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BEFORE THE STATE OF INDIANA
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF JULY 8, 2015

- - -

PROCEEDINGS

before the Indiana Environmental Rules Board,
Beverly Gard, Chairman, taken before me, Lindy L.
Meyer, Jr., a Notary Public in and for the State
of Indiana, County of Shelby, at the Indiana
Government Center South, Conference Center,
Room A, 402 West Washington Street, Indianapolis,
Indiana, on Wednesday, July 8, 2015 at 1:29
o'clock p.m.

- - -

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

1 APPEARANCES:

2 BOARD MEMBERS:

- 3 Beverly Gard, Chairman
- 4 Gary Powdrill
- 5 Dr. Ted Niemiec
- 6 Joanne Alexandrovich
- 7 Kelly Carmichael
- 8 Ken Rulon
- 9 William Etzler
- 10 Chris Horn
- 11 Calvin Davidson
- 12 Mike Mettler, Proxy, Department of Health
- 13 Cameron Clark, Proxy, Department of Natural Resources
- 14 Devin Hillsdon-Smith, Proxy, Indiana Economic Development Corporation
- 15 David Bausman, Proxy, Lieutenant Governor
- 16 Thomas W. Easterly (nonvoting)

12 IDEM STAFF MEMBERS:

- 13 Christine Pedersen
- 14 Bruno Pigott
- 15 Susan Bem
- 16 Lauren Aguilar
- 17 MaryAnn Stevens
- 18 Nancy King
- 19 Janet Pittman
- 20 Keith Baugues
- 21 Scott Deloney

18 PUBLIC SPEAKERS:

- 19 Bill Beranek
- 20 Lori Gates
- 21 Andrew Berger
- 22 Bowden Quinn
- 23 Vicki Wright
- 24 Dan Weiss
- 25 David Pippen

- - -

1 1:29 o'clock p.m.
2 July 8, 2015

3 - - -

4 CHAIRMAN GARD: I hope this is the
5 only time I have to use this today.

6 I'm going to call the meeting of the
7 Environmental Rules Board to order. You have the
8 minutes of the March 11th, 2015 meeting. Are
9 there any additions or corrections as
10 distributed?

11 (No response.)

12 CHAIRMAN GARD: Any discussion?

13 (No response.)

14 CHAIRMAN GARD: Do I hear a motion to
15 approve the summary of the meeting?

16 DR. NIEMIEC: So moved.

17 MR. POWDRILL: Second.

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

20 MR. HORN: Aye.

21 DR. NIEMIEC: Aye.

22 MR. ETZLER: Aye.

23 MR. CARMICHAEL: Aye.

MR. RULON: Aye.

1 DR. ALEXANDROVICH: Aye.

2 MR. BAUSMAN: Aye.

3 MR. POWDRILL: Aye.

4 MR. CLARK: Aye.

5 MR. METTLER: Aye.

6 MR. DAVIDSON: Aye.

7 MR. HILLSDON-SMITH: Aye.

8 CHAIRMAN GARD: Aye.

9 Opposed, nay.

10 (No response.)

11 CHAIRMAN GARD: The summary of the
12 meeting of March 11th, 2015 is approved.

13 IDEM Reports.

14 Commissioner, you're up.

15 COMM. EASTERLY: Okay. I'm going to
16 tell you about the bills that passed this year,
17 that -- and some of them result in work for you,
18 but just to get it off the table, this will
19 probably be my last meeting. I told the Governor
20 I'm leaving at the end of August, so I think
21 everybody in the world knows, even though we
22 haven't sent out a real announcement yet, but I
23 just didn't want anybody to be surprised and say,

1 "Wait, he didn't tell us that."

2 So, I've enjoyed working with all of you
3 and learning all of the things I've learned, but
4 when Sen. Gard was in the Senate, she said one
5 thing that I've thought about, says, "Do you
6 really --" you know, she didn't want to die in
7 the Senate. I don't want to die at IDEM.

8 (Laughter.)

9 COMM. EASTERLY: You want to do other
10 things in your life, so -- but the most important
11 thing is to talk to you about bills that passed
12 the legislature this year that relate to IDEM.
13 Two of them are, we'll say, routine.

14 One was our catchall bill, which was 1350,
15 it started as a House Bill, and it allows us to
16 have variances that last more than one year in
17 other programs besides water quality. Before,
18 you could have a variance in the water quality
19 program that lasted longer, but in all of the
20 other programs I could have only a hardship
21 variance that lasted for no more than one year,
22 and then it couldn't be renewed.

23 So, this will allow us to deal with people

1 outside of enforcement that need some more time
2 to come into compliance. They have to have a
3 compliance plan, but still, it's a better way for
4 us to deal with some of these things.

5 Then inland fee mitigation, you may have
6 heard about that program. It's DNR and IDEM, and
7 actually INDOT's helping us, too, for wetlands,
8 so that eventually -- but it doesn't work yet --
9 you could decide not to mitigate your own wetland
10 disturbances, but to give a fee to the state for
11 In -- DNR to do the work, or at least supervise
12 the work, building the proper mitigation
13 wetlands. We had a small change there that makes
14 the program work better, but it's still not
15 approved by the Corps of Engineers. So, it's not
16 a done deal, but it's a necessary thing we
17 needed.

18 Electronic submission of information, we
19 were prohibited by statute from requiring people
20 to send to us electronically, which was sort of a
21 challenge, because EPA's in the process of
22 passing a rule that says you must report
23 electronically to either the state, or if they

1 won't accept it, to EPA. So, we got the state to
2 allow us to ask people to send things in
3 electronically. It's moving to the modern age.
4 It's a lot better than processing all of those
5 pieces of paper.

6 For the wastewater treatment plant
7 operator certification, we have been working with
8 Ivy Tech so that you could take your exams at Ivy
9 Tech, and they will do them virtually any day. I
10 don't think they do them on Sunday, but you can
11 take them any time once you're qualified to take
12 them, as opposed to we gave them twice a year at
13 four locations around the state, so many people
14 had to travel and stay overnight and all of those
15 things. But in order to do that, Ivy Tech needed
16 a convenience fee, they call it, it's a \$30
17 charge, and what -- this gives us a clear
18 authority to allow Ivy Tech to charge the \$30.

19 Solid waste management disposal fees and
20 hazardous waste disposal fees, we simplified when
21 they're supposed to be paid and reduced the total
22 amount of payments, I believe, that you have to
23 make, so that it's less paperwork for people.

1 And you make your payment when you have to
2 otherwise fill out some form telling us how much
3 waste there is, so it's just easier.

4 And then recycling reports, this didn't
5 quite work right. We had a law that said you
6 have to file recycling information on a
7 fiscal-year basis and everybody wanted to do it
8 on a calendar year basis, and that's fine. That
9 part passed.

10 We forgot to ask them to change the date
11 that IDEM has to report the results, so
12 technically right now I have to report the
13 results of the recycling before people have to
14 tell me what it was, so we'll be working next
15 year with the legislature to try and fix that
16 glitch.

17 Then there was what started as Senate
18 Act 311, which was about rede -- not
19 redefining -- amending the definitions of terms
20 like "remedial action removal and response."
21 That's all for the cleanup programs and
22 clarifying that we can charge -- or be reimbursed
23 for oversight costs incurred in reviewing removal

1 and remediation actions without a court order.
2 That was some question in some people's minds, so
3 that solved a theoretical problem that people
4 were worried about.

5 And then the more controversial bill was
6 312, which we call the tanks bill, underground
7 storage tank bill. The concept is that we have
8 water supplies that can be polluted by leaks from
9 above-ground storage tanks, and so half of this
10 bill requires the water supplies to have a threat
11 minimization plan and response plan, and the
12 other half would require people to say what's in
13 their tanks so that you could have an effective
14 threat minimization and response plan.

15 The bill as it finally passed only makes
16 you tell what's in your tank if it's within a
17 quarter mile of a water, within 25 miles of a
18 drinking water intake and isn't otherwise
19 reported, and there's a bunch of other exemptions
20 which people are interested in.

21 Your authority and what we'll be asking
22 you to do in the next year or so is to look at
23 that -- the quarter mile and 25 miles are

1 considered to be the critical zone, a zone that
2 is where we most are worried about, what spills.

3 Also, it's -- your authority is to
4 classify the hazards of different chemicals, so
5 some are -- some are clearly much more of a
6 concern than others, so you get to put them in
7 boxes or bins, and then we'd be worried more
8 about the higher hazard ones.

9 And also -- what else? Oh, the hazard
10 zone was to figure out if that was the right
11 number. It might be the right number for some
12 streams and not for others, the 25 and the
13 quarter. And then you can make recommendations
14 to the legislature on other things that are in
15 the law that you might think do or don't provide
16 adequate protection.

17 So, that will be work for the next two
18 years or so, and we will be coming, not this
19 meeting, but in the future with an emergency
20 rulemaking request, just to tell people exactly
21 what we need reported and how we need it
22 reported, because the first reporting date is
23 like the beginning of next year, as I recall, and

1 it's hard to report without guidance on what
2 we're looking for.

3 So, that's -- that's really what happened
4 in the legislature. Are there any questions or
5 anything?

6 CHAIRMAN GARD: On that, speaking
7 about the last issue you were talking about, I've
8 had a number of requests that there be a working
9 group put together, and so at the next meeting,
10 you know, I'll probably announce a working group.
11 Anybody that is interested, you know, give me
12 your name and contact information, and we'll try
13 to put together a diverse group that represents
14 all of the aspects of this, and we've got to sort
15 through that legislation and figure out exactly
16 what the Rules Board is supposed to do. It's --

17 COMM. EASTERLY: I think that's a
18 great idea.

19 CHAIRMAN GARD: Okay. We will do
20 that.

21 Also, Commissioner, we, you know, on
22 behalf of the Board and certainly, personally,
23 myself, thank you for all of these years of

1 service. I think you've set a record. Nobody
2 lasted in this agency as long.

3 (Laughter.)

4 COMM. EASTERLY: I couldn't get the
5 Governor to fire me; right?

6 CHAIRMAN GARD: But I've worked under
7 five different Commissioners now, and you
8 certainly have set the bar. You've moved this
9 agency forward, put together a great staff, a
10 great leadership team, and I think the people in
11 this state should be very, very proud of what has
12 been accomplished under your leadership. We're
13 going to miss you. You probably won't miss us as
14 much as we'll miss you.

15 COMM. EASTERLY: Thank you.

16 CHAIRMAN GARD: And think about us
17 when you read that we're having a snow storm in
18 January.

19 COMM. EASTERLY: I don't like those
20 snow storms in January, or the ice storms.

21 CHAIRMAN GARD: Any other questions
22 for the Commissioner on his report?

23 (No response.)

1 CHAIRMAN GARD: Well, I happened to
2 skip -- yes.

3 MR. RULON: Did you want to say a few
4 words about the waters of the U.S. rulemaking?

5 COMM. EASTERLY: Well --

6 MR. RULON: Has that affected you
7 guys yet?

8 COMM. EASTERLY: -- EPA proposed a
9 waters of the U.S. rulemaking. It was an
10 education process for me, because when I talked
11 to them, what they said they wanted to do made
12 sense, but what the words said, all of my
13 friends, including David here, said, "What you
14 told me the rule does isn't what the words say."
15 And so, we and ag sent in a comment letter on the
16 proposed rule.

