

1 BEFORE THE STATE OF INDIANA
2 ENVIRONMENTAL RULES BOARD

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4
5 PUBLIC MEETING OF JANUARY 10, 2018

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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, January 10, 2018 at 1:31
17 o'clock p.m.

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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 Dr. Ted Niemiec
- 6 Joanne Alexandrovich
- 7 Karen Valiquett
- 8 Ken Rulon
- 9 William Etzler
- 10 Chris Horn
- 11 Gail Boydston
- 12 Calvin Davidson
- 13 Devin Hillsdon-Smith
- 14 Mike Mettler, Proxy, Department of Health
- 15 Jeffrey Cummins, Proxy, Lieutenant Governor
- 16 Bruno Pigott, IDEM Commissioner (nonvoting)

11

IDEM STAFF MEMBERS:

- 12 Brian Rockensuess
- 13 Nancy King
- 14 Chris Pedersen
- 15 Krystal Hackney
- 16 Keelyn Walsh
- 17 MaryAnn Stevens
- 18 Martha Clark Mettler
- 19 Dan Watts
- 20 Doug Louks
- 21 Jack Harmon
- 22 Jessica Reiss
- 23 Susan Bem
- 24 Roger Letterman

19

PUBLIC SPEAKERS:

- 20 None

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1 1:31 o'clock p.m.
 January 10, 2018

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3 CHAIRMAN GARD: If I can -- if I can
4 have your attention, please, we need to call the
5 meeting of the Indiana Environmental Rules Board
6 for January the 10th to order. The Chair sees a
7 quorum, so we'll proceed with the business.

8 The first order of business today is
9 approval of the summary of our October 11th, 2017
10 Board meeting. Are there additions or
11 corrections to the summary as presented?

12 MR. ETZLER: I move approval.

13 MR. RULON: Second.

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

16 MR. HORN: Aye.

17 DR. NIEMIEC: Aye.

18 DR. ALEXANDROVICH: Aye.

19 MS. BOYDSTON: Aye.

20 MR. CUMMINS: Aye.

21 MR. ETZLER: Aye.

22 MS. VALIQUETT: Aye.

23 MR. RULON: Aye.

1 MS. COLLIER: Aye.

2 MR. METTLER: Aye.

3 MR. DAVIDSON: Aye.

4 MR. HILLSDON-SMITH: Aye.

5 CHAIRMAN GARD: Aye.

6 Opposed, nay.

7 (No response.)

8 CHAIRMAN GARD: The summary is

9 approved.

10 Comm. Pigott.

11 COMM. PIGOTT: Thank you very much.

12 A few things. First of all, a lot of you
13 folks know that our family suffered a loss this
14 past December, and my wife passed away, and I
15 just want to say to all of you how grateful our
16 family's been to the outpouring of support that
17 we've received for the -- just the kindness and
18 friendship of everyone in the environmental
19 community, the Board members, and I just can't
20 thank you enough for all of the support we've
21 gotten. And that's not just for me, that's for
22 my whole family, so I want to say thank you for
23 all of that.

1 But on the business side of things, you
2 know, it's a new year. We have our Governor,
3 who's come forward with his new agenda for 2018,
4 and last night he gave his State of the State
5 speech, and there was a reference to the work
6 we're doing here in the environment, especially
7 regarding water and wastewater infrastructure,
8 and I'm very excited. It's part of the
9 Governor's agenda, and I think we can do some
10 really great stuff. So, I'm excited for all of
11 that.

12 And finally, really, we're working into a
13 legislative session, and Brian, my Chief of Staff
14 here, has been the guru of our legislative
15 efforts in our agency through the years, so I'd
16 like to have him give a brief update about what
17 we're looking at, and then I'll close with a
18 couple of other initiatives we're working on.

19 MR. ROCKENSUESS: So, as many of you
20 know, it's really early on in the legislative
21 session. IDEM has two bills that we are backing.
22 The first one's authored by Sen. Eric Bassler,
23 Senate Bill 274. It deals with red-tag of

1 underground storage tank bills -- underground
2 storage tanks. We currently have the authority
3 to red-tag an underground storage tank, and that
4 is a compliance mechanism whereby if you are not
5 compliant with the regs, then you can't accept
6 gas. That's what a red tag is.

7 We've had a couple of instances where
8 we've had to red-tag an individual six or seven
9 times, so the compliance mechanism is not
10 working. So, what this bill does is three
11 strikes, you're out. You get three red tags.
12 After the third, if you're still noncompliant, we
13 can -- we may ask you to close the tank, and that
14 can be done by cementing the tank, removing the
15 tank. There's a whole litany of rules in the
16 tank world of how you close a tank.

17 And then, as always, we have an omnibus
18 bill. It's all of the cleanup things we find
19 over the year, and our omnibus bill has currently
20 five different items in it.

21 One is to bring consistency between
22 wastewater and drinking water certifications. We
23 certify the operators of both the wastewater and

1 the drinking water utility, and so we're trying
2 to marry up how they get certified.

3 We're making it clear that if you're like
4 a steel mill that takes drugs from the police and
5 incinerates them, that that's an okay thing to
6 do. There was questions on whether that was
7 legal, and so we're clarifying that it is.

8 We're eliminating some regional sewer
9 district language in the statute that applied to
10 only one county, and now that language is
11 inhibiting the county from moving forward.

12 And then, as you may have known, health
13 and IDEM have had kind of a split on septics, who
14 has what role, and we're shifting our role in
15 septics over to health to streamline that
16 program.

17 And then finally, there's a rulemaking
18 reference that's a technical correction that
19 we're updating.

20 And that's the majority of our
21 legislation.

22 COMM. PIGOTT: And in terms of other
23 initiatives we're working on, a couple that I

1 just want to mention. One is -- well, three.

2 So, one of the big issues we're always focused on

3 is ensuring we'll get permits done on time, in

4 real time. We're going to continue the focus in

5 the agency.

6 It's been a real driver for us, and we're

7 just going to continue that effort. We don't

8 want to see backlogs, we don't want to see

9 permits that are not issued on time, because we

10 realize not only the importance to the

11 environment, but the importance to our partners

12 and efforts to grow our economy. And, you know,

13 we work with Devin quite a bit at our agency.

14 MR. HILLSDON-SMITH: (Gave the "I'm

15 watching you" sign.)

16 COMM. PIGOTT: Exactly. We're hand

17 in glove. And I'll tell you what: It's a great

18 partnership. We're very excited about it, and we

19 want to do our part to help you guys out. So,

20 we're going to continue that focus.

21 The second thing is we're going to renew

22 our focus to get our inspection reports done in a

23 timely manner. Our statutory requirements are 45

1 days. To me, that seems way too long. It
2 shouldn't take us that long to get an inspection
3 report out. We're aiming for much better,
4 something around seven days. We're not there
5 yet, but we are going to continue working in that
6 way.

7 And then my big -- personally, my big
8 effort is to have us wrest control over the
9 Federal 404 program and bring it to Indiana.
10 Right now it's split between Indiana, where
11 there's a -- we issue a 401 certification, but if
12 you're a company, you often and likely need to
13 get a 404. We're going to work to make that
14 process happen in a more efficient, more
15 effective way, and we believe that that would
16 happen if it was incorporated all in one place
17 here at the Department of Environmental
18 Management.

19 So, those are kind of the big things we're
20 working on right now. And that's my report.
21 Thank you.

22 CHAIRMAN GARD: Are there any
23 questions for the Commissioner on -- for -- yes.

1 MR. HILLSDON-SMITH: Commissioner,
2 what would it take to get that 404 process for
3 the state? Because that is a -- that would be a
4 huge deal for us.

5 COMM. PIGOTT: Several things. First
6 of all, you'd have to -- it's like a delegated
7 program.

8 MR. HILLSDON-SMITH: Okay.

9 COMM. PIGOTT: So, just as we were
10 delegated authority to issue permits for water,
11 air and land, we'd have to be delegated the
12 authority over the 404 program, which means you
13 have to make application, you have to demonstrate
14 your ability in terms of staffing to effectively
15 issue permits, do compliance and enforcement
16 work, which means staff numbers.

