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ENVIRONMENTAL RULES BOARD MEETING

Transcript of the proceedings held on the 12th day of  
November, 2014, at 402 West Washington Street, Conference  
Room A, Indianapolis, Indiana, before Heather S. Orbaugh,  
Notary Public in and for the County of Boone, State of  
Indiana, CCR: LA.

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 Sen. Beverly Gard - Chair

4 William Etzler - Vice Chair

5 Tom R. Anderson

6 Gary Powdrill

7 Dr. Ted Niemi ec

8 Joanne Alexandrovich

9 Cal Davidson

10 Chris Horn

11 Gail Boydston

12 Pam Fisher - IEDC Proxy

13 Mike Mettler - IDOH Proxy

14 Cameron Clark - IDNR Director

15 Ken Rulon

16 Kent Abernathy - IDEM Chief of Staff

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1:30 PM

NOVEMBER 12, 2014

SEN. GARD: Let's go around the room and everybody introduce themselves and tell who they represent because I think we have some folks in the room who probably aren't particularly familiar with this board.

MR. ABERNATHY: Kent Abernathy, I am the Chief of Staff of IDEM.

MR. RULON: Ken Rulon representing agriculture.

MR. CLARK: Cameron Clark representing DNR.

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

MS. FISHER: Pam Fisher proxy for Secretary of Commerce Victor Smith.

MS. BOYDSTON: Gail Boydston, representing manufacturing.

SEN. GARD: Beverly Gard, general public.

MR. ETZLER: Bill Etzler, small business.

MR. ANDERSON: Tom Anderson, environmental.

MR. POWDRILL: Gary Powdrill, public at large.

DR. NIEMIEC: Ted Niemi ec, healthcare.

DR. ALEXANDROVICH: Joanne Alexandrovich,

1 county government.

2 MR. DAVIDSON: Calvin Davidson, solid waste  
3 and recycling.

4 MR. HORN: Chris Horn representing labor.

5 SEN. GARD: Thank you very much. The first  
6 order of business is to approve the summary of the minutes  
7 for September 10, 2014. Is there a motion to approve them  
8 as distributed?

9 MR. HORN: So moved.

10 DR. NIEMI EC: Second.

11 SEN. GARD: All in favor, yea.

12 (Yaes heard.)

13 SEN. GARD: Those opposed, nay.

14 MR. DAVIDSON: Madam Chairman, I wasn't  
15 present so I thought I should abstain.

16 SEN. GARD: Thank you. Motion passes.

17 MR. HORN: So moved.

18 SEN. GARD: Kent Abernathy, Commissioner's  
19 report.

20 MR. ABERNATHY: Thank you, Madam Chairwoman  
21 and members of the Board and guests. First of all, I  
22 apologize, Commissioner Easterly is in Chicago today with  
23 Region Five USEPA, and there is really just two big issues  
24 we have going on. It is on two major USEPA initiatives, it  
25 is providing comments for submission to USEPA first on the

1 proposed definition of waters of the US as part of the  
2 Clean Water Act. We just got a copy of the final comments,  
3 what we believe are the final comments. Those are due on  
4 Friday the 14th, so in a couple days. And the second is  
5 proposed Section 111-D to the Clean Air Act or the  
6 so-called Carbon Rule, if you will, on existing power  
7 plants and those are due December 1st. That's all I have  
8 to report, Madam Chair.

9                   SEN. GARD: Thank you. Chris Pedersen,  
10 rulemaking update.

11                   MS. PEDERSEN: Hello, my name is Chris  
12 Pedersen, I am with the Rules Development Branch. I just  
13 want to talk to you briefly about some rules that we  
14 anticipate coming before you in our next board meeting.  
15 Right now we believe that is going to be in January.  
16 The first will be final adoption of the Hazardous Waste  
17 Updates. This is a rule that's up for preliminary adoption  
18 today, and it is an incorporation by reference of recent  
19 federal hazardous waste rules that are necessary to  
20 maintain authorization to administer the hazardous waste  
21 program in Indiana.

22                   In addition to that, we have several that we  
23 anticipate being ready for preliminary adoption. The first  
24 one is Walsh & Kelly SO<sub>2</sub> Limits. Walsh & Kelly is a hot  
25 mix asphalt plant that is located in Griffith, Indiana, in

1 Lake County and the sources requested revision to their SO<sub>2</sub>  
2 emission limits for a new aggregate dryer burner using the  
3 same limits as the old unit. Another rule is ship building  
4 and ship repair. For this one, Jeff Boat, which is a barge  
5 manufacturer in Jeffersonville, Indiana, in Clark County  
6 they have requested an amendment to the VOC content limit  
7 for anti-foulant coatings.

8           Their current coating has been discontinued and  
9 other available coatings that meet the current limit are  
10 either not appropriate for barges or else very expensive.  
11 Sources in other states use less expensive coatings that  
12 meet the VOC content limits in the national emissions  
13 standards for hazardous air pollutants or NESHAP, so IDEM  
14 will be proposing a VOC content limit that is consistent  
15 with the limit in the ship building and ship repair NESHAP.

16           Also, particulate matter emission limit updates,  
17 the purpose of this rule is to update source specific  
18 information in the particulate matter emission limit rules,  
19 it will update and correct information that is inaccurate  
20 or obsolete, and it will also address specific requests  
21 from sources that have asked to change emission limits that  
22 are currently in the rule. We would also anticipate  
23 repealing certain sections for sources that are either no  
24 longer in operation or that have units that have closed  
25 down.

1           And then the final rule that we are anticipating is  
2 the SO<sub>2</sub> emission limits. We think that may be ready in  
3 January, and this one revises or adds SO<sub>2</sub> emission limits  
4 in certain counties that have townships that have been  
5 designated as non-attainment for the new one-hour SO<sub>2</sub>  
6 standards, removing sources and equipment that are closed  
7 in those areas and then also revising the emission limits,  
8 and the affected areas would be townships in Marion,  
9 Morgan, Daviess, Pike, and Vigo Counties. And that is all  
10 I have.

11                         SEN. GARD: Any questions for Chris? Thank  
12 you. Matt Stuckey for Annual Air Permitting Report.

13                         MR. STUCKEY: Good afternoon. I am Matt  
14 Stuckey, I am the air permits branch chief and as per a  
15 number of regulations I am required to do a report out on  
16 air permitting each year to the board, so here I am to do  
17 that today. You should have the report itself in the  
18 packet and have gotten an opportunity to review it. I  
19 don't intend to go through it in great detail. Obviously  
20 if you have questions, you are welcome to ask as we go.

21           Some of the highlights and important things, we  
22 have 95 new Title V permits issued this year, so that is  
23 sources that either are new sources or have transitioned  
24 from a lower level permit up to Title V. That was a fairly  
25 average number. Again, most of the numbers that you see in

1 the report, there is not a huge dramatic change or swing in  
2 the results. A couple of interesting notes on our permit  
3 time, our significant permits which we are supposed to  
4 issue the majority within 270 days, our average is about  
5 100 to 150 days which is down some from the last few years.  
6 So we are issuing those types of permits quicker than we  
7 have in the past. Our construction permits, which would be  
8 primarily the important ones that are the significant  
9 source seeking permit revisions which, again, are for new  
10 sources, for new modification construction, and existing  
11 sources. And, again, the average time for those permits is  
12 between 50 and 75 days.

13 And, again, those are -- for that particular one  
14 those are clock days. Our calendar days are also down  
15 around the 120 mark. But what that tells you again is when  
16 the amount of time that it takes us to issue a permit based  
17 on the clock, which is the time we are counting for our  
18 time working on the permit and the remaining time is time  
19 we are waiting for the sources to provide us with  
20 information. So, again, down from the previous years.

21 Permit applications received for fiscal year 2014  
22 is 1,349. The previous year was 1331 so, again, you can  
23 see it is fairly static and we are issuing about the same  
24 number of permits and we are receiving about the same  
25 number of applications.



1           On our appeals we have -- we issued four appeal  
2 resolutions which means these are permits that in many  
3 cases are permits that have been appealed in years past  
4 that we have been working with the sources to work out  
5 details, administrative, or legal issues. So we really are  
6 reducing the number of appeals significantly from the years  
7 past. Something else I thought was interesting as we were  
8 preparing the report, the section on notices of deficiency,  
9 this is where we ask sources for more information. I was  
10 interested to see that we have made significant reductions  
11 in the number of notices and deficiencies who have had  
12 issues, even though the number of applications received is  
13 about the same, and really that has a lot to do with the  
14 fact that we are trying to be more efficient in the amount  
15 of information we ask for and the way in which we ask for  
16 that information so we don't have to keep going back and  
17 asking again for information, so we can obtain it the first  
18 time and can reduce the amount of time it takes to issue  
19 the permits. So, again, about 70 less this year, notices  
20 of deficiencies by E-mail.

21           On the financials, I won't pretend to know all that  
22 I need to know. Thankfully we have people in our branch or  
23 office that do know all about the financials. As I  
24 understand it, our revenues are still consistent with our  
25 expenditures. We still aren't receiving enough money to

1 maintain our program, all the things that we are obligated  
2 to do, the cash balance in our accounts has not exceeded  
3 the \$3 million mark, not by a long shot, but we don't have  
4 more money than we are allowed to take in by rule, so  
5 again, we are not looking, at least this year, at proposing  
6 raises in permit fees, although we do assess that every  
7 year and make sure that we have enough money to fund our  
8 program.

9           In terms of permit time and metrics, this is what  
10 we put out to the governor every year, once a quarter, once  
11 a month, indicating our performance as a branch. This year  
12 we were now obligated based on internal performance and  
13 management requirements to issue the permits on average  
14 within 85 percent of the time allowed. In previous years I  
15 reported out that our obligation was to get them within a  
16 hundred percent, so we are required to issue permits within  
17 270 days, they had to at least be issued within 270 days.  
18 Now, if you are required to do 270 then 85 percent of that.  
19 And, again, this is the agency's push to make sure that  
20 sources are not waiting longer than they need to to get  
21 permits. You can see from the numbers in the report, we  
22 are not as consistent with meeting the 84 as we did the  
23 hundred percent -- or 85, we are at 84 percent today, so we  
24 are pretty much maintaining, and we are taking steps to  
25 improve that every day.

1           Again, to that end, our biggest problem that we  
2 have right now, and it seems like it is the same thing I  
3 tell you every year, staffing. Air permits does a really  
4 good job of training consultants and environmental health  
5 and safety people, so they come work for us for a couple  
6 years and they leave and go work elsewhere where they can  
7 make substantially more money. That is something I can't  
8 do much about, but we are looking at that. Something that  
9 we are looking at in terms of being competitive with our  
10 staffing.