17 Then the final rule came out, and it's
18 fair to say that they didn't really address any
19 of our concerns, and so the final rule may be
20 even broader than the proposed rule, and so
21 Indiana -- well, Attorney General Zoeller, just
22 the other day, announced that we'll be joining
23 the lawsuits -- more than half of the states

1 filed lawsuits saying that this rule is a broad
2 expansion of federal authority over local waters
3 and land use.

4 And many states are like us. Almost --
5 almost every water in the state, including all of
6 those that EPA wants to get coverage for, is a
7 water of the state already, and we protect those
8 waters of the state through the programs that
9 you've authorized to us do, and we think that
10 works pretty well.

11 So, why we need you to have to get a
12 federal permit from the Corps of Engineer for
13 those things that are not a big problem, it's
14 basically a federal-state power issue, I think.

15 CHAIRMAN GARD: Yeah. I'm very
16 appreciative of the state moving forward in this
17 direction. When I first got involved in all of
18 this, one of the very first issues we were faced
19 with was the waters of the state issue, and that
20 was difficult enough. I can't imagine having to
21 deal with this, so thank you for agreeing to
22 support the Attorney General.

23 COMM. EASTERLY: Mr. Powdrill?

1 MR. POWDRILL: When you go to
2 Bloomington now --

3 COMM. EASTERLY: Yeah.

4 MR. POWDRILL: -- every little cut in
5 the topography that water can drain down has a
6 sign next to it that says, "Notice: Waters of
7 the U.S." Now, is that part of that whole same
8 thing, or is that something that --

9 COMM. EASTERLY: No, I don't know who
10 did that, but we don't --

11 MS. METTLER: It's I-69, where they
12 received our permits, and part of the permit
13 requirement, if you filled or moved water of the
14 U.S., you need to identify that.

15 COMM. EASTERLY: So they know which
16 ones are --

17 MS. METTLER: It's part of their --

18 COMM. EASTERLY: -- regulated.

19 MS. METTLER: -- mitigation, right.

20 MR. POWDRILL: So, are they waters of
21 the U.S. or are they waters of the state, or --

22 COMM. EASTERLY: Well, those are
23 both.

1 MS. METTLER: Yes.

2 COMM. EASTERLY: Those are
3 jurisdictional waters. That's what the signs
4 that I'm used to seeing say. So, they are waters
5 of the U.S. Any navigable water, any basically
6 constantly flowing tributary to a navigable
7 water, there's never been a big debate that those
8 are waters of the U.S. This rule extends it --
9 they tried to clarify that some ditches were not
10 waters of the U.S., but by the time they got done
11 clarifying it, we're not sure what's not a water
12 of the U.S. anymore.

13 CHAIRMAN GARD: Well, I skipped over
14 an agenda item that we need to address. I'm
15 going to ask everybody to introduce themselves,
16 and we do have a new member. Mr. Devin
17 Hillsdon-Smith is the new proxy for the Secretary
18 of Commerce. He replaces Pam Fisher, who was on
19 this Board for many, many years, who has moved
20 over to INDOT now.

21 But we welcome you.

22 MR. HILLSDON-SMITH: Thank you very
23 much.

1 CHAIRMAN GARD: It's good to have
2 you.

3 And I'd like everybody to go around and
4 introduce themselves, Kelly, and who you
5 represent.

6 COMM. EASTERLY: You can start out.

7 MR. CARMICHAEL: Kelly Carmichael,
8 utilities.

9 MR. DAVIDSON: Calvin Davidson, solid
10 waste.

11 DR. ALEXANDROVICH: Joanne
12 Alexandrovich, local government.

13 MR. RULON: Ken Rulon, agriculture.

14 MR. POWDRILL: Gary Powdrill, the
15 citizens at large.

16 DR. NIEMIEC: Ted Niemiec, health
17 care.

18 MR. ETZLER: Bill Etzler, small
19 business.

20 CHAIRMAN GARD: Beverly Gard, general
21 public.

22 MR. HORN: Chris Horn, labor.

23 MR. HILLSDON-SMITH: Devin

1 Hillsdon-Smith, economic development.

2 MR. METTLER: Mike Mettler, proxy for
3 State Health Commissioner, Dr. Adams.

4 MR. CLARK: Cameron Clark, Director
5 of the Department of Natural Resources.

6 MR. BAUSMAN: David Bausman, proxy
7 for the Lieutenant Governor.

8 COMM. EASTERLY: I'm Tom Easterly,
9 the Commissioner of IDEM for 51 more days.

10 (Laughter.)

11 COMM. EASTERLY: I'm a nonvoting
12 member of the Board.

13 CHAIRMAN GARD: Okay. The Chair does
14 see a quorum.

15 Chris Pederson is going to give a
16 rulemaking update.

17 MS. PEDERSEN: Okay. Before I talk
18 about rules, I just wanted to cover a couple of
19 other things. The first has to do with mileage
20 reimbursement. The Indiana state mileage
21 reimbursement rate has been changed from 44 cents
22 per mile to 40 cents per mile, and you should see
23 this reflected on your travel vouchers, and this

1 is based on the fact that fuel costs have
2 decreased over the past few years. The
3 reimbursement rate will be reviewed semiannually,
4 and notice will be given if it's going to be
5 changed in the future.

6 In addition, I would like to introduce a
7 new rule writer. Jack Harmon has just joined us
8 from the Office of Air Quality, Air Permits
9 Branch. He's going to be doing rules for us, and
10 primarily handling air rules.

11 As far as rule updates, the timing of some
12 of the upcoming rules is uncertain, so we're not
13 suggesting a specific date for the next Board
14 meeting, but I would like to go over a few rules
15 that I suspect would be ready for your
16 consideration at the next meeting.

17 The first one is actually before you
18 today, the Voluntary Performance Based Leadership
19 Programs. It's three separate rules that are
20 very, very similar that you'll be considering for
21 preliminary adoption today, and if you do adopt
22 those, then I would expect those to be ready for
23 final adoption at the next meeting.

1 In addition to that, as the Commissioner
2 commented on, we have an emergency rule we're
3 developing for the above-ground storage tank
4 legislation that was passed. This provides a
5 mechanism for reporting above-ground storage
6 tanks in accordance with the recent legislation.
7 It requires reporting before January 1st of 2016,
8 which is why we need an emergency rule to take
9 care of that. Until the regular rulemaking is
10 completed, that emergency rule will need to be
11 readopted by this Board approximately every three
12 months.

13 Another one we have, the rule review for
14 rules that do not expire, this is what we often
15 refer to as our sunset and/or nonsunset
16 rulemaking projects. A public hearing before the
17 Board is required so the Board can determine if
18 there are concerns that should be addressed by
19 rulemaking for those rules that do not expire.
20 The last time we presented this to the Board was
21 in September of 2014, and we're currently working
22 on the notices for this year's list.

23 As far as rulemakings, we have a number of

1 rules that are getting close to being ready for
2 the second notice of comment period. The one
3 that I know is on its way and should be ready at
4 the next meeting for preliminary adoption is the
5 Solid Waste Facility Operator Certification
6 rulemaking.

7 This rule provides additional flexibility
8 for training course content and options for
9 completing courses. It extends the period of
10 time allowed between operator certifications, and
11 it provides clarifications and updates to the
12 existing rule.

13 And that is all I have right now.

14 CHAIRMAN GARD: Chris, do you want to
15 mention the -- if we have a November meeting,
16 when that meeting will be?

17 MS. PEDERSEN: Yes. Because our
18 regular meeting would have fallen on Veterans
19 Day, we've rescheduled November's to -- I believe
20 it was November 4th.

21 CHAIRMAN GARD: 4th, uh-huh.

22 MS. PEDERSEN: November 4th. If we
23 should have it in November, it would be on

1 the 4th.

2 CHAIRMAN GARD: Do you have any idea
3 from looking at this calendar when you think the
4 next meeting will be?

5 MS. PEDERSEN: I would say we very
6 well could be ready in October.

7 CHAIRMAN GARD: Okay.

8 MS. PEDERSEN: But always subject to
9 change.

10 CHAIRMAN GARD: Okay. Thank you.

11 Any questions for Chris?

12 (No response.)

13 CHAIRMAN GARD: Thank you.

14 Today there will be public hearings prior
15 to consideration for final adoption of the NPDES
16 General Permits; Sulfur Dioxide Emission Limits;
17 and thirdly, Satellite Manure Storage Structures.

18 We will have a public hearing prior to
19 preliminary adoption of the Voluntary Performance
20 Based Leadership Program rule amendments. They
21 are presented -- these are presented as three
22 separate rule documents in the Board packet,
23 because the amendments occur in three separate

1 titles of the Indiana Administrative Code.
2 Because the changes proposed are very similar for
3 each rule, we will open a single hearing which
4 will cover all three rules.

5 Anyone wishing to speak on any of the
6 rules or provide comments pertaining to all of
7 the rules may do so during that hearing. The
8 Board will then take three separate Board actions
9 when preliminarily adopting the rules.

10 Additionally, the Board will be discussing
11 the citizen petition for rulemaking on silica
12 dust, which was presented at the March meeting.
13 Today the Board must determine whether to hold a
14 formal hearing on that petition.

15 And finally, we will have a report from
16 the advisory group on the citizen petition to
17 amend the definition of "interference" in the
18 water rules.

19 Are there any questions about the
20 procedure, and particularly the procedure of the
21 first agenda item?

22 (No response.)

23 CHAIRMAN GARD: Okay. These rules

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

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

18 (Reporter sworn.)

19 CHAIRMAN GARD: Thank you.

20 This is a public hearing before the
21 Environmental Rules Board of the State of Indiana
22 concerning preliminary adoption of amendments to
23 rules at 326 IAC 25, 327 IAC 18, and 329 IAC 18,

1 Voluntary Performance Based Leadership Programs.
2 These rules are presented as three separate rules
3 as they are amendments to three separate areas of
4 the Indiana Administrative Code dealing with air
5 regulation, water regulation and solid waste
6 regulation.

7 As the suggested amendments are similar in
8 nature, we are opening one hearing for all three
9 rules at this time. Anyone who wishes to address
10 any of the three rules or speak to an issue that
11 applies to all three may do so during the
12 hearing.

13 I will now introduce Exhibits A, B and C,
14 the draft rules, into the record of the hearing.

15 MaryAnn Stevens from the Department will
16 present the rules.

17 MS. STEVENS: Good afternoon, members
18 of the Board. I'm MaryAnn Stevens, a rule writer
19 in the Rules Development Branch of the Office of
20 Legal Counsel, and as you heard, this is a three
21 for one. It's LSA Document 14-68, 14-69 and
22 14-238. And as we've also heard, this is a
23 combined hearing for all three rulemakings. I'm

1 presenting my description of the rules just once;
2 however, the public may comment on the rules
3 separately or in combination, and there will be
4 separate Board actions to consider preliminary of
5 the three rulemakings.

6 In 2007, the then existing environmental
7 boards adopted rules into Titles 326, 327 and 329
8 to establish the Environmental Stewardship
9 Program, or ESP, and the Comprehensive Local
10 Environmental action Network Community Challenge
11 Program, or CLEAN. These programs are
12 performance-based incentive programs for
13 companies and communities that not only meet
14 environmental regulatory requirements, but also
15 voluntarily go beyond those requirements to
16 provide even greater protection to the
17 environment and public health.

18 Do I need to use this?

19 COMM. EASTERLY: Yes.

20 MS. STEVENS: Were you able to hear
21 me? Sorry.

22 Implementation of these programs by IDEM
23 in the years since they became available has led

1 to identification of rule changes that are
2 intended to update and enhance the programs.

