

1 BEFORE THE STATE OF INDIANA
2 ENVIRONMENTAL RULES BOARD

3 - - -

4
5 PUBLIC MEETING OF OCTOBER 11, 2017

6
7

8 - - -

9 PROCEEDINGS

10 before the Indiana Environmental Rules Board,
11 Beverly Gard, Chairman, taken before me, Lindy L.
12 Meyer, Jr., a Notary Public in and for the State
13 of Indiana, County of Shelby, at the Indiana
14 Government Center South, Conference Center,
15 Room A, 402 West Washington Street, Indianapolis,
16 Indiana, on Wednesday, October 11, 2017 at
17 1:29 o'clock p.m.

18 - - -

19
20

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

1 APPEARANCES:

2 BOARD MEMBERS:

- 3 Beverly Gard, Chairman
- 4 Angelique Collier
- 5 R. T. Green
- 6 Dr. Ted Niemiec
- 7 Joanne Alexandrovich
- 8 Karen Valiquett
- 9 Ken Rulon
- 10 William Etzler
- 11 Chris Horn
- 12 Gail Boydston
- 13 Calvin Davidson
- 14 Mike Mettler, Proxy, Department of Health
- 15 Chris Smith, Proxy, Department of Natural Resources
- 16 Devin Hillsdon-Smith, Proxy, Indiana Economic Development Corporation
- 17 Jeffrey Cummins, Proxy, Lieutenant Governor
- 18 Bruno Pigott (nonvoting)

19 IDEM STAFF MEMBERS:

- 20 Brian Rockensuess
- 21 Julia Wickard
- 22 Niles Parker
- 23 Bob Lugar
- 24 Chris Pedersen
- 25 Matt Stuckey
- 26 Keelyn Walsh
- 27 MaryAnn Stevens
- 28 Mark Derf
- 29 Martha Clark Mettler
- 30 Tom Newcomb
- 31 Marty Yeates
- 32 Nancy King
- 33 Janet Pittman
- 34 Karen Willever

35 PUBLIC SPEAKERS:

- 36 None

37 - - -

1 1:29 o'clock p.m.
October 11, 2017

2 - - -

3 CHAIRMAN GARD: Well, if I can have
4 your attention, I will call this meeting to
5 order. The Chair sees a quorum, and the first
6 thing that I would like to do is to go around the
7 room and have everyone introduce themselves. We
8 do have three new members: Angelique Collier,
9 from IPL, representing public utilities; Karen --
10 you've got to pronounce that for me.

11 MS. VALIQUETT: Valiquett.

12 CHAIRMAN GARD: Valiquett, from Core
13 Planning Strategies, representing environmental
14 interests; and R. T. Green, representing the
15 general public. So, we welcome you to the Board,
16 and we'll go around and have everyone introduce
17 themselves and tell what constituency that they
18 are appointed to represent.

19 MR. ROCKENSUESS: Brian Rockensuess,
20 Chief of Staff, IDEM.

21 MR. HILLSDON-SMITH: Devin
22 Hillsdon-Smith, proxy for the Secretary of
23 Commerce, representing Economic Development.

1 MR. CUMMINS: Jeff Cummins, Indiana
2 State Department of Ag, L.G. proxy.

3 MR. SMITH: Chris Smith of the
4 Department of the Natural Resource, proxy for DNR
5 Director Clark.

6 MR. METTLER: Mike Mettler, proxy for
7 the State Health Commissioner.

8 MR. HORN: Chris Horn, representing
9 labor.

10 MS. BOYDSTON: Gail Boydston,
11 manufacturing.

12 CHAIRMAN GARD: Beverly Gard, general
13 public.

14 MR. ETZLER: Bill Etzler, small
15 business.

16 MS. COLLIER: Angelique Collier,
17 public utilities.

18 MR. GREEN: R. T. Green, general
19 public.

20 DR. NIEMIEC: Ted Niemiec, health.

21 DR. ALEXANDROVICH: Joanne
22 Alexandrovich, local government.

23 MS. VALIQUETT: Karen Valiquett,

1 environmental.

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

4 MR. RULON: Ken Rulon, agriculture.

5 CHAIRMAN GARD: And thank you,
6 everyone. Congratulations to those members that
7 were reappointed. Glad to see all of you back.

8 (Comm. Pigott arrived.)

9 CHAIRMAN GARD: Are there any -- does
10 anyone want to change the order of the agenda
11 items?

12 (No response.)

13 CHAIRMAN GARD: If not, they will
14 stay as they are on the agenda.

15 Our first order of business today is the
16 approval of the summary of the July 12th, 2017
17 Board meeting. Are there any additions or
18 corrections to the summary as presented?

19 (No response.)

20 CHAIRMAN GARD: If not, do I hear a
21 motion to approve?

22 MR. ETZLER: I move approval.

23 DR. NIEMIEC: Second.

1 CHAIRMAN GARD: All in favor of
2 approving the minutes as presented.

3 MR. HILLSDON-SMITH: Aye.

4 DR. NIEMIEC: Aye.

5 MR. CUMMINS: Aye.

6 DR. ALEXANDROVICH: Aye.

7 MS. BOYDSTON: Aye.

8 MR. ETZLER: Aye.

9 MS. COLLIER: Aye.

10 MR. GREEN: Aye.

11 MS. VALIQUETT: Aye.

12 MR. RULON: Aye.

13 MR. HORN: Aye.

14 MR. METTLER: Aye.

15 MR. DAVIDSON: Aye.

16 MR. SMITH: Aye.

17 CHAIRMAN GARD: Aye.

18 All of those opposed, nay.

19 (No response.)

20 CHAIRMAN GARD: The minutes are
21 approved.

22 Commissioner?

23 COMM. PIGOTT: Good afternoon.

1 I have a couple of announcements regarding
2 staffing today. First of all, I'd like to
3 announce that Julia Wickard, who had been with
4 IDEM for about eight months now, has been
5 promoted into our Assistant Commissioner in our
6 Office of Program Support.

7 For those of you who may not be aware of
8 our Office of Program Support, it deals with a
9 lot of the Office of Pollution Prevention and
10 Technical Assistance work that we do. It has --
11 it features Clean Communities, our CTAP program,
12 which is, confidentially, businesses around the
13 state is housed there, as well as other
14 administrative functions in our agency. So,
15 Julia is stepping up to take over the authority
16 over that group of programs.

17 And Julia, if you're here, can you stand
18 up, please?

19 Julia is an enormous resource for us.
20 She's been extremely, relentlessly and superbly
21 positive in our agency, and when I'm having a
22 down day, I go to Julia and she makes me feel
23 better.

1 (Laughter.)

2 COMM. PIGOTT: But more important
3 than that, and that's very important, she's got a
4 host of managerial skills. She's worked for
5 years in the agricultural arena and has been a
6 trusted person who's worked both with our
7 agricultural community and with our state
8 agencies.

9 I'm so proud to have her as a member of
10 our senior staff team, and she's doing great
11 things, and she's been working to create
12 efficiencies in that program, and one of the
13 things that she's been working on is creating a
14 safety program.

15 I'm also proud to announce that our person
16 who was in charge of -- our Deputy in that
17 program has agreed to take over our safety
18 program. We need to bolster our safety work. We
19 have people go out in the field on a regular
20 basis to conduct water sampling. We have people
21 who, believe it or not, climb stacks, and you'd
22 never catch me doing it, but we have people doing
23 it, and we need to make sure that our people are

1 safe.

2 So, we're intent on bolstering our safety
3 program, and Niles Parker, who was been the
4 Deputy Assistant Commissioner in that program
5 area is taking over our safety, and he's going to
6 build our safety program up, and I'm very proud
7 that he's been willing to do that.

8 And as a result, we've had a vacancy in
9 our Deputy position, and we looked, oh, at a
10 number of positions and people to fill the deputy
11 position in the Office of Program Support, and we
12 were lucky to find a fellow named Bob Lugar.

13 Bob, if you're in the audience, can you
14 stand up?

15 Bob has been serving in a number of roles.
16 He's got a great deal of environmental experience
17 working with United Water in Indianapolis. He
18 was the Town Manager of McCordsville. He has
19 years of environmental experience with a variety
20 of consulting firms as well.

21 So, I'm really thrilled that he's joining
22 us at IDEM, and he'll do a great job of working
23 with communities around the state in these

1 programs that we do, our Clean Communities and
2 other areas, and he's got a great deal of
3 managerial talent, so we're excited that Bob is
4 joining our team as well.

5 Now, finally, I want to talk a little bit
6 about an area we never talk about here, and that
7 is our financial area. As any state agency, and
8 Chris can attest to, one of the things that
9 that's really important to do is to pay attention
10 to your budget, and we've paid attention to our
11 budget for years, but we haven't had the kind of
12 oversight over our budgetary areas that I really
13 like us to have.

14 So, we conducted a great amount of
15 interviews to find a talented Chief Financial
16 Officer for IDEM, and after talking to, it seems
17 like, every financial person in the State of
18 Indiana, we met a woman named Kim Diller, and Kim
19 was a Controller at the State Board -- or
20 Department of Health.

21 So, we thought so much of her work that we
22 asked her to come and work at IDEM, and I'm
23 sorry, Mike, but I think we got a great person

1 who -- and I don't know if Kim's here this
2 afternoon, but if she's here, she should stand
3 up. She's not. She's back at the office tending
4 to our finances.

5 We also have a person working under her
6 who had worked in the Budget Office in the
7 Governor's Office, so we're excited Josh Potter
8 has joined our team as well.

9 So, I think over the last several months
10 we've paid a great deal of attention to how the
11 agency works internally, and I thought I owed it
12 to you folks to give you an explanation of the
13 hires that we've made, and I think it'll put us
14 in a good position to do the work that you all
15 want us to do effectively, efficiently, and
16 managing the bottom line as well.

17 And I'm happy to answer any questions you
18 may have.

19 CHAIRMAN GARD: Are there any
20 questions for the Commissioner?

21 (No response.)