11           Unfortunately, the down side to staff turnover is  
12 that I have to train people over and over again. As I get  
13 new staff, I train them to write permits, they leave, they  
14 submit really good applications thankfully, but we still  
15 have to train the new staff. So those are the things that  
16 we are working on. We have tried to modernize our system.  
17 We have made some additional improvements to what we call  
18 our air pro, which is our electronic document transfer  
19 system, so all of our work now is done electronically. All  
20 the documents are reviewed and commented on through this  
21 share point program so that by the time we are done with  
22 the permit, it has all been done that way and then we are  
23 ready to print it out so that really the only time we do  
24 hard copies anymore would be the file version of the permit  
25 to be sent to the source, almost everything else is done

1 electronically and even the interested parties and the  
2 folks that are to receive the permit, we send them letters  
3 identifying where they can go to see the permit, again, on  
4 our web site so as to avoid printing over and over again  
5 documents and basically to reduce our cost, the cost of  
6 paper and printers.

7           Other than that for the coming year, again, we are  
8 always looking at improvements in our air pro system. We  
9 have initiated a program where we are going to reduce the  
10 amount of text that we send to the paper for public  
11 notices. I think it is a good indicator that we are  
12 looking at every possible way to save money and resources.  
13 We used to put in the newspaper a letter that lays out what  
14 the permit is all about, and it was usually two to three  
15 pages long, we have condensed that down to a couple  
16 paragraphs that tells you where to go see the full version  
17 of the permit, and we are looking at potentially saving the  
18 state about \$50,000 in cost just by doing that because we  
19 pay per letter, per line, going to the newspaper. So until  
20 we can get around going to the newspaper, which is required  
21 by rule, we are trying to minimize the cost we have. So,  
22 again, these are things that we are doing to try to reduce  
23 that cost. We are about a year into our reorganized  
24 program and we have six sections and I will tell you it has  
25 worked out very well. The work load for each section chief

1 is a lot less, they have the ability to focus more on  
2 sources and permit applications that we have and to deal  
3 with the issues that come up, so that's been I think a  
4 pretty good success for us.

5           The biggest change this year, probably the most  
6 important thing that we are dealing with right now is the  
7 Supreme Court's ruling on greenhouse gasses. I know you  
8 guys probably have followed this, we were here two years  
9 ago, three years ago talking about the fact that we have to  
10 regulate greenhouse gasses; now that the Supreme Court says  
11 we don't, but it is not as simple as you might think. We  
12 are working through the legalities of that and we are not  
13 regulating greenhouse gasses for the majority of the  
14 sources now, but for some of the larger, more complex  
15 sources where they would otherwise be subject to PSD, we  
16 continue to regulate. There is some disagreement about  
17 whether that is really what the court ruling was, but  
18 that's what we are doing based on EPA guidance. So many of  
19 the sources will be in getting revisions of their permit  
20 trying to get the greenhouse gas requirements out of the  
21 permit. So we will be working with that and increase the  
22 work load as well. But, again, it is important we do that  
23 because that's what the Supreme Court has ruled. That's  
24 really what we are working on. Do you have any questions  
25 for me?

1 SEN. GARD: Thank you. Are there questions?

2 MR. STUCKEY: Thank you.

3 SEN. GARD: Thank you so much. Today there  
4 will be public hearings prior to consideration for final  
5 adoption of the Stage II Vapor Recovery Systems and  
6 Electronic Waste, a public hearing prior to consideration  
7 for preliminary adoption of the hazardous waste updates as  
8 well. There will also be a presentation on Nonrule Policy  
9 Document, IDEM's Office of Water Quality. Rules being  
10 considered at today's meeting are included in the board  
11 packets that are available for public inspection at the  
12 Office of Legal Counsel, 13th Floor, Indiana Government  
13 Center North. The entire board packet is also available on  
14 IDEM's web site at least one week prior to each board  
15 meeting. A written transcript of today's meeting will be  
16 made. The transcript and any legal or any written  
17 submissions will be open for public inspection at the  
18 Office of Legal Counsel. Copies may be made for the cost  
19 of copying.

20 Will the official reporter of the cause please  
21 stand and raise your right hand and state your name?

22 COURT REPORTER: Heather Orbaugh.

23 SEN. GARD: Do you solemnly affirm that you  
24 will keep complete and true notes of all that transpires  
25 and prepare a transcript thereof and faithfully perform all

1 duties imposed upon you as an official reporter in the  
2 state of Indiana?

3 COURT REPORTER: I do.

4 SEN. GARD: Thank you. This is a public  
5 hearing before the Environmental Rules Board for the State  
6 of Indiana concerning preliminary adoption of amendments to  
7 rules at 329 IAC 3.1 updating the hazardous waste rules. I  
8 will now introduce Exhibit A, the draft rules, into the  
9 record of the hearing.

10 (Exhibit A admitted.)

11 SEN. GARD: Dan Watts, are you going to  
12 present the rule?

13 MR. WATTS: Good afternoon, Chairwoman Gard  
14 and members of the board. My name is Dan Watts, I am a  
15 rule writer with the rules development branch and I would  
16 like to present LSA Document Number 14-288 for preliminary  
17 adoption which proposes amendments to the hazardous waste  
18 management rules at 329 IAC 3.1. This rulemaking will  
19 update IDEM's hazardous waste rules to be equivalent or  
20 consistent with recent changes to EPA hazardous waste  
21 rules.

22 This rulemaking uses a modified rulemaking process  
23 in accordance with IAC 13-14-9-7 that allows for a waiver  
24 of the first comment period if the commissioner determines  
25 that the rulemaking policy alternatives are so limited that

1 a first comment period would provide no substantial benefit  
2 to the environment for persons to be regulated or otherwise  
3 affected by the proposed rule. Because this rulemaking was  
4 initiated by the need to adopt changes to EPA rules without  
5 significant modification, IDEM believes this rule fits the  
6 requirements of IC 13-14-9-7, so we do not have a first  
7 comment period for this rule, it went straight to the  
8 second comment period.

9           Each year the EPA publishes final rules that make  
10 changes to EPA hazardous waste regulations and it has  
11 authorized a hazardous waste program with the EPA  
12 delegating responsibilities to IDEM to implement the  
13 program in lieu of the EPA. State regulatory agencies that  
14 operate authorized RCRA hazardous waste management programs  
15 are required to adopt the changes to the EPA hazardous  
16 waste rules in order to maintain equivalent and consistent  
17 requirements with the EPA. If IDEM does not incorporate  
18 the required changes from the EPA final rules into state  
19 rules, Indiana may lose authorization and the EPA make take  
20 over the implementation of the hazardous waste rules in  
21 Indiana, and we don't really want that.

22           So in this rulemaking, the EPA final rule for  
23 transboundary shipments of hazardous waste between  
24 countries in the Organization for Economic Cooperation and  
25 Development is a required rule and became effective in



1 January -- well, it was published January 8, 2010. This is  
2 a rule that IDEM needs to adopt to maintain equivalency  
3 with EPA requirements. With other EPA final rules for  
4 hazardous waste, the EPA has amended the requirements to be  
5 less strict than the former requirements or offered more  
6 compliance flexibility and the states are not required to  
7 adopt these changes. However, the EPA encourages states to  
8 adopt these optional rules in order to maintain a  
9 consistent regulatory environment with federal requirements  
10 that potentially reduce costs for regulated entities. In  
11 this rulemaking, that includes the EPA final rules for the  
12 following: An alternative standard for the use of best  
13 demonstrated available technologies for treating hazardous  
14 wastes from the production of carbamate waste; technical  
15 corrections and clarifications for hazardous waste  
16 requirements at 40 CFR 261.32(a) and 40 CFR 266.20(b);  
17 revisions to the requirements for the solvent contaminated  
18 wipes that allow for the conditional exclusions of solvent  
19 contaminated wipes from the definition of solid waste or  
20 the definition of hazardous waste for meeting certain  
21 requirements; and a conditional exclusion for carbon  
22 dioxide streams that are hazardous from the definition of  
23 hazardous waste if the streams are captured and injected  
24 for geologic sequestration under certain conditions.

25 So representatives from IDEM are available to

1 answer any questions you may have for this rulemaking. The  
2 department asks that the board preliminary adopt this rule  
3 as presented. Thank you.

4 SEN. GARD: I have a question. Early in  
5 your presentation you stated -- were referring to  
6 transportation and you said between countries, did you mean  
7 between counties?

8 MR. WATTS: No, between countries.  
9 International shipments, hazardous waste.

10 SEN. GARD: Okay. Any other questions?  
11 Thank you. I have no speaker cards. Is there anyone who  
12 would like to comment on this? This hearing is concluded.  
13 Is there any board discussion? Is there a motion?

14 DR. NIEMI EC: One point I would like to  
15 make, on the summary that we have on Page 305, this is  
16 under 329 IAC 3.1-6-2 under Section 2, Subsection 3, it  
17 refers to the SWMB, is it possible that this might now be  
18 the ERB? I think we should discuss that.

19 SEN. GARD: I haven't found where you are  
20 talking about.

21 DR. NIEMI EC: The reference is to the  
22 administrator in 40 CFR 261.10, 40 CFR 261.11, SWMB.

23 SEN. GARD: Good catch.

24 DR. NIEMI EC: So should this be then changed  
25 to the ERB?

1 SEN. GARD: Yes.

2 DR. NIEMI EC: Okay. Thanks.

3 SEN. GARD: We are probably going to be  
4 finding those things for years. Thank you. Is there a  
5 board motion to preliminarily adopt the rule?

6 MR. ANDERSON: So moved.

7 MR. RULON: Second.

8 SEN. GARD: All in favor say yea.

9 (Yae heard.)

10 SEN. GARD: Opposed, nay. The motion has  
11 passed.

12 This is a public hearing before the Environmental  
13 Rules Board for the State of Indiana concerning Final  
14 Adoption of Amendments to Rules at 326 IAC 2 and 326 IAC 8  
15 concerning Stage II Vapor Recovery Systems. I will now  
16 introduce Exhibit B, the Preliminary Adopted Rules with  
17 IDEM Suggested Changes into the record of the hearing.  
18 Chris, do you want to present that?

19 (Exhibit B marked.)