3 Among the revisions to update the ESP and
4 CLEAN program rules, references to the federal
5 National Environmental Performance Track Program,
6 or NEPT, N E P T, are being removed. This
7 federal program was a voluntary performance-based
8 program that provided incentives to companies
9 that have gone above and beyond standard
10 regulatory requirements. The federal program was
11 discontinued in May 2009, which necessitates
12 removing references to it or its requirements
13 from the Indiana ESP rules.

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

21 The number of continuous environmental
22 improvement initiatives required under the rules
23 for preliminary adoption has been reduced to four

1 for the membership term. The term of membership
2 has been revised from three to four years, so, in
3 essence, you'll have one initiative per year
4 length of membership term.

5 Another revision in the rules for
6 preliminary adoption is the elimination of the
7 requirement for CLEAN members to implement an
8 environmental management system, or EMS. The EMS
9 requirement for ESP will remain in effect.

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

20 For members in good standing in either the
21 ESP or CLEAN program, a new incentive to allow
22 regulatory flexibility is being added. The
23 incentives are where these rules have differed

1 since their original adoption; however, the new
2 incentive being added is the same in each
3 rulemaking. The new incentive will allow members
4 in good standing in the ESP and CLEAN programs to
5 request twenty-four hours advance notification of
6 the Commissioner's representative arriving to
7 conduct a routine inspection of the member's
8 facilities.

9 It's not a whole lot of changes to these
10 programs, but they are considered to be useful
11 for making the program broader in their appeal.
12 So, if there are any other ques -- or any
13 questions, I can try and answer in a general way.
14 I also have some staff members that conduct these
15 programs who will be able to answer in greater
16 detail --

17 CHAIRMAN GARD: Are there --

18 MS. STEVENS: -- any of your
19 questions.

20 CHAIRMAN GARD: -- questions from
21 Board Members about any of the three programs?

22 (No response.)

23 CHAIRMAN GARD: You did a good job,

1 then.

2 MS. STEVENS: All right. Thank you.

3 CHAIRMAN GARD: Thank you.

4 I have no speaker cards signed up to speak
5 on this. Is there anyone in the audience who
6 would like to speak on any of the three of these?

7 (No response.)

8 CHAIRMAN GARD: If not, this hearing
9 is concluded.

10 There will be three separate votes, one
11 for each of the three rules. The Board will now
12 consider preliminary adoption of amendments to
13 the Voluntary Performance Based Leadership
14 Program rules at 326 IAC 25, the rules for the
15 air program. Is there any Board discussion?

16 (No response.)

17 CHAIRMAN GARD: If not, do I have a
18 motion to preliminarily adopt the rule?

19 MR. RULON: So moved.

20 CHAIRMAN GARD: Is there a second?

21 MR. POWDRILL: Second.

22 DR. ALEXANDROVICH: Second.

23 CHAIRMAN GARD: All in favor, say

1 aye.

2 MR. HORN: Aye.

3 DR. NIEMIEC: Aye.

4 MR. ETZLER: Aye.

5 MR. CARMICHAEL: Aye.

6 MR. RULON: Aye.

7 DR. ALEXANDROVICH: Aye.

8 MR. BAUSMAN: Aye.

9 MR. POWDRILL: Aye.

10 MR. CLARK: Aye.

11 MR. METTLER: Aye.

12 MR. DAVIDSON: Aye.

13 MR. HILLSDON-SMITH: Aye.

14 CHAIRMAN GARD: Aye.

15 Opposed, nay.

16 (No response.)

17 CHAIRMAN GARD: The rule is

18 preliminarily adopted.

19 The Board will now consider preliminary
20 adoption of amendments to the Voluntary
21 Performance Based Leadership Programs at
22 327 IAC 18, the rules for the water program. Is
23 there any Board discussion?

1 (No response.)

2 CHAIRMAN GARD: Is there a motion to
3 preliminarily adopt the rules?

4 DR. ALEXANDROVICH: So moved.

5 CHAIRMAN GARD: Is there a second?

6 MR. CLARK: Second.

7 MR. ETZLER: Second.

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

10 MR. HORN: Aye.

11 DR. NIEMIEC: Aye.

12 MR. ETZLER: Aye.

13 MR. CARMICHAEL: Aye.

14 MR. RULON: Aye.

15 DR. ALEXANDROVICH: Aye.

16 MR. BAUSMAN: Aye.

17 MR. POWDRILL: Aye.

18 MR. CLARK: Aye.

19 MR. METTLER: Aye.

20 MR. DAVIDSON: Aye.

21 MR. HILLSDON-SMITH: Aye.

22 CHAIRMAN GARD: Aye.

23 Opposed, nay.

1 (No response.)

2 CHAIRMAN GARD: The rules are
3 adopted.

4 The Board will now consider preliminary
5 adoption of amendments to the Voluntary
6 Performance Based Leadership Programs -- Program
7 rules at 329 IAC 18, the rules for the solid
8 waste program. Is there Board discussion?

9 (No response.)

10 CHAIRMAN GARD: Is there a motion to
11 preliminarily adopt the rules?

12 MR. RULON: So moved.

13 CHAIRMAN GARD: Second?

14 MR. BAUSMAN: Second.

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

17 MR. HORN: Aye.

18 DR. NIEMIEC: Aye.

19 MR. ETZLER: Aye.

20 MR. CARMICHAEL: Aye.

21 MR. RULON: Aye.

22 DR. ALEXANDROVICH: Aye.

23 MR. BAUSMAN: Aye.

1 MR. POWDRILL: Aye.

2 MR. CLARK: Aye.

3 MR. METTLER: Aye.

4 MR. DAVIDSON: Aye.

5 MR. HILLSDON-SMITH: Aye.

6 CHAIRMAN GARD: Aye.

7 Opposed, nay.

8 (No response.)

9 CHAIRMAN GARD: The rule is 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 327 IAC 5 and 15, NPDES General Permits
14 program.

15 I will now introduce Exhibit D, the
16 preliminarily adopted rules with IDEM's suggested
17 changes incorporated, into the record of the
18 hearing.

19 Is there someone from the Department to
20 present the rule? Nancy? Nancy King.

21 MS. KING: Thank you, Chairman Gard,
22 members of the Board.

23 I am speaking to you about the General

1 Permit Rule, because the permit writer who
2 originally worked on this retired a month after
3 he brought it to you for preliminary adoption and
4 joined the seminary. I'm sure there is no
5 connection whatsoever.

6 (Laughter.)

7 MS. KING: And so, basically it is up
8 to me to explain to you why we're bringing this
9 to you today. Today we have the General Permit
10 Rules that are proposed for final adoption. It
11 was originally proposed to have eliminated all of
12 the NPDES general permits by rule. However, not
13 all of the general permit drafts have been
14 approved by EPA.

15 At this point in time, EPA has reviewed
16 and approved drafts of administrative general
17 permits for: Noncontact cooling water
18 discharges, Petroleum Products Terminal
19 discharges, Groundwater Petroleum Remediation
20 Systems discharges, Hydrostatic Testing of
21 Commercial Pipeline discharges, and Sand, Gravel
22 and Crushed Stone operations.

23 Therefore, the decision was made to

1 deviate from the original plan of waiting until
2 all of the general permits had been okayed by EPA
3 and complete this rulemaking by reinstalling as
4 yet unapproved general permits back into their
5 places in Article 15, meaning that the general
6 permits dealing with storm water, coal mines, and
7 on-site discharging disposal systems in Allen
8 County would remain as permits by rule for the
9 time being, and the other permits could be
10 administratively issued as soon as the repeal of
11 those permits by rule becomes effective by this
12 particular rulemaking action.

13 We started this process in late 2010,
14 after many discussions with EPA about issues they
15 have with our NPDES program. Specifically,
16 because our general permits were permits by rule,
17 they were considered issued by the board that
18 adopted them. At the time, it was our Water
19 Pollution Control Board, and by statute, the
20 Water Board required a member who was employed by
21 an entity that held a major NPDES permit.

22 That was under the now repealed IC
23 13-18-1-2. That is no longer a requirement under

1 the enabling statute for ERB. However, we do
2 have members whose companies hold NPDES permits,
3 and EPA has stated that under 40 CFR 123.25, an
4 NPDES permit cannot be issued by a board, a
5 member of which is employed by an entity holding
6 an NPDES permit.

7 Additionally, our permits by rule did not
8 get reopened every five years at the end of a
9 permit term for public and EPA comment. In fact,
10 many of these rules had not been opened for
11 several years. We simply required the submittal
12 of new Notices of Intent for permit holders at
13 the end of their five-year terms. There was not
14 opportunity for comment on the actual
15 requirements of the general permits.

16 Those were the reasons we started this
17 rulemaking several years ago. We also received
18 specific statutory authorization with the passage
19 of IC 13-18-3-5 in the 2011 Indiana General
20 Assembly. That statute allowed for the
21 elimination of permits by rule within the
22 Administrative Code and the administrative
23 issuance of general permits, and provided that

1 the terms of an existing general permit would
2 remain in effect and enforceable until the person
3 submitted a new Notice of Intent for the
4 administratively issued general permits.

5 Our plan was to preliminarily adopt the
6 rules that would eliminate all general permits by
7 rule, and then await EPA approval of the draft
8 general permit, and when all of them had been
9 tentatively approved by EPA, begin public
10 meetings and outreach to affected permit holders
11 and interested parties prior to putting each
12 general permit up for the required public notice
13 and comment period.

14 We would then complete the rulemaking
15 process by seeking final adoption and preparing
16 the rules for promulgation, while at the same
17 time be preparing the formal issue -- or formal
18 issuance of the general permits and making the
19 Notices of Intent available for permit holders.
20 We had intended to make them available for
21 submittal when the rules repealing the old
22 general permits became effective. So, the rule
23 you have before you was preliminarily adopted

1 under that particular game plan in July of 2012.

2 Comm. Easterly wanted to show that we had
3 made progress toward our goal of administrative
4 issuance by moving forward with elimination of
5 permits by rule for those permits for which EPA
6 has issued tentative approval, so we arranged
7 several meetings and opportunities for review of
8 the permit drafts and discussion with permit
9 holders and interested parties, and put each one
10 out for public notice and comment, as required by
11 law.

12 So, now we are ready to issue those
13 permits, but must complete this rulemaking to do
14 so. As I mentioned to you when we were
15 discussing this at the previous Board meeting, we
16 will be starting another rulemaking to eliminate
17 the remaining general permits by rule as we get
18 closer to EPA approval of those draft permits.

19 This change in course has created a rather
20 large and complex rule for you to look at. It
21 involves reinserting a lot of language we had
22 completely eliminated in the preliminarily
23 adopted rule. That is the reason this rule is so

1 much longer than what we preliminarily adopted.
2 Whenever we change anything in a section, we have
3 to print out the entire section to show the
4 change, and because we have proposed wholesale
5 elimination of many sections of Article 15 in the
6 preliminarily adopted rule, much of the wording
7 that is being reinstated has to be shown that you
8 see there were actual wording changes in each of
9 those sections.

10 I think you can get an idea of how
11 confusing this can be when you look at the key at
12 the top of the rule. It's on the very first page
13 of the 112-page rule document. That's one of the
14 reasons we decided to include a separate document
15 that was sort of a cross-check or a study aid.
16 It shows where the changes are being proposed
17 and, in most cases, gives a brief explanation as
18 to why we're proposing those changes.

19 I will say to this Board what I stated to
20 the Water Board at preliminary adoption: The
21 intent of this rule is to provide for a change in
22 process only, not a change in requirements for
23 each permit holder, except in those cases where

1 new federal requirements have arisen since the
2 last time the rules were open, and these rules,
3 many of them, have not been open for a long time.