22 CHAIRMAN GARD: And I will tell you I
23 keep hearing good things about IDEM right now.

1 COMM. PIGOTT: Well, that's great,
2 and, you know, we appreciate that. It's my -- I
3 know that every day's a new day and every day
4 there's a new challenge, so we'll strive to live
5 up to those good things and try to meet them
6 every day. And if we're not, I count on you
7 folks to help us understand where we're falling
8 short, because we would make corrections if
9 necessary. And we look at you folks as our
10 partners in knowing what -- how people are
11 thinking about what we're doing and where we can
12 do better at the agency, and we very much
13 appreciate that.

14 CHAIRMAN GARD: Okay. Any questions
15 for the Commissioner?

16 (No response.)

17 CHAIRMAN GARD: And let me say to the
18 new people, the rulemaking process is a little
19 different than the legislative process, as I
20 found out, it was kind of a rude awakening for
21 me, so don't hesitate to stop us anywhere along
22 the line and ask a question. Any question you
23 have is reasonable, because sometimes what we do

1 and the way we do it seems a little unreasonable,
2 so just please don't hesitate to stop and ask
3 questions, and with the support people we have
4 out there, somebody should be able to answer any
5 questions that you have.

6 Now I will call on Chris Pederson for
7 rulemaking updates and information on the Air
8 Permitting Report that is in your Board packet,
9 and thank you for that report. That was a good
10 report.

11 MS. PEDERSEN: Okay. I have actually
12 several things to mention to all of you.

13 First, I want to go over a few
14 administrative things. Each of you have received
15 something related to the orientation packets for
16 our newest members, you have a complete
17 orientation packet.

18 And for the members who have been with the
19 Board previously, you have a supplement that
20 replaces some older information in your original
21 orientation packet, and that includes new
22 organizational charts, a list of the current
23 Board Members and contact information.

1 And then we've reprinted some statutes
2 that apply to the operation of the Board. The
3 statutes haven't changed, but this format is
4 consistent with the ones in the new members'
5 packets as well as it's just easier to read.

6 Another item, you should have all received
7 an e-mail from our Ethics Officer, Kathy Mills.
8 Board Members are statutorily required to take
9 ethics training every two years. This is
10 something that's done on-line, and instructions
11 in the e-mail should be able to walk you through
12 how to handle that. The training period for this
13 started yesterday and it goes through
14 November 10th, so we would encourage you all to
15 go on-line and take that training before
16 the 10th.

17 CHAIRMAN GARD: Should all of us have
18 gotten that e-mail?

19 MS. PEDERSEN: To the best of my
20 knowledge.

21 MS. KING: If you didn't, I can -- I
22 will check with Kathy to make sure. If any of
23 you have not gotten that e-mail, just please let

1 me know by the end of day today.

2 CHAIRMAN GARD: I didn't.

3 MS. KING: I'll double-check with

4 Kathy.

5 MS. PEDERSEN: Okay. Another item, a

6 reminder, if any of you have any changes related

7 to potential conflicts of interest related to

8 your participation on this Board, you can check

9 with Janet Pittman back here at our desk and get

10 a form to submit your information. It's only if

11 you have something that's changed that you think

12 might be an issue; otherwise, you don't have to

13 do anything.

14 And also, if any of you have a parking

15 ticket for this meeting today that you need to

16 have validated, you need to give that to Karen

17 back here at the desk right now, so she can get

18 those validated. Does anybody have one, any of

19 Board members have --

20 MS. PITTMAN: From the state, do you

21 have the state garage's --

22 MS. PEDERSEN: From the state

23 garages.

1 (No response.)

2 MS. PEDERSEN: No? Okay. Then I'll
3 go ahead and move on to rules. We have several
4 rules that should be ready for presentation at
5 the next meeting. Currently I'm anticipating
6 that will be January 10th of 2018. First would
7 be the Lawrence Township, Dearborn County Ozone
8 Redesignation Emergency Rule. This is the one
9 that's been coming before you at each meeting,
10 and is before you again today.

11 The one at the next meeting will
12 include -- aside from the redesignation for
13 ozone, it will include some updates for some of
14 the other pollutants, and they are just
15 administrative changes. In addition to that,
16 we're hoping at the next meeting that the regular
17 rulemaking will actually be able to come to you
18 for adoption.

19 This is being handled as one of our
20 Section 8 rulemakings, which means there's only
21 one adoption. It's expedited because it's a very
22 simple change and there's no alternatives, and
23 that one is primarily also to redesignate the

1 area to attainment for ozone, but will also
2 include some of the administrative changes.
3 The NOx Emissions from Large Affected
4 Units Rule. This was one that I had mentioned
5 last -- last meeting. It affects certain units
6 that are covered under the Clean Air Interstate
7 Rule that are not covered under the recently
8 adopted Cross-State Air Pollution Rule. This is
9 large industrial fossil fuel fire boilers and
10 electric generating units that are not at a power
11 plant.

12 Originally we'd hoped that this rule would
13 be ready for presentation to you today, but based
14 on comments that we received, we are discussing
15 possible revisions with EPA, and we're hoping to
16 complete any revisions in time for the next
17 meeting.

18 The Volatile Organic Liquid Storage Tanks
19 Rule. This one would allow alternative
20 inspection methods to avoid having to empty a
21 tank just to allow for an inspection. These
22 tanks are generally very large, and they usually
23 contain petroleum products. Each time the tank

1 is emptied, degassed and refilled, it increases
2 the VOC emissions and is costly to the source in
3 downtime and raw materials.

4 This particular revision will only apply
5 to Clark, Floyd, Lake and Porter Counties because
6 this is a rule that is applicable to those
7 counties due to an ozone nonattainment situation
8 they had in the past, so these were requirements
9 that were put on these areas to get them back
10 into attainment. So, this is one that will only
11 apply to those -- to the sources in those areas,
12 and it will also address administrative changes,
13 corrections and clarifications.

14 And then in addition to that, two rules
15 that may be ready for final adoption if they're
16 preliminarily adopted today are the title 327 CFR
17 Update and Administrative Revisions Rule and the
18 Underground Storage Tanks Rule.

19 And if anybody has any questions about the
20 rules, I'll take those now before moving to the
21 next item.

22 (No response.)

23 MS. PEDERSEN: Okay. Then the last

1 item, the Air Permitting Report, is -- this was
2 in your Board packet, and I hope you've had time
3 to review it, and we do have someone here, Matt
4 Stuckey, who is available so answer any questions
5 about that report, if you have any. So, that's
6 if anybody has any questions about that report.

7 CHAIRMAN GARD: Yes, anybody have any
8 questions about the Air Permit Report?

9 (No response.)

10 CHAIRMAN GARD: Thank you for
11 including that.

12 MS. PEDERSEN: Uh-huh.

13 MR. ETZLER: I have a question.

14 CHAIRMAN GARD: Yes, uh-huh.

15 MR. ETZLER: Mine's a simple one. On
16 page 8 of 15, under the New Construction Source
17 Modifications Update, the table that talks about
18 the number of permits that are past the deadline.

19 MR. STUCKEY: Right.

20 MR. ETZLER: Just a simple question:
21 Are some of those permits ongoing that haven't
22 been -- that are past the deadline, or were they
23 or have they been cleaned up is my question?

1 MR. STUCKEY: Well, so, these totals
2 were through the end of the fiscal year --

3 MR. ETZLER: Right.

4 MR. STUCKEY: -- so, through June. I
5 don't know specifically which ones those are.
6 What happens with permitting, because they're
7 anywhere from a 120-day to a 270-day permit term,
8 how long we have to process them, these numbers
9 just continue to roll, so every month there might
10 be some that have rolled past the 120 days.

11 Typically, the only ones that would fall
12 into this category with the past statutory
13 requirements would be what we call CWOP/OWOP, so
14 permits -- construction without a permit/
15 operating without a permit. So, we're not held
16 to the same requirement to issue them in the same
17 time line, but we still strive to do so. So, I
18 couldn't tell you for sure based on the numbers
19 in front of me here.

20 MR. ETZLER: Let me clarify my
21 question. You -- in August there was one,
22 September there was one, then October there were
23 zero.

1 MR. STUCKEY: Uh-huh.

2 MR. ETZLER: So, my question is: Did
3 the ones in August and September get cleaned up,
4 and so --

5 MR. STUCKEY: Well, I would assume
6 so, right. Yeah, based on the data --

7 MR. ETZLER: Okay. That -- that
8 answers my question --

9 MR. STUCKEY: Okay.

10 MR. ETZLER: -- because you show that
11 there were five total, but from my perspective,
12 you're actually getting them cleaned up, so --

13 MR. STUCKEY: Oh, absolutely, yeah.

14 MR. ETZLER: You never had more than
15 two at any one time, I guess, that were --

16 MR. STUCKEY: No.

17 MR. ETZLER: -- beyond -- okay.

18 COMM. PIGOTT: Yes, that's right.

19 MR. STUCKEY: We generally shoot for
20 zero as much as we can.

21 MR. ETZLER: Okay. That -- that's
22 the question.

23 MR. STUCKEY: Okay. Fair enough.

1 MR. ETZLER: Thank you.

2 CHAIRMAN GARD: Yes, Ken.

3 MR. RULON: A just had one quick
4 question, because I -- is it possible maybe in
5 the future reports to include like a five-year
6 track record? Because I think you guys really
7 underreport your performance by just showing us
8 12 months, because you've already -- you're doing
9 so much better than five years ago. It might be
10 nice for us to have a five- or a ten-year
11 summary.

12 COMM. PIGOTT: We could do that in --
13 separately from this in terms of all of our
14 permits, because we do track them all.

15 MR. STUCKEY: Right.

16 COMM. PIGOTT: And this is in context
17 of the Air Report. It doesn't --

18 MR. STUCKEY: Yeah.

19 COMM. PIGOTT: -- include the other
20 permits that we --

21 MR. STUCKEY: Right.

22 COMM. PIGOTT: -- are issuing. But
23 if you would like to see, we're happy to provide

1 information about the five-year transfer for all
2 of our permits so that the Board's more aware of
3 it. But you're right, the story that has been
4 told over time is of incredible improvement, and
5 we're happy to show you that. I thought we
6 bragged about it too much.

7 (Laughter.)

8 MR. STUCKEY: Never too much. Yeah,
9 in the report, as you see from the very
10 beginning, there's a regulatory requirement to
11 submit a report on a 12 month period ending the
12 fiscal year, but anytime you want data, we can
13 provide it. We always have -- we can do that.