17 And then, frankly, I believe that there
18 would be a cost associated with doing that,
19 because I believe our staffing numbers would have
20 to go up. But I truly believe that the gain
21 from -- from the incorporation of all of that
22 activity in the state, it far outstrips the cost
23 of bringing that activity into the State of

1 Indiana.

2 So, there's definitely a cost associated
3 with it, but the benefit way outstrips it. Right
4 now, businesses are waiting years to get their
5 404 permits, and I just don't believe that that's
6 necessary.

7 MR. HILLSDON-SMITH: No. You have my
8 full support.

9 COMM. PIGOTT: Thank you.

10 CHAIRMAN GARD: Any other questions
11 for the Commissioner or for Brian?

12 (No response.)

13 CHAIRMAN GARD: You might mention
14 that we finally have a Region 5 Administrator.

15 COMM. PIGOTT: Yes, we do have a
16 Region 5 Administrator, Ms. Stepp, who used to
17 work in Wisconsin, and then she moved to Region 7
18 in the new administration, and now she's been
19 moved over to Region 5 and is the Region 5
20 Administrator.

21 I had a conversation with her in early
22 December. She seems to like -- someone that will
23 be easy to get along with, who understands the

1 perspective of the states in terms of what they
2 really need to get things done, and what they
3 don't need in order to get things done. We see a
4 little of both.

5 And so, we're really excited. She just
6 started on the 2nd, so we're going to give her a
7 little time to get her feet on the ground, but
8 then we're excited to get together with her and
9 talk about what's important to us. So, that's a
10 big thing.

11 And I forgot about the VW stuff, but I
12 thought maybe --

13 CHAIRMAN GARD: No, you go ahead.

14 COMM. PIGOTT: Well, I didn't want to
15 take it away, but as you all know, there was a
16 settlement and a consent decree that was put
17 together by the Federal Government when VW was
18 accused of monkeying with their emission controls
19 equipment.

20 That -- that settlement allowed for 41
21 million dollars to come to Indiana, and that 41
22 million dollars is something that can be spent on
23 a variety of activities in the state that are

1 associated with reducing NOx emissions.

2 The Governor signed an executive order.

3 That executive order established a board led by

4 Sen. Gard, who will meet on a regular basis to

5 examine the kind -- well, first, put together a

6 plan for generally the kind of projects that will

7 be funded here in Indiana; secondly, consider

8 those specific projects and make sure that the

9 funding gets sent for those projects.

10 The beginning of that process really is

11 tomorrow. We're having a meeting led by

12 Sen. Gard of the Board. It's an orientation

13 meeting, it's not a public meeting. It's just an

14 effort to educate all of the members of the Board

15 about everything and ensure that we're all on the

16 same page in terms of the kind of -- the

17 procedures and the things that the Board will be

18 doing.

19 And I'm very excited about it, because I

20 think this Board -- it's a collection of terrific

21 people who have the best interest of Hoosiers in

22 mind and who have got years of experience and, I

23 think, will make some great decisions that'll

1 help -- I think it can help economically as well
2 as environmentally, so I'm really excited about
3 that.

4 Then after tomorrow, there's going to be a
5 series of meetings around the State of Indiana
6 where people who are interested in submitting
7 suggestions about the kinds of things that this
8 Board should be granting moneys for can give
9 their input, so that a plan can be finalized and
10 sent to the trustee about how Indiana's going to
11 spend its money.

12 And once that's done, once those series of
13 meetings is done and input is given, then that
14 plan will be sent and the Board will have its
15 direction in terms of the types of projects that
16 will be funded. It's pretty exciting. I'm
17 thinking this will be a really productive and
18 useful Board. So, thank you for being the Chair.
19 I'm just excited about it.

20 And also thanks to the Office of Air
21 Quality, who's been really doing a lot of legwork
22 to help set up all of this, as well as our
23 friends in the Office of Legal Counsel. So, it's

1 going to be a team effort, and we're here, the
2 agency, to support the Board in its efforts.

3 DR. ALEXANDROVICH: Is anything off
4 the table, or is it all --

5 COMM. PIGOTT: Yes, there are things
6 that are off the stable. There's specific types
7 of projects that can be funded, so -- and I don't
8 have a list in front of me, but there are
9 boundaries in terms of how moneys can be spent.
10 But the settlement allows for states to even more
11 define those boundaries even more specifically.

12 But it can be fleets, it can be charging
13 stations, it can be a variety of different kinds
14 of things that ultimately we'll have, and the
15 point is to reduce NOx emissions from what was
16 theoretically expelled, you know, in the vehicles
17 that we're driving around in that had the
18 equipment that wasn't working properly.

19 So, yes, there's some boundaries on this.
20 The Board gets to define it even more. I would
21 say, and Sen. Gard mentioned this today, that --
22 and I think the most productive way for people to
23 provide input is to show up at those sessions

1 that we're having around the state to receive
2 input about the types of projects that should be
3 funded.

4 There have been some people who have come
5 up to me directly and asked, "Can I sit down with
6 you and talk about this?" And really, this is a
7 Board effort in that there's a structure that's
8 set up to receive input, and I think that's the
9 most productive way to provide the kinds of
10 suggestions and input that the people may have
11 about how that money should be spent.

12 DR. ALEXANDROVICH: Uh-huh.

13 CHAIRMAN GARD: And it's not often
14 that you're given 41 million dollars to spend.

15 (Laughter.)

16 COMM. PIGOTT: Yeah, I know.

17 CHAIRMAN GARD: So, this is kind of
18 neat.

19 Any -- any further questions for the
20 Commissioner?

21 (No response.)

22 CHAIRMAN GARD: Okay. Chris
23 Pedersen.

1 MS. PEDERSEN: Hi. I'm Chris
2 Petersen, Rules Development Branch in the Office
3 of Legal Counsel.

4 Before I start talking about the rules, I
5 first want to introduce our newest rule writer,
6 Krystal Hackney.

7 Krystal, stand up, wave.

8 MS. HACKNEY: (Complied.)

9 MS. PEDERSEN: She just joined us
10 last month, and so in the future you're likely to
11 be seeing her presenting some rules also.

12 We have several rules we feel may be ready
13 for presentation at the next meeting, which we're
14 anticipating would be on April 11th. The first
15 is the Attainment Status Updates Rule. This is
16 an air rule that updates the designation language
17 in the current Air Quality Attainment Status
18 Tables for consistency with the federal language,
19 but it does not actually change any designations.

20 The county tables that we have are
21 normally not updated unless a designation for the
22 county for a particular pollutant is changed, and
23 so, some of the language in those tables becomes

1 obsolete over a period of time. When EPA issues
2 a new standard, they sometimes change the
3 language that they use to describe the
4 designation, and we do not always update those
5 because it doesn't ultimately change the
6 designation.

7 So, this rulemaking is just to update all
8 of that language. The rulemaking will update the
9 specific language used in the tables, and then
10 also specify the most recent standard to which
11 the designation applies. It is a Section 8
12 notice, so it's an expedited rulemaking, with one
13 written comment period and one hearing, and it is
14 to be posted in the Indiana Register next week.

15 Another rule is the Cross-Connections
16 Reference Updates Rule, and this rule updates and
17 clarifies references related to the prevention of
18 cross-connections and backflow contamination in
19 drinking water systems, and it also will make
20 some administrative and formatting changes.

21 Designations for the 2010 Sulfur Dioxide
22 Standard were published in the Federal Register
23 this week, so we may be considering whether to

1 present an emergency rule for some of those
2 counties that have been designated nonattainment.

3 And in addition to that, there's two rules
4 that are before you today for preliminary
5 adoption: The NOx Emissions from Large Affected
6 Units Rule and Volatile Organic Liquid Storage
7 Tanks Rule. If those are preliminarily adopted
8 today, they may be ready for final adoption in
9 April.

10 Also, the Lawrenceburg Township, Dearborn
11 County Ozone Redesignation Emergency Rule is
12 before you today. There is a possibility that if
13 the regular rulemaking is not effective by the
14 next meeting, we may have to bring that one to
15 you one more time.