4 That remains our goal, but it gets
5 slightly more complicated when we have to have
6 rules applicable to some general permits, those
7 that remain permits by rule, and not applicable
8 to administratively issued general permits. All
9 permit terms for administratively issued general
10 permits are supposed to be contained within the
11 permit.

12 Thus when we were restoring language into
13 Article 15 for those permits by rule that would
14 remain, we specifically listed the rule numbers;
15 that would be Rules 5, 6, 7, 13 and 14. So,
16 certain sections that used to apply to all
17 permits by rule apply only to those specified
18 rules that will remain in Article 15.

19 As an example, 327 IAC 15-4-3 is reporting
20 requirements. It was previously applicable to
21 persons regulated by this article, meaning
22 Article 15, which was everybody that has a
23 general permit. So, instead, it now reads,

1 "persons regulated by Rules 5, 6, 7, 13 or 14 of
2 this Article." Those general requirements apply,
3 as they originally did, under the existing
4 permits by rule. If certain reports under that
5 section are not required under a specific permit
6 by rule, then they are not required now. There
7 are no additional requirements than what was
8 previously required of these permit holders.

9 As I mentioned, many of these rules have
10 not been open for a long time, and as such, there
11 are numerous places where language could have
12 been rewritten to be consistent with later added
13 language or to make sections easier to follow.
14 However -- and I know you'll find this hard to
15 believe -- we honestly tried to make as few
16 changes as possible to update the rules and keep
17 with our revised plan to eliminate several, but
18 not all, of the general permits by rule.

19 As such, it was determined that a change
20 may have -- if it was determined that a change
21 may have a substantive effect, we chose not to
22 make that change, given the fact that such a
23 change would not have had the benefit of the full

1 public comment process. That is the reason, for
2 example, that we did not further update the
3 incorporation by reference sections that you find
4 at 327 IAC 5-2-1.5 and 1.6 to the 2014 CFR.

5 Because we will be revisiting many of
6 these sections in the rulemaking that will be
7 necessary to complete the conversion to
8 administrative issuance, we believe that
9 rulemaking is the better place to propose those
10 changes so that folks will have the opportunity
11 to comment on those changes more fully.

12 The changes we are suggesting are to
13 reinsert much of the language stricken at
14 preliminary adoption related to those general
15 permits that will remain permits by rule for now.
16 There are many changes that are attempts to make
17 the rules in Articles 5 and 15 consistent with
18 each other on topics that apply to all NPDES
19 permits in 5 and general permits that are
20 discussed in Article 15.

21 In places where there would already be
22 language changes to meet that goal, we have tried
23 to eliminate duplicative definitions and

1 eliminate out-of-date citations and
2 cross-references, or fix addresses or contact
3 information, for example. And while it may be
4 difficult to believe, again, we did try to make
5 as few changes as possible to make this hybrid
6 program of permits by rule and administrative
7 issuance work.

8 That said, we did find, thanks to some
9 eagle-eyed folks who actually looked at our Board
10 packet, we found a few additional suggested
11 amendments, which we have included in your Board
12 packet. It's called Addendum 1. I believe we
13 also have separate documents back at the table
14 for folks if they want to look at them. I will
15 walk through those now. We are specifically
16 asking that those be included in IDEM's suggested
17 changes.

18 The additional amendments include amending
19 327 IAC 5-3-12 regarding public notice and
20 comment of all NPDES permits. We are suggesting
21 adding a reference to publication of the draft
22 general permit on the IDEM Web site in addition
23 to publication in the newspaper.

1 And we're also, as the second change,
2 suggesting a conforming change to 327 IAC 5-3-14,
3 subsection (b), regarding issuance of a general
4 permit. We're eliminating reference to the
5 Indiana Register and including reference to the
6 IDEM Web site as a mode of publishing the full
7 text of a permit as well as the notification
8 requirements under 5-3-12.

9 Prior to the advent of the Internet, such
10 documents were printed in the Register and in
11 newspapers. Now EPA accepts Web sites as an
12 appropriate form of notice of publication. These
13 changes will make these two sections internally
14 consistent with each other.

15 The third suggested change we are
16 including is to 327 IAC 5-4-6(a)(5), storm water
17 discharges. We're asking that No. 5 in that list
18 under subsection (a) be reinstated. It was
19 stricken at preliminary adoption when it was
20 anticipated that the discussion of how best to
21 regulate medium and large MS4 communities, which
22 is what (a)(5) applies to, would be discussed
23 during the development of the storm water draft

1 general permits.

2 This will now be one of the topics we
3 tackle in both the next rulemaking that deals
4 with storm water, coal mine and Allen County
5 discharging systems, and as we develop those
6 draft general permits.

7 And the fourth and final suggested change
8 is to reinstate words at 327 IAC 15-2-9,
9 subsection (a), to make it clear that the
10 Commissioner can in fact require a new discharger
11 that may otherwise be eligible for a general
12 permit to seek an individual permit under the
13 conditions listed in that section. That language
14 was stricken at preliminarily -- at preliminary
15 adoption, and we're asking that the Board
16 reinstate that language.

17 Those are the specific changes I wanted to
18 mention. I'm not going to go through all of the
19 other changes, but I'm happy to try to explain
20 any questions that you may have about it. I know
21 this was a difficult thing to read, and I know
22 that, especially with the time frame within which
23 no one had really seen this, that it's kind of

1 difficult to wrap your brains around, so I'm sure
2 you probably have a lot of questions. I'll be
3 happy to try to answer them.

4 CHAIRMAN GARD: Questions from the
5 Board?

6 Yes, Dr. Alexandrovich.

7 DR. ALEXANDROVICH: What form does
8 EPA approval of the permits come in?

9 MS. KING: What form does EPA
10 approval of the permits come in?

11 DR. ALEXANDROVICH: Right. I mean --

12 MS. KING: What do you -- oh, do you
13 mean --

14 COMM. EASTERLY: They send us a
15 nonobjection letter.

16 DR. ALEXANDROVICH: A nonobjection
17 letter; okay. Oh, and how long do you think
18 it'll take to get the other ones approved?

19 COMM. EASTERLY: Well, we started
20 this process in 2010, with a schedule that we
21 sent to EPA saying it would all be done by 2011.
22 We're sitting here in 2015 with EPA having
23 approved whatever it is, four or five of them.

1 We haven't started on the rest yet, and they're
2 going to be harder. So, I can't tell you. I can
3 tell you that we have these work plans that we
4 negotiate with EPA every two years. They've
5 asked us to come up with a credible schedule this
6 time, so we'll be working on that.

7 DR. ALEXANDROVICH: And I think I
8 might have found another typo in here. Do you
9 want that now?

10 COMM. EASTERLY: Yes.

11 MS. KING: Sure.

12 DR. ALEXANDROVICH: And I don't know.

13 On page 9 of 112 --

14 MS. KING: All righty.

15 DR. ALEXANDROVICH: -- under
16 "Exceptions," then it says, "[Section] 1.8. The
17 following are exceptions," and then there's
18 "Delete 40 CFR 122.3 and insert the following."
19 So, I think you kind of -- right around there on
20 the page. Do you want me to get up?

21 MS. KING: No, I just -- basically,
22 all of this language that is bold here, or is it
23 language that was put in at preliminary adoption?

1 So, what specific --

2 DR. ALEXANDROVICH: The -- I think
3 you have your notes on what you do in that
4 section.

5 MS. KING: No, no, that is correct
6 language. That basically says, instead of
7 looking at -- instead of --

8 COMM. EASTERLY: It doesn't.

9 MS. KING: -- the -- this is language
10 that basically says in places where --
11 "...incorporated by reference in...1.5...and
12 insert the following." Yeah, this one is -- I do
13 not believe that is a typo, but I'm looking at
14 1.5 in order to tell you. I don't believe that
15 is a typo. If --

16 DR. ALEXANDROVICH: It seemed to me
17 like it's --

18 MS. KING: It's strange language, I
19 give you that, because it basically goes back and
20 says instead of these specific things that are
21 within these various parts of the CFR, use this
22 particular language. We did not change that from
23 preliminary adoption. If --

1 DR. ALEXANDROVICH: Oh, okay. I
2 think I'm following now. So, I'd have to go back
3 to 1.5 and then see where CFR 122.3 was there --

4 MS. KING: Correct.

5 DR. ALEXANDROVICH: -- and insert --

6 MS. KING: So, that language is not
7 something that we do very often in rules, so it
8 is oddly worded, I will definitely grant you
9 that --

10 DR. ALEXANDROVICH: Okay.

11 MS. KING: -- but I do not think that
12 that is a typo.

13 DR. ALEXANDROVICH: Okay. I wasn't
14 sure.

15 CHAIRMAN GARD: Other questions for
16 Nancy?

17 Yes, Cal.

18 MR. DAVIDSON: Just as a follow-up,
19 and maybe, Commissioner, you can chime in here,
20 but how many permits or what kind of entities are
21 we talking about? How many is on that list that
22 are to be accomplished?

23 COMM. EASTERLY: That are done or are

1 not done?

2 MR. DAVIDSON: Not done.

3 COMM. EASTERLY: Not done is coal
4 mines, construction runoff, erosion control,
5 basically, storm water from industrial
6 facilities, MS4, which is municipal separate
7 storm sewers, and Allen County --

8 MS. KING: On-site discharging.

9 COMM. EASTERLY: Yeah, on-site
10 dischargers. So, there --

11 MS. KING: About 30.

12 COMM. EASTERLY: On the one hand,
13 there's only four, but like our Rule 6, which is
14 our industrial one, EPA has revised the
15 requirements twice since we adopted that rule,
16 and we haven't incorporated any of those
17 revisions. So, that's going to be a fairly
18 complex process with all of the regulated
19 entities, and the coal mine one is just
20 inherently controversial.

21 MR. DAVIDSON: Thank you.

22 CHAIRMAN GARD: Any other questions?

23 (No response.)

1 CHAIRMAN GARD: Okay. Seeing none,
2 we do have some speaker --

3 MR. POWDRILL: Oh, I'm sorry.

4 CHAIRMAN GARD: -- cards.

5 Yes, Gary.

6 MR. POWDRILL: Nancy, originally we
7 were going to repeal the permit by rule for
8 everything, and now we're only -- are we only
9 repealing permit by rule for the five that we're
10 addressing here?

11 MS. KING: Yes. The ones --

12 MR. POWDRILL: And the permit --

13 MS. KING: -- the ones that I --

14 MR. POWDRILL: -- by rule is still in
15 effect --

16 MS. KING: -- specifically listed --

17 MR. POWDRILL: Right.

18 MS. KING: -- those permits by rule
19 we will be able to administratively issue under
20 this. So, in order to do that, we had to
21 reinstate the language that keeps the permit by
22 rule for the coal mine, storm water in Allen
23 County general permits back into the rule so that

1 they remain a permit by rule.

2 There was other language that probably you
3 may remember, because you were on the Water Board
4 at the time, that had -- there was some general
5 language that talked about what -- that general
6 permits were permits by rule. There were things
7 like that -- some of those remained stricken as
8 part of the final adoption rule, because we're
9 still allowed to have the general permits by rule
10 legally. It's just the conflict-of-interest
11 issue we have with EPA.

12 And so, ultimately, while we have this
13 hybrid system, we had to sort of put a lot of
14 language back in to allow us to be able to keep
15 that -- the administration of those permits by
16 rule going while we also have the ability to
17 administratively issue these newly approved
18 general permits for the five that we've talked
19 about.