14 MR. RULON: You need this?

15 MR. STUCKEY: That's fine.

16 MR. ETZLER: It would be nice to have
17 a quarterly report sent to us --

18 COMM. PIGOTT: We can do so.

19 MR. ETZLER: -- if you could just
20 e-mail it. Even if we have no meeting, if you
21 could just e-mail a quarterly report and --

22 COMM. PIGOTT: Sure.

23 MR. ETZLER: -- say, "Here's where

1 we're at."

2 COMM. PIGOTT: We could easily do
3 that.

4 MR. ETZLER: I think that would be
5 very helpful, because sometimes I get questioned
6 about, you know, why things aren't moving, and it
7 would be nice to be able to tell people that, you
8 know, they really are. There's -- you know,
9 there's always a little glitch or something we
10 have to deal with.

11 COMM. PIGOTT: We would be happy to
12 do that for you, absolutely.

13 MR. ETZLER: Thank you.

14 CHAIRMAN GARD: Now, some of you all
15 may remember, back in the early to mid '90's,
16 when the time frame legislation was enacted, the
17 delinquent permits were up in the thousands.

18 COMM. PIGOTT: Yes, I can remember
19 since I was in NPDES that --

20 CHAIRMAN GARD: Right.

21 COMM. PIGOTT: -- we had 263 when
22 Comm. Easterly joined the agency. So, yeah, they
23 were in the thousands.

1 CHAIRMAN GARD: Things have gotten
2 better.

3 MR. STUCKEY: Yes.

4 CHAIRMAN GARD: Any other questions
5 on the report?

6 (No response.)

7 CHAIRMAN GARD: Okay. Thank you.

8 MR. STUCKEY: Thank you.

9 CHAIRMAN GARD: Today we have one
10 emergency rule that the Board will be asked to
11 readopt, the Lawrenceburg Township, Dearborn
12 County Ozone redesignation. There will be
13 hearings prior to final adoption of the following
14 rules: U.S. Steel SO2 Rule Revisions and Outdoor
15 Hydronic Heaters. We will also have hearings
16 prior to preliminary adoption of Title 327 CRF
17 [sic] Update and Administrative Revisions and
18 Underground Storage Tanks.

19 And finally, we will have a public hearing
20 on rules that do not expire under the sunset
21 provisions of IC 13-14-9.5-1.1. There will also
22 be a presentation of a nonrule policy document,
23 Revocation of Air Construction and/or Operating

1 Permits.

2 The rules being considered at today's
3 meeting were included in Board packets and are
4 available for public inspection at the Office of
5 Legal Counsel, 13th floor, Government Center --
6 Indiana Government Center North. The entire
7 Board packet is also available on IDEM's Web site
8 at least one week prior to each Board meeting.

9 A written transcript of today's meeting
10 will be made. The transcript and any written
11 submissions will be open for public inspection at
12 the Office of Legal Counsel. A copy of the
13 transcript will be posted on the Rules page of
14 the agency Web site when it becomes available.

15 Will the official reporter for the cause
16 please stand and raise your right hand and state
17 your name?

18 (Reporter sworn.)

19 CHAIRMAN GARD: Thank you.

20 The Board will now consider adoption of an
21 emergency rule to redesignate Lawrenceburg
22 Township in Dearborn County to attainment for the
23 2008 eight-hour ozone standard. This Emergency

1 Rule incorporates the federal rule.

2 I will enter Exhibit A, the draft
3 Emergency Rule, into the record of the meeting.

4 Keelyn Walsh -- Walsh, from the agency
5 will present the Emergency Rule.

6 MS. WALSH: Good afternoon, members
7 of the Board. I am Keelyn Walsh with the Rules
8 Development Section of the Office of Legal
9 Counsel, and I'm here to present the Emergency
10 Rule to redesignate Lawrenceburg Township in
11 Dearborn County to attainment for the 2008
12 eight-hour ozone standard for readoption.

13 This rule was temporarily revised in
14 326 IAC 1-4-16 to redesignate Lawrenceburg
15 Township to attainment for the 2008 eight-hour
16 ozone standard until the regular rulemaking is
17 completed.

18 On April 7th, 2017, U.S. EPA published a
19 final rule to redesignate Lawrenceburg Township
20 in Dearborn County to attainment for the 2008
21 eight-hour ozone standard. This emergency rule
22 will allow affected sources to be permitted under
23 the prevention of significant deterioration

1 program under 326 IAC 2-2, instead of the more
2 restrictive emission offset program under
3 326 IAC 2.3.

4 Being permitted under the PSD program
5 instead of the emission offset program will have
6 a positive impact on Dearborn County's economy
7 and contribute greater economic benefits to the
8 redesignated area. Redesignating Lawrenceburg
9 Township to attainment for the 2008 eight-hour
10 ozone standard will not establish any
11 requirements to which the regulated sources are
12 not already subject.

13 This emergency rule was originally adopted
14 on April 12th, 2017, and then readopted on
15 July 12th, 2017. If readopted again, this
16 emergency rule will be filed and become effective
17 immediately for 90 days, at which time the
18 regular rulemaking will be completed and brought
19 to you for adoption.

20 IDEM requests that the Board adopt this
21 emergency rule as presented, and program staff
22 are available to answer any further questions you
23 may have.

1 Thank you.

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

4 (No response.)

5 CHAIRMAN GARD: Is there Board
6 discussion?

7 (No response.)

8 CHAIRMAN GARD: Is there a motion to
9 adopt the emergency rule?

10 MR. RULON: So moved.

11 CHAIRMAN GARD: Is there a second?

12 MR. HILLSDON-SMITH: Second.

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

15 MR. HILLSDON-SMITH: Aye.

16 DR. NIEMIEC: Aye.

17 MR. CUMMINS: Aye.

18 DR. ALEXANDROVICH: Aye.

19 MS. BOYDSTON: Aye.

20 MR. ETZLER: Aye.

21 MS. COLLIER: Aye.

22 MR. GREEN: Aye.

23 MS. VALIQUETT: Aye.

1 MR. RULON: Aye.

2 MR. HORN: Aye.

3 MR. METTLER: Aye.

4 MR. DAVIDSON: Aye.

5 MR. SMITH: Aye.

6 CHAIRMAN GARD: Aye.

7 Those opposed, nay.

8 (No response.)

9 CHAIRMAN GARD: The emergency rule is
10 adopted.

11 This is a public hearing before the
12 Environmental Rules Board of the State of Indiana
13 concerning final adoption of amendments to rules
14 at 326 IAC 7-4.1-20, U.S. Steel Gary Works.

15 I will now introduce Exhibit B, the
16 proposed rules, into the record of the hearing.

17 MaryAnn Stevens from the Department will
18 present the rule.

19 MS. STEVENS: Good afternoon, members
20 of the Board. I am MaryAnn Stevens, a rule
21 writer in the Office of Legal Counsel, Rules
22 Development Branch.

23 The United States Steel Gary Works has

1 sulfur dioxide emission limitations under 326 IAC
2 7-4.1-20 that are applicable to the facility's
3 coke plant, which includes the coal handling
4 facilities, coke oven batteries, coke byproducts
5 recovery plant, coke oven desulfurization
6 facility, and the no. 2 coke plant boiler house.

7 The entire coke plant facility permanently
8 ceased operation as of March 30, 2015. With the
9 permanent shutdown of the coke plant, the sulfur
10 dioxide emission limitations are not necessary.
11 Therefore, this rulemaking is to eliminate the
12 sulfur dioxide limits from 326 IAC 7-4.1-20.

13 This rulemaking is being conducted under
14 statute at IC 13-14-9-8 that allows for an
15 abbreviated rulemaking process when the
16 Commissioner of IDEM makes a determination that
17 there is no reasonably anticipated benefit to
18 either the environment or persons regulated or
19 otherwise affected by the proposed rule from not
20 having a second public comment period or more
21 than one public hearing.

22 The sulfur dioxide limits in
23 326 IAC 7-4.1-20 apply only to United States

1 Steel Gary Works facility coke plant, so
2 eliminating those limits affects no entity other
3 than United States Steel Gary Works.

4 The findings and determination of the
5 Commissioner along with its comment period was
6 posted in the Indiana Register on June 28, 2017,
7 and no comments were submitted. IDEM believes
8 the draft rule proposed for final adoption is the
9 appropriate response to the permanent shutdown of
10 the United States Steel Gary Works coke plant.

11 IDEM asks for the Board's vote for final
12 adoption. If there are any questions, I can
13 provide answers, as well as IDEM staff from the
14 Office of Air Quality are here to provide more
15 detailed answers.

16 Thank you.

17 CHAIRMAN GARD: Does anyone have any
18 questions for MaryAnn? Yes.

19 MR. RULON: Just a regulatory -- if
20 they chose to reopen this facility, though, then
21 they would have to reapply for permits?

22 MS. STEVENS: Mark?

23 MR. DERF: Yes.

1 MR. RULON: So, basically, taking
2 this rule away doesn't let them reopen later
3 without going through the process; right?

4 MR. DERF: Right.

5 MS. STEVENS: Right, yes.

6 MR. RULON: Thank you.

7 CHAIRMAN GARD: Any other questions?

8 (No response.)

9 CHAIRMAN GARD: Okay. I have no
10 speaker cards submitted to comment on this rule.
11 Does anyone out there want to comment that didn't
12 fill out a speaker card?

13 (No response.)

14 CHAIRMAN GARD: Okay. Seeing none,
15 the hearing is concluded. The Board will now
16 consider final adoption of the U.S. Steel SO2 Rule
17 Revisions at 326 IAC 7-4.1-20. Any Board
18 discussion?

19 (No response.)