16 And I'd be happy to answer any questions
17 about the rulemakings.

18 CHAIRMAN GARD: Are there any
19 questions about what's coming up in the near
20 future?

21 MS. BOYDSTON: Chris, I just have one
22 question. In the past, you had given us a nice
23 list of what we could expect. Is that in here?

1 MS. PEDERSEN: I'm sorry?

2 MS. BOYDSTON: In our packets in the
3 past, you had given us a list of all of the
4 future rulemakings, and you've just run through
5 some. Is that list in our packet and I'm missing
6 it?

7 CHAIRMAN GARD: The chart?

8 MS. BOYDSTON: Yeah, the chart. I
9 don't see it.

10 MS. PEDERSEN: Well, those big
11 charts, I -- yeah, I have not been providing that
12 more because there's a lot of information on
13 there that's not relative to rulemakings that are
14 in process, but there is --

15 MS. PITTMAN: We have the status.

16 MS. PEDERSEN: -- an abbreviated
17 chart about the ones that are close to moving.

18 MS. BOYDSTON: Okay. So, we have the
19 ones that are for status today?

20 MS. PEDERSEN: Right. But if you
21 have any questions about any specific rules --

22 MS. BOYDSTON: Okay.

23 MS. PEDERSEN: -- I'll be happy to

1 answer those.

2 MS. BOYDSTON: I was kind of addicted
3 to the chart, so --

4 MS. PEDERSEN: Oh, okay.

5 MS. BOYDSTON: Okay. Just a hint, I
6 like the chart.

7 CHAIRMAN GARD: Other questions?

8 (No response.)

9 CHAIRMAN GARD: Thank you.

10 Today we have one emergency rule that the
11 Board is being asked to readopt, the Lawrenceburg
12 Township, Dearborn County Ozone Redesignation.

13 There will be hearings prior to final
14 adoption of the following rules: Lawrenceburg
15 Township, Dearborn County Ozone Redesignation;
16 Title 327 Drinking Water Rules; Title 327 CFR
17 Update and Administrative Revisions; Underground
18 Storage Tanks.

19 We will also have hearings prior to
20 preliminary adoption of the following rules:
21 Volatile Organic Liquid Storage Tanks; NOx
22 Emissions from Large Affected Units, and repeal
23 of the NOx Budget Trading Program.

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

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

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

17 (Reporter sworn.)

18 CHAIRMAN GARD: Thank you.

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

1 current federal designation.

2 I will enter Exhibit A, the draft
3 emergency rule, into the record of the hearing.

4 Keelyn Walsh will present the rule.

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

12 This rule temporarily revises
13 326 IAC 1-4-16 to redesignate Lawrenceburg
14 Township to attainment for the 2008 eight-hour
15 ozone standard until the regular rulemaking is
16 completed, and also incorporates administrative
17 updates to other attainment statuses contained in
18 the regular rulemaking that I'll be presenting
19 next.

20 On April 7th, 2017, U.S. EPA published a
21 final rule to redesignate Lawrenceburg Township
22 in Dearborn County to attainment for the 2008
23 eight-hour ozone standard. This emergency rule

1 will allow affected resources to be permitted
2 under the Prevention of Significant Deterioration
3 program under 326 IAC 2-2, instead of the more
4 restrictive emission offset program under
5 326 IAC 2-3.

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

15 This emergency rule was originally adopted
16 on April 12th, 2017, and then readopted on
17 July 12th and October 11th, 2017. If adopted
18 today, this emergency rule will be filed and be
19 effective for 90 days. If the regular rulemaking
20 is not effective before the next meeting, then
21 the emergency rule will be brought to you again
22 for readoption.

23 IDEM requests that the Board adopt this

1 emergency rule as presented, and program staff
2 are available to answer any further questions you
3 may have.

4 Thank you.

5 CHAIRMAN GARD: Are there any
6 questions for Ms. Walsh?

7 (No response.)

8 CHAIRMAN GARD: Thank you.

9 Is there Board discussion?

10 (No response.)

11 CHAIRMAN GARD: Is there a motion to
12 adopt the emergency rule?

13 DR. NIEMIEC: So moved.

14 CHAIRMAN GARD: Is there a second?

15 MR. CUMMINS: Second.

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

18 MR. HORN: Aye.

19 DR. NIEMIEC: Aye.

20 DR. ALEXANDROVICH: Aye.

21 MS. BOYDSTON: Aye.

22 MR. CUMMINS: Aye.

23 MR. ETZLER: Aye.

1 MS. VALIQUETT: Aye.

2 MR. RULON: Aye.

3 MS. COLLIER: Aye.

4 MR. METTLER: Aye.

5 MR. DAVIDSON: Aye.

6 MR. HILLSDON-SMITH: Aye.

7 CHAIRMAN GARD: Aye.

8 Opposed, nay.

9 (No response.)

10 CHAIRMAN GARD: The emergency rule is
11 adopted.

12 This is a public hearing before the
13 Environmental Rules Board of the State of Indiana
14 concerning final adoption of amendments to rules
15 at 326 IAC 1-4-16, Redesignation to Attainment
16 for Ozone in Lawrenceburg Township, Dearborn
17 County.

18 I will now introduce Exhibit B, the
19 proposed rules, into the second -- into the
20 record of the hearing.

21 Keelyn Walsh will present the rule.

22 MS. WALSH: Hello, again. Keelyn
23 Walsh, and I'm here to present Rule No. 17-432,

1 Lawrenceburg Township, Dearborn County
2 Redesignation to Attainment for the 2008
3 Eight-Hour Ozone Standard for your consideration.

4 Redesignating Lawrenceburg Township to
5 attainment for the 2008 eight-hour ozone standard
6 will have a positive impact on Dearborn County's
7 economy by allowing the new major sources, and
8 major modifications at existing sources, to be
9 permitted under the Prevention of Significant
10 Deterioration rules in 326 IAC 2-2, rather than
11 the more restrictive emission offset rules in
12 326 IAC 2-3.

13 This will contribute greater economic
14 benefits to the redesignated area and does not
15 establish any requirements to which the regulated
16 sources are not already subject. This rule also
17 makes administrative updates to several other
18 attainment statuses to ensure that they are
19 consistent with federal regulations.

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

1 Thank you.

2 CHAIRMAN GARD: Are there any
3 questions?

4 (No response.)

5 CHAIRMAN GARD: Any Board discussion?

6 (No response.)

7 CHAIRMAN GARD: Is there a motion --
8 oh, we have to have a public hearing.

9 MR. RULON: So moved.

10 CHAIRMAN GARD: No speakers -- not
11 yet, I'm sorry. I kind of jumped ahead.

12 (Laughter.)

13 CHAIRMAN GARD: Is there anyone to
14 speak on the proposed rule?

15 (No response.)

16 CHAIRMAN GARD: This hearing is
17 concluded. The Board will now consider final
18 option of amendments to rules at 326 IAC 1-4-16,
19 Redesignation to Attainment for Ozone in
20 Lawrenceburg Township, Dearborn County. Is there
21 any Board discussion?

22 (No response.)

23 CHAIRMAN GARD: Is there a motion to

1 final adopt the rules?

2 DR. NIEMIEC: So moved.

3 CHAIRMAN GARD: Second?

4 MR. HILLSDON-SMITH: Second.

5 CHAIRMAN GARD: I'll do a roll-call

6 vote.

7 Dr. Alexandrovich?

8 DR. ALEXANDROVICH: Yes.

9 CHAIRMAN GARD: Ms. Boydston?

10 MS. BOYDSTON: Yes.

11 CHAIRMAN GARD: Mr. Horn?

12 MR. HORN: Yes.

13 CHAIRMAN GARD: Mr. Clark?

14 (No response.)