20 MR. POWDRILL: But there will be no
21 gap?

22 MS. KING: There will be no gap. By
23 statute, the terms of the permit for -- the

1 permit holders for the five that we'll be
2 administratively issuing, those -- by statute,
3 the terms and enforcement of those remain in
4 effect until they submit their new Notice of
5 Intent to us, which is how the process for
6 administrative issuance works.

7 MR. POWDRILL: If they never
8 submit --

9 MS. KING: They have to do it -- by
10 statute, they have to do it within 90 days of
11 those being available.

12 MR. POWDRILL: Okay.

13 MS. METTLER: And we have already
14 talked to all of those permittees, and they are
15 aware of the timing.

16 CHAIRMAN GARD: Any other questions?

17 (No response.)

18 CHAIRMAN GARD: Okay. Thank you,
19 Nancy.

20 MS. KING: Thank you.

21 CHAIRMAN GARD: We have some people
22 who have signed up to speak.

23 Bill Beranek.

1 I will note that we generally try to limit
2 testimony to five minutes.

3 DR. BERANEK: Okay. I will speak for
4 five minutes. My name is Bill Beranek. I'm
5 speaking on behalf of myself.

6 I fully appreciate the difficulty of this
7 rule. I'm sympathetic to taking apart and
8 putting back together again, and I'm sympathetic
9 to the challenges of this. I do have concerns,
10 and I think it would not be a good idea to final
11 adopt this at this time.

12 I have -- IDEM was gracious enough,
13 gracious enough, to spend four hours with me
14 yesterday to go through all of my concerns. I'm
15 not going to share my concerns with you, but
16 there's enough that I think just one month, two
17 months, could solve that and at least not have
18 words that are inconsistent, words that are not
19 meaning what they didn't intend to mean.

20 Let me just give a few things just off the
21 top -- well, a few things. Storm water right
22 now, which is critical to both Article 5 and
23 Article 15, the individual NPDES permit rule and

1 the general NPDES permit rule, at 5 and 15, now
2 the definition of storm water is different in
3 those two rules, substantively different in those
4 two rules, and both of those rules use the term
5 importantly and as a way of connecting to each
6 other. So, this is not a good thing, it seems to
7 me.

8 Secondly, the public hearing process for
9 the administrative general permit must be
10 different than the individual permit in a
11 substantive way. It shouldn't be as extensive as
12 the public hearing process for the rulemaking
13 was, which was several years and a lot of notices
14 and so forth, but it can't be just the minimum
15 that is present in the individual permit, which
16 is what is the status for right now in this rule.

17 The -- for the general -- for the regular
18 permit, it's 30 days. That works well for an
19 individual permit, because the guy who's going to
20 be affected has applied for it, and he's been
21 calling up every month waiting to get it. He
22 knows it's coming. That guy knows, so he's got
23 time when he sees it to talk to his consultant,

1 talk to his lawyer within 30 days and ask for a
2 hearing. That's no problem. The people that are
3 affected are generally in the area. They know
4 it's coming, and 30 days is okay for them.

5 But a general permit coming out, you don't
6 have people -- many of the people are not even
7 affected, people who have no way of knowing this
8 is coming. So, there has to be in that process,
9 artificially put in by the rule, just exactly
10 like we did in antidegradation, there has to be a
11 way for people to know, be notified ahead, the
12 people that are affected and the public interest
13 groups, six months ahead that this is coming.

14 Thirty days is not enough, starting from
15 scratch, for a notification. And there's ways to
16 do this, and I'm sure IDEM would try to be as
17 good as possible, dah-dah-dah-dah, but this does
18 need to be in the regulation; otherwise, it's
19 really easy for a pressure to happen when the
20 five-year time is up -- these permits last five
21 years -- EPA has a lot of pressure they're
22 putting on these people because they want the
23 rule to be -- they want the permit to be changed

1 in certain conditions.

2 That deadline's going to be a
3 high-pressure point, and so you need to have all
4 affected parties in Indiana be alerted that
5 that's coming. Thirty days, ready or not, on the
6 IDEM Web site is not going to be adequate notice
7 for most folks.

8 Along with that, these permits are going
9 to all expire in five years. My recommendation
10 all along has been: Don't repeal five general
11 permits at the same time, because you know what
12 that means; you just started the clock for five
13 administrative general permits to end at the same
14 time.

15 So, then you have five permits that have
16 to be renewed at the same time, and that's
17 difficult. That's going to be difficult for the
18 agency to do, difficult for the people to adjust
19 to. It's better to stagger them. I mean you
20 could stagger them -- these are kind of simple.
21 You could stagger even four across 12 months,
22 ideally if you go two per year, but really not a
23 good idea to have these general permits end at

1 the same time, which is when they'd need to be
2 renewed at the same time.

3 The wording of -- in this administrative
4 permit, the wording of the hearing is the
5 individual hearing, using -- individual permit
6 hearing, using words like "applicant," which you
7 don't have in a general permit, because they just
8 reference the individual permit for the hearing.
9 Little things like that wouldn't take too much
10 time to fix.

11 Now, there are some other things that --
12 while you're looking just to clean up, there is a
13 provision in here, which you are changing, but
14 not the part I'm talking about, which prohibits
15 septic tanks in the State of Indiana simply
16 because you use the word "water of the state"
17 instead of "surface water of the state."

18 There's another one where -- general
19 permit for pesticides, which is working very well
20 right now. The State Chemist is doing it. It's
21 a perfect one. But in this rule, you talk about
22 it's regulating pesticides to the waters of the
23 state, not surface waters of the state.

1 Remember, the NPDES permit program is all
2 about surface waters, so when you use these terms
3 interchangeably with waters of the state, waters
4 of the state is not the same as waters of the
5 United States in the sense that waters of the
6 state also includes ground water, so you have to
7 be very careful when you use that term.

8 Finally, just one last thing as examples
9 of things. Several places, and I don't know if
10 Nancy had it corrected, but it's happening --
11 it's happened in several places when she talked
12 about stuff like 15-9 or something, where
13 there's -- well, I'll just say one spot. There's
14 a spot that demands that the Commission -- that
15 demands a person to get a particular petroleum
16 bulk station general permit. It says they must
17 obtain that, and you should never have wording
18 that they must obtain, but what it was intended
19 to do is say they cannot get a Rule 6 or
20 whatever -- what did you say? Industrial storm
21 water --

22 COMM. EASTERLY: No, that's Rule 6.

23 DR. BERANEK: They can't get the

1 Rule 6 one, they must get that one, which is
2 fine. If they're going to get the general
3 permit, they have to get one that's tailored for
4 them, I get that, but you should never word it to
5 say they must get that, because they may want an
6 individual permit. The Commissioner may want an
7 individual permit for that person.

8 So, the whole structure should always be
9 written that the general permit is an option
10 for -- to happen; it can't be mandated. You
11 don't mandate a general permit for the party; you
12 don't mandate that the agency accept a general
13 permit. Both the agency and the person have --
14 should have the right to have an individual
15 permit. And that's not the way it's written
16 several in places in here.

17 And then one last thing, because I'll be
18 back later sometime on antidegradation, there is
19 one phrase in here where you're excluding people
20 from getting general permits if they
21 significantly lower the water quality, and that's
22 a code phrase, and they do a reference right into
23 antidegradation, and that's a phrase that has

1 nothing to do with runoff, and that has to do
2 with an individual permit.

3 That's a very complicated definition,
4 which I've written a treatise on, that has terms
5 like de minimus that are not defined, and it
6 talks about a regular NPDES permit, a loading
7 capacity with exclusions. That is probably what
8 is not meant when you say you don't allow anybody
9 to have a general permit if they've significantly
10 lowered the water quality. That's a very precise
11 term of art, and I don't know if that's what's
12 meant here.

13 Thank you.

14 CHAIRMAN GARD: Thank you.

15 Are there questions for Bill?

16 (No response.)

17 CHAIRMAN GARD: Thank you.

18 Lori Gates.

19 And Lori, before you begin, thank you for
20 the memo I got with a lot of your suggested
21 changes, and actually that -- your memo was
22 pretty much the reason for this addendum that
23 we've had today, and I hope that that addresses a

1 number of the points you made.

2 MS. GATES: It certainly does, and we
3 appreciate that very much and the opportunity to
4 come and address the Board today. I'm Lori
5 Gates, with Christopher Burke Engineering. I am
6 representing two associations today: The Indiana
7 Association for Flood Plain and Storm Water
8 Management, as well as the County Surveyors
9 Association of Indiana.

10 Our comments and concerns focus on the
11 change in process. This is a big change for the
12 general permits. We certainly understand what is
13 going on in other states and how EPA tends to
14 regulate, and that most states do issue general
15 permits outside of their administrative codes.

16 The concern is for this process to think
17 about our order of magnitude, if you will, for
18 general permits. Rule 5 was mentioned, for
19 example, earlier that covers erosion and sediment
20 control, runoff, storm water runoff. There are
21 over 8,000, over 8,000, active permits right now
22 in the State of Indiana just on that one rule
23 alone.

1 So, our concern is the proposed rulemaking
2 would say that these general permits, as
3 Dr. Beranek described, would be subject to the
4 exact same public process as one individual
5 permit that affects one entity, so we think that
6 the process needs to be fully defined.

7 And yes, there's always an option, and
8 there's conflicting language right now in the
9 draft rule about how many public hearings, what
10 would happen, but it needs to be defined in the
11 Administrative Code, and that's the concern from
12 the stakeholders that I represent, that we would
13 like to see additional opportunities for public
14 comment, simply because there are so many
15 stakeholders that are involved with this
16 particular process.

17 So, we also -- I submitted the letter, as
18 Chairman Gard did describe, so you can see our
19 rule citations, and there's a lot of detail there
20 that I won't be redundant and cover as well, but
21 we also are requesting that the final adoption be
22 delayed until we can have some more dialogue and
23 some of these issues can get resolved, because

1 this is a large and complex process. So, we need
2 to get the process right, and then we'll focus on
3 the language that's in the actual general
4 permits.

5 Thank you very much.

6 CHAIRMAN GARD: Are there questions
7 for Ms. Gates?

8 (No response.)

9 CHAIRMAN GARD: Thank you.

10 MS. GATES: Thank you.

11 CHAIRMAN GARD: Andrew Berger.

12 MR. BERGER: Thank you, Madam
13 Chairwoman, members of the Board. I'm Andrew
14 Berger, with the Indiana Manufacturers
15 Association.

16 I'm here to discuss really one point, and
17 it was brought up a little bit earlier: The
18 reinstatement of the permit by rules by that list
19 of -- I think it's four different items. One of
20 them is for industrial product -- for industrial
21 activity, storm water permits for industrial
22 activity, and that's what our association's
23 interest is.

1 Yes, it is put back in, but it's also
2 changed. It's changed to -- the wording is to
3 make it consistent with the EPA permits, and I'm
4 sure there's more talented lawyers than I am who
5 can, you know, give a great definition of what
6 the impact of that "consistent with" wording is,
7 but if it means that all general permits have to
8 follow the EPA standard, that will have some
9 costs to industrial facilities across the state
10 that get the general permits.

11 My understanding is that the EPA is a
12 standard, it's not a requirement right now. In
13 all of Region V, I think it only applies to
14 essentially Native American land that EPA has,
15 you know, the permitting authority on. If this
16 is in anticipation of what EPA is going to do, I
17 mean that's fine, we can have that discussion,
18 but probably at that time.