20 MS. PEDERSEN: Again, I am Chris Pedersen  
21 with the Rules Development Branch. This is a rule that was  
22 before you in September and was preliminarily adopted.  
23 Under the Clean Air Act, Stage II Vapor Recovery Systems  
24 were required on gas pumps in certain ozone noncontainment  
25 areas. Technology is designed to control gas line vapors

1 that can react with sunlight, nitrogen oxides, and other  
2 volatile organic compounds to form ozone. In 2012 USEPA  
3 determined that Stage II requirements may no longer be  
4 needed since most vehicles on the road have onboard  
5 refueling vapor recovery equipment making the Stage II  
6 systems redundant. In accordance with USEPA guidance, IDEM  
7 conducted emission inventory analysis to determine when  
8 Stage II vapor recovery requirements could be removed in  
9 Indiana without impacting emission reductions. The  
10 analysis showed that Stage II systems would no longer be  
11 needed in 2016, but since the Stage II requirements began  
12 being phased out in 2013, IDEM has prepared a demonstration  
13 that accounts for the potential loss reductions from Stage  
14 II requirements with reductions achieved through shutdown  
15 credits and other programs that are not currently in the  
16 state implementation plan. This demonstration will  
17 accompany the rule revision submitted to USEPA to support  
18 modification to the state implementation plan. This  
19 rulemaking amends 326 IAC 2-11-2, 326 IAC 8-4-1, and 326 IAC  
20 8-4-6, Turbo Stage II vapor recovery system requirements in  
21 Clark, Floyd, Lake, and Porter Counties and to update  
22 information for consistency with USEPA guidance and the  
23 results of IDEM's analysis specific to Indiana.

24 The only changes to this rule since you saw it in  
25 September were minor administrative changes to conform to

1 the legislative services agency's drafting requirements and  
2 also the removal of an obsolete reference. IDEM recommends  
3 that the board final adopt this proposed rule. Program  
4 staff are here to answer any questions.

5 SEN. GARD: Are there any questions of  
6 Chris?

7 MR. POWDRILL: Chris, on Page 6 of 10 at the  
8 bottom, I guess it would be Section 1.

9 MS. PEDERSEN: Okay.

10 MR. POWDRILL: It talks about  
11 decommissioning, and I -- the way I read it, it says they  
12 have to -- each gas dispensing facility has to decommission  
13 their Stage II Vapor Recovery System or else they have to  
14 continue running it; is that the way I interpreted it?

15 MS. PEDERSEN: That's correct.

16 MR. POWDRILL: And there is a specific  
17 method for which they decommission it?

18 MS. PEDERSEN: Correct.

19 MR. POWDRILL: I don't understand why.

20 MS. PEDERSEN: The pumps that have the  
21 system on now, as long as they maintain the equipment on  
22 it, they have to maintain it in accordance with the rule.  
23 If they choose to decommission it, then they decommission  
24 it in accordance with the rule, but they have that option.

25 MR. POWDRILL: So they have to take the

1 stuff off.

2 MS. PEDERSEN: If they take it off, they  
3 just have to do it in accordance with the rule. And new  
4 pumps would not have to have the equipment at all.

5 MR. POWDRILL: When they take it off does  
6 the agency have to sign off on it or anything of that  
7 nature?

8 MS. PEDERSEN: No.

9 MR. POWDRILL: Just by taking it off it is  
10 considered decommissioned?

11 MS. PEDERSEN: They do have to notify us.

12 MR. POWDRILL: Okay. Thank you.

13 SEN. GARD: Any other questions?

14 DR. ALEXANDROVICH: The submission  
15 demonstration that the equivalent emissions reductions from  
16 this and other things, is that available to us and to the  
17 public, and if EPA doesn't approve it, how does that affect  
18 our rulemaking?

19 MS. PEDERSEN: As far as availability,  
20 Roger, do you know if -- is it completed? Do you know if  
21 we have completed the demonstration? I think it is  
22 drafted. That would be available when it is completed. As  
23 far as if it is not adopted by USEPA, that does not  
24 actually affect the status of the state rule, it would  
25 still be in effect. And we work with EPA closely on these

1 things so they are aware of what we are doing, and to the  
2 best of our knowledge, they are not going to have any  
3 issues with this.

4 DR. ALEXANDROVICH: Can you send that out to  
5 the board once it's complete?

6 MS. PEDERSEN: Sure.

7 SEN. GARD: Any other questions? I guess  
8 the hearing is completed.

9 This board will now consider final adoption of  
10 amendments to Stage II Vapor Recovery Rules. Is there  
11 discussion by the board? Is there a motion to adopt IDEM's  
12 suggested changes?

13 MR. DAVIDSON: So moved.

14 MR. CLARK: Seconded.

15 SEN. GARD: All those in favor say yea.

16 (Yea heard.)

17 SEN. GARD: Those opposed, nay. Motion  
18 passes. Motion should be made to final adopt the rule as  
19 amended. Is there a motion?

20 MR. RULON: So moved.

21 SEN. GARD: Second?

22 MR. POWDRILL: Second.

23 SEN. GARD: This is a roll call vote.

24 Mr. Rulon?

25 MR. RULON: Yae.

1 SEN. GARD: Dr. Alexandrovich?  
2 DR. ALEXANDROVICH: Yes.  
3 SEN. GARD: Dr. Niemiec?  
4 DR. NIEMIEC: Yes.  
5 SEN. GARD: Mr. Powdri II?  
6 MR. POWDRILL: Yes.  
7 SEN. GARD: Mr. Anderson?  
8 MR. ANDERSON: Yes.  
9 SEN. GARD: Mr. Etzler?  
10 MR. ETZLER: Yes.  
11 SEN. GARD: Ms. Boydston?  
12 MS. BOYDSTON: Yes.  
13 SEN. GARD: Mr. Davidson?  
14 MR. DAVIDSON: Yes.  
15 SEN. GARD: Mr. Horn?  
16 MR. HORN: Yes.  
17 SEN. GARD: Ms. Fisher?  
18 MS. FISHER: Yes.  
19 SEN. GARD: Mr. Mettler?  
20 MR. METTLER: Yes.  
21 SEN. GARD: Mr. Clark?  
22 MR. CLARK: Yes.  
23 SEN. GARD: And the chair votes yes. 13 to  
24 nothing, the rule is adopted.  
25 This is a public hearing before the Environmental



1 Rules Board in the State of Indiana concerning the final  
2 adoption of amendments to rules at 329 IAC 16 on electronic  
3 waste. I will now introduce Exhibit C, the preliminary  
4 adopted rules with IDEM's suggested changes into the record  
5 of the hearing.

6 (Exhibit C marked.)

7 SEN. GARD: Is there someone from the  
8 department to present the rules?

9 MR. WATTS: Hello again. This one is a  
10 little shorter than the last one. Good afternoon,  
11 Chairwoman Gard, members of the board, I am here to present  
12 LSA Document Number 14-19 for final adoption which proposes  
13 amendments to the electronic waste management rules at 329  
14 IAC 16, as explained during preliminary adoption. This  
15 rule proposed for final adoption will do the following:  
16 add compliance flexibility for container labels, mapping,  
17 and financial assurance, including the option to choose  
18 from three more mechanisms to comply with financial  
19 assurance requirements; make the rule more understandable  
20 by eliminating confusing, unnecessary, and repetitive  
21 language; reorganize portions of the rule for improved  
22 clarity such as the exemption from complying with this rule  
23 for small quantity hazardous waste generators and large  
24 quantity hazardous waste generators; update requirements to  
25 allow for changes in technology such as the outdated

1 standards for electronic submission of data to the  
2 department.

3           Since the preliminary adoption in September, the  
4 only changes are grammatical changes. At 329 IAC  
5 16-5-1(e)(1) pointed out by one of our astute board  
6 members, IDEM has not added any requirements or made any  
7 other changes since the first hearing. Representatives  
8 from IDEM are available to answer any questions you may  
9 have for this rulemaking. The department asks that the  
10 board preliminary adopt this rule -- finally adopt this  
11 rule as presented. Thank you.

12                   SEN. GARD: Are there any questions for  
13 Mr. Watts?

14                   MR. DAVIDSON: I apologize for not being  
15 here the last meeting, but the definition of electronic  
16 waste, I know there was at one time or not too long ago  
17 more than one definition of electronic waste, has that been  
18 clarified or solved?

19                   MR. WATTS: That is not something I am aware  
20 of.

21                   MR. DAVIDSON: I know this didn't address  
22 specifically that, I was looking for that in this material,  
23 but one was a little broader, one was a little narrower,  
24 and if that's something I could follow up on, I don't know  
25 that it will affect the rule but it is something we should

1 probably consider to make sure the definition of what's  
2 affected is consistent.

3 MR. WATTS: I will have to check on what we  
4 have in our definition.

5 SEN. GARD: Cal, are you talking about the  
6 definition in the rule or in the statute?

7 MR. DAVIDSON: Well, that's a fair question  
8 because that's part of the confusion in the industry is  
9 which rule applies.

10 MR. WATTS: Because if it is defined by  
11 statute, we couldn't change it by rule.

12 SEN. GARD: Okay. Somebody can find out the  
13 answer for you.

14 MR. DAVIDSON: Thank you.

15 SEN. GARD: Any other questions? Thank you.  
16 I have no speaker cards on this rule. Is there anyone who  
17 wishes to address the rule? This hearing is concluded.  
18 The board will now consider final adoption of amendments to  
19 the electronic waste rule. Board discussion? Is there a  
20 motion to adopt IDEM's suggested changes?

21 MR. DAVIDSON: So moved.

22 SEN. GARD: Second?

23 DR. ALEXANDROVICH: Second.

24 SEN. GARD: All in favor say yea.

25 (Yea was heard.)

1                   SEN. GARD: Those opposed? The motion to  
2 adopt the changes has been approved. Is there a motion to  
3 final adopt the rule as amended?