15 CHAIRMAN GARD: Mr. Hillsdon-Smith?

16 MR. HILLSDON-SMITH: Aye -- or yes.

17 CHAIRMAN GARD: Dr. Niemiec?

18 DR. NIEMIEC: Yes.

19 CHAIRMAN GARD: Mr. Rulon?

20 MR. RULON: Yes.

21 CHAIRMAN GARD: Mr. Etzler?

22 MR. ETZLER: Yes.

23 CHAIRMAN GARD: Mr. Cummins?

1 MR. CUMMINS: Yes.

2 CHAIRMAN GARD: Mr. Davidson?

3 MR. DAVIDSON: Yes.

4 CHAIRMAN GARD: Mr. Valiquett --

5 Ms. Valiquett?

6 MS. VALIQUETT: Yes.

7 CHAIRMAN GARD: Ms. Collier?

8 MS. COLLIER: Yes.

9 CHAIRMAN GARD: Mr. Mettler?

10 MR. METTLER: Yes.

11 CHAIRMAN GARD: And the Chair votes

12 aye. Did I miss anybody?

13 (No response.)

14 CHAIRMAN GARD: The vote is 13 to

15 none. The rule is adopted.

16 This is a public hearing before the

17 Environmental Rules Board of the State of Indiana

18 concerning final adoption of amendments to rules

19 at 327 IAC 8-2.1, 8-2.4 and 8-2.6, Drinking Water

20 Rules.

21 I will now introduce Exhibit C, the

22 proposed rules, into the record of the hearing.

23 MaryAnn Stevens will present the rules.

1 MS. STEVENS: Good afternoon, members
2 of the Board. I'm MaryAnn Stevens, a rule writer
3 in the Office of Legal Counsel, Rules Development
4 Branch. This rule is LSA Document No. 17-442.

5 We called it a rule cleanup. It's a very basic,
6 straightforward, noncontroversial rule.

7 The United States Environmental Protection
8 Agency review and approval of adopted rules and
9 changes made to state drinking water standards
10 rules is required in order for the state to
11 maintain primacy to conduct the drinking water
12 programs under the Safe Drinking Water Act.

13 The 2016 final adopted Revised Total
14 Coliform Rule has been reviewed by U.S. EPA, with
15 the resultant request for revisions to 327 IAC
16 8-2.4-1 and 327 IAC 8-2.1-3.

17 Additionally, this rule makes three
18 revisions requested after U.S. EPA's review of
19 the Stage 2 Disinfectants and Disinfection
20 Byproducts Rule and Long Term 2 Enhanced Surface
21 Water Treatment Rule. These three changes are
22 located in Article 8, Rule 2.6 in Sections 11, 15
23 and 18.

1 If the state rules are not as stringent as
2 the federal rules, then U.S. EPA could deny
3 approval to the state rules, which could affect
4 funding that the state receives under the Safe
5 Drinking Water Act. These corrections are minor
6 in scope and do not make any regulatory change.
7 Nevertheless, by completing these revisions as
8 requested by U.S. EPA, the state rules would be
9 as stringent as the federal rules and acceptable
10 to U.S. EPA.

11 There is one change in 327 IAC 8-2.4-1,
12 subsection (a), where the reference to the Code
13 of Federal Regulations is updated from 2015
14 to 2016. This change was not requested by
15 U.S. EPA, but is a rule update to reflect the
16 latest applicable edition of the federal
17 regulations.

18 This rulemaking is being conducted under
19 IC 13-14-9-8. It allows for an abbreviated
20 rulemaking process when the Commissioner of IDEM
21 makes a determination that there is no reasonably
22 anticipated benefit to either the environment or
23 persons regulated or otherwise affected by the

1 proposed rule from not having a second public
2 comment period or more than one public hearing.
3 The minor scope of the corrections made to the
4 drinking water rules makes this rulemaking
5 appropriate for being done under Section 8 of
6 Title 13.

7 The findings and determination of the
8 Commissioner along with its comment period were
9 posted in the Indiana Register on October 11,
10 2017, and no comments were submitted.

11 IDEM believes the draft rule proposed for
12 final adoption is the appropriate response to
13 U.S. EPA's requested changes to the drinking
14 water rules. IDEM asks for the Board to vote for
15 final adoption. If there are any questions, I
16 can provide answers, and we have Drinking Water
17 staff members here as well.

18 CHAIRMAN GARD: Does the Board have
19 any questions?

20 (No response.)

21 CHAIRMAN GARD: Okay. Thank you.

22 We have no speaker cards. If there anyone
23 that would like to speak on the proposed rule?

1 (No response.)

2 CHAIRMAN GARD: The hearing is
3 concluded. The Board will now consider final
4 adoption of the drinking water cleanup amendments
5 at 327 IAC 8-2.1, 8-2.4 and 8-2.6. Is there any
6 Board discussion?

7 MR. HILLSDON-SMITH: Yeah, a quick
8 one. I just -- I think it's minor. Section 3
9 (b)(1), probably "if" shouldn't be bolded; right,
10 following -- or sorry, 3(b)(3), page 2 of 17. I
11 thought Dr. Alexandrovich would have caught that,
12 but I guess not.

13 DR. ALEXANDROVICH: I don't have
14 paper copies of these.

15 MR. HILLSDON-SMITH: Ah.

16 (Discussion off the record.)

17 CHAIRMAN GARD: Nancy?

18 MS. STEVENS: Can you quote that
19 citation again?

20 MR. HILLSDON-SMITH: Yeah. It's
21 page 2. It's -- so, section 3(b)(3), and it's
22 just minor. It's the "if" afterwards is bolded.

23 MS. STEVENS: And are you -- what are

1 you saying? It is bold on here.

2 MR. HILLSDON-SMITH: Right. It
3 shouldn't be; right? It's just right here.

4 COMM. PIGOTT: Yeah, yeah.

5 MS. STEVENS: It's just some minor
6 reformatting that we did. It broke out some -- a
7 subdivision that wasn't formerly in there. So,
8 it's just a shift in the format, not a change --

9 COMM. PIGOTT: So, the "if" was --
10 the "if" was not there previously; is that what
11 you're saying, MaryAnn?

12 MS. STEVENS: Correct.

13 COMM. PIGOTT: And because you broke
14 it out differently, the "if" should be bolded,
15 because while it doesn't make a difference
16 substantively, it is an addition to the language;
17 is that your point?

18 MS. STEVENS: If you go back on
19 page 1, under subdivision (2) --

20 COMM. PIGOTT: Yeah.

21 MS. STEVENS: -- the original
22 language was, "If as follows" --

23 COMM. PIGOTT: Yes.

1 MS. STEVENS: -- with a colon after
2 it.

3 MR. HILLSDON-SMITH: Oh, that's what
4 you're saying. I see. Yeah, yeah.

5 MS. STEVENS: The "as follows" has
6 been struck out, and then subdivision (3) has
7 been added as a new formatted layout.

8 MR. HILLSDON-SMITH: Gotcha.

9 MS. STEVENS: So, the "if" is new.
10 Previously it was all combined under that
11 original "if" at subdivision (2).

12 MR. HILLSDON-SMITH: Got it. All
13 right.

14 MS. METTLER: But we do appreciative
15 you reading it.

16 (Laughter.)

17 MR. HILLSDON-SMITH: Just, you know,
18 keeping you accountable, that's all.

19 COMM. PIGOTT: This falls under the
20 category of MaryAnn, the only time she's ever
21 been wrong is when she thought she was wrong, but
22 she was right.

23 (Laughter.)

1 MS. STEVENS: Everybody likes to
2 delve into formatting, and it gets your brain
3 really curled up.

4 MR. HILLSDON-SMITH: Lesson learned.

5 (Laughter.)

6 MR. DAVIDSON: You'll be charged a
7 time out for --

8 MS. METTLER: We're going to randomly
9 bold things from now on.

10 (Laughter.)

11 MR. HILLSDON-SMITH: Just to see if I
12 catch it? Phenomenal. I think I'm going to be
13 an employee now.

14 (Discussion off the record.)

15 CHAIRMAN GARD: Okay. Is that
16 resolved?

17 COMM. PIGOTT: Yes.

18 MR. HILLSDON-SMITH: Yep. My bad.

19 CHAIRMAN GARD: Okay. We've got a
20 motion and a second; correct?

21 THE REPORTER: No.

22 CHAIRMAN GARD: No?

23 MR. DAVIDSON: No, there's been no

1 action.

