposed, nay.

19 (No response.)

20 SENATOR GARD: We are adjourned.

21 (Proceedings adjourned at 2:30 p.m.)

22

23

1 CERTIFICATE

2 STATE OF INDIANA)
) ss:
 3 COUNTY OF BOONE)

4

5 I, Heather S. Orbaugh, the undersigned Court
 Reporter and Notary Public residing and maintaining
 6 offices in the City of Zionsville, Boone County,
 Indiana, do hereby certify:

7

8 That I reported to the best of my ability in
 machine shorthand all of the words spoken by all
 parties in attendance during the course of the ensuing
 9 proceedings, including objections, if any, made by all
 counsel present;

10

11 That I later reduced my shorthand notes into the
 foregoing typewritten transcript form, which
 typewritten transcript is a true record to the best of
 12 my ability of the testimony given by the witness as
 stated above;

13

14 That I am not a relative or employee or attorney
 or counsel of any of the parties, nor am I a relative
 or an employee of such attorney or counsel, and that I
 15 am not financially interested in this action.

16

17 IN WITNESS HERETO, I have affixed my Notarial Seal
 and subscribed my signature below this 4th day of
 18 March, 2019.

19

20

21

22 _____
 Notary Public
 County of Residence: Boone (Seal)
 23 My Commission Expires on: April 4, 2026