4                   MR. HORN: So moved.

5                   DR. ALEXANDROVICH: Second.

6                   SEN. GARD: Okay. Role call vote.

7 Mr. Rulon?

8                   MR. RULON: Yae.

9                   SEN. GARD: Dr. Alexandrovich?

10                  DR. ALEXANDROVICH: Yes.

11                  SEN. GARD: Dr. Niemi ec?

12                  DR. NIEMI EC: Yes.

13                  SEN. GARD: Mr. Powdrill?

14                  MR. POWDRILL: Yes.

15                  SEN. GARD: Mr. Anderson?

16                  MR. ANDERSON: Yes.

17                  SEN. GARD: Mr. Etzler?

18                  MR. ETZLER: Yes.

19                  SEN. GARD: Ms. Boydston?

20                  MS. BOYDSTON: Yes.

21                  SEN. GARD: Mr. Davidson?

22                  MR. DAVIDSON: Yes.

23                  SEN. GARD: Mr. Horn?

24                  MR. HORN: Yes.

25                  SEN. GARD: Ms. Fisher?

1 MS. FISHER: Yes.

2 SEN. GARD: Mr. Mettler?

3 MR. METTLER: Yes.

4 SEN. GARD: Mr. Clark?

5 MR. CLARK: Yes.

6 SEN. GARD: And the chair votes yae. 13 to  
7 nothing, the rule is adopted.

8 Now, we move on to Nonrule Policy Document  
9 Presentation. Paul Higgenbotham from IDEM's Office of  
10 Water Quality. This is concerning the State Phosphorus  
11 Treatment Standard.

12 MR. HIGGENBOTHAM: Good afternoon, board  
13 members. My name is Paul Higgenbotham, I am with the  
14 Office of Water Quality, Permits Branch. I am the branch  
15 chief of the wastewater permits group. I am here today to  
16 present to you the nonrule policy document. The  
17 identifying policy number is the word Water-019-NPD. The  
18 subject title of the document is State Total Phosphorus  
19 Treatment Standard for One Million Gallons a day or Greater  
20 Sanitary Wastewater Dischargers.

21 What this nonrule policy document will do will be  
22 implementing a one milligram per liter total phosphorus  
23 monthly average limit on all major sanitary wastewater  
24 dischargers in an effort to address nutrient discharges  
25 from those facilities and to the waters of the state to

1 help reduce the impact on how many blooms that could have,  
2 impacts on fish, fish habitat, and drinking water sources  
3 as we have seen in the Toledo situation that happened  
4 recently in Ohio, as well as starting to address some of  
5 the things like hypoxic zone, the Gulf of Mexico, or as  
6 with Lake Erie, those who follow some of the Great Lakes  
7 issues, some of the significant impacts on Lake Erie and  
8 now what blooms there.

9           This Nonrule Policy Document was put on IDEM's web  
10 site on September 12 of 2014 and the comment period lasted  
11 through October 24 of 2014. During that period of time  
12 IDEM did not receive any public comments on the NPD. The  
13 NPD, again, as I mentioned affects all major sanitary  
14 wastewater dischargers at this time. We plan to implement  
15 that starting January 1 of 2015 for those permit renewals  
16 that happen to start coming in are required to be in by  
17 January 1 of 2015. And then moving through that, averages  
18 on those facilities, that would be about 14 renewals in  
19 2015, 23 renewals in 2016, 16 renewals in 2017, 20 renewals  
20 in 2018, and then 16 renewals in 2019 to ultimately getting  
21 all the major sanitary dischargers with a limit of one  
22 milligram per liter total phosphorus. What that implements  
23 or one of the impacts that has is currently the estimated  
24 volume for those affected by this nonrule policy document.  
25 There is roughly 8,000, a little over 8,000 pounds of

1 phosphorus per day discharged by these facilities, total  
2 with implementing this NPD document, that reduced that  
3 volume by over 5,000 pounds a day for a 60 percent  
4 reduction, and phosphorus loading from just those  
5 facilities alone. So we see it as a way of having  
6 immediate positive impact while also being feasible for  
7 those facilities for the environment.

8           And then currently this would -- I think there is  
9 137 major sanitary wastewater dischargers in the state of  
10 Indiana at the time. Some of those currently do have a  
11 limit of one milligram per liter due to their location and  
12 how they discharge to a lake or reservoir, but this will  
13 have an immediate impact and is a phase, a step in our  
14 approach to trying to start addressing some of the nutrient  
15 issues that we are seeing with the out blooms and things as  
16 well as some of the -- well, I say pressure from the USEPA  
17 on all the states to start developing approaches to dealing  
18 with nutrients. And this is kind of our first step that  
19 can have a significant impact right away in a relatively  
20 short period of time that would be feasible for these  
21 facilities to implement.

22           SEN. GARD: Are there questions for  
23 Mr. Higgenbotham? Yes, Gary?

24           MR. POWDRILL: Why is this a Nonrule Policy  
25 Document and not a rule modification?

1                   MR. HIGGENBOTHAM: This is a nonrule policy  
2 document on the interpretation of the existing rule found  
3 at 327 IAC 5-10-2(a)(2) that gives the agency or the  
4 commissioner the authority to require limits for  
5 phosphorus, so there is an existing rule now, therefore a  
6 new rule would not be needed.

7                   MR. POWDRILL: Is the limit the same in the  
8 existing rule?

9                   MR. HIGGENBOTHAM: The limit and the way the  
10 rule reads, I don't have the complete part of the rule, but  
11 there is a table, a reduction table in the rule, in 510-2,  
12 that basically says for I think it is anything above four  
13 milligrams per liter total phosphorus has to be an 80  
14 percent reduction, and that's in the raw, so therefore  
15 the -- it is estimated that the raw wastewater is well  
16 above the four, so if you apply that 80 percent, it is the  
17 more stringent of the two, it will always be one milligram  
18 per liter. I know that that's kind of -- without having it  
19 and showing you how the calculation works, but one  
20 milligram per liter would be the requirement.

21                   MR. POWDRILL: I know that within the last  
22 couple of years you have put into permits a requirement for  
23 wastewater dischargers to monitor and I think report  
24 phosphorus effluent, do you know the results of what's been  
25 coming out of those reports? I mean are they all way above



1 the one, are they all close to the one, are they all way  
2 below?

3 MR. HIGGENBOTHAM: These particular ones  
4 that we are talking about for this -- that would be  
5 impacted by this NPD, they range from anywhere between 2.7  
6 to 3.5 on their effluent, their treated effluent now, so  
7 there would be -- that's how I came up with the calculation  
8 to the reducing over 5,000 pounds a day from these  
9 facilities. There would be a significant reduction.

10 MR. POWDRILL: So they all have the  
11 capability of controlling from 2.7 down to less than one?

12 MR. HIGGENBOTHAM: Some of them will  
13 probably have to put in additional technologies, and to  
14 help handle that issue they can -- we have done outreach to  
15 all these facilities through mass E-mails, through phone  
16 calls, through conversations with interested parties, and  
17 explained their ability to get what's called a scheduled  
18 compliance to implement and to come into compliance with  
19 these standards where they could get up to, if it is  
20 justified, up to three years to put in the needed required  
21 technologies. But the technologies are out there for this  
22 type of a limit that can be met and some facilities are  
23 already implementing the standards meeting this limit.

24 MR. POWDRILL: The piece of paper that  
25 Dr. Alexandrovich handed me, it says that if you are less

1 than one, you need to reduce 60 percent.

2 MR. HIGGENBOTHAM: That's treated effluent.  
3 I mean that's raw, that's the raw, so what's coming into  
4 these facilities is well above that. If how that rule  
5 reads, if it is four or above, you have to reduce 80  
6 percent. Wastewater, raw wastewater is above that so we  
7 are talking about the raw 24/7 wastewater for phosphorus,  
8 because what we are seeing in the treated, the actual  
9 treated wastewater is the 2.7 and the 3.5, the 4, and  
10 that's treated effluent. So the raw, of course, is higher  
11 than that. So if you apply that 80 percent, like I say,  
12 the five, that's going to get you to the one and that's  
13 actually per the ten state standards, which a lot of things  
14 go by for the construction technology aspect of things.  
15 It's well above the four.

16 MR. POWDRILL: Since we are not going to be  
17 required to vote on this, I still have the concern that we  
18 are doing this the wrong way with an NPD. I think we  
19 should be doing this more with an actual rule so that  
20 everyone has the opportunity to comment on it and see what  
21 their costs are going to be and report what they need to do  
22 to get there, because right now we are just putting out an  
23 NPD that says do it and there is no opportunity for input  
24 from the stakeholders.

25 MR. HIGGENBOTHAM: We have, again, we have

1 done outreach to all the stakeholders that are impacted and  
2 nobody is surprised by this, everybody knows the nutrient  
3 aspect is out there. Some of their responses to us were,  
4 yeah, okay, I figured it was coming, so we will start  
5 working on it. And they knew, too, that there is a  
6 potential that they could get a scheduled compliance if it  
7 is justified to where they could have the time to get the  
8 technology they need or the type of equipment they need to  
9 meet that limit. So this is something I think that in my  
10 opinion the regulative community can live with, that does  
11 get a reduction and starts that process down the road that  
12 we are starting to go down with nutrients.

13 MR. POWDRILL: I don't disagree that it is  
14 needed, I don't disagree that we should approach it in some  
15 way, I just think using an NPD is the wrong way to approach  
16 it.

17 SEN. GARD: Dr. Alexandrovich?

18 DR. ALEXANDROVICH: Most of my questions  
19 were answered, so my last one is, which might get to your  
20 last point, is eventually the scope and the dates you said,  
21 eventually all these facilities will have the one microgram  
22 per day in their permit?

23 MR. HIGGENBOTHAM: Yeah, milligram per  
24 liter, right, in their permit, and that is, again, this  
25 category because and our research of the situation from

1 sanitary wastewater dischargers, we found out that 90  
2 percent of the phosphorus load based upon our data pulls  
3 from our data base is coming from the major facilities. It  
4 is just a volume issue because the volume is so much  
5 greater of the wastewater they discharge. So to get the  
6 biggest bang for the buck is why we took this approach.

7 SEN. GARD: Mr. Etzler?

8 MR. ETZLER: You said some facilities  
9 already have this in their permits?

10 MR. HIGGENBOTHAM: Yes.

11 MR. ETZLER: Are they experiencing  
12 difficulty in meeting the limits?

13 MR. HIGGENBOTHAM: Not at all because they  
14 have been doing it for years. Under 327 IAC 10-4-2, I  
15 believe is the lake and single discharger rule, which has  
16 been in place for quite some time and that has always  
17 required those facilities to meet the one milligram per  
18 liter and they are not having problems with meeting this  
19 limit.

20 MR. ETZLER: My next question, we are  
21 talking about major dischargers and we are looking at  
22 making a significant reduction, what's the next step for  
23 the rest of the community of wastewater dischargers?

24 MR. HIGGENBOTHAM: As it relates to this  
25 similar type of situation, that is something that we are

1 still looking for feedback. We haven't yet internally  
2 approached that issue on extending this to minor facilities  
3 or those less than one million gallons a day because there  
4 is additional potential financial, technological, operator  
5 issues that may impact those just because they are such a  
6 smaller facility, so we haven't yet gone there. We will be  
7 looking for input as we are for everything, looking for  
8 input from not only the regulated community but the  
9 environmental community and everybody else.