19 I don't think it's a good idea for the
20 state to be putting new requirements on in a rule
21 that -- I mean it's like everybody's admitted,
22 and I don't have problems with it. It's supposed
23 to not have any of those substantive changes in

1 place.

2 So, with that, I'm happy to answer any
3 questions.

4 CHAIRMAN GARD: Any questions for
5 Andrew?

6 (No response.)

7 CHAIRMAN GARD: This is a different
8 hat for you, Andrew.

9 MR. BERGER: It is. I'm getting,
10 hopefully, more comfortable every day.

11 CHAIRMAN GARD: Okay. Thank you.

12 MR. BERGER: Thank you.

13 CHAIRMAN GARD: I don't have any --
14 any more sign-up cards for this. Is there
15 anybody in the audience that would care to
16 comment on the rule?

17 (No response.)

18 CHAIRMAN GARD: Okay. Thank you.

19 Is there -- is there any Board discussion?

20 MR. POWDRILL: Madam Chairman, I've
21 heard from some people today that they didn't
22 have time to comment on this rule, and
23 admittedly, when there was preliminary adoption,

1 there was a public hearing with that preliminary
2 adoption, but that was back in 2013, over two
3 years ago, and this document has changed
4 dramatically, for 112 pages, and they -- the
5 people that I've talked to said the document was
6 not available until the Board packet came out, so
7 that did not give them much time to review it and
8 prepare comments and submit comments.

9 So, I'm just wondering if we've kind of
10 done a rush to judgment here because we're trying
11 to get it approved. I don't think -- are we
12 under any sanction risk from EPA if we don't have
13 these approved in the next month or two or three?

14 COMM. EASTERLY: The risk is that you
15 could file suit against any one of these general
16 permit holders, and it's likely that the permit
17 would be found to be invalid. So, we have all of
18 these people out there with permits. One of my
19 goals has been since day one that we have a piece
20 of paper from the State of Indiana that says
21 something's allowed if it shields you against all
22 of those other things. We've been on notice
23 since 2009 that these permits didn't meet the

1 federal requirements.

2 MR. POWDRILL: But the EPA hasn't
3 provided us the information to write permits
4 anyway up until now -- for five of them --
5 they've only done it for five of them.

6 COMM. EASTERLY: No, we actually
7 proposed the permits. We chose those five
8 because we want to get the process to work.
9 Those five -- the people impacted by those
10 permits were fully involved, and they are not --
11 they don't have the same concerns that the
12 industry does with Rule 6 and that the surveyors
13 do with Rule 13. We know those are going to be
14 longer, more detailed discussions.

15 And the way this rule works, I wanted to
16 issue the five administratively ready ones now,
17 but the law says I can't have them in two places.
18 So, if we don't do this, the five that would
19 be -- that we have nonobjection letters on won't
20 be issued, and those people would be at risk.
21 The other people will continue to be at risk.

22 MR. POWDRILL: But in your
23 discussion, didn't you say that EPA has not

1 provided us the guidance for the rest of these,
2 or some -- for us to do the work and get them
3 administratively --

4 COMM. EASTERLY: No, we --

5 MR. POWDRILL: -- approved?

6 COMM. EASTERLY: I think it's going
7 to be very difficult to get them and our
8 regulated industries and people to a point where
9 EPA will buy off on what we want to do. That's
10 what's going to take a long time. The ones that
11 we have now are not controversial, which is why
12 we wanted to get them done, and then work on the
13 other ones that are going to be more challenging.

14 CHAIRMAN GARD: Let me ask this
15 question: If this rulemaking is approved today
16 and there's still a couple of issues hanging out
17 there, can that be dealt with in the next rule
18 that's coming dealing with this?

19 COMM. EASTERLY: Yes.

20 CHAIRMAN GARD: I see Bruno shaking
21 his head. I guess the concern I have is that
22 there have been three public comment periods on
23 this. I think we -- well, two were required, and

1 the third was held because of the general
2 interest in this, but -- and this is not a new
3 concern. I had this concern when I was in the
4 General Assembly, chairing the Environmental
5 Affairs Committee.

6 With all of the public comment periods and
7 then people wait and come in when they -- at the
8 very end of the process, and we've had a
9 two-or-three-year process, and that's just a bug
10 of mine. I mean with something like this that's
11 been out there this long, I think interested
12 parties that are going to be affected by this can
13 get engaged sooner. It's certainly -- it's
14 certainly -- you certainly had the opportunity
15 to. It's just a bug I have. I think that --

16 Yes, Cal.

17 MR. DAVIDSON: Commissioner, how --
18 how do -- by passing the two or repealing the two
19 that you say are not contested, but how does that
20 not put the others, the -- forgive me; I fell
21 asleep three nights trying to get through this.

22 (Laughter.)

23 MR. DAVIDSON: This was my first

1 time. So, the Rule 9 or Rule 13 that you
2 mentioned that are going to be -- if we repeal
3 all these today, are those folks not at risk for
4 being out of compliance and not --

5 COMM. EASTERLY: Those folks have
6 been at risk since 2009, since we had
7 constructive notice. We've been trying to fix
8 this process. We had -- what we -- EPA agreed
9 with us that we couldn't do it until we got
10 statutory authority, but Sen. Gard fixed that in
11 2011, I believe.

12 So, now -- and they've been patient. I
13 told you they want a schedule we're actually
14 going to meet. If we don't do anything, they
15 will wonder if we were even serious about what we
16 told them in the past.

17 MR. DAVIDSON: I agree that with the
18 process where we're going needs to get done. I
19 guess my concern was about that gap that some
20 people mentioned earlier and how to avoid --

21 COMM. EASTERLY: There is no gap in
22 coverage --

23 MR. DAVIDSON: Well --

1 COMM. EASTERLY: -- but the problem
2 that I see is that those Rule 5, 6, 13, coal
3 mines, whatever they are in Allen County, they
4 still have those permits that EPA's told us don't
5 meet the requirements of the Clean Water Act.
6 But EPA is using discretion to let us go through
7 the process and finish it.

8 MR. DAVIDSON: Does that keep the
9 en -- the permit by rule free from civil suit
10 or --

11 COMM. EASTERLY: No -- well, I'm not
12 a lawyer; okay? Let me back off of that. I
13 would be concerned --

14 MR. DAVIDSON: That's a safe --

15 COMM. EASTERLY: -- having been in
16 business and been sued for a multitude of things,
17 I would be in here asking the state to finish
18 those other permits.

19 MR. DAVIDSON: Okay. One last
20 question. I may be confused about -- you
21 mentioned 35 or so, I think, when you were up
22 here.

23 MS. KING: It would be the Allen

1 County folks that are on that interesting on-site
2 discharging disposal system. There were
3 approximately 35 homes to which that applied in
4 Allen County.

5 MR. DAVIDSON: In Allen County.

6 MS. KING: Yes.

7 MR. DAVIDSON: But the 8,000 that
8 somebody else mentioned, how many -- really, I
9 guess maybe I can clarify. How many permits are
10 we really talking about here? Is it thousands?

11 COMM. EASTERLY: Yes.

12 MR. PIGOTT: Cal, the number of
13 permits, with the change to this rule today, that
14 would be affected today, are 250. There are
15 8,000 -- when Lori came up and talked about the
16 8,000 permittees, that's in the storm water group
17 that would not be affected by this rulemaking.
18 They'd still have their permits for Rule 5, 6
19 and 13.

20 There are 250 facilities that are covered
21 under five different permits that we've got today
22 to deal with: Hydrostatic testing of pipelines;
23 sand, gravel and dimension stone; petroleum

1 product terminals; noncon -- once through
2 noncontact cooling water; and groundwater
3 petroleum remediation systems. All -- those are
4 the five permits that this Board would, by
5 approving this rulemaking, allow us to move
6 forward to issue it administratively, and the
7 total universe of those five are 250.

8 So, the others that Lori talked about, the
9 8,000, are not affected by this rulemaking today.
10 This rulemaking preserves their permits by rule.
11 It only allows us to issue permits for those
12 other five permits, which we had extensive public
13 hearings on. We had public meetings in this very
14 room with all of the permittees and invited them
15 to come, and contacted each and every one of them
16 to let them know what was in each of these
17 permits, to ask for their feedback, and we heard
18 very little concern about it.

19 So, we feel that we're in good stead with
20 the businesses that depend on these permits, and
21 we'll be careful about the concerns that were
22 raised about the public participation issues.
23 If -- you ought to know that every NPDES permit

1 has, at a minimum, a 30-day comment period. We
2 always have the ability to go beyond that, and
3 certainly the concerns that Lori and Bill Beranek
4 raised about the different nature of this are
5 fair points. But as Sen. Gard indicated, those
6 concerns, too, we can deal with in the rulemaking
7 that will come with those permits, and we're
8 happy to have discussions about that at that
9 time.

10 MR. DAVIDSON: Thanks. And I agree
11 with you about the 11th-hour kind of effect.
12 It's my first go at it, though. There's a lot --
13 out of 112 pages, I'm sure there's still many,
14 many things that are inconsistent in language and
15 reference, there's no doubt. I couldn't keep up
16 with it and I trusted it, so good luck.

17 CHAIRMAN GARD: Yes.

18 MR. POWDRILL: Bruno, out of the 250
19 permittees, how many came to the meeting?

20 MS. METTLER: It was probably a
21 hundred or so.

22 MR. PIGOTT: I would say that there
23 were approximately a hundred people who attended

1 the meetings, and we broke up into small groups,
2 to talk to each of them about their specific
3 concerns with their specific general permits, to
4 make sure that we weren't just talking in general
5 terms, but that we were talking about each
6 individual general permit, each general permit.

7 And that was in addition to our normal
8 process of public noticing the permit, so we
9 fully expect, just like that process, that as we
10 move forward with these other general permits,
11 we're not constrained by the 30-day public
12 comment period, and we rarely, in these kinds of
13 situations, limit ourselves to those time frames.

14 And I can think of BP, U.S. Steel, all of
15 these individual permits, where some might argue
16 to the Board that those, too, should have longer
17 than 30-day comment periods, we don't change our
18 rules to say that for those controversial and
19 extensive permits. We instead have a floor for
20 all of our permits and allow ourselves to give
21 more time for public comment, and that's what we
22 did in this process.

23 MR. POWDRILL: So, you had 40 percent

1 participation?

2 MR. PIGOTT: That -- yes, and I would
3 say that that participation was extensive, the
4 comments we received were useful, and generally
5 speaking, I would say that the comments were --
6 did not request that we substantively change
7 anything. Because there weren't large
8 substantive changes, they were able to view the
9 NOI's that they'll receive, view the language in
10 the permit, and that was in addition to the
11 public comment period. So, we feel like we are
12 very sensitive to the public process, and we will
13 continue to be so as we move forward.

14 CHAIRMAN GARD: Any other --

15 MR. POWDRILL: Thank you.

16 CHAIRMAN GARD: -- questions?

17 DR. ALEXANDROVICH: I guess I do --

18 CHAIRMAN GARD: Yes.

19 DR. ALEXANDROVICH: -- because Bill
20 mentioned some things about the definition -- two
21 different definitions of storm water and
22 prohibiting septic tanks, and the fact that he
23 had some meeting with IDEM folks. Are -- is

1 there anything to that difference in those
2 particular things?

3 MR. PIGOTT: Okay. Well, there's
4 certainly something to the fact that we met with
5 Bill for four hours yesterday to talk about the
6 permit, and I can't tell you how much we
7 appreciate the input that Bill gave us. I mean
8 some people have an eye for rules, and
9 Mr. Beranek is definitely one of them.