2 CHAIRMAN GARD: Okay.

3 MR. RULON: So moved.

4 CHAIRMAN GARD: Is there a second?

5 MR. CUMMINS: Second.

6 CHAIRMAN GARD: This is a roll call.

7 Dr. Alexandrovich?

8 DR. ALEXANDROVICH: Yes.

9 CHAIRMAN GARD: Ms. Boydston?

10 MS. BOYDSTON: Yes.

11 CHAIRMAN GARD: Mr. Horn?

12 MR. HORN: Yes.

13 CHAIRMAN GARD: Mr. Clark?

14 (No response.)

15 CHAIRMAN GARD: Mr. Hillsdon-Smith?

16 MR. HILLSDON-SMITH: Yes.

17 CHAIRMAN GARD: Dr. Niemiec?

18 DR. NIEMIEC: Yes.

19 CHAIRMAN GARD: Mr. Rulon?

20 MR. RULON: Yes.

21 CHAIRMAN GARD: Mr. Etzler?

22 MR. ETZLER: Yes.

23 CHAIRMAN GARD: Mr. Cummins?

1 MR. CUMMINS: Yes.

2 CHAIRMAN GARD: Mr. Davidson?

3 MR. DAVIDSON: Yes.

4 CHAIRMAN GARD: Ms. Valiquett?

5 MS. VALIQUETT: Yes.

6 CHAIRMAN GARD: Am I pronouncing that
7 right?

8 MS. VALIQUETT: Uh-huh.

9 CHAIRMAN GARD: Okay.

10 Ms. Collier?

11 MS. COLLIER: Yes.

12 CHAIRMAN GARD: Mr. Mettler?

13 MR. METTLER: Yes.

14 CHAIRMAN GARD: And the Chair votes
15 aye. It' 13 to 0. The rule is adopted.

16 This is a public hearing before the
17 Environmental Rules Board of the State of Indiana
18 concerning final adoption of amendments -- of
19 amendments to multiple rules in Title 327 of the
20 Indiana Administrative Code to update references
21 to the Code of Federal Regulations and other
22 administrative changes.

23 I will now introduce Exhibit D, the

1 preliminarily adopted rules, into the record of
2 the hearing.

3 Keelyn Walsh will present the rules.

4 MS. WALSH: Good afternoon. I'm
5 Keelyn Walsh, and I'm here to present Rule
6 No. 17-278, Title 327 CFR Update and
7 Administrative Corrections and Updates for your
8 consideration.

9 References to the Code of Federal
10 Regulations at 327 IAC 1-1-2 indicates the yearly
11 edition of the CFR that is applicable to federal
12 water regulations that have been incorporated by
13 reference throughout 327 IAC, unless a previous
14 edition is identified in a specific rule.
15 Updating from the July 1st, 2004 version to the
16 July 1st, 2016 version of the CFR will
17 incorporate applicable federal requirements that
18 have become effective during that time.

19 At the time this rule was initiated, the
20 2017 version of the CFR was not available, so
21 this rulemaking does not include federal
22 revisions that became effective during that time,
23 with the exception of one significant revision

1 from 2017 that is included through a reference
2 update to the Federal Register citation.

3 On September 18th, 2017, U.S. EPA
4 published a final rule at 82 FR 43500, postponing
5 certain compliance dates for the effluent
6 limitations guidelines and standards for the
7 steam electric power generating point source
8 category, in order to potentially revise best
9 available technology limitations and pretreatment
10 standards for existing sources.

11 The September 18th, 2017 final rule has
12 been included in this rulemaking. Any additional
13 revisions to federal citations that are
14 referenced in Title 327 will be included in a
15 future CFR update rulemaking.

16 In addition to updating the references to
17 the CFR, IDEM is updating citations incorporated
18 by reference in several sections of Title 327.
19 IDEM is also making administrative changes to
20 remove obsolete language, correct mistakes,
21 update information, and ensure consistency with
22 the rule writing format.

23 This update provides consistency between

1 Indiana rules and federal regulations.
2 Consistency makes expectations clear to the
3 regulated community and makes it easier for
4 interested parties to access the updated CFR
5 sections. This rulemaking does not make any
6 substantive changes beyond those that are already
7 federally required.

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

12 Thank you.

13 CHAIRMAN GARD: Are there any
14 questions for Ms. Walsh?

15 (No response.)

16 CHAIRMAN GARD: Thank you.

17 We have no speaker cards. Does anyone
18 care to speak on the rule?

19 (No response.)

20 CHAIRMAN GARD: The hearing is
21 concluded. The Board will now consider final
22 adoption of revisions to 327 IAC. Is there any
23 Board discussion?

1 (No response.)

2 CHAIRMAN GARD: Is there a motion to
3 final adopt the rules.

4 MR. CUMMINS: So moved.

5 CHAIRMAN GARD: Is there a second?

6 MR. HILLSDON-SMITH: Second.

7 CHAIRMAN GARD: Roll call.

8 Dr. Alexandrovich?

9 DR. ALEXANDROVICH: Yes.

10 CHAIRMAN GARD: Mr. Boydston?

11 MS. BOYDSTON: Yes.

12 CHAIRMAN GARD: Mr. Horn?

13 MR. HORN: Yes.

14 CHAIRMAN GARD: Mr. Hillsdon-Smith?

15 MR. HILLSDON-SMITH: Aye.

16 CHAIRMAN GARD: Dr. Niemiec?

17 DR. NIEMIEC: Yes.

18 CHAIRMAN GARD: Mr. Rulon?

19 MR. RULON: Yes.

20 CHAIRMAN GARD: Mr. Etzler?

21 MR. ETZLER: Yes.

22 CHAIRMAN GARD: Mr. Cummins?

23 MR. CUMMINS: Yes.

1 CHAIRMAN GARD: Mr. Davidson?

2 MR. DAVIDSON: Yes.

3 CHAIRMAN GARD: Ms. Valiquett?

4 MS. VALIQUETT: Yes.

5 CHAIRMAN GARD: Ms. Collier?

6 MS. COLLIER: Yes.

7 CHAIRMAN GARD: Mr. Mettler?

8 MR. METTLER: Yes.

9 CHAIRMAN GARD: And the Chair votes

10 aye. The vote is 13 to 0. The rule is final

11 adopted.

12 This is a public hearing before the

13 Environmental Rules Board of the State of Indiana

14 concerning final adoption of amendments to

15 329 IAC-9 concerning Underground Storage Tanks.

16 I will now introduce Exhibit E, the

17 preliminarily adopted rule with IDEM's suggested

18 changes, into the record of the hearing.

19 Dan Watts will present the rule.

20 MR. WATTS: Hello. Good afternoon,

21 Chairwoman Gard, members of the Board. Dan

22 Watts, rule writer for IDEM, and I'm here to

23 present LSA Document 16-204 to the Board for

1 final adoption.

2 IDEM is proposing amendments to 329 IAC 9
3 that will update the standards and requirements
4 for underground storage tanks to be at least as
5 stringent as the recently amended federal UST
6 rules that were promulgated in a U.S. EPA rule
7 published on July 15th, 2015.

8 Because IDEM operates a state UST program
9 with approval from U.S. EPA, IDEM must maintain
10 requirements that are at least as stringent as
11 the federal UST standards. And after a state
12 adopts rules that are at least as stringent as
13 the federal standards, the U.S. EPA also is
14 requiring that states submit an updated
15 application for state program approval before
16 October 13th, 2018, a deadline which IDEM plans
17 to meet well in advance.

18 I already discussed the more general
19 changes included in this rulemaking during the
20 preliminary adoption hearing in October, so I'll
21 focus this presentation on the changes to the
22 rule language since the preliminary adoption.

23 First, 329 IAC 9-3-1 includes references

1 to industry standards that were updated in the
2 federal rules incorporated by reference, but not
3 updated in the state rules. IDEM has amended
4 this section to update the industry standards to
5 be equivalent with what is in the federal rules.

6

7 Next, 329 IAC 9-4-4 contains incorporation
8 by reference dates that are different from the
9 dates specified in Section 9-1-1. IDEM has
10 amended the incorporation by reference
11 information in 9-4-4 to be consistent with the
12 rest of Article 9.