10 MR. ETZLER: So kind of as a follow-up to  
11 what Mr. Powdrill was saying, we went through the  
12 rulemaking process, this one applies -- would apply to all  
13 dischargers, what we are looking at through this document  
14 is being selective at this point to allow the agency to get  
15 information back on technological improvements that are  
16 being made for the larger facilities, then to be able to  
17 look at implementing this and understanding the impacts  
18 that the smaller communities might be faced with if we did  
19 a rule that said "thou shalt."

20 MR. HIGGENBOTHAM: Well, I think there is --  
21 you know, EPA as I mentioned has been doing quite the  
22 full-court press on nutrients across the country, and with  
23 that some of their supporting documentation is there is  
24 quite a few or quite a bit of information out there about  
25 technologies, different technologies be it, you know,

1 chemical precipitation or membranes or other filtration or  
2 biological, so there is quite a bit of information out  
3 there that technologies really -- we just saw this as a way  
4 to address a large portion of the discharge or of the  
5 pollutant load from point source discharges in a way that  
6 allows -- gets at the immediate issue that EPA is talking  
7 to us about and it is good for our waters, but also buys us  
8 some additional time to talk as you mentioned to the  
9 smaller facilities and figure out what are some of those  
10 hurdles. We don't feel that this NPD is a hurdle in any  
11 way whatsoever for those major sanitary discharges, but  
12 could it be a hurdle for some of the smaller ones?  
13 Absolutely. And that's why need more time to have those  
14 discussions with those individuals.

15 SEN. GARD: Yes?

16 MR. RULON: I just have a couple of  
17 questions. So if I understood your numbers correctly,  
18 there are going to be 16 facilities that are renewed in  
19 2019 and you are going to give them three more years to  
20 comply so it is possible that it will be 2022?

21 MR. HIGGENBOTHAM: Well, the statute for  
22 schedule of compliance allows a maximum -- for down state  
23 there is a maximum allowable time of three years for  
24 scheduled compliance. Up in the Great Lakes area, the  
25 statute allows five years. You know, we are looking at it

1 from the standpoint of this is a the technology is out  
2 there, it is doable, it is feasible, so where we want to  
3 put the ceiling across the board, across the state would be  
4 three years, but they would still have to justify that. So  
5 it is not an automatic three years. We think that people  
6 can do it sooner than that, we are just putting that max  
7 out there as the ability for somebody to request. Now,  
8 will we allow that three years? That's going to be  
9 dependent upon the justification they submit as part of  
10 their permit application.

11 MR. RULON: You kind of make it sound like  
12 they are putting phosphorus in when they shouldn't be right  
13 now, because if it is easy to comply, then why aren't they  
14 just doing it on their own?

15 MR. HIGGENBOTHAM: There is not a  
16 requirement, specific spelled-out requirement to do it on  
17 their own, other than for lake and single discharger rule  
18 where it is spelled out.

19 MR. RULON: But the technical issue, I am  
20 not sure that I understand the -- this is the one  
21 milligram, that's an average? Is that --

22 MR. HIGGENBOTHAM: It's a monthly average,  
23 yeah, and the frequency of -- the frequency that they will  
24 be required to test that at is the same -- because it  
25 varies from facility to facility based upon their size and

1 their flow rates, but it would be the same as they are  
2 required to sample for CBOD and TSS, so it is an average of  
3 those over a 30-day period.

4 MR. RULON: Is there any waivers built into  
5 that for storm surge discharges or overflow discharges,  
6 does that count towards this average?

7 MR. HIGGENBOTHAM: It is a sampling  
8 frequency that's laid out then and all that would go  
9 into -- all those results would go into that. So there is  
10 not an out for any -- now, they could explain as they  
11 submit information to us, if there is a situation that they  
12 could in their submittal explain something happened or  
13 something occurred to try to justify an issue, but I don't  
14 see that being a problem for them to do that.

15 MR. RULON: The last question you may not  
16 have the answer to, I am curious, what percent is the  
17 phosphorus loading that we have that's coming from  
18 wastewater treatment facilities versus natural resources  
19 versus highway runoff?

20 MR. HIGGENBOTHAM: That I do not have.

21 MR. POWDRILL: Agriculture?

22 MR. RULON: Ag, absolutely, yeah. And then  
23 of course the seasonal seasonality part of that, all the  
24 aerial photos I have seen, this is a big issue just in  
25 certain months of the year when flow is reduced in the



1 streams; is that --

2 MR. HIGGENBOTHAM: Yes, that flow in the  
3 stream will also have an impact on it as well.

4 MR. POWDRILL: Could somebody come up with  
5 that number, what percent of the total stream loading is  
6 from wastewater treatment sources versus agriculture and  
7 lawn fertilizers and all that stuff?

8 MR. HIGGENBOTHAM: I'm looking at my bosses.

9 MR. PIGOTT: My name is Bruno Pigott,  
10 assistant commissioner, Office of Water Quality. We don't  
11 have those numbers. It would be very difficult to. We  
12 don't regulate the agricultural discharges, of course, so  
13 that's all pure speculation, but we know what we would have  
14 in terms of reduction from point source discharges, and you  
15 might remember, several years ago the agency was initiating  
16 a rulemaking to put in place phosphorus standards that were  
17 much stricter than the one milligram per liter limits. And  
18 during that time period there were a lot of questions  
19 raised regarding the derivation, scientific derivation of  
20 the standard, where you would test to determine whether  
21 that standard was being met and how far upstream from that  
22 you apply such a standard to wastewater discharges. And  
23 that led to a lot of discussions about what is the answer  
24 to all these questions, and we knew that that would take a  
25 lot of time, and we also knew that we have authority

1 currently under our current rules to do something  
2 differently and immediately to help reduce phosphorus  
3 loadings instead of waiting for the end of a long and  
4 sometimes tedious discussion regarding how you sort through  
5 all that. So rather than just talk about it, we thought we  
6 should take some reasonable steps that we already have  
7 under our rule to implement some changes that we know that  
8 facilities could successfully implement, and so this NPD is  
9 kind of a result of that, it is an effort to say, look, we  
10 think there are some things that can be done today and,  
11 yes, for some facilities it will mean some costs and for  
12 other facilities they may be treating in such a way today  
13 that it won't be a big cost, and we're sensitive because we  
14 heard our discussion with stakeholders that there is a cost  
15 component, but it is primarily with those very small, minor  
16 wastewater treatment facilities. So let's make a step  
17 forward today and let's reduce that loading, and that's  
18 what Paul is talking about doing, is that this effort will  
19 allow us to instead of wading through all of that, let's do  
20 something now. We can achieve some reductions and we will  
21 be successful, it might mean some additional cost, but  
22 relatively speaking we have already seen facilities like  
23 Fort Wayne in Northeast Indiana, Westfield, just out of  
24 town, already put in place technologies that effectively  
25 meet that limit, and therefore, we could take this step and

1 be successful in real environmental improvement, not just  
2 putting in place a standard that would still take years and  
3 years and years to have any impact whatsoever on it. So we  
4 think this is a really good effort, one that will result in  
5 substantive environmental improvement, not just theoretical  
6 environmental improvement.

7 SEN. GARD: Mr. Etzler?

8 MR. ETZLER: I want to echo Mr. Rulon's  
9 concern regarding the implementation of this because I look  
10 at those outliers in 18 and 19 having a much longer period  
11 of time in order to implement this, and I would really like  
12 the agency to report back to us on how you are going to  
13 address that issue. I know we have got processes in place  
14 now, but I am really concerned we are going to let people  
15 slide for eight or ten years to meet this standard, and I  
16 would say that I would vote to go the other direction and  
17 say let's implement a rule if we're going to see that kind  
18 of opportunity for these facilities to meet the nonpolicy.

19 MR. PIGOTT: I think we can report back and  
20 be happy to.

21 MR. ETZLER: Thank you.

22 SEN. GARD: Other questions or comments?

23 Thank you.

24 MR. HIGGENBOTHAM: Thank you.

25 SEN. GARD: That concludes most of the

1 agenda. We now have open forum. I do know that there are  
2 some people here that -- wait a minute, excuse me. Bowden,  
3 you wanted to speak on that.

4 MR. QUINN: Madam Chair, Members of the  
5 Board, I am Bowden Quinn, Conservation Director for the  
6 Sierra Club Hoosier Chapter and I would just like to  
7 provide a little bit different perspective following up on  
8 your very pertinent questions about the Nonrule Policy  
9 Document. I congratulate and thank IDEM and the Office of  
10 Water Quality for taking this step, I would like to think  
11 that it will have some impact on the phosphorus pollution  
12 and the toxic algae problem, but from the expert that I  
13 talked with, it probably won't. Nutrients are different  
14 from toxic chemicals. Toxic chemicals will have impacts at  
15 different concentrations on different organisms, so if you  
16 pass a rule to reduce a concentration, it could very well  
17 help some of the organisms whereas perhaps not all of the  
18 organisms, but when you are talking about nutrients, it is  
19 not like that. It is an on/off switch. The amount of  
20 phosphorus in the system is either enough to support toxic  
21 algae or it is not. And right now there is more than  
22 enough to support toxic algae, and this one milligram per  
23 liter per major dischargers, while it may reduce phosphorus  
24 loadings by the 5,000 tons, whatever Paul mentioned, it is  
25 not going to solve the problem. It is not going to even

1 start to solve the problem. Secondly, this one milligram  
2 per liter limit has been around, as Paul said, for years  
3 and other states that are addressing this issue are going  
4 much beyond that, .6, .5, .4 milligrams per liter to try to  
5 achieve the reductions that are necessary. But there is,  
6 as pointed out, there is a cost to that and it shouldn't be  
7 just the water treatment plants who are burdened with that  
8 cost. You know, asked about relative contribution, that  
9 will be different for various watersheds in some  
10 watersheds.

11 Lower White River may be point sources are a major  
12 contributor, but I just had an opportunity to read the  
13 watershed management plan, draft watershed management plan  
14 for the Upper Maumee, which of course contributes to the  
15 problem and caused the ban on drinking water in Toledo,  
16 they said -- that plan said that 70 percent of the nutrient  
17 loadings come from agriculture. So major discharges, minor  
18 discharges, point sources alone are not going to solve this  
19 problem and it is unfair to force the people who pay for  
20 those discharges to take on the whole responsibility. We  
21 must find a way to address the problem coming from  
22 agriculture as well. And Bruno mentioned the rulemaking,  
23 and IDEM started November 2011 a criteria for phosphorus in  
24 lakes and reservoirs, it had work groups for -- I think it  
25 had seven work groups over a ten-month period that came up

1 with the draft criteria, but then they got bogged down in  
2 these implementation issues that Bruno mentioned, and as  
3 you look at your schedule of tentative rulemakings, they  
4 have got a blank for 2015.