10 On the issue of the different definitions
11 of storm water, what we -- because we're
12 retaining the permits for 5, 6 and 13 as they are
13 in the permit, we understand, and we wanted to
14 take a closer look at that language that Bill was
15 talking about, and we believe that there's an
16 opportunity to fix that as well as other issues
17 in the following rulemaking.

18 Because remember, we're going to have to
19 reopen this rule again to extract the storm water
20 general permits, so this is not the last shot at
21 adjusting this rule. And we hope to do that
22 fairly quickly, because we do have EPA and
23 businesses that are going to depend on legitimate

1 permits to be issued.

2 DR. ALEXANDROVICH: So, those two
3 definitions wouldn't really change the
4 circumstances that have been --

5 MR. PIGOTT: We believe that --

6 DR. ALEXANDROVICH: -- discussed
7 today?

8 MR. PIGOTT: -- the language, for
9 example, using surface water versus waters of the
10 state was consistent with what was in the rule
11 language previously. Now, are there possible
12 typos and other issues? Absolutely, which is why
13 I think it's important for the Board to
14 understand that this is not the last time we're
15 going to look at this rule language. We will be
16 back at this again.

17 And we believe that the current permittees
18 that will continue to have coverage under the
19 storm water and the coal rules will not be
20 affected. There's not going to be a substantive
21 change to them until we go through that process.
22 And when we do, we will engage the stakeholders,
23 just as we have for these five general permits.

1 (Dr. Niemiec left the room.)

2 MR. PIGOTT: Did that answer your
3 question?

4 DR. ALEXANDROVICH: Yeah, I think it
5 does. Just -- I guess as you move forward on
6 this -- I mean I did go and look at the permits
7 that were there. Actually, I had trouble finding
8 it by your left-hand navigation. I have to use
9 your search option, which doesn't always work
10 well, but I found them, and I saw that you had
11 had meetings with them. So, if you would keep
12 the Board kind of noticed of all of that kind of
13 meetings, because I guess we don't necessarily
14 get that information. We get it after it's
15 already done, so --

16 MR. PIGOTT: We will be happy to do
17 that, and include all -- every Board member in
18 those meetings so that there is a full
19 participation by any member of the public,
20 including the Board, in this process.

21 DR. ALEXANDROVICH: Thank you.

22 CHAIRMAN GARD: Any other questions?

23 (No response.)

1 CHAIRMAN GARD: If not, I'm going to
2 close the public hearing, and now the Board will
3 consider final adoption of the NPDES General
4 Permit Rule. Is there any further Board
5 discussion?

6 MR. RULON: I think what the
7 Commissioner said is pretty important, is that,
8 you know, this actually finally puts four of
9 these -- or five of these things to bed, and I --
10 I think we want to be -- we need to really put
11 something to bed for a change on this and let
12 them start working on the next rule, because the
13 next ones are the ones that are very important to
14 my constituency and the citizens of the state,
15 and they're the ones who are really impacting the
16 water problem. So, I really think we should move
17 forward. As much as I share Dr. Beranek's
18 concerns, I would like to see us move forward.

19 CHAIRMAN GARD: Uh-huh.

20 Is there a motion to adopt IDEM's
21 suggested changes? And this does include the
22 addendum.

23 MR. RULON: So moved.

1 CHAIRMAN GARD: Is there a second?

2 MR. METTLER: Second.

3 CHAIRMAN GARD: Okay. All in favor,
4 say aye.

5 MR. HORN: Aye.

6 DR. NIEMIEC: Aye.

7 MR. ETZLER: Aye.

8 MR. CARMICHAEL: Aye.

9 MR. RULON: Aye.

10 DR. ALEXANDROVICH: Aye.

11 MR. BAUSMAN: Aye.

12 MR. POWDRILL: Aye.

13 MR. CLARK: Aye.

14 MR. METTLER: Aye.

15 MR. DAVIDSON: Aye.

16 MR. HILLSDON-SMITH: Aye.

17 CHAIRMAN GARD: Aye.

18 Opposed, nay.

19 (No response.)

20 CHAIRMAN GARD: Okay. The suggested
21 changes and the addendum are adopted. Is there a
22 motion to finally adopt the rule as amended?

23 MR. ETZLER: So moved.

1 CHAIRMAN GARD: Is there a second?

2 MR. HILLSDON-SMITH: Second.

3 CHAIRMAN GARD: Any further Board

4 discussion?

5 (No response.)

6 CHAIRMAN GARD: Mr. Rulon?

7 MR. RULON: Yes.

8 CHAIRMAN GARD: Dr. Alexandrovich?

9 DR. ALEXANDROVICH: Yes.

10 CHAIRMAN GARD: Mr. Carmichael?

11 MR. CARMICHAEL: Yes.

12 CHAIRMAN GARD: Mr. Powdrill?

13 MR. POWDRILL: No. I don't think --

14 I must say that I just don't like approving a
15 rule that has known problems, saying we're going
16 to fix it later, when later might be five years,
17 ten years. I mean look how long it's taken
18 already. So, I don't like approving a rule that
19 has known problems in it. That is the reason for
20 my no.

21 CHAIRMAN GARD: Mr. Etzler?

22 MR. ETZLER: Yes.

23 CHAIRMAN GARD: Mr. Davidson?

1 MR. DAVIDSON: No.

2 CHAIRMAN GARD: Mr. Horn?

3 MR. HORN: Yes.

4 CHAIRMAN GARD: Mr. Hillsdon-Smith?

5 MR. HILLSDON-SMITH: Yes.

6 CHAIRMAN GARD: Mr. Bausman?

7 MR. BAUSMAN: Yes.

8 CHAIRMAN GARD: Mr. Clark?

9 MR. CLARK: Yes.

10 CHAIRMAN GARD: Dr. Niemiec?

11 MR. POWDRILL: He left a minute ago.

12 CHAIRMAN GARD: Okay.

13 MR. POWDRILL: I think he'll be back.

14 CHAIRMAN GARD: Chairman Gard, yes.

15 What do we do, Nancy? Do we wait on him,
16 or do we just go ahead with this?

17 MS. KING: You have enough votes, but
18 you certainly can wait, should you so desire.

19 CHAIRMAN GARD: Okay. I think we'll
20 just move on. One, two, three, four -- nine
21 yeses and --

22 (Dr. Niemiec returned.)

23 (Laughter.)

1 CHAIRMAN GARD: We were debating
2 whether to wait for your vote. Since you're
3 here, we're voting on final adoption of the
4 general permit rule.

5 DR. NIEMIEC: I just had an emergency
6 call, but I vote aye.

7 CHAIRMAN GARD: Aye; okay. So, that
8 is ten ayes and two nays, so the rule is finally
9 adopted. Thank you all very much.

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 7-1.1 and 7-4, Sulfur Dioxide Emission
14 Limits.

15 I will now introduce Exhibit E, the
16 preliminarily adopted rules with IDEM's suggested
17 changes incorporated, into the record of the
18 hearing.

19 Susan Bem will present the rule.

20 MS. BEM: My name is Susan Bem, and
21 I'm going to talk about the Sulfur Dioxide
22 Emission Limits rulemaking. It's LSA No. 11-356.

23 This rulemaking adds new requirements for

1 sources located in counties designated by
2 U.S. EPA as nonattainment for the one-hour sulfur
3 dioxide ambient air quality standard that were
4 designated in the August 5th, 2013 Federal
5 Register, based on monitoring data through 2012.
6 Counties with townships designated as
7 nonattainment are Marion, Morgan, Daviess, Pike
8 and Vigo.

9 Federal regulations do not detail the
10 exact emission controls needed to address
11 nonattainment areas. Air quality modeling is
12 used to determine what emission limits are needed
13 to bring the area into compliance with the
14 one-hour sulfur dioxide standard. IDEM used
15 AERMOD, the U.S. EPA accepted model for
16 attainment planning.

17 Some counties, Vigo, Marion and Morgan
18 County, already have sources with emission limits
19 in Article 7 to address the old SO2 standard.
20 These limits will remain effective until the
21 compliance date for the new limits. In the last
22 section of the rule, there's a -- it repeals the
23 current limits once the compliance date for the

1 new limits is in place.

2 IDEM has been working with the sources
3 affected by this rulemaking to develop emission
4 limits that model attainment and reflect the
5 compliance strategy that the sources use to
6 comply. Some of the larger sources, power
7 plants, are affected by other regulations that
8 are driving their control strategies. In Marion
9 and Vigo Counties, many of the sources are able
10 to model attainment using low-sulfur diesel fuel
11 that they are already using or will soon be
12 using.

13 The Mercury and Air Toxics Standards, or
14 MATS rule, is one of the other regulations that
15 affect sources subject to this rule. The Supreme
16 Court issued a decision on the MATS rule last
17 Monday that sends it back to the lower court
18 because U.S. EPA did not address costs before it
19 began crafting regulations when it decided it was
20 appropriate and necessary to regulate toxic
21 emissions from power plants.

22 The standards are left in place and the
23 case was sent back to the D.C. Circuit Court,

1 which will have to decide whether they should
2 remain on the books while U.S. EPA completes the
3 additional analysis required by the Court's
4 decision. They could do this by remanding the
5 rule, keeping it in place while EPA addresses the
6 costs, or they can remand it with vacature. But
7 either way, the limits being proposed today for
8 the final -- for final adoption are separate and
9 will be independently effective.

10 At preliminary adoption in March, there
11 were two sources that IDEM mentioned as needing
12 additional discussion between preliminary
13 adoption and final adoption. Those were
14 Rolls-Royce and Hydraulic Press Brick.

15 IDEM has continued to work with
16 Rolls-Royce to develop a compliance strategy that
17 models attainment with the standard. At
18 preliminary adoption, we identified a compliance
19 strategy that included lowering the jet fuel
20 sulfur content to .95 pounds per million BTU for
21 the test cells at Plant 5 and the gas turbine
22 engines identified as D3 and D4. With this
23 change, the source can operate the test cells

1 without any restriction on operating hours and
2 still model attainment with the standard.

3 So, in the proposed rule for final
4 adoption, all of the Plant 5 test cells will be
5 restricted to the .05 limit, but -- and there
6 will be no need to single out the N6 Plant 5 test
7 cell, and all of the engine test cells at Plant 5
8 will have that same limit of .05, but the Plant 8
9 test cells will remain at the .1 pounds per
10 million BTU as preliminarily adopted.

11 The other source is Hydraulic Press Brick.
12 It's a facility that makes light-weight aggregate
13 products using shale mined on-site and then fired
14 in kilns with coal. There are three kilns
15 on-site. The rule requires that Kiln 3 not
16 operate, and puts in place new sulfur dioxide
17 limits for the other two kilns.

18 Based on ongoing discussion between EPA,
19 the source and IDEM since preliminary adoption,
20 IDEM is now proposing changes to the format of
21 the limits for final adoption. U.S. EPA agrees
22 the compliance strategy for this source is 50
23 percent reduction in emissions, and this is based

1 on what can be achieved using limestone injection
2 during a demonstration test last year.

3 Given the variability of the sulfur
4 content of the shale, it was difficult to
5 determine a numerical limit that represented 50
6 percent control. Therefore, for final adoption,
7 IDEM is proposing that the format of the limit be
8 a percent reduction instead of a numerical pounds
9 per million BTU limit.

10 The rule will still require that the
11 source install and operate a limestone injection
12 system and do sulfur content measurements of both
13 the shale and the coal with periodic stack tests.