13 And finally, 329 IAC 9-4-2 is proposed for
14 repeal because the requirements in the section
15 are nearly identical to and repetitive of the
16 analogous federal requirements at 40 CFR 280.51,
17 and IDEM has attempted to minimize repetition
18 between state and federal requirements with this
19 rulemaking.

20 In addition, after the preliminary
21 adoption of the rulemaking, IDEM was contacted by
22 an interested party that wished to submit
23 comments for the rulemaking but missed the

1 official comment periods. Those comments are
2 included with the Board packet.

3 IDEM has reviewed the comments and
4 determined that no changes in the rulemaking were
5 necessary because the comments did not propose
6 any suggested changes to the rule language. They
7 were generally supportive of the rulemaking, and
8 they raised concerns that we felt could be
9 addressed through case-by-case review and
10 implementation rather than through a rulemaking.

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

16 Thank you. Is there any questions?

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

19 MR. HILLSDON-SMITH: How or why was
20 that determination made that it could be done
21 case by case instead of through a rulemaking, in
22 response to this comment?

23 MR. WATTS: The things that the

1 comments were referring to were sort of like
2 site-specific decisions that -- that we would
3 make when -- when evaluating what's going on at
4 that particular site. And if there's any UST
5 staff that can elaborate upon that today, that
6 would be appreciated.

7 MR. LOUKS: They were -- they were
8 more questions about implementation of the rule
9 in a site-specific situation and less about the
10 content of the rule itself, the rule language.

11 MR. HILLSDON-SMITH: Okay. That
12 helps.

13 MR. WATTS: Yeah.

14 CHAIRMAN GARD: Any additional
15 questions?

16 (No response.)

17 CHAIRMAN GARD: Thank you.

18 I have received no speaker cards. Is
19 there anyone that would like to speak on the
20 rule?

21 (No response.)

22 CHAIRMAN GARD: The hearing is
23 concluded. The Board will now consider final

1 adoption of the revisions to 329 IAC 9, the
2 Underground Storage Tank Rules. Is there Board
3 discussion?

4 MR. RULON: Just a quick question for
5 Bruno. I notice when the EPA adopted this rule.
6 Is there any movement afoot to retract part of
7 this rule currently that would then change this
8 rulemaking?

9 COMM. PIGOTT: I don't believe so,
10 but Doug, do you know of any such effort?

11 MR. LOUKS: I know of no such effort.

12 MR. RULON: Okay. Thank you.

13 CHAIRMAN GARD: Any additional
14 questions?

15 (No response.)

16 CHAIRMAN GARD: Is there a motion
17 made to adopt IDEM's suggested changes?

18 MR. HORN: So moved.

19 CHAIRMAN GARD: Is there a second?

20 MR. RULON: Second.

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

23 MR. HORN: Aye.

1 DR. NIEMIEC: Aye.

2 DR. ALEXANDROVICH: Aye.

3 MS. BOYDSTON: Aye.

4 MR. CUMMINS: Aye.

5 MR. ETZLER: Aye.

6 MS. VALIQUETT: Aye.

7 MR. RULON: Aye.

8 MS. COLLIER: Aye.

9 MR. METTLER: Aye.

10 MR. DAVIDSON: Aye.

11 MR. HILLSDON-SMITH: Aye.

12 CHAIRMAN GARD: Aye.

13 Opposed, nay.

14 (No response.)

15 CHAIRMAN GARD: That motion passes.

16 Is there a motion to adopt -- to final adopt the

17 rules as amended?

18 MR. ETZLER: So moved.

19 CHAIRMAN GARD: Is there a second?

20 MR. HORN: Second.

21 CHAIRMAN GARD: This is a roll-call

22 vote.

23 Dr. Alexandrovich?

1 DR. ALEXANDROVICH: Yes.
2 CHAIRMAN GARD: Ms. Boydston?
3 MS. BOYDSTON: Yes.
4 CHAIRMAN GARD: Mr. Horn?
5 MR. HORN: Yes.
6 CHAIRMAN GARD: Mr. Hillsdon-Smith?
7 MR. HILLSDON-SMITH: Aye.
8 CHAIRMAN GARD: Dr. Niemiec?
9 DR. NIEMIEC: Yes.
10 CHAIRMAN GARD: Mr. Rulon?
11 MR. RULON: Yes.
12 CHAIRMAN GARD: Mr. Etzler?
13 MR. ETZLER: Yes.
14 CHAIRMAN GARD: Mr. Cummins?
15 MR. CUMMINS: Yes.
16 CHAIRMAN GARD: Mr. Davidson?
17 MR. DAVIDSON: Yes.
18 CHAIRMAN GARD: Ms. Valiquett?
19 MS. VALIQUETT: Yes.
20 CHAIRMAN GARD: Ms. Collier?
21 MS. COLLIER: Yes.
22 CHAIRMAN GARD: Mr. Mettler?
23 MR. METTLER: Yes.

1 CHAIRMAN GARD: The Chair votes aye.

2 The vote is 13 to 0. The rule is final adopted.

3 This is a public hearing before the

4 Environmental Rules Board of the State of Indiana

5 concerning preliminary adoption of amendments to

6 326 IAC 8-9, Volatile Organic Liquid Storage Tank

7 Emissions.

8 I will now introduce Exhibit F, the draft

9 rules, into the record of the hearing.

10 Jack Harmon will present the rule.

11 MR. HARMON: Good afternoon,

12 Chairwoman Gard, members of the Board. I'm Jack

13 Harmon with IDEM's office of Legal Counsel, Rule

14 Development Branch. Today the Department

15 presents the Volatile Organic Liquid Storage Tank

16 Emissions Rule for preliminary adoption.

17 This rulemaking affects owners and

18 operators of large storage vessels that contain

19 volatile organic liquids, or VOL, in Clark,

20 Floyd, Lake and Porter Counties. This rulemaking

21 is applicable only in these four counties,

22 because these areas were formerly designated as

23 nonattainment areas for ozone by the United

1 States Environmental Protection Agency, EPA. To
2 reduce potential future violations, federal law
3 mandates that these requirements must remain in
4 the rules.

5 This rulemaking addresses inspection
6 methods used in performing routine inspections
7 required for each storage tank. Currently, if a
8 tank is in use when it's time for a required
9 inspection, the tank must be taken off-line,
10 emptied, degassed, inspected, and then refilled
11 before it can be put back into service. This
12 process is very costly in that it wastes product,
13 it causes excessive downtime, and increases VOC
14 emissions that contribute to ozone formation.

15 This rulemaking allows for an affected
16 source to request an alternative inspection
17 method to change rigging, work standards, and
18 methods in order to perform an inspection while
19 the tank is in service, thereby eliminating or
20 reducing the downtime, materials and emissions.

21 IDEM has discussed this proposed
22 alternative method with U.S. EPA, and U.S. EPA
23 agrees that there would be fewer emissions by

1 using this alternative method.

2 During the first public comment period in
3 this rulemaking process, one affected source
4 expressed approval and support for this
5 rulemaking. However, the source also requested
6 IDEM not to include the option to expand this
7 rulemaking to sources statewide, because although
8 it could mean fewer emissions, there are other
9 requirements in the rule that are much more
10 restrictive than the current requirements for the
11 rest of the state that would become applicable.

12 As a result of this comment, IDEM decided
13 not to expand the applicability of the rule
14 beyond those VOL sources in the four counties
15 currently listed. Subsequently, during the
16 second public comment period, there were no
17 comments on the draft.

18 Because of the support of the affected
19 sources and the recognition from U.S. EPA that
20 the rule amendment would reduce air pollution,
21 IDEM believes this is an important revision to
22 protect human health and the environment.

23 To summarize, this rulemaking proposes to

1 amend 326 IAC 8-9 to modify the VOL rules in
2 Clark, Floyd, Lake and Porter Counties for VOC
3 emissions from large storage tanks, to allow --
4 excuse me -- for an alternative inspection method
5 when performing periodic required inspections on
6 these tanks, and, in doing so, will reduce
7 downtime in the operation of the tanks, reduce
8 waste of raw materials, and reduce air pollution
9 by reducing VOC emissions. IDEM will submit the
10 completed rule to U.S. EPA for approval into
11 Indiana's SIP.