5           IDEM is not going to solve this problem without  
6 help and this board I think is the right group. You have  
7 the representatives from the various stakeholders, you have  
8 a responsibility to see that rules are passed to protect  
9 the environment and we all know how serious a problem the  
10 toxic algae is, the Toledo drinking water ban, we had a  
11 dead dog from going into I think -- I believe it was the  
12 Salamonie Reservoir, IDEM monitors I think 13 lakes and  
13 reservoirs this year, eight of them, at least eight of them  
14 went over the guidance, the health guidance for toxic  
15 algae. All three of the reservoirs in the Indianapolis  
16 areas were over the limit this year. Last year two, and I  
17 believe all 13 of the sites monitored by IDEM last year at  
18 some point exceeded the guidance level. So this problem is  
19 going to get worse. It is going to fluctuate, but there  
20 are other factors on how much rain there is, how hot it  
21 gets, but this a bomb waiting to explode. We need to  
22 address it, so I ask the board to get involved in this  
23 rulemaking for lake nutrient criteria and let's get  
24 something passed in in 2015. Thank you.

25           SEN. GARD: Thank you. Any questions for

1 Bowden? Thank you. This is the time for open forum. As I  
2 said, we do have some people that have signed up to address  
3 the board. Because we have a fair number of people that  
4 have signed up, Mr. Etzler will be timekeeper and I ask the  
5 people to keep your comments to five minutes or less. So  
6 with that, I am going in the order that they gave me.

7 Rosemary Spalding.

8 MS. SPALDING: Good afternoon. Thank you,  
9 Madam Chairman and thank you members of the board for the  
10 opportunity to address you during this open forum. My name  
11 is Rosemary Spalding. I am president of Earth Charter  
12 Indiana and I am here in connection with the petition for  
13 rulemaking that Earth Charter Indiana submitted on June 10  
14 and that the board considered at the last meeting on  
15 September 10.

16 Before I start, though, I would like to thank the  
17 ERB members for spending the time to review our submission.  
18 I know it was very lengthy. We have a 13-page statement of  
19 reasons and many exhibits, too many to print, we had a disk  
20 of exhibits as well as almost a hundred statements of  
21 support that people did in support of the petition for  
22 rule, and so I do thank you for spending that time.  
23 I also thank you for taking the time to respond to some of  
24 the communications that I know you have received from  
25 various people who wanted to support our receiving a

1 hearing on this, and I have heard from many that they  
2 received very kind and thoughtful responses, so I thank you  
3 for taking that time as well.

4           We made a slight miscalculation in terms of looking  
5 at the agenda and we didn't want people to get here and  
6 have to sit and wait for two hours and so we estimated that  
7 given the public hearings that were going to take place  
8 that they could arrive by 3:00 o'clock. So you went faster  
9 than we thought, but I would like to ask everybody who is  
10 here to support the request that we are going to make from  
11 you to stand if they would just so know that they are here  
12 to support that. Thank you.

13           I know we have a couple of people that are  
14 representing organizations as well. Amanda Shepherd is  
15 here representing the Hoosier Environmental Council, Bowden  
16 Quinn, I hope I can say that you are representing the  
17 Sierra Club in that regard. Thank you. We do think we  
18 have some children coming, I am hoping if they arrive that  
19 they won't be too disruptive and I think they are very  
20 excited about witnessing firsthand a civic process, so  
21 maybe they can speak with some of you afterwards.

22           It is clear from the discussion on September 10  
23 from the September 10th meeting and from the responses to  
24 communications that board members either have concerns  
25 about or do not believe that the ERB has the authority to



1 act on our rulemaking proposal. First I want to say that I  
2 regret that I did not address this directly in June when we  
3 submitted the petition. Of course we realized this would  
4 be a little bit out of the ordinary for the Environmental  
5 Rules Board and that's why we did include a fairly detailed  
6 legal analysis at that time concluding that the board did  
7 have the authority; however, I just didn't -- we didn't  
8 anticipate that the issue would pose an obstacle to our  
9 getting a hearing and so at the last meeting we were just  
10 taken by surprise and, again, weren't prepared really to  
11 address that during the open forum at the last meeting.

12           Second, pursuant to the statute and as Chairperson  
13 Gard stated at the beginning of the discussion, the sole  
14 issue before the board at the September 10 meeting was  
15 whether our proposal is not plainly devoid of merit since  
16 it was determined that the other two statutory requirements  
17 were met. Answering this question was necessary to  
18 determine whether ECI is entitled to a hearing. The  
19 discussion that followed, however, never addressed directly  
20 the question of whether ECI's proposal is or is not plainly  
21 devoid of merit. In the absence of a motion to hold a  
22 hearing simply does not equate to a determination that our  
23 proposal is plainly devoid of merit with all due respect  
24 because I think that's kind of the position that has been  
25 taken, so therefore our purpose in addressing you today is

1 to ask that you reconsider this issue and then as the  
2 statute requires make a finding as to whether ECI's  
3 proposal is not plainly devoid of merit by voting on that  
4 question. We are asking that you reconsider based on two  
5 outcome determinative factors; first, we believe that the  
6 environmental rules board does in fact have the authority  
7 and one could argue that the ERB even has a mandate to act  
8 on our proposed rule and I hope all of you received a copy  
9 of the letter that was sent by Bill Weeks from the  
10 Conservation Law Center, I am going to introduce him next  
11 and he can talk more about that or answer any questions you  
12 might have about his analysis.

13           Second, even if there is a disagreement on that  
14 legal issue, it does not render our proposal plainly devoid  
15 of merit so as to deprive us of the right to a hearing  
16 under the statute. I would refer -- I sent a letter to  
17 Chairperson Gard right after that September 10 meeting and  
18 copied everyone and someone had asked about whether that  
19 term was defined and it is not, so it gets the plain  
20 meaning of the statute. Does that mean my time is up? I  
21 would ask in light of the fact that several people who I  
22 signed up are not here, if I be given latitude to go a  
23 little bit longer to finish my statement.

24           SEN. GARD: Rosemary, it is five minutes per  
25 person.

1 MS. SPALDING: Thank you.

2 SEN. GARD: Mr. Bill Weeks.

3 MR. WEEKS: Thank you, members of the board  
4 for the opportunity to address you on this. I have written  
5 you the results of the research that we did for Earth  
6 Charter Indiana on the issue of your authority, and you  
7 know your authority very well so I won't dwell on it except  
8 to say that I think that it seems clear to me that should  
9 we decide to adopt such a rule that you do have the  
10 authority to do it and that, in fact, the question before  
11 you last time was not whether you wanted to adopt such a  
12 rule, but whether you believed that the petition in front  
13 of you was plainly devoid of merit. Now, the answer that I  
14 have received in the interim was it is plainly devoid of  
15 merit because we don't have the authority to do it. And as  
16 I have said, I think there are several reasons that you do  
17 have that authority and I have stated them in the letter,  
18 but should you have questions I brought copies of the  
19 statutes that I cited with me so that you could see them in  
20 context if you need to. But I want to spend just a minute  
21 more on sort of another issue, and it is one that's less  
22 familiar to you, and that is the process by which the  
23 public can bring to you petitions for your action. It is  
24 something that I learned from reading the transcript of the  
25 last meeting, it happens very little, but I think it is a

1 very important law and the way that the law is structured  
2 suggests that it is designed to enhance the process for the  
3 public to bring to you its concerns for rules and be heard,  
4 and the reason I say that is because the standard for  
5 setting a hearing is so low, it says if the members of the  
6 public want a rule, they can bring it to you and you are to  
7 set it for a hearing upon a finding that it is not plainly  
8 devoid of merit, and there is not a statutory definition of  
9 plainly devoid of merit, it means exactly what you would  
10 think it means, it means it just has -- it is almost a  
11 silly or ridiculous proposal. Let me give you an example  
12 of one. If the Earth Charter Indiana had come to you and  
13 said we would like you to adopt a rule that provides for  
14 Sunday sales of alcohol in the state of Indiana, and you  
15 would say, well, that's not something that we do, it is not  
16 within our authority, but that's not what happened in this  
17 instance. Earth Charter Indiana says it may not be a wise  
18 thing and you may decide that you don't think you should  
19 adopt the rule that they ask, but they have said we want to  
20 come to you with something that is right in the middle of  
21 your jurisdiction. We might have gone to the governor,  
22 that might have been wiser, you might think it is wiser; we  
23 might have gone to the legislature, but those entities have  
24 many, many items on their agenda. Your agenda is  
25 environment. Climate is an issue which is clearly the

1 center of your agenda and they are asking you to hear their  
2 petition for rule. Now, that's the question. Should you  
3 hear their petition for rule? When you have heard it, when  
4 you have heard what all sides that are concerned about  
5 whether the state should have an action plan, you may  
6 decide that you don't wish to adopt that rule, but the  
7 issue before you now is simply shall you hear it and I  
8 would suggest that its both in the spirit of the statute  
9 and within your authority to hear it. Do you have  
10 questions for me?

11 SEN. GARD: Are there questions from the  
12 board for Mr. Weeks? Thank you.

13 MR. WEEKS: Thank you.

14 SEN. GARD: Denise Abdul-Rahm from the  
15 NAACP.

16 MS. ABDUL-RAHM: Hi. Thank you to the  
17 members of the rulemaking board. Again, my name is Denise  
18 Abdul-Rahm, I am the NAACP environmental climate justice  
19 chair for the state of Indiana. And I am through the  
20 leadership of attorney, national board member, and  
21 president Barbara Williams, all of our Indiana members have  
22 signed a resolution calling on the Indiana Department of  
23 Environmental Management and other state of Indiana  
24 entities to support policy surrounding the reduction of  
25 carbon pollution and its impact on climate change.

1           We believe that climate change policy is the  
2 responsibility of IDEM and that the rule or statute, et  
3 cetera, should be enacted, and we are in full support of  
4 Earth Charter Indiana through the leadership of Jim Boycer.  
5 We are here advocating on behalf of our constituents and  
6 believe this too is an environmental justice concern, and  
7 that it deserves fair treatment and being a full protective  
8 involvement.