20 CHAIRMAN GARD: Is there a motion to
21 final adopt the rules?

22 MR. DAVIDSON: So moved.

23 MR. GREEN: Second.

1 CHAIRMAN GARD: This is roll-call
2 vote. Dr. Alexandrovich?
3 DR. ALEXANDROVICH: Yes.
4 CHAIRMAN GARD: Ms. Boydston?
5 MS. BOYDSTON: Yes.
6 CHAIRMAN GARD: Mr. Horn?
7 MR. HORN: Yes.
8 CHAIRMAN GARD: Mr. Smith?
9 MR. SMITH: Yes.
10 CHAIRMAN GARD: Mr. Hillsdon-Smith?
11 MR. DAVIDSON: He stepped out.
12 CHAIRMAN GARD: Dr. Niemiec?
13 DR. NIEMIEC: Yes.
14 CHAIRMAN GARD: Mr. Rulon?
15 MR. RULON: Yes.
16 CHAIRMAN GARD: Mr. Etzler?
17 MR. ETZLER: Yes.
18 CHAIRMAN GARD: Mr. Cummins?
19 MR. CUMMINS: Yes.
20 CHAIRMAN GARD: Mr. Davidson?
21 MR. DAVIDSON: Yes.
22 CHAIRMAN GARD: Ms. Valiquett?
23 MS. VALIQUETT: Yes.

1 CHAIRMAN GARD: Ms. Collier?

2 MS. COLLIER: Yes.

3 CHAIRMAN GARD: Mr. Mettler?

4 MR. METTLER: Yes.

5 CHAIRMAN GARD: Mr. Green?

6 MR. GREEN: Yes.

7 CHAIRMAN GARD: And the Chair votes

8 aye. So, the vote is 14 to 0. The rule is final

9 adopted.

10 This is a public hearing before the

11 Environmental Rules Board of the State of Indiana

12 concerning final adoption of amendments to rules

13 at 326 IAC 4-3, Outdoor Hydronic Heaters.

14 I will now introduce Exhibit C, the

15 preliminarily adopted rule with IDEM's suggested

16 changes, into the hearing of the record -- or the

17 record of the hearing.

18 Keelyn Walsh from the Department will

19 present the rule.

20 MS. WALSH: Good afternoon. I am

21 Keelyn Walsh, and I'm here to present Rule

22 No. 16-332, Outdoor Hydronic Heater Revisions,

23 for your consideration.

1 Outdoor hydronic heaters are used to heat
2 and provide hot water for homes and other
3 structures, but can emit thick smoke and
4 high-particulate emissions such as carbon dioxide
5 and volatile organic compounds if operated
6 improperly.

7 On March 16th 2015, U.S. EPA published a
8 new source performance standards, or NSPS, in the
9 Federal Register to regulate outdoor hydronic
10 heaters. This rule was effective on May 15th,
11 2015 and applies to manufacturers and retailers
12 of outdoor hydronic heaters. Upon the effective
13 date of the federal rule, all new outdoor
14 hydronic heaters were required to meet
15 particulate matter emission limits. All
16 requirements of the Federal NSPS have been
17 adopted in the state rule in Article 12 of the
18 IAC.

19 Indiana's current Outdoor Hydronic Heater
20 Rule at 326 IAC 4-3, effective May 18th, 2011,
21 relied on U.S. EPA's voluntary program to qualify
22 and label new installations. Upon publication of
23 the NSPS in 2015, however, installations of

1 outdoor hydronic heaters previously regulated
2 under the state rule became subject to the
3 requirements of the NSPS at 40 CFR 60,
4 Subpart 4Q.

5 The purpose of this rulemaking is to amend
6 Indiana's current Outdoor Hydronic Heater Rule at
7 326 IAC 4-3 to incorporate the requirements of
8 the NSPS at 40 CFR 60, Subpart 4Q for outdoor
9 hydronic heaters. These amendments do not make
10 any substantive changes or impose any new
11 regulations or requirements for outdoor hydronic
12 heater owners or operator beyond those currently
13 in effect in the Federal NSPS or in the 2011
14 state rule at 326 IAC 4-3.

15 This rulemaking retains the requirements
16 of the 2011 state rule concerning stack height
17 requirements, the summertime operating ban,
18 opacity limits, and the notice to buyers. This
19 rulemaking also amends additional language as
20 necessary to remove the homemade unit exemption,
21 as all units manufactured are now regulated by
22 the Federal NSPS.

23 The proposed revisions also make it clear

1 that the exemptions for stack height and
2 summertime use apply not only to Phase 2 units
3 under the voluntary program, but also units
4 certified under the NSPS. While the NSPS applies
5 to more than outdoor hydronic heaters, such as
6 forced air furnaces, the state rule at
7 326 IAC 4-3 will remain limited to outdoor
8 hydronic heaters.

9 IDEM requests that the Board final adopt
10 this rule as presented, and the program staff are
11 available to answer any questions you may have.

12 Thank you.

13 CHAIRMAN GARD: Does the Board have
14 any questions?

15 (No response.)

16 CHAIRMAN GARD: I have no speaker
17 cards submitted. Does anyone out there want to
18 comment on the rule?

19 (No response.)

20 CHAIRMAN GARD: Okay. Hearing none
21 or seeing none, the hearing is concluded. The
22 Board will now consider final adoption of the
23 Outdoor Hydronic Heater Rules at 326 IAC 4-3.

1 Board discussion?

2 (No response.)

3 CHAIRMAN GARD: Is there a motion to

4 adopt IDEM's suggested changes?

5 MR. DAVIDSON: So moved.

6 MR. RULON: Second.

7 CHAIRMAN GARD: Is there a second?

8 All in favor, say aye.

9 MR. HILLSDON-SMITH: Aye.

10 DR. NIEMIEC: Aye.

11 MR. CUMMINS: Aye.

12 DR. ALEXANDROVICH: Aye.

13 MS. BOYDSTON: Aye.

14 MR. ETZLER: Aye.

15 MS. COLLIER: Aye.

16 MR. GREEN: Aye.

17 MS. VALIQUETT: Aye.

18 MR. RULON: Aye.

19 MR. HORN: Aye.

20 MR. METTLER: Aye.

21 MR. DAVIDSON: Aye.

22 MR. SMITH: Aye.

23 CHAIRMAN GARD: Aye.

1 Opposed, nay.

2 (No response.)

3 CHAIRMAN GARD: Is there a motion to
4 final adopt the rules as amended?

5 DR. NIEMIEC: So moved.

6 CHAIRMAN GARD: Is there a second?

7 MR. SMITH: Second.

8 CHAIRMAN GARD: Roll-call vote.

9 Dr. Alexandrovich?

10 DR. ALEXANDROVICH: Yes.

11 CHAIRMAN GARD: Ms. Boydston?

12 MS. BOYDSTON: Yes.

13 CHAIRMAN GARD: Mr. Horn?

14 MR. HORN: Yes.

15 CHAIRMAN GARD: Mr. Smith?

16 MR. SMITH: Yes.

17 CHAIRMAN GARD: Mr. Hillsdon-Smith?

18 MR. HILLSDON-SMITH: Yes.

19 CHAIRMAN GARD: Dr. Niemiec?

20 DR. NIEMIEC: Yes.

21 CHAIRMAN GARD: Mr. Rulon?

22 MR. RULON: Yes.

23 CHAIRMAN GARD: Mr. Etzler?

1 MR. ETZLER: Yes.

2 CHAIRMAN GARD: Mr. Cummins?

3 MR. CUMMINS: Yes.

4 CHAIRMAN GARD: Mr. Davidson?

5 MR. DAVIDSON: Yes.

6 CHAIRMAN GARD: Ms. Valiquett?

7 MS. VALIQUETT: Yes.

8 CHAIRMAN GARD: Ms. Collier?

9 MS. COLLIER: Yes.

10 CHAIRMAN GARD: Mr. Green?

11 MR. GREEN: Yes.

12 CHAIRMAN GARD: Mr. Mettler?

13 MR. METTLER: Yes.

14 CHAIRMAN GARD: And the Chair votes

15 aye. The vote is 15 to 0. I've got a question

16 about the previous vote before we move on.

17 MS. METTLER: Devin was out.

18 MR. SMITH: Yeah.

19 CHAIRMAN GARD: Pardon me?

20 MS. METTLER: Devin had stepped out.

21 CHAIRMAN GARD: Okay. That's -- I

22 wanted to make sure I hadn't missed something.

23 Okay. The rule is finally adopted.

1 This is a public hearing before the
2 Environmental Rules Board for the State of
3 Indiana concerning preliminary adoption of
4 amendments to multiple rules entitled 327 of the
5 Indiana Administrative Code to update references
6 to the Code of Federal Regulations and other
7 administrative changes.

8 I will now introduce Exhibit D, the draft
9 rules, into the record of the hearing.

10 Keelyn Walsh from the Department will
11 present the rule.

12 MS. WALSH: Good afternoon once
13 again. I'm Keelyn Walsh, and I'm here to present
14 Rule No. 17-278, CFR Update and Administrative
15 Corrections and Updates, for your consideration.

16 References to the Code of Federal
17 Regulations at 327 IAC 1-1-2 indicates the yearly
18 edition of the CFR that's applicable to federal
19 regulations that have been incorporated by
20 reference throughout 327 IAC, unless a previous
21 edition is identified in the specific rule.

22 Updating Indiana rules to the July 1st,
23 2016 version of the CFR will provide the latest

1 federal requirements to the regulated entities,
2 with the exception of those federal regulations
3 more recently published in the Federal Register.

4 On April 25th, 2017, U.S. EPA published a
5 notification postponing certain compliance dates
6 for the effluent limitations guidelines and
7 standards for the steam electric power generating
8 point source category. This action was taken
9 pursuant to Section 705 of the Administrative
10 Procedures Act, which allows an agency to
11 postpone the effective date of a rule pending
12 judicial review. The April 25th, 2017
13 notification has been included in this
14 rulemaking.

15 On June 6th, 2017, U.S. EPA published a
16 proposed rule to postpone the same compliance
17 dates as the April 25th, 2017 notification by
18 amending 40 CFR 423. As this is only a proposed
19 rule, it's not being referenced in this
20 rulemaking, but at such time when U.S. EPA
21 finalizes a proposed rule, IDEM will consider
22 whether an additional rulemaking at the state
23 level would be necessary.

1 In addition to updating references to the
2 CFR, IDEM is updating citations incorporated by
3 reference in several sections of Title 327. IDEM
4 is also making administrative changes to remove
5 obsolete language, correct mistakes, update
6 information, and ensure consistency with the rule
7 writing format.

8 This update provides consistency between
9 Indiana rules and federal regulations.

10 Consistency make expectations clear to the
11 regulated community and makes it easier for
12 interested parties to access the updated CFR
13 sections.