12 It was brought to our attention today that
13 the applicability section of the rule at
14 326 IAC 8-9-1 is inaccurate, and after some
15 internal discussion today, we propose to review
16 and correct the language prior to final adoption
17 of this rule. Specifically, it dealt with --
18 excuse me -- those tanks containing VOL that had
19 vapor pressure less than 0.5 PSIA. So, we
20 propose to review and correct that language prior
21 to final adoption of the rule.

22 The Department respectfully requests the
23 Board preliminarily adopt the draft rule.

1 Additional IDEM staff, including Jessica Reiss,
2 are here available if you have any questions that
3 I cannot answer.

4 Thank you.

5 CHAIRMAN GARD: Are there any
6 questions for Mr. Harmon? Yes.

7 DR. NIEMIEC: Just a very brief
8 question. Regarding that issue of tanks that are
9 greater than or equal to 39,000 gallons that do
10 have a maximum true vapor pressure less than .5
11 pounds per square inch absolute, what is the
12 likely intent going to be --

13 MR. HARMON: I'm sorry?

14 DR. NIEMIEC: -- for this language?

15 MR. HARMON: I'm sorry?

16 DR. NIEMIEC: For those tanks that
17 are less than .5 PSIA --

18 MR. HARMON: Uh-huh.

19 DR. NIEMIEC: -- what is the likely
20 final language going to specify?

21 MR. HARMON: We really -- this is
22 fresh information today that's just been brought
23 to light to us.

1 DR. NIEMIEC: All right. Thank you.

2 I look forward to it.

3 MR. HARMON: I'm not an expert in
4 that, but we haven't had time yet to circle the
5 wagon and regroup and make a final recommendation
6 on that.

7 DR. NIEMIEC: Very good. Thank you.

8 MR. HARMON: But we shall address
9 this further; okay?

10 DR. NIEMIEC: Thank you.

11 MR. HARMON: Thank you.

12 CHAIRMAN GARD: Dr. Alexandrovich?

13 DR. ALEXANDROVICH: Yeah. How is the
14 inspection schedule determined for the tanks?

15 MR. HARMON: They're indicated in the
16 rule, and have been for many, many years. I'm
17 not sure exactly the criteria behind what went
18 into that originally, the rulemaking, but some
19 are five-year frequencies, some are ten-year
20 frequencies; okay? And it depends on internal
21 floating tank, and it gets beyond me. I don't
22 know if there's anybody in the audience that has
23 the technical expertise to address your comment.

1 I'm not sure there is.

2 CHAIRMAN GARD: Ms. Valiquett, did
3 you have a question?

4 MS. VALIQUETT: (Shook head no.)

5 CHAIRMAN GARD: Okay.

6 Anybody else have questions?

7 (No response.)

8 CHAIRMAN GARD: Okay. Thank you.

9 MR. HARMON: Thank you.

10 CHAIRMAN GARD: I have no speaker
11 cards. Is there anyone that proposes to speak on
12 the proposed rule?

13 (No response.)

14 CHAIRMAN GARD: This hearing is
15 concluded. The Board will now consider
16 preliminary adoption of amendments to
17 326 IAC 8-9. Is there Board discussion?

18 (No response.)

19 CHAIRMAN GARD: Is there a motion to
20 preliminarily adopt the rule?

21 MR. HORN: So moved.

22 CHAIRMAN GARD: Is there a second?

23 MR. CUMMINS: Second.

1 DR. ALEXANDROVICH: Second.

2 CHAIRMAN GARD: All in favor, say

3 aye.

4 MR. HORN: Aye.

5 DR. NIEMIEC: Aye.

6 DR. ALEXANDROVICH: Aye.

7 MS. BOYDSTON: Aye.

8 MR. CUMMINS: Aye.

9 MR. ETZLER: Aye.

10 MS. VALIQUETT: Aye.

11 MR. RULON: Aye.

12 MS. COLLIER: Aye.

13 MR. METTLER: Aye.

14 MR. DAVIDSON: Aye.

15 MR. HILLSDON-SMITH: Aye.

16 CHAIRMAN GARD: Aye.

17 All opposed, nay.

18 (No response.)

19 CHAIRMAN GARD: The rule is

20 preliminarily adopted.

21 This is a public hearing before the

22 Environmental Rules Board of the State of Indiana

23 concerning preliminary adoption of amendments to

1 326 IAC 10 and 24 regarding NOx Emissions from
2 Large Affected Units, and the repeal of the NOx
3 Budget Trading Program.

4 I will now introduce Exhibit G, the draft
5 rules, into the record of the hearing.

6 Jack Harmon will present the rule.

7 MR. HARMON: Good afternoon,
8 Chairwoman Gard, members of the Board. I'm Jack
9 Harmon with IDEM's Rule Development Branch.

10 Today the Department presents for your
11 consideration the NOx Emissions from Large
12 Affected Units Rule for preliminary adoption.

13 This rulemaking affects owners and
14 operators of large affected units that were
15 formerly regulated under the NOx Budget Trading
16 Program and the Clean Air Interstate Rule, or
17 CAIR. In general, large affected units are
18 fossil fuel-base -- fired boilers with a maximum
19 design heat input capacity of greater than 250
20 million British Thermal Units per hour, or
21 cogeneration units serving a generator that does
22 not sell electricity to the grid.

23 The United States Environmental Protection

1 Agency, or U.S. EPA, published the Cross State
2 Air Pollution Rule, or CSAPR, in the Federal
3 Register on August 8, 2011, at 76 Federal
4 Register 48208, in order to reduce the interstate
5 transport of fine particulate matter and ozone.
6 The rule replaces U.S. EPA's CAIR, which was
7 remanded by a December 2008 court decision that
8 kept CAIR in place temporarily while directing
9 U.S. EPA to issue a replacement rule.

10 The SO₂ and NO_x requirements for electric
11 generating units at power plants under CAIR have
12 been replaced by CSAPR and were addressed through
13 a separate state rulemaking, LSA 16-209, approved
14 by this Board last fall. Initially the large
15 affected units could not be included in the
16 recently adopted CSAPR.

17 Although federal changes to CSAPR now
18 allow states to include large affected units in
19 the CSAPR Trading Program, it is not a viable
20 option for Indiana because there is no longer an
21 incentive for sources to be part of the Trading
22 Program. Additionally, EPA would limit how much
23 Indiana could increase its budget to bring these

1 sources into the Trading Program.

2 Therefore, federal law requires Indiana to
3 adopt a rule so that these large affected units
4 can continue to comply with the federal NOx SIP
5 Call Rules under 40 CFR 51.121. Federal law also
6 requires Indiana to submit this rule to U.S. EPA
7 for approval into the Indiana State
8 Implementation Plan, or SIP.

9 During the two public comment periods in
10 this rulemaking, several affected sources
11 expressed concerns for several of the elements in
12 our draft. The main points expressed were the
13 following: No. 1, Part 75 monitoring
14 requirements that remain in the new rule should
15 be removed because the aggregate emissions from
16 all affected sources fall significantly below the
17 NOx SIP Call budget.

18 No 2, since some sources must also comply
19 with New Source Performance Standards, or NSPS,
20 Part 60 requirements already, IDEM should allow
21 Part 60 NOx, CEMS to satisfy the Part 75 CEMS
22 requirements, even though Part 60 is less
23 stringent than Part 75.

1 No. 3, IDEM should allow an alternative
2 method -- demonstration of calculating emissions
3 using fuel usage and appropriate fuel emission
4 factors to show that Indiana does not exceed its
5 budget.

6 And 4, Indiana should continue to allow an
7 exemption for Part 75 monitoring requirements for
8 those sources using greater than 50 percent blast
9 furnace gas as its fuel.

10 During the development of draft language,
11 IDEM consulted with U.S. EPA to discuss the
12 concerns of the affected sources and to ensure
13 that the law as drafted -- the rule as drafted
14 can be approved into the Indiana SIP. IDEM sent
15 copies of all of the comments and IDEM's proposed
16 responses for review.