9           Our national NAACP office says the effects of  
10 global warming are especially dire to low income and racial  
11 ethnic minority Americans. Scientific study after study  
12 demonstrate communities of color and low income communities  
13 are disproportionately impacted by the effects of climate  
14 change as well as people living in developing nations  
15 around the world. Manifestations of climate change such as  
16 storms, floods, extreme cold and heat and all, insert  
17 agricultural devastation and the result of food deserts, as  
18 climate variabilities have a much more serious impact on  
19 African Americans and other racial ethnic minorities  
20 economically, socially, and through our health and our  
21 well-being. Of course, we have examples such as Hurricane  
22 Katrina and Sandy, and its aftermath and it is but one  
23 example of how the results of climate change can have  
24 desperate impact and tragic impact on communities of color  
25 in the state of Indiana and in America. And just in

1 closing, just two quotes by Thomas Friedman, "The abiding  
2 strategy of our generation has to be resilience. We will  
3 only be free to live the lives we want if we make our  
4 cities, states, country, and planet more resilient." And  
5 lastly, we appeal on this board that, "We are the first  
6 generation to feel the impacts of climate change and the  
7 last generation to do something about it." Please pass  
8 this climate change policy. Thank you.

9                   SEN. GARD: Are there questions for  
10 Ms. Abdul -Rahm? Thank you. Maddie Brooks with Youth Power  
11 Indiana. I will set that aside. Cory Gordon. Jean  
12 Terpstra.

13                   MS. TERPSTRA: Good afternoon. Thank you  
14 for this opportunity to come speak before you today. I am  
15 Jean Terpstra, I am not representing an organization but I  
16 am, I hope, representing my community. I live down in  
17 Columbus, Indiana, where people are very interested in the  
18 environment. We have a lot of groups that are into  
19 sustainable food, sustainable farming, we try to locally  
20 source. People who are close to the environment know that  
21 there have already been climate changes that have changed  
22 how we have to deal with the weather and the plants. We  
23 have changed a whole zone as far as planting for what  
24 plants you purchase, things like that, and I think that it  
25 is excellent that we would be looking ahead to try to

1 implement plant development rules that will help Indiana  
2 deal with the oncoming changes of climate change. When I  
3 first heard about Earth Charter requesting a hearing so  
4 that Indiana and your group specifically could get ahead of  
5 the game and try to set up a comprehensive plan of  
6 establishing rules to determine how to look at things and  
7 who is going to be in charge of what and what needs to be  
8 done, I was like, whoa, Indiana is at the front.

9           Finally, we are getting out ahead of something, we  
10 are not reacting to a disaster that's already happened. We  
11 are going to figure this out and try to figure out how to  
12 lessen the impact, how to keep our economy strong, how to  
13 keep our people moving to help with the social justice  
14 issues we have just been hearing about because it is the  
15 poor, the impoverished who are going to be the most hit if  
16 we can't get this under control.

17           When I heard the hearing had been denied before any  
18 kind of resolution on its merit or before any kind of  
19 discussion as to what the rules might be or what kind of  
20 plan could be put in place or what might be useful, I was  
21 frankly a little shocked. Our government is based on a  
22 system of communication, open input, people coming before  
23 the boards with their appropriate power who will have the  
24 ability to do things, to set things up, to help us all,  
25 protect us all, I did not understand why they were refused



1 the chance of a hearing. I mean if you hear it and you  
2 decide there is things you can't do or there is no point in  
3 going on with setting up this comprehensive body of rules,  
4 which I find incredible because it seems like doing  
5 anything is better than doing nothing right now, that would  
6 be one thing; but to not have the hearing, to not listen to  
7 people, clearly you have a lot of people very interested  
8 from all different walks of life and all different areas of  
9 the community who want to be able to come in front of a  
10 board with your talents, your qualities. You know, you all  
11 come from a lot of different areas, you have a lot of  
12 different specialties, you can draw on information that I  
13 as an individual couldn't possibly draw on. If you can't  
14 hear the concerns and think about what it is you all can  
15 put in place to help our state move forward in a safe and a  
16 protective mode, you know, that's optimum for everybody, I  
17 think you failed in your duties. I really do. I think  
18 you're an environmental rules board, I don't think anything  
19 can possibly affect the environment more than climate  
20 change, you know, how the environment deals with the  
21 various chemicals released into it, everything else. It  
22 all depends on the climate.

23 I think that having a hearing so that you can  
24 determine whether or not there is merit in establishing a  
25 comprehensive process of rules going forward is the next

1 logical step. Thank you very much. I appreciate the  
2 opportunity to speak before you. If you have any  
3 questions, I would be happy to try to answer.

4 SEN. GARD: Any questions for Ms. Terpstra?  
5 Thank you.

6 MS. TERPSTRA: Thank you very much.

7 SEN. GARD: Charles Mitch.

8 MR. MITCH: My name is Charles Mitch. I am  
9 a volunteer leader with the local Sierra Club group down in  
10 Columbus, Indiana, and I want to speak just briefly on that  
11 I think the proposal very much merits at least being  
12 considered with a hearing. We know from just recent events  
13 in our community in Columbus, 2008, we were severely  
14 impacted by major flooding, I think roughly ten percent of  
15 the homes in Columbus had flood damage occurring there.  
16 What we do know from experts looking at the possible  
17 impacts of climate change in coming decades is that those  
18 kinds of storms are going to be occurring with increasing  
19 frequency. It is likely that what we now would consider a  
20 hundred year storm will be -- in 30 years will be happening  
21 with frequencies more like every 30, 40, 50 years, much  
22 more frequently. Just on the basis of that, I think there  
23 is plain merit in at least having a hearing on the issue,  
24 but what I did want to note also in response to the  
25 flooding in Columbus, the community did take steps to adopt

1 more strict flood control ordinances, flood hazard  
2 ordinances and is in the process of adopting that rule.  
3 They did have testimony from experts across the state,  
4 including from the state climatologist who is a professor  
5 at Purdue University so I think it would be -- speaks to  
6 the merits of having a hearing on the petition to bring in  
7 an expert such as that. I know there are also professors  
8 at Indiana University who also have been participating at  
9 the national level with the National Academy of Sciences on  
10 climate change issues, so I think to really look at this  
11 issue, there is plainly, clearly merit in having a hearing  
12 on this, so I would at least ask you to go ahead and  
13 consider a motion to actually have a hearing instead of  
14 what I saw had occurred at the September meeting where this  
15 question was just tabled with no motion considered. And I  
16 will stop there. Thank you.

17                   SEN. GARD: Are there questions for  
18 Mr. Mitch? Thank you. Have either of the two that we  
19 called on previously, the students, have they come? Maddie  
20 Brooks or Cory Gordon?

21                   MS. SPALDING: I am having somebody check to  
22 see if they might be outside.

23                   SEN. GARD: We always ask if there is anyone  
24 that wants to comment to the board that did not fill out an  
25 appearance card, if you wish to comment, fill one out and

1 have it brought up here.

2 MS. SPALDING: We have had quite a few other  
3 people come if you don't mind, if everybody would stand who  
4 is here in support of a reconsideration of the hearing,  
5 again, since many of you weren't here at the beginning, I  
6 would appreciate it. Thank you. Thank you, Madam  
7 Chairman.

8 SEN. GARD: We will have some board  
9 discussion and if the two students come then they are  
10 certainly welcome to testify following our discussion. I  
11 am going to open the subject matter to the board and see if  
12 you have thoughts, questions, so forth?

13 MR. ANDERSON: I will make a quick comment.  
14 As I probably reiterated at the last meeting, I can see  
15 that the petition that has been submitted meets the  
16 standards of what a hearing is. We then had the discussion  
17 on whether or not we were in any way responsible for being  
18 able to address the creation of the policy. And, you know,  
19 I really I guess personally don't have a problem with  
20 having a hearing, I think as we have our open discussion  
21 and I do want to express that no one at the time during our  
22 public meeting last time did come and help shed any light  
23 on it. I think there is some information that somehow we  
24 either deny the petition or that we didn't provide an  
25 opportunity for the public to speak, which I don't believe

1 was the case. As witnessed by today, when we obviously  
2 have had an open forum and allowed the public to speak and  
3 when it was originally presented.

4           So, long and short, I really have no problem with a  
5 hearing. I think we have heard a couple times. I think  
6 that I still have questions whether we have the authority  
7 to do something to develop policy, whether there is a more  
8 appropriate way to do that. Obviously I am concerned about  
9 issues like climate change. I know we seldom get into  
10 those type of policy issues when we are looking at specific  
11 rules, but I certainly would be open to hearing more  
12 information. I think there was some response that we  
13 probably needed to put this on an agenda item rather than  
14 taking action at this meeting, but I think that would be  
15 maybe something you could comment on.

16           SEN. GARD: Are our students here? Okay.  
17 We will have that testimony and then continue board  
18 discussion. Maddie Brooks.

19           MS. BROOKS: Hi. My name is Maddie Brooks  
20 and I am an eighth grade student at (inaudible). This past  
21 summer I was taught to use my voice, to stand up, to make  
22 myself be heard, but in order to be heard, you need an  
23 audience willing to listen. That's your role today.  
24 Climate change has been demanding to be noticed lately and  
25 a lot of people have chosen to ignore or deny that fact,

1 but not us, we have noticed. We have noticed the  
2 temperature rising, we have noticed the ice melting, and we  
3 have noticed the extreme weather conditions. Some people  
4 made excuses or say we are imagining all of these  
5 situations, but being doubted on the facts, it wears me  
6 out, let alone all of these guys. Here comes -- I brought  
7 my class along, or some of my class along today. But on  
8 behalf of the youth, I ask you to take the necessary and  
9 responsible steps as our state's leaders to grant us a  
10 hearing regarding a climate action plan to ensure my future  
11 is guaranteed, that their future is guaranteed. The  
12 citizens of Indiana are counting on you, each and every one  
13 of you, to have the chance to make a difference. So ask  
14 yourselves, why not take it? My and future generations are  
15 depending on the decision you take. Our future? They are  
16 in your hands. It is up to you if they are good ones or  
17 not.

18                   SEN. GARD: Thank you, Maddie, and thank  
19 your for taking the time to be here. Are there questions  
20 for Maddie? Cory Gordon.