14 The 2016 edition of the CFR is a
15 codification of the final and effective
16 regulations published in the Federal Register as
17 of July 1st, 2016. This rulemaking does not make
18 any substantive changes beyond those already
19 federally required.

20 IDEM requests that the Board preliminarily
21 adopt this rule as presented, and program staff
22 are available to answer any further questions you
23 may have.

1 Thank you.

2 CHAIRMAN GARD: Does the Board have
3 any questions about the presentation?

4 Yes, Dr. Alexandrovich.

5 DR. ALEXANDROVICH: Yes. We've had
6 this before about not necessarily updating to the
7 latest, like July 1st, 2017. Can you comment on
8 that, why we're not doing that?

9 MS. WALSH: It just has to do with
10 the way that, you know, the notices are published
11 in the Federal Register timing-wise as to when we
12 are able to update them ourselves. I don't know
13 if Chris maybe can give any further specification
14 on that, but --

15 MS. PEDERSEN: I think you kind of
16 got it. Yeah, generally, the official version of
17 the CFR is not actually even available in hard
18 copy until September or October, and so, as we
19 started this rule, we could only go up to 2016,
20 because even right now I'm not sure if the 2017
21 version would be available to us, and we would
22 have to have that available to do a rulemaking.

23 DR. ALEXANDROVICH: Okay.

1 CHAIRMAN GARD: Okay. Any further
2 questions?

3 (No response.)

4 CHAIRMAN GARD: I have no speaker
5 cards presented. Is there anyone out there that
6 would like to comment on the rule?

7 (No response.)

8 CHAIRMAN GARD: If not, the hearing
9 is concluded. The Board will now consider
10 preliminary adoption of the revisions to 327 IAC.
11 Is there Board discussion?

12 MS. VALIQUETT: Chairman Gard?

13 CHAIRMAN GARD: Yes.

14 MS. VALIQUETT: I just have noticed a
15 typo. On page 1 of 92, "References to the
16 federal act," I think "federal" should be
17 capitalized, at the very bottom of the page.

18 CHAIRMAN GARD: Yeah, I see what
19 you're talking about, third line from the bottom.

20 MS. PEDERSEN: That's actually in the
21 title of one of our sections, and that's not
22 actually considered rule, so LSA will change that
23 as soon as we submit it.

1 CHAIRMAN GARD: Okay. So, we don't
2 need any kind a motion?

3 MS. PEDERSEN: No.

4 CHAIRMAN GARD: Okay.

5 You're good.

6 (Laughter.)

7 CHAIRMAN GARD: We need a motion for
8 preliminary adoption of the rule.

9 MR. CUMMINS: So moved.

10 CHAIRMAN GARD: Is there a second?

11 MR. HILLSDON-SMITH: Second.

12 CHAIRMAN GARD: All in favor, say
13 aye.

14 MR. HILLSDON-SMITH: Aye.

15 DR. NIEMIEC: Aye.

16 MR. CUMMINS: Aye.

17 DR. ALEXANDROVICH: Aye.

18 MS. BOYDSTON: Aye.

19 MR. ETZLER: Aye.

20 MS. COLLIER: Aye.

21 MR. GREEN: Aye.

22 MS. VALIQUETT: Aye.

23 MR. RULON: Aye.

1 MR. HORN: Aye.

2 MR. METTLER: Aye.

3 MR. DAVIDSON: Aye.

4 MR. SMITH: Aye.

5 CHAIRMAN GARD: Aye.

6 Opposed, nay.

7 (No response.)

8 CHAIRMAN GARD: The preliminary rule
9 is adopted.

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

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

16 Dan Watts from the Department will present
17 the rule.

18 MR. WATTS: Good afternoon members of
19 the Board. I'm Dan Watts, a rule writer for
20 IDEM, and I'm here to present LSA Document 16-204
21 to the Board for preliminary adoption.

22 IDEM is proposing amendments to 329 IAC 9
23 that will update the standards and requirements

1 for underground storage tanks to be no less
2 stringent than the recently amended federal UST
3 rules. The U.S. EPA promulgated a final rule on
4 July 15th, 2015 that made comprehensive changes
5 to the federal UST standards at 40 CFR 280 and
6 40 CFR 281, including amending some requirements
7 to be more stringent than previous requirements.

8 Because IDEM operates an approved state
9 UST program with approval from U.S. EPA, IDEM
10 must maintain requirements that are no less
11 stringent than the federal UST standards. After
12 a state adopts rules that are no less stringent
13 than the recently updated federal standards, the
14 U.S. EPA is also requiring that states submit an
15 updated application for state program approval
16 before October 13th, 2018. The Board doesn't
17 have anything to do with that application, that's
18 something that we take care of, and IDEM is
19 seeking to complete this rulemaking well in
20 advance of that deadline.

21 IDEM is proposing the direct incorporation
22 by reference of many subparts of 40 CFR to
23 replace state rules that are currently written

1 out as full text at 329 IAC 9. Many existing
2 sections in Article 9 are proposed for repeal and
3 will be replaced with direct incorporation by
4 reference of federal standards. This method will
5 reduce potential repetitiveness and inconsistency
6 between state and federal requirements, while
7 ensuring that state rules are no less stringent
8 than the federal requirements.

9 Sections that are proposed for
10 incorporation by reference include applicable
11 definitions for UST's, standards for new and
12 existing UST's, general operating requirements,
13 release detection, and operator training.

14 IDEM also is proposing to maintain some
15 sections of Article 9 that include state specific
16 requirements and are no less stringent than the
17 analogous federal requirements. These sections
18 include requirements for notification, reporting
19 and record keeping, releases and release
20 response, site investigation, corrective action,
21 delivery prohibition, closure, and financial
22 responsibility.

23 In addition, IDEM is proposing amendments

1 that make corrections to the rules and improve
2 the rule language, which IDEM attempts to do with
3 any open rulemaking. These amendments include
4 correction of obsolete cross-references
5 typographical errors and inconsistencies,
6 simplification of clarification of existing rule
7 language, and reorganization of some rule
8 requirements. These changes are not anticipated
9 to affect the intent or scope of the rule
10 requirements.

11 Myself and other representatives from IDEM
12 are here to answer any questions you may have for
13 this rulemaking, and the Department respectfully
14 requests that the Board preliminarily adopt this
15 rule as presented.

16 Thank you.

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

19 DR. ALEXANDROVICH: I do have some,
20 and is this the time to talk about this?

21 CHAIRMAN GARD: Yes.

22 MR. WATTS: Yeah.

23 DR. ALEXANDROVICH: Sorry; I have a

1 list. All right. Now, on page 4 of 28, kind of
2 the middle of the page, no. 2, "A reference to
3 'implementing agency', "department of
4 environmental management" is also not
5 capitalized. That's a minor thing.

6 MR. WATTS: I believe that --

7 DR. ALEXANDROVICH: It is in other
8 places.

9 MR. WATTS: Is it in other places?

10 DR. ALEXANDROVICH: Yeah.

11 MR. WATTS: This is something we'll
12 have to check with our administrative drafting
13 manual to see if that particular agency should be
14 capitalized. Sometimes we do, and sometimes --

15 DR. ALEXANDROVICH: Okay.

16 MR. WATTS: -- the Legislative
17 Services Agency prefers it not capitalized.

18 DR. ALEXANDROVICH: Okay.

19 MR. WATTS: I'll have to check on
20 that.

21 DR. ALEXANDROVICH: That was kind
22 of -- that's kind of minor. Other things are
23 more questions, I think.

1 MR. WATTS: Uh-huh.

2 DR. ALEXANDROVICH: On page 6 of 28,
3 the definition of "permanent closure," at the top
4 of the page --

5 MR. WATTS: Uh-huh.

6 DR. ALEXANDROVICH: -- it seems like
7 that definition may be incomplete, because it
8 really just refers to clean -- "emptied and
9 cleaned...removing all liquids and accumulated
10 sludges," and I think it would have to -- and has
11 been -- had a site assessment and approval for
12 final closure by the Department.

13 It seems incomplete. On page 10 of 28,
14 you have a change in service tank is also defined
15 as being cleaned and emptied, so it looks like it
16 needs a little more.

17 MR. WATTS: Okay. There -- federal
18 rules might have a -- we adopted many definitions
19 from the federal rules, and we may have a
20 definition -- there may be a definition of
21 "closure" in there.

22 DR. ALEXANDROVICH: Okay.

23 MR. WATTS: I do not have the

1 complete definitions for the federal rules on
2 hand. It was 80 pages and I didn't want to print
3 it all off and waste paper, to tell you the
4 truth, but we -- those -- I could check that. I
5 don't know if we have -- we have the capability
6 to check this maybe if somebody has an iPad.

7 DR. ALEXANDROVICH: Well, because the
8 rule goes through requirements to be permanently
9 closed, so --

10 MR. WATTS: Uh-huh.

11 DR. ALEXANDROVICH: -- just cleaning
12 it and emptying it isn't really all it is, so --

13 MR. WATTS: Uh-huh. Okay.

14 DR. ALEXANDROVICH: I'm sorry; I'm
15 going to go on. On page 14 of 28, up towards the
16 top, "If the site assessment is incomplete, the
17 opener or operator shall be notified by the
18 commissioner and...have forty-five...days...to
19 complete the...assessment." So, my question
20 there is: How long does IDEM have to review the
21 assessment? I mean can they wait -- you know, is
22 there anything in the rule to make IDEM just --

23 MR. WATTS: Do you want to do that?

1 DR. ALEXANDROVICH: Yeah.

2 MR. WATTS: Is there anyone from UST
3 staff going to be able to answer that today?

4 Okay. Tom.

5 MR. NEWCOMB: Good afternoon. I'm
6 Tom Newcomb, the UST Section Chief.

7 To directly answer the question, no, there
8 is not. Historically, at least since I've been
9 the Section Chief, there's a requirement to have
10 it done within 60 days of the UST Section
11 receiving a closure report. So, there might be
12 another rule somewhere that that is -- that
13 60-day limit is based on, but that's what it is.

14 DR. ALEXANDROVICH: Maybe that could
15 be added to one of the reports, that -- you know,
16 how long it takes for IDEM to act on a permit or
17 a closure report, something like that.