17 Additionally, after development of draft
18 language at Second Notice, IDEM sent a copy to
19 U.S. EPA for review and input. IDEM has had
20 several phone conversation -- conference calls,
21 excuse me -- with staff members from both
22 U.S. EPA Region 5 and U.S. EPA's Clean Air
23 Markets Division, or CAMD. As a result of these

1 calls, IDEM specifically requested responses in
2 writing for its specific questions on its draft
3 from the comments from the large affected unit
4 sources.

5 On October 16th, 2017, IDEM received
6 written comments from U.S. EPA. Since it is
7 IDEM's intent to promulgate a rule that satisfies
8 federal requirements and can be approved into its
9 SIP, IDEM has taken U.S. EPA's input into
10 consideration when drafting the rule language in
11 its preliminary adoption request.

12 Regarding the Part 75 monitoring and
13 reporting requirements, the requirements are
14 specifically spelled out in 40 CFR 51.121(i)(4),
15 and U.S. EPA indicated that unless or until the
16 current law is changed, it has no authority to
17 allow Indiana to change this requirement.

18 Replacement measures do not have to be source
19 specific emission caps or rate limits, but can be
20 collective caps instead. Indiana's replacement
21 measure is a collective cap on affective sources.

22 The Part 75 monitoring requirements are
23 not linked to any specific form of enforceable

1 control measure, but is triggered by Indiana's
2 choice of the sources relied on to meet the
3 state's NOx budget in the state's original SIP
4 addressing the NOx SIP Call. U.S. EPA did,
5 however, verbally indicate to us that it may
6 review these requirements in the future.

7 This same response also applies to IDEM's
8 request to substitute Part 60 compliance
9 demonstrations to satisfy Part 75 requirements.
10 Because Part 60 is not what 40 CFR 51.121(i)(4)
11 requires, U.S. EPA indicated that it currently
12 had no authority to approve Indiana's request.

13 Therefore, for the reasons outline above,
14 the Part 75 monitoring and reporting requirements
15 must remain in today's rule for your
16 consideration for preliminary adoption.

17 Regarding the monitoring requirement
18 exemption proposed in the Second Notice comment
19 period for units that combust 50 percent or more
20 blast furnace gas as its fuel, Indiana did not
21 initially count the blast furnace gas units
22 toward the reductions to meet the SIP Call.

23 U.S. EPA commented that since IDEM did not

1 use emissions from the blast furnace gas units to
2 count toward emission reductions toward the NOx
3 SIP Call, Indiana could likewise exclude the
4 blast furnace gas units from regulations required
5 to meet the budget under the NOx SIP Call now.

6 Even if part 75 monitoring is not required
7 for these units, the blast furnace gas units are
8 still subject to other requirements; therefore,
9 must be still considered in this rulemaking.

10 Therefore, for the reasons outlined above,
11 blast furnace gas units have been removed from
12 326 IAC 10-2 and have been returned to
13 326 IAC 10-3 in today's rule presented for your
14 consideration for preliminary adoption.

15 To summarize, this rulemaking proposes to,
16 number one, add 326 IAC 10-2 to establish rules
17 in Indiana for NOx emissions from large affected
18 units; two, to amend 326 IAC 10-3-1 and
19 326 IAC 10-3-3 to clarify Indiana's requirements
20 for blast furnace gas units; and three, to repeal
21 the CAIR Rules found at 326 IAC 24-3-1,
22 326 IAC 24-3-2, 326 IAC 24-3-4, and
23 326 IAC 24-3-11 that U.S. EPA is no longer

1 implementing.

2 IDEM will submit the completed rule to
3 U.S. EPA for approval into Indiana's SIP, and
4 it's important to move forward with a rule to
5 address Indiana's NOx SIP Call obligations.
6 Without this rulemaking, there would be -- there
7 would not be clear requirements for these sources
8 as the CAIR Trading Program is no longer in
9 place, and the current requirements for these
10 sources would remain federally enforceable in the
11 SIP as part of the CAIR Rules.

12 The Department respectfully requests the
13 board preliminarily adopt this rule. Additional
14 IDEM staff, including Susan Bem, Roger Letterman
15 and Jessica Reiss, are available should you have
16 any questions that I cannot answer.

17 Thank you.

18 CHAIRMAN GARD: Are there any
19 questions for Mr. Harmon?

20 (No response.)

21 CHAIRMAN GARD: Thank you.

22 MR. HARMON: Thank you.

23 CHAIRMAN GARD: I have no speaker

1 cards presented. Does anyone want to speak on
2 this proposed rule?

3 (No response.)

4 CHAIRMAN GARD: The hearing is
5 concluded. The Board will now consider
6 preliminary adoption of amendments to 326 IAC 10
7 and 24. Is there Board discussion?

8 (No response.)

9 CHAIRMAN GARD: Is there a motion to
10 preliminarily adopt the rule?

11 MR. CUMMINS: So moved.

12 CHAIRMAN GARD: Is there a second?

13 MR. HILLSDON-SMITH: Second.

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

16 MR. HORN: Aye.

17 DR. NIEMIEC: Aye.

18 DR. ALEXANDROVICH: Aye.

19 MS. BOYDSTON: Aye.

20 MR. CUMMINS: Aye.

21 MR. ETZLER: Aye.

22 MS. VALIQUETT: Aye.

23 MR. RULON: Aye.

1 MS. COLLIER: Aye.

2 MR. METTLER: Aye.

3 MR. DAVIDSON: Aye.

4 MR. HILLSDON-SMITH: Aye.

5 CHAIRMAN GARD: Aye.

6 Opposed, nay.

7 (No response.)

8 CHAIRMAN GARD: The rule is

9 preliminarily adopted.

10 This is an Open Forum. Is there anyone
11 that proposes -- that would like to speak to the
12 Board today?

13 (No response.)

14 CHAIRMAN GARD: Okay. The next
15 meeting of the Environmental Rules Board is
16 tentatively set for April the 11th, 2017 at 1:30
17 in Conference Room A, Government Center South.

18 MR. CUMMINS: Chairwoman Gard?

19 CHAIRMAN GARD: Yes.

20 MR. CUMMINS: I have a question, if
21 we have a moment.

22 CHAIRMAN GARD: Yes.

23 MR. CUMMINS: I'm just wondering if

1 the Board or if IDEM has any sense of whether
2 there's impacts yet on IDEM from the President's
3 Executive Order on regulatory reform from last
4 year, last spring. He had signed the Executive
5 Order, and I think much of the impact was going
6 to land on EPA, and I'm wondering if any of that
7 has trickled down yet to IDEM in terms of rules
8 that have been maybe considered for revocation.

9 COMM. PIGOTT: Not at this point, no.

10 CHAIRMAN GARD: Okay. If there's a
11 change in the proposed meeting date, we will let
12 you know. You'll get an e-mail from me in March
13 reminding you that it will be the 11th of April.

14 So, with that in mind, is there a motion
15 to adjourn?

16 DR. NIEMIEC: So moved.

17 CHAIRMAN GARD: Is there a second?

18 MR. HILLSDON-SMITH: Second.

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

21 MR. HORN: Aye.

22 DR. NIEMIEC: Aye.

23 DR. ALEXANDROVICH: Aye.

1 MS. BOYDSTON: Aye.

2 MR. CUMMINS: Aye.

3 MR. ETZLER: Aye.

4 MS. VALIQUETT: Aye.

5 MR. RULON: Aye.

6 MS. COLLIER: Aye.

7 MR. METTLER: Aye.

8 MR. DAVIDSON: Aye.

9 MR. HILLSDON-SMITH: Aye.

10 CHAIRMAN GARD: Aye.

11 Opposed, nay?

12 (No response.)

13 CHAIRMAN GARD: We are adjourned.

14 - - -

15 Thereupon, the proceedings of
16 January 10, 2018 were concluded
17 at 2:35 o'clock p.m.

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1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Wednesday, January 10, 2018 in this matter and
8 transcribed by me.

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11

Lindy L. Meyer, Jr.,

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Notary Public in and

13

for the State of Indiana.

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15 My Commission expires August 26, 2024.

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