21                   MS. GORDON: Hi, my name is Cory Gordon and  
22 I am an eighth grade student at Eastwood Middle School.  
23 First off, I would just like to say thank you for giving me  
24 time to share my opinion and listening to me. I am here to  
25 express a fact that we in Indiana need a climate action

1 plan. Climate change is a real, hard-hitting challenge  
2 that we must face. It is something -- it is not something  
3 that can just solve itself. Now, I know some of you  
4 probably think that nothing major will happen until you are  
5 dead and gone, but what about my future? I want to grow up  
6 and I want to get a job, but the way things are going now,  
7 my full-time job will be surviving. And what about  
8 generations younger than me? Will they even know what life  
9 was like when people didn't have to scramble around for  
10 food like animals? In all honesty, I am terrified. I am  
11 terrified for my future and also for Indiana. So think to  
12 yourself, do you really want all your hard work for this  
13 country to be all for nothing? Do you want your kids,  
14 nieces, nephews, and grandchildren to have to give up all  
15 they have just to survive, or will you have a plan? We  
16 have a plan that can save hundreds of thousands of lives  
17 and futures because I need that plan and so do all the  
18 generations younger than mine.

19 SEN. GARD: Thank you, Cory. Welcome  
20 students. You might raise your hands so that the board can  
21 see who you are and where you are. Thank you. Thank you  
22 so much and thank you parents for bringing them.

23 We will continue with board discussion. Thoughts  
24 from anyone else? I have a few thoughts. I am the only  
25 person on this board that has had the opportunity to serve

1 in the General Assembly and also now as a member of this  
2 panel. Clearly policy concerning environment and  
3 everything else is made by the General Assembly and with  
4 respect to environmental issues of the federal government  
5 as well. The General Assembly is the policy making body.  
6 This rulemaking panel and the predecessors to it which were  
7 three different boards were established to implement policy  
8 that the General Assembly made or that the federal  
9 government made.

10 If I were still a member of the General Assembly  
11 and I saw that the environmental rulemaking board was  
12 passing major public policy for this state and essentially  
13 doing an end run around the General Assembly, I can tell  
14 you members of the General Assembly would not look on that  
15 favorably at all and there would probably be legislative  
16 action to do something pretty seriously about the  
17 responsibilities that the environmental rulemaking board  
18 had, and so that is the perspective as I see it.

19 Members of the board may think differently, but the  
20 statute that we have looked at about the citizens' petition  
21 doesn't specifically address whose authority this is, but I  
22 think if you go and look through the statutes that deal  
23 with the establishment and responsibilities of the  
24 rulemaking board in general and then the responsibilities  
25 of the General Assembly, it is going to be very clear that



1 the General Assembly is the policy making body in this  
2 state and the Environmental Rulemaking Board implements  
3 that policy as necessary, although it is not spelled out  
4 just that specifically in that part dealing with citizen  
5 petitions. So, you know, those are my thoughts. I would  
6 like to hear the rest of the board's thoughts on this, but  
7 my thought is that with respect to the responsibilities of  
8 this board, you know, I find that the petition is devoid of  
9 merit with respect to the responsibilities that this board  
10 has.

11 MR. RULON: And I really want to commend the  
12 students for coming and Earth First and all the other  
13 groups. I think we all share the same issues that Bowden  
14 shares about cleaning up the water. We were just pretty  
15 hard a little bit ago on the industry cleaning up the water  
16 and I think we all share that. I think one thing that kind  
17 of gets lost in the discussion here a little bit is, you  
18 know, we have already passed tons of rules working on the  
19 environment and climate change, greenhouse gas rules, SO<sub>2</sub>  
20 rules. We do a lot of rules that are very specifically  
21 focused on very specific issues, and we would welcome, I  
22 think, recommendations and I think we approved a hearing  
23 for one of those petitions just this last meeting, so I  
24 think we are more than willing to address issues as they  
25 come along and make sense.

1           The second thing, I did a little research, a number  
2 of people have mentioned that all the states around us have  
3 climate action plans and all of those states basically  
4 have -- the governor has appointed a policy development  
5 panel of experts, scientists, and they have put together a  
6 climate action plan and they report to the governor and  
7 none of that is implemented through their IDEM level  
8 agencies, not in Illinois, not in Ohio, not in Michigan,  
9 not in Kentucky as I research and understand. I could be  
10 wrong in some aspects. And that seems like the way Indiana  
11 should do it, too. We should have those reports written by  
12 university experts. I would strongly encourage Governor  
13 Pence to appoint someone from Purdue or from Ball State and  
14 from IU to head up a committee to do that plan and would  
15 have the resources to bring in all these people. But from  
16 our end, I don't see how we haven't already addressed the  
17 major issues before us and then going forward how this  
18 would be possible if we have a hearing, this is what we are  
19 being asked to have, at the end of the hearing what we do,  
20 I don't see where that road leads us just to have a  
21 hearing.

22                   SEN. GARD: Well spoken. Other thoughts  
23 from committee members?

24                   MR. CLARK: I guess I would echo your  
25 sentiments. I am relatively new to this panel, but much of

1 what I have been part of, assuming prior to me, were rules  
2 designed to have an impact on the betterment of the  
3 environment and as I have sat here in my time here, I have  
4 seen rules designed to improve water quality and air  
5 quality and all those things that have been credited, if  
6 you will, for climate change. So in a way, I would say  
7 that we are tackling climate change in a way that we are  
8 designed to statutorily. And I have heard talk of policy,  
9 I have heard talk of rules, I am not sure that we were  
10 given a body of rules to consider, but clearly if you look  
11 at the statute under 13, 14, and 8, we are a rule adopting  
12 body. And if there are some rules that we have passed that  
13 someone feels need to be made more stringent or a rule that  
14 we have not considered to be considered, I think that's the  
15 appropriate thing to be brought to us, but a climate action  
16 plan I don't think is within our statutory purview.

17                   SEN. GARD: And you mentioned things that we  
18 had done and there is really a fair amount I think coming  
19 down the pike, and these things don't happen quickly, but  
20 certainly the USEPA has some proposed rules that are going  
21 to impact us a lot with respect to air quality and address  
22 a lot of things dealing with climate change, and as those  
23 are adopted by the federal government, then we get those as  
24 to pass rules because as a state, we are given a  
25 responsibility for implementing that and so then we will

1 get rules to deal with various aspects of rules that may  
2 pass the USEPA and be adopted by the federal government.  
3 And I do know that Governor Pence had put together an  
4 energy group looking at energy efficiency, renewable energy  
5 and so forth. I haven't seen a final report on that, I  
6 don't know that it's out, but I heard it discussed and  
7 certainly those things are all going to have a positive  
8 impact on addressing some of the issues with climate  
9 change. So it is not that we are not looking at these  
10 issues, we are looking at it from various venues, but the  
11 state is looking at it and we will eventually be looking at  
12 it as a result.

13 DR. ALEXANDROVICH: I will just add to the  
14 energy plan, I understand the state is also working on a  
15 water plan to prepare for any droughts or floods and to be  
16 resilient, so that's also under way.

17 SEN. GARD: Yes, it is. Yes?

18 MR. ANDERSON: I guess, you know, one of the  
19 things I have had some experience presenting petitions,  
20 mostly they weren't successful over the years, but the  
21 threshold is relatively low for the petition as I  
22 understand it submitted. I believe that they have met the  
23 requirements which are the amount of signatures, there  
24 hasn't been a hearing within the previous six months, and  
25 that it is not totally devoid of merit. I think we have

1 had a couple legal explanations of why that fits in above  
2 this relatively low threshold for this particular  
3 rulemaking. I think as we have had explanations in the  
4 past, too, a hearing doesn't have to be held before this  
5 board, we have discussed that it could be held with the  
6 hearing officer. You have the opportunity for the  
7 information of everyone that's here or anyone else to  
8 submit the information, at which point the hearing officer  
9 can make a recommendation and at which point we can make a  
10 decision whether or not to pursue a rulemaking specifically  
11 presented or take action or no action. And as I said, I  
12 have been involved with a lot of these over the years or  
13 some over the years and, you know, it is difficult. I  
14 think some have been successful in very specific parts of  
15 rules.

16           That being said, I mean I would be willing to make  
17 a motion to hold a hearing on this petition as submitted  
18 and I move that we hold a hearing.

19           SEN. GARD: Is that an official --

20           MR. ANDERSON: I make an official motion to  
21 hold a hearing.

22           SEN. GARD: And it would be my  
23 recommendation that if that motion is adopted, that a  
24 hearing officer be appointed to conduct the hearing. The  
25 motion is on the table. Is there a second to the motion?

1 The motion dies for lack of a second. Is there any further  
2 discussion by the board?

3 MS. FISHER: Senator Gard, could you maybe  
4 advise as to how this group would want to get this issue in  
5 front of elected officials if this is something they would  
6 choose to do?

7 SEN. GARD: And I have mentioned this to  
8 some of the people that have sent me E-mails, and I am sure  
9 that many of you received those as well. This really is an  
10 issue for the General Assembly, and I would encourage you  
11 all to contact legislators, you know, there are 150 of  
12 them, 50 in the Senate and 100 in the House. There are I  
13 think going to eventually be 20 new legislators this  
14 session but, you know, you can get a hold of the list of  
15 legislators and look through it and decide who you would  
16 like to approach. You may approach several of them,  
17 certainly more than one legislator could sponsor a bill.  
18 And if you're going to do that, now is the time to do it.  
19 That is one reason I would not want to put this off until  
20 January or February because the General Assembly will --  
21 legislative services will be giving legislators a deadline  
22 and that deadline will probably be in about four or five  
23 weeks, so they have to submit bill requests in the next  
24 four to five weeks. And so this would be the time to find  
25 a legislator to propose a bill that would actually require

1 the establishment of a development of a climate action  
2 plan. So that would be the advice that I would give you  
3 because that is the policy making body of this state. But  
4 now is the time to do it.

5 Any further comment? Okay. The next meeting will  
6 be Wednesday, January 14, 2015 at 1:30 in this conference  
7 room. Hopefully we won't be snowed in. With that is there  
8 a motion to adjourn?

9 MR. POWDRILL: So moved.

10 SEN. GARD: Is there a second?

11 MR. RULON: Second.

12 SEN. GARD: All in favor, say yea.

13 (Yea heard.)

14 SEN. GARD: We are adjourned.

15 (Proceedings adjourned at 3:14 p.m.)

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1 CERTIFICATE

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

4

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

9

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

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

18

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

23

24 IN WITNESS HERETO, I have affixed my Notarial Seal and  
25 subscribed my signature below this 20th day of November,  
2014.

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32 \_\_\_\_\_  
33 Notary Public  
34 County of Residence: Boone (Seal)  
35 My Commission Expires on: April 27, 2017