18 MR. NEWCOMB: Okay. Thank you.

19 DR. ALEXANDROVICH: Okay. I'm sorry;
20 I'm kind of jumping through this, trying to
21 understand the rules. On page 20 of 28 -- no,
22 under no. 3, kind of in the middle of the page,
23 under 3(C) and (D), there's a referral to where

1 you have to have borings where a contaminant is
2 detected and samples where the release is
3 suspected or detected. It kind of threw me for a
4 loop, because all of that stuff was not
5 previously referring to a leak or contamination,
6 so it's just like a closure rule. So, I'm
7 just -- it seems out of place.

8 MR. WATTS: Okay. So, 3(C) and 3(D)?

9 DR. ALEXANDROVICH: Yeah, and there's
10 a similar issue on that. I mean if you have a
11 leak or a contamination, one would expect them to
12 fix it or close it, but there are other reasons,
13 I think, a tank would be closed. So --

14 MR. WATTS: Uh-huh.

15 DR. ALEXANDROVICH: -- the way it
16 just reads, like all of the sudden it's like
17 where the contaminant is detected, like if there
18 was a contaminant.

19 MR. WATTS: Okay.

20 DR. ALEXANDROVICH: And there's a
21 similar citation like that on page 22 -- let's
22 see -- under water sampling, if I can find it
23 myself. "For any permanent closure or

1 change-in-service, a ground water sample must be
2 collected within any area where a suspected
3 contaminant release has occurred...."

4 MR. WATTS: Okay.

5 DR. ALEXANDROVICH: So, it's like
6 closing it, and then -- it seems like it's just
7 out of place. I'm not sure.

8 MR. WATTS: Okay.

9 MR. RULON: I had just read this to
10 only be talking about closures. There's an
11 entire separate rule about an in-use -- I believe
12 in remediation. All right. This whole -- all of
13 this language is just about if you're closing the
14 tank, as I understood it.

15 MR. WATTS: This language here, this
16 particular section we're discussing, has to do
17 with site assessment, and it isn't -- yeah, you
18 are correct, we have an entire rule dedicated to
19 closure, and this is just one section within that
20 rule. As for these requirements seeming out of
21 place, that question's a little bit technical for
22 me, and --

23 DR. ALEXANDROVICH: Okay. But you

1 guys will look into it?

2 MR. WATTS: Yeah, we can -- I don't
3 know. Tom, do you have any additional comments
4 on this particular section here?

5 DR. ALEXANDROVICH: He needs a little
6 assist.

7 MR. NEWCOMB: Well, to kind of step
8 back a little bit to the previous question about
9 the definitions of a permanent closure of a tank,
10 the way the definition is written, I think it's
11 actually based on the federal definition of
12 "closure." It somewhat separates what actually
13 happens in application where the tank is
14 physically being closed versus the requirement to
15 do a site assessment.

16 The rule does require that when a tank, a
17 regulated UST, is permanently closed, that site
18 assessment is then performed. So, that's why I
19 think the definition doesn't really speak about
20 doing a site assessment, because the site
21 assessment itself is its own thing.

22 DR. ALEXANDROVICH: Right, but then
23 there would be two definitions to what

1 "permanently closed" is. Officially, and cleaned
2 and emptied -- emptied and cleaned, it seems it's
3 not complete. That's --

4 MR. NEWCOMB: Okay. As far as the
5 actual closure rule, now, the rule that is
6 currently in effect is, I think, mostly in its
7 entirety being repealed and replaced with 9-6-2.6
8 as the site assessment sampling requirements.
9 So, I guess maybe I need to ask a little bit --
10 for you to restate the question as far as what is
11 the issue.

12 DR. ALEXANDROVICH: Oh, well -- so,
13 reading through this, the site assessment
14 sampling requirements, is it -- is it for
15 closures that are both -- well, just all of the
16 sudden it just mentions if the boring is -- they
17 have to -- "...two...soil samples are required at
18 the point where a contaminant is detected...."

19 So, that's like the first time in that
20 whole discussion of detecting a contaminant, but
21 I think somewhere else, though, it said you have
22 to follow response requirements. "Samples must
23 be [taken] where the release is suspected or

1 detected," so that's assuming there was a release
2 suspected or detected.

3 MR. NEWCOMB: Well, I think those are
4 samples that go basically above and beyond the
5 standard closure sampling requirements. If you
6 look at page 20 of 28, the second half of the
7 page, where it starts with -- I'm not sure of the
8 nomenclature, whether that's a clause or a
9 subdivision, but (b), "Soil sampling for removal
10 closure must be conducted in compliance with the
11 following."

12 Then when you get down to that subclause,
13 (i), it says, "Bottom samples must meet the
14 following requirements...soil sampling must
15 consist of a minimum of two...soil samples taken
16 within two...feet below both ends of each
17 UST...if the UST capacity is...ten thousand [or
18 larger, an] additional sample must be taken..."

19 So, the basic requirements for UST closure
20 remain the same: Two bottom samples, three if
21 it's a 10,000 gallon or larger tank, one from,
22 you know, the midpoint of the side walls of the
23 excavation for every 20 feet of the perimeter,

1 and then if there's other -- if there is an
2 indication that there's been a release, then you
3 have to go and do the additional sampling.

4 DR. ALEXANDROVICH: Additional.

5 MR. NEWCOMB: That's the cited -- the
6 sections that you're referencing. So, if there's
7 a visual or a -- well, what's the word? --
8 olfactory indication that there's a release at a
9 certain location, then there's additional
10 sampling required.

11 DR. ALEXANDROVICH: Okay. I am sure
12 you know the rule better than I did. It confused
13 me, which is why I asked the questions. So, I
14 think I know the -- I've got a couple more; I'm
15 sorry. I might know the answer to this, but why
16 is no native soil sample required for in-place
17 closure? Is that because you're not disturbing
18 it? I didn't write the page number on that.

19 MR. NEWCOMB: Let's see. In-place
20 closure, soil sampling.

21 DR. ALEXANDROVICH: I think it's
22 somewhere --

23 MR. HILLSDON-SMITH: Page 22, bottom.

1 DR. ALEXANDROVICH: Yeah. Yes,
2 that's right.

3 MR. NEWCOMB: Well, actually it
4 starts on page 19 of 28 with "Site assessment
5 sampling requirements." 2.6(a), "Soil sampling
6 for an in-place closure must be conducted as
7 follows," then if you read through that, it goes
8 through the various steps that have to be
9 included in the sup -- the work plan. They have
10 to submit a work plan as they're requesting
11 permission to do an in-place closure, so they
12 have to actually send us a report with the
13 request.

14 DR. ALEXANDROVICH: But --

15 MR. NEWCOMB: And then it says --

16 DR. ALEXANDROVICH: Oh, go ahead.

17 MR. NEWCOMB: "The proposed boring
18 locations must be as follows...one...boring every
19 twenty...feet around the tank area, with a
20 minimum of four...borings...each boring must be
21 within three...feet adjacent to the UST." So,
22 those borings will actually be closer to the tank
23 than -- and then it takes it back to --

1 DR. ALEXANDROVICH: Right. The soil
2 is not disturbed, so --

3 MR. NEWCOMB: Well, that's
4 actually -- three feet from an underground
5 storage tank for -- in most cases, you're
6 actually going to be drilling your backfill
7 material, not the native soil. So, it's a --
8 it's like pea gravel, for the --

9 DR. ALEXANDROVICH: Uh-huh.

10 MR. NEWCOMB: -- most part, some
11 places it's sand for older sites. So, the pea
12 gravel is going to -- basically, the tank
13 excavation works like a bathtub, so if there has
14 been a release, it's more likely going to be
15 concentrated in the excavation area than going
16 into the native soil. There's still probably
17 going to be some there, too, but you're going to
18 get a faster response, indicating whether there's
19 been a release by putting the holes in the
20 excavation itself.

21 DR. ALEXANDROVICH: Okay. It almost
22 seems the opposite, though. I'm -- because if
23 you excavate it, then you get a -- well, I'm

1 going to have to do a little more reading on that
2 one.

3 MR. NEWCOMB: Well, that -- when you
4 do an excavation or a removal closure, that
5 backfill material also has to be checked to see
6 if it's --

7 DR. ALEXANDROVICH: Right.

8 MR. NEWCOMB: -- contaminated as
9 well. You can't put it back in the hole if it's
10 contaminated. And then they step out further to
11 do the soil sampling of the native soil.

12 DR. ALEXANDROVICH: But why wouldn't
13 you do that for an in-place closure?

14 MR. NEWCOMB: Well, if it is an
15 in-place closure and it does -- the readings do
16 come back that it's contaminated, then it
17 automatically get listed as a leaking --

18 DR. ALEXANDROVICH: Okay.

19 MR. NEWCOMB: -- UT site and you have
20 to go into the ISC -- I'm sorry -- initial site
21 characterization --

22 DR. ALEXANDROVICH: Okay.

23 MR. NEWCOMB: -- and delineate the

1 extent of the contamination.

2 DR. ALEXANDROVICH: Gotcha. Thank
3 you. Then another question relating to those
4 site plans. So, why is the site plan only
5 required for the in-place closure?

6 MR. NEWCOMB: Well, that's a good
7 question. Because, generally speaking, with the
8 removal closure, you know what you've got once
9 you've dug the tanks out of the ground, and
10 sampling doesn't happen until the tanks and the
11 backfill have been removed, and the piping runs
12 and whatnot. With an in-place closure, the
13 intent is to leave those tanks there and not --
14 basically not disturb anything that doesn't --

15 DR. ALEXANDROVICH: Okay.

16 MR. NEWCOMB: -- need to be
17 disturbed.

18 DR. ALEXANDROVICH: Yeah.

19 MR. NEWCOMB: And there are -- a lot
20 of times the reason -- well, the only reason that
21 we generally allow an in-place closure is if
22 removing the tank would endanger the structural
23 integrity of the building, a road, or a -- a

1 structure, a roadway, or like a sidewalk.

2 So, if it's too close to something and you

3 can't dig it up, we allow the in-place closure.

4 And then there might be other reasons why they

5 can't punch more borings real close to the tanks,

6 then maybe you step out further, say, underground

7 utilities or whatnot, so --

8 DR. ALEXANDROVICH: Okay. Thank you.

9 MR. NEWCOMB: -- that gives us a

10 chance to basically negotiate where those samples

11 will be taken.

12 DR. ALEXANDROVICH: That makes sense.

13 And you mentioned the pipings, so for an in-place

14 closure, I think it says you don't need to sample

15 around the piping. Wouldn't you want to do that?

16 MR. NEWCOMB: Let's see.

17 DR. ALEXANDROVICH: I'm on 21 of 28,

18 no. 4. Oh, no, that's not what I was --

19 MR. NEWCOMB: No, paragraph 3 says --

20 DR. ALEXANDROVICH: Okay.

21 MR. NEWCOMB: -- they will be. They

22 must be sampled.

23 DR. ALEXANDROVICH: Okay. I guess I

1 misread it.

2 MR. NEWCOMB: Oh, it's only if
3 they're directly above the tanks for an in-place
4 closure. Same thing with the removal closure.
5 We've been over sites where the dispensers are
6 sitting directly above the tanks. Well, when --
7 by the time you've dug the tanks out, all of the
8 piping and the dispensers are gone, so there is
9 no need to sample.

10 DR. ALEXANDROVICH: So, you would
11 sample if it was an in-place closure and some of
12 that piping remained? There would be sampling
13 nearby?

14 MR. NEWCOMB: Yeah, the -- well, and
15 what the rule is envisioning here, first on
16 page 21 of 28, paragraph 3, it says the native
17 soil sample -- "Native soil under piping and
18 dispenser[s]...which routinely contains regulated
19 substances, must be sampled." And then when you
20 get down to 4, it's "...not required if [the]
21 dispensers and piping...are located directly
22 above the UST system...."

23 DR. ALEXANDROVICH: Gotcha.

1 MR. NEWCOMB: So, the idea, again, is
2 that for the looser backfill, the sample is going
3 to tell you if there's been a release.

4 DR. ALEXANDROVICH: All right. Thank
5 you very much. I'm done.

6 CHAIRMAN GARD: Okay. That's fine.
7 Any other questions on the rule?

8 (No response.)

9 CHAIRMAN GARD: This hearing is
10 concluded. The Board will now consider
11 preliminary adoption of the Revisions to
12 329 IAC 9, the Underground Storage Tanks. Any
13 further Board discussion?

14 (No response.)

15 CHAIRMAN GARD: Is there a motion to
16 preliminarily adopt the rules?

17 MR. CUMMINS: So moved.

18 CHAIRMAN GARD: Is there a second?

19 MR. DAVIDSON: Second.

20 CHAIRMAN GARD: All in favor, say
21 aye.

22 MR. HILLSDON-SMITH: Aye.

23 DR. NIEMIEC: Aye.

1 MR. CUMMINS: Aye.

2 DR. ALEXANDROVICH: Aye.

3 MS. BOYDSTON: Aye.

4 MR. ETZLER: Aye.

5 MS. COLLIER: Aye.

6 MR. GREEN: Aye.

7 MS. VALIQUETT: Aye.

8 MR. RULON: Aye.

9 MR. HORN: Aye.

10 MR. METTLER: Aye.

11 MR. DAVIDSON: Aye.

12 MR. SMITH: Aye.

13 CHAIRMAN GARD: Aye.

14 Opposed, nay.

15 (No response.)

16 CHAIRMAN GARD: The rule is

17 preliminarily adopted.

18 This is a public hearing before the

19 Environmental Rules Board for rules not subject

20 to the sunset provisions of IC 13-14-9.5.

21 Rules that are exempt from expiration

22 under the law and have been effective for seven

23 years are to be the subject of a public notice

1 asking for comment on any of the listed rules in
2 a public hearing before the Board.

3 A notice for each affected title of the
4 Indiana Administrative Code this year was limited
5 to Titles 326 and 327 as published in the Indiana
6 Register with a request for written comments on
7 whether any of the listed rules should be renewed
8 under the regular rulemaking process at IC
9 13-14-9.

10 I will now introduce Exhibits F and G, the
11 notices published in the Indiana Register, into
12 the record of the hearing.

13 No written comments were received for any
14 of the rules listed in the notices. Is there
15 anyone who wishes to provide comment to the Board
16 on any of the rules at this time?

17 (No response.)

18 CHAIRMAN GARD: If not, this hearing
19 is concluded. The Board must determine whether,
20 based on comments received, it would be -- it
21 would like to direct the agency to open a new
22 rulemaking for any of the rules listed as being
23 exempt from the sunset process. And if the Board

1 chooses not to ask for a rulemaking, a motion
2 should be made for no further action to be taken
3 on the rules.

4 If you have any questions about the
5 nonsunset process, Nancy King is available to
6 answer any questions. Any questions for Nancy?

7 (No response.)

8 CHAIRMAN GARD: Is there any Board
9 discussion?

10 (No response.)

11 CHAIRMAN GARD: Is there a motion for
12 no further action on these rules?

13 MR. HORN: So moved.

14 MR. GREEN: Second.

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

17 MR. HILLSDON-SMITH: Aye.

18 DR. NIEMIEC: Aye.

19 MR. CUMMINS: Aye.

20 DR. ALEXANDROVICH: Aye.

21 MS. BOYDSTON: Aye.

22 MR. ETZLER: Aye.

23 MS. COLLIER: Aye.

1 MR. GREEN: Aye.

2 MS. VALIQUETT: Aye.

3 MR. RULON: Aye.

4 MR. HORN: Aye.

5 MR. METTLER: Aye.

6 MR. DAVIDSON: Aye.

7 MR. SMITH: Aye.

8 CHAIRMAN GARD: Aye.

9 Opposed, nay.

10 (No response.)

11 CHAIRMAN GARD: The motion is
12 adopted.

13 We will now have a presentation on the
14 nonrule policy document regarding Revocation of
15 Air Construction and Operating Permits. Marty
16 Yeates of IDEM's Office of Air Quality will
17 present the NPD.

18 MR. YEATES: Good afternoon. I'm
19 Marty Yeates. I'm with the IDEM Office of Air
20 Quality, Compliance Enforcement Branch.

21 This air permit revocation nonrule policy
22 document pertains to construction and/or
23 operating air permits. The purpose of this is to

1 allow IDEM Office of Air Quality, or OAQ, to
2 maintain a more accurate listing of air permits
3 inventory and records concerning the air emission
4 sources within the State of Indiana.

5 The scope of this, it pertains to sources
6 that no longer operate, have not constructed, or
7 no longer exist. It extends to the Air Permits
8 Branch, the Compliance Enforcement Branch, the
9 Air Operations Branch, and the Air Programs
10 Branch. It does not apply to sources that are
11 operating, only to sources that are permanently
12 closed and been verified are no longer operating.

13 In summary, the Office of Air Quality, Air
14 Permits Branch normally revokes construction or
15 operating air permits upon a request from the
16 source. However, false sources with no contact
17 information, with an existing valid construction
18 or operating air permit, and in need of
19 revocation, in order for IDEM to maintain more
20 accurate permitting, permitted sources,
21 inventories and records concerning air emission
22 sources within the state [sic].

23 The actual policy, the intent of this

1 policy, is that when OAQ receives information
2 that a source has abandoned a permitted site and
3 ceased to operate permanently or their contact is
4 no longer responsive, the agency should attempt
5 to verify source closure, and if it's verified,
6 initiate permit revocation.

7 The air compliance inspector plays a key
8 role within this policy, the administering of
9 this policy. They would use due diligence when
10 the agency discovers or suspects that a source
11 has closed. Some of this due diligence includes
12 several things. The policy lists and delineates
13 some things, but it's not necessarily all
14 inclusive.

15 It includes things such as contacting a
16 corporate office if the company still exists but
17 in another location; verifying operational status
18 within the Secretary of State's Business Services
19 Division Web site; conducting Internet searches;
20 actually conducting a site visit, a site
21 inspection.

22 Or perhaps to document that the source is
23 permanently closed or nonexistent. Returned

1 mail, sometimes mail gets returned
2 nondeliverable, that's a good indication that the
3 source is no longer in existence; nonpayment of
4 annual fees, permit fees; and nonsubmittal of
5 reports that are due quarterly or annually.

6 If the due diligence just described
7 indicates that a source does not constructively
8 exist or never constructed, then the air
9 compliance inspector creates a log entry or
10 inspection report that they actually conducted an
11 on-site inspection.

12 The Air Compliance Enforcement Branch will
13 quarterly compile a list of sources for which a
14 permit revocation has been proposed. It's then
15 submitted to Max. Max then posts it to a Web
16 site for the public to view. If nobody objects
17 within 30 days, then the Air Compliance
18 Enforcement Branch submits appropriate forms to
19 the Permits Administration and Support Section.

20 Then this section would then issue a
21 revocation and a notice of decision. Upon that
22 issuance, the source is changed to permanently
23 closed in all of the applicable correcting

1 databases, and then the permit is considered to
2 be officially revoked.

3 And that basically summarizes this nonrule
4 policy document. Are there any questions?

5 CHAIRMAN GARD: Any questions about
6 the document?

7 Yes.

8 MR. HILLSDON-SMITH: So, if a source
9 is changed permanently closed, you go through all
10 of this, did all of your due diligence, posted 30
11 days, and say two years -- a year and a half or
12 two years later another company decides they want
13 to come in and start up this facility, does that
14 pose any issues for them if they're trying to
15 come in but the source is permanently closed?

16 MR. YEATES: That would actually be
17 considered another source and they would apply
18 for their own operating permit.

19 MR. HILLSDON-SMITH: What if it was
20 the same source as before, don't know what
21 happened to them, the contact wasn't responding,
22 and all of the sudden they come back and say,
23 "Hey, we want to get this going?" So, it is the

1 same source, but the permit had closed, and they
2 say, "Hey, we had financial issues. You know,
3 two years later the market's better and we want
4 to open this thing up." I guess I'm looking at
5 what does "permanently" mean for them?

6 MR. YEATES: "Permanently" means that
7 it's been verified that the construct -- the
8 operation is permanently stopped.

9 MR. HILLSDON-SMITH: Okay. And if
10 they wanted to go back in and start right up
11 again, they'd apply for a new permit?

12 MR. YEATES: They would reapply for
13 another -- for another air operating permit.

14 MR. HILLSDON-SMITH: All right.

15 CHAIRMAN GARD: Any other questions?

16 (No response.)

17 CHAIRMAN GARD: Thank you.

18 MR. YEATES: Thank you.

19 CHAIRMAN GARD: Now is an Open Forum.

20 Is there anyone that wishes to address the Board
21 today?

22 (No response.)

23 CHAIRMAN GARD: I've got a couple of

1 questions about the process of initiating rules.
2 How long is it taking now when you decide you
3 need a rule and submit everything to -- do you
4 still have to submit everything to OMB to get
5 approval to start a rulemaking?

6 MS. KING: I can answer that. Nancy
7 King with IDEM's Office of Legal Counsel, and
8 still doing rules, still hanging out with you
9 guys.

10 We still -- our process now, the
11 Governor's Office has been considering what to do
12 about the rule moratorium that was imposed under
13 the Pence Administration. They're still taking
14 comments, I believe, from agencies on whether
15 that should be kept in its entirety or amended in
16 some way.

17 But essentially what that requires is that
18 we have to submit -- before we start a rulemaking
19 for us, because we have our specific rulemaking
20 process under 13, Title 13, which is, as you
21 know, different than the rest of the agencies
22 under Title 4, but it's essentially the same
23 thing. When they do a notice of intent to start

1 a rule, it's like our first notice, as it's
2 published in the Indiana Register.

3 Prior to having the ability to do that, we
4 have to submit a request explaining how this
5 particular rule meets the exceptions within the
6 moratorium, and that goes to the Office of
7 Management and Budget. At this point, before we
8 do that, we currently have to submit to the
9 Governor's Office just a real quick -- kind of a
10 "This is what we're intending to do" kind of a
11 thing.

12 Basically we use that same kind of
13 synopsis for the moratorium exception request to
14 submit to the Governor's Office. They just kind
15 of want to know what's on the horizon. They've
16 been turning those around very quickly. I think
17 some of that is part of just sort of the new
18 administration getting a handle on what
19 rulemakings are happening. So, that doesn't
20 usually impede us very much at all.

21 I will say that the moratorium exception
22 request does on occasion take quite a bit of time
23 to come back from the Office of Management and

1 Budget to allow us to start a rulemaking. We
2 have to get the okay before we can submit our
3 first notice.

4 So, that -- the timing on that, especially
5 when they are within the legislative session or
6 preparing and they're doing fiscal impact
7 analysis, I know a lot of times it also depends
8 on their staff. I know they were sort of down on
9 staff. They have been returning things to us
10 more quickly and trying to work through their
11 backlog.

12 So, it's hard to give a good figure on how
13 long it takes, but it does tend to slow us down,
14 and as you are all pretty well aware, and you new
15 folks will learn quickly, we are not the
16 speediest of rulemaking folks. Our process takes
17 quite a long time, generally speaking, because of
18 the number of notices and hearings we have before
19 the Board.

20 But that said, it does allow us to also
21 answer questions like Ms. Alexandrovich raised
22 today pertaining to our rules, because they are
23 so technical and we get a lot of public input.

1 So, as you know, the length of time varies
2 depending on the intricacy or level of
3 controversy of a particular rulemaking.

4 But ours is a slow process, so anything we
5 can do to speed it up, we certainly try. OMB has
6 their job to do. It does tend to hold us up
7 sometimes in terms of starting a rulemaking.
8 They -- I know they've been trying to work on it.
9 I can't give you an exact time. I would love for
10 it to be faster, but there's a lot of things I'd
11 like that I don't get, so --

12 CHAIRMAN GARD: Well, at least
13 they're looking at it.

14 MS. KING: They are, they're really
15 trying to move it along, so it's -- I know
16 that -- I think other agencies probably have the
17 same sort of issues that they deal with. It's
18 just that our process takes so much longer than
19 regular Title 4 rulemakings, so --

20 CHAIRMAN GARD: And then the other
21 question is: Are things that come out of
22 Washington, particularly the EPA, that we have to
23 initiate a rulemaking to comply with, is that

1 slow -- is that pretty slow right now?

2 MS. KING: Yeah. It -- again, when
3 we have rules, much like you saw with our CFR
4 updates, things like that, when we are
5 required -- because we have our various programs
6 that are -- we're required to maintain level
7 stringency of CFR's or whatever, as those rules
8 come out, we bring those to you.

9 You'll see a lot of them in our air
10 program, for example, with NESHAP's or the
11 designations, things like that, and everything is
12 a little -- a little unsettled. And so, yeah,
13 that -- it makes a difference for us. We
14 certainly keep up with it and try to do what we
15 can, but in an unsettled time, we just kind of
16 keep moving through our process.

17 In some respects, having it take a little
18 bit longer is sort of helpful, because hopefully
19 things will settle down so we know what's going
20 on by the time we ask you to final adopt a rule,
21 for example. But for example, when we have a
22 Section 8 where we're incorporating by reference,
23 we can only do that after a rule has been

1 finalized on the federal level.

2 So, when you've got, you know, issues
3 related to appeals of rules or you get rules
4 being pulled back, things like that, that can
5 certainly affect what we do and can sometimes
6 kind of derail what we've started to do based on
7 the time frame that it takes us to get it to you.

8 So, yeah, it has a definite effect, but --

9 CHAIRMAN GARD: Then the last
10 question: Do we have a new Region V
11 Administrator, Director yet?

12 MS. KING: I have not heard that we
13 have a new Region V Administrator as yet.

14 CHAIRMAN GARD: Okay. Is there an
15 acting one?

16 MS. KING: Yes, Bob Kaplan is the
17 acting Region V Administrator. He --

18 CHAIRMAN GARD: Okay.

19 MS. KING: -- remains the acting
20 Administrator.

21 CHAIRMAN GARD: Okay.

22 MS. KING: The one thing I just want
23 to add -- I could have done it in Open Forum, but

1 since I'm here, I will say it -- just especially
2 for our new members, and honestly, it applies to
3 all of you Board members, we try to get the Board
4 packet out to you a couple of weeks beforehand.

5 And I understand that it's not like the
6 first thing you want to grab and read. It is
7 exciting stuff, but that being the case, any time
8 you have any questions, big or small or whatever,
9 pertaining to anything within the Board packet,
10 we have the information in there for who the rule
11 writer is and that contact, and we are happy to
12 answer any questions before the Board meeting, if
13 that's beneficial to you.

14 I just wanted to make sure, because I'm
15 not sure it's clear in the orientation packets
16 for our new folks, but we're happy to answer
17 those questions anytime. And you can certainly
18 always call me or Chris Pedersen or any of our
19 rule writers, and we're happy to get you any
20 information that you don't feel is clear in the
21 Board packet.

22 CHAIRMAN GARD: Okay.

23 Yes, Ken.

1 MR. RULON: Just -- I think I know
2 the answer to this, but this may be for other
3 people. So, you know, we've been adopting rules
4 for five years now where EPA has increased
5 stringency, and if EPA would relax a rule, that's
6 also going to force us to redo our rules to a
7 relaxed level, because we can't be more stringent
8 than; is that right, or not?

9 MS. KING: We can be more stringent
10 than. There is a -- there was a sort of
11 no-more-stringent-than bill that passed in the
12 last legislative session. It does not prohibit
13 us from being more stringent. What it requires
14 is that if we do a rule more stringent than, we
15 have to submit it to -- oh, now I have to
16 remember this right -- we have to submit it to
17 the Legislative Council, and basically that
18 rule -- we can go through the promulgation
19 process, but that rule cannot become effective
20 until the end of the next legislative session --

21 MR. RULON: Oh, that's right.

22 MS. KING: -- which gives the
23 legislature the opportunity to weigh in on that

1 particular rule. So, for purposes of federal
2 regulations, yeah, it -- we can leave ours in
3 place, certainly, but yeah, there is that little
4 bit of extra layer to it now.

5 DR. NIEMIEC: If it's already in
6 place, though, is it likely that you would just
7 make a notification to the legislature, and then
8 they would determine if it needs to be --

9 MS. KING: If it's already in place,
10 that does not apply. We're not going to -- we're
11 not going to ask them to come and take away all
12 of our rules. They have plenty to do during
13 their session. They don't need us bothering them
14 with those kinds of things, if at all necessary.

15 CHAIRMAN GARD: While we have Nancy
16 up here, are there any other questions?

17 (No response.)

18 MS. KING: Thank you.

19 CHAIRMAN GARD: Thank you.

20 Well, the next meeting of the Board will
21 be tentatively set January the 10th, 2018 at 1:30
22 in this conference room. It's subject to change,
23 but you'll be notified and updated if in fact

1 there has to be a change.

2 And for the new members, whenever we do
3 meet, it's always on the second Wednesday
4 afternoon at 1:30. So, we've been meeting --
5 it's been averaging about once a quarter
6 recently.

7 So, do I hear a motion to adjourn?

8 DR. NIEMIEC: So moved.

9 MR. SMITH: Second.

10 CHAIRMAN GARD: All in favor, say
11 aye.

12 DR. NIEMIEC: Aye.

13 MR. CUMMINS: Aye.

14 DR. ALEXANDROVICH: Aye.

15 MS. BOYDSTON: Aye.

16 MR. ETZLER: Aye.

17 MS. COLLIER: Aye.

18 MR. GREEN: Aye.

19 MS. VALIQUETT: Aye.

20 MR. RULON: Aye.

21 MR. HORN: Aye.

22 MR. METTLER: Aye.

23 MR. DAVIDSON: Aye.

1 MR. SMITH: Aye.

2 CHAIRMAN GARD: Aye.

3 Opposed, nay.

4 (No response.)

5 CHAIRMAN GARD: Okay. We are
6 adjourned.

7 - - -
8 Thereupon, the proceedings of
9 October 11, 2017 were concluded
at 2:45 o'clock p.m.
- - -

10

11

12

13

14

15

16

17

18

19

20

21

22

23

1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Wednesday, October 11, 2017 in this matter and
8 transcribed by me.

9

10

11

Lindy L. Meyer, Jr.,

12

Notary Public in and

13

for the State of Indiana.

14

15 My Commission expires August 26, 2024.

16

17

18

19

20

21

22

23