14 During the third comment period, IDEM
15 received comments in regards to the attainment
16 strategy within south -- within the southwest
17 area of Indiana. The first concern raised is
18 that IDEM was now proposing limits for the Duke
19 Gibson facility in Gibson County. Based on
20 monitoring data, U.S. EPA did not designate
21 Gibson County as nonattainment in this first
22 round of designations for the one-hour standard,
23 and reductions from the Duke Gibson facility will

1 not be needed to bring the Pike/Daviess
2 nonattainment area into attainment. Therefore,
3 this rulemaking does not include limits for the
4 Duke Gibson facility.

5 The second concern raised is that IDEM
6 adopt lower limits for the IPL Petersburg plant
7 in Pike County to provide an additional cushion
8 against any impacts that the Gibson power plant
9 might have on the Pike/Daviess County
10 nonattainment area. But IDEM addressed these
11 impacts by adding a background concentration to
12 the modeling impacts for the Pike/Daviess
13 nonattainment area.

14 And then there is also another source in
15 Pike County, Hoosier Energy Ratts, that was
16 included in the modeling for Pike County, and it
17 has limits in the proposed rule, but both of
18 these units have been idled and most likely will
19 not operate again due to a consent degree and the
20 MATS rule.

21 Also, at the last Board meeting, there was
22 extensive discussion on the compliance date for
23 the new limits. For preliminary adoption, IDEM

1 had proposed a compliance date of January 1st,
2 2017. Under the Clean Air Act, areas are
3 required to attain the standard within five years
4 after the effective date of being designated
5 nonattainment, which is October 4, 2018. At a
6 minimum, one calendar year of monitoring data
7 with values under the standard is needed to show
8 attainment, and hence, the January 1st, 2017
9 compliance date.

10 The Board had voted on and adopted a
11 compliance date of October 4th, 2017. This is
12 the date that published with the proposed rule in
13 the Indiana Register. IDEM is again suggesting
14 that the Board adopt the compliance date of
15 January 1st, 2017.

16 In the Board packet there is a memo from
17 IDEM's Office of Legal Counsel detailing the
18 rationale for this January 1st, 2017 compliance
19 date. The demonstration of attainment is
20 required by October 2018, so while IDEM can ask
21 for two one-year extensions of this deadline,
22 monitoring data showing attainment is needed for
23 the previous year.

1 As the courts have recently ruled on the
2 2008 ozone standard, if the attainment deadline
3 falls within the calendar year, then the data
4 from the entire year cannot be used in the
5 calculation. And all of this is presented in the
6 Office of Legal Counsel memo in your Board
7 packet, and U.S. EPA has reviewed the memo and
8 has concurred with it. U.S. EPA wrote guidance
9 based on what they would be able to approve in
10 the attainment SIP's that the states will submit
11 to EPA for SIP approval.

12 In the -- as soon as this rule publishes
13 in the Indiana Register as a final effective
14 rule, about three to three and a half months from
15 now, IDEM will submit the rule along with the
16 attainment demonstration to U.S. EPA for SIP
17 approval. In the interim, IDEM will put the
18 attainment documents, which include the
19 attainment strategy for each source, out on
20 public notice.

21 The Department recommends that the Board
22 final adopt the proposed rule with IDEM's
23 suggested changes as presented.

1 Thank you. Any questions?

2 CHAIRMAN GARD: Are there ques --

3 Yes, Dr. Alexandrovich.

4 DR. ALEXANDROVICH: When do you
5 expect those things to be posted, the attainment
6 demonstrations for each source?

7 MS. BEM: Well, after the Board
8 meeting and we know exactly that what we proposed
9 for emission limits are what -- are the emission
10 limits we're going to move forward with, along
11 with all of the modeling that the technical staff
12 have been working on, we will put them out for a
13 30-day public comment period and opportunity for
14 a public hearing. Most likely that will be
15 posted -- probably not for a month. Maybe
16 mid-August --

17 DR. ALEXANDROVICH: Okay.

18 MS. BEM: -- would be a good
19 estimate.

20 CHAIRMAN GARD: Yes, Gary.

21 MR. POWDRILL: I'm just confused with
22 these two lists. In Section 3 you have a list
23 that says the emission units located in Marion

1 County should comply with sulfur dioxide emission
2 limits as follows, and you list them all, and
3 then a map is on page 7 -- or I mean page 3
4 of 20, and then Section 4 basically says the same
5 thing and starts another list, and the one that
6 caught my eye basically was Citizens Thermal is
7 in both lists with different numbers, and didn't
8 Citizens Thermal go to gas?

9 MS. BEM: Well, Section 3 is -- are
10 the current limits that are on the books now that
11 will stay in effect until the new compliance date
12 of January 1st, 2017, and then when -- oh, you
13 know, in terms of the SIP limits, we're not
14 requiring, as a compliance strategy, those
15 natural-gas-based limits.

16 MR. POWDRILL: So, Section --
17 Section 3 is the limits up until --

18 MS. BEM: Yes.

19 MR. POWDRILL: -- January 1st of '17.

20 MS. BEM: And then those will be
21 repealed at that time.

22 MR. POWDRILL: And Section 4 is the
23 limits after January 1st?

1 MS. BEM: Correct.

2 MR. POWDRILL: Okay. Okay. Thank
3 you.

4 CHAIRMAN GARD: Are there other
5 questions?

6 Yes, Kelly.

7 MR. CARMICHAEL: I appreciate IDEM
8 taking the Board recommendation to go back to EPA
9 and discuss this timing issue, in particular with
10 the reliability concerns. Did EPA opine on
11 resolution if there is an electrical liability
12 issue that arises as a result of complying with
13 the rule?

14 MS. BEM: No. I mean they focused on
15 what date they would be able to, you know, SIP
16 approve. If there's issues in the future on
17 electrical reliability, you know, that didn't
18 affect their decision on what they felt should be
19 the required date for compliance.

20 MR. CARMICHAEL: Well, I think it's
21 important to note to the Board that what's in
22 front of us here creates an issue where Duke
23 can't assure reliability, and that's coming from

1 the Midcontinent Independent System Operator, who
2 says that the Duke plant must be available in the
3 event that there's reliability issues in the
4 Terre Haute area.

5 So, it forces Duke into an issue where
6 they can choose to not comply with the rule in
7 front of us and keep the lights on, or comply
8 with the rule in front of us and create a grid
9 reliability issue. And without resolution -- I
10 assume perhaps Mr. Weiss is going to speak, so we
11 can have some more discussion, but I don't know.
12 What's the answer?

13 COMM. EASTERLY: The answer is if
14 that becomes an issue, they can come in and get a
15 variance or another administrative document, and
16 then the air quality in Terre Haute likely will
17 not meet the standard, and that part of the state
18 will still be nonattainment, and it'll trigger --
19 all that process means is it will remain
20 nonattainment for probably about five more years
21 before the best-case process happens. So, there
22 are ways to deal with people that can't comply
23 with the SIP. We unfortunately have that issue

1 all of the time.

2 MR. CARMICHAEL: So, reliability,
3 then, would trump --

4 COMM. EASTERLY: At the end of the
5 day, yes, but we would expect them to do their
6 best to try not to have that problem, but if they
7 have it --

8 MR. CARMICHAEL: You would --

9 COMM. EASTERLY: Yes, reliability --
10 people need reliable and obviously affordable
11 electricity. There's no question about that.

12 MR. RULON: Who defines "affordable,"
13 Tom?

14 COMM. EASTERLY: The IURC.

15 (Laughter.)

16 COMM. EASTERLY: I agree with you.
17 The EPA and I have had this discussion and have
18 had it with the FERC, too, but it is what it is.

19 MR. POWDRILL: But that puts the
20 whole area of Vigo County at risk of economic
21 development, because Duke has to get that piece
22 of paper from you to maintain reliability;
23 correct?

1 COMM. EASTERLY: No, their risk for
2 economic development will be if we can't
3 demonstrate a year of good data by the end
4 of 2017, and that gets back to how far off is
5 Duke and how much additional emissions do they
6 need to make that actually show up at the
7 monitors?

8 DR. ALEXANDROVICH: And is that all
9 of Vigo County, or just --

10 COMM. EASTERLY: It's a small -- it's
11 some township.

12 MS. BEM: It's just the township
13 that's in nonattainment.

14 CHAIRMAN GARD: Other questions?

15 (No response.)

16 CHAIRMAN GARD: Are you -- are you
17 through?

18 MS. BEM: Uh-huh, yes.

19 CHAIRMAN GARD: We have some people
20 that want to speak to this.

21 Bowden Quinn.

22 MR. QUINN: Thank you, Madam Chair,
23 member of the Board. I'm Bowden Quinn, I'm

1 Chapter Director for the Sierra Club Hoosier
2 Chapter, and for this rule I'm also speaking on
3 behalf of the National Sierra Club Local Chapter.
4 The State Chapter is around 8,000 members, and
5 nationwide, we have over two million members and
6 supporters.

7 Sierra Club appreciates the hard work that
8 IDEM has put into this rule. It's a difficult
9 rulemaking, and to start off, we do support
10 IDEM's suggested change to move the compliance
11 date back to January 1st, 2017. We agree that
12 EPA would not be able to approve the rule with
13 the later date.

14 But we think that this is a missed
15 opportunity; that more could have -- should be
16 done to protect people from the sulfur dioxide
17 emissions. And let's keep in mind, this is a
18 health rule. This is a rule to protect people.
19 There is no dispute that high sulfur dioxide
20 levels harm people's health. They cause
21 respiratory problems. They cause asthma attacks.
22 There's even links to cardiovascular problems.

23 And studies have shown that these health

1 impacts can happen by brief exposures, even as
2 short as five minutes, and we know that there
3 is -- there are high sulfur dioxide levels around
4 the Duke Gibson generating plant. IDEM's own
5 data shows that.

6 You can look at the response to comments
7 that there -- that the issue is this Gibson
8 Coal -- Coal Road monitor, which, over a
9 three-year period, has shown the average just,
10 you know, fairly close to the required 75 parts
11 per billion, which is the standard. Over a
12 three-year period, I believe, the average was 72
13 parts per billion. But IDEM's own documents
14 shows a map that shows that there are higher
15 levels around that monitor, and that those levels
16 can fluctuate depending upon meteorological
17 conditions.

18 Now, just across the road from that
19 monitoring station there is a small community
20 called East Mount Carmel, and these people have
21 already been put at risk, their health put at
22 risk, by that generating plant, because their
23 well water was contaminated by coal ash,

1 migration of coal ash pollutants, until finally
2 that was found, and now Duke is supplying their
3 water, but we don't know how long their health
4 was at risk from these pollutants in the ground
5 water.

6 And now, we also know that their health is
7 potentially at risk from high sulfur dioxide, and
8 this rule would provide the opportunity to have
9 lower limits for that plant and protect those
10 people.

11 I will now read from the prepared comments
12 from National Sierra Club. There are two
13 fundamental problems with IDEM's approach to the
14 Gibson generating facility in this rulemaking.
15 First, use of the Gibson Coal Road monitor to
16 designate Gibson County as unclassifiable, when
17 IDEM had originally and correctly designated a
18 part of the County as nonattainment, is not
19 appropriate, because that monitor does not appear
20 to be a source oriented -- to be source oriented
21 to best capture sulfur dioxide impacts.

22 The modeling of actual hourly emissions
23 showed the Gibson Coal Road monitor is not

1 located where Duke Gibson has its highest
2 impacts. In fact, the monitor is located where
3 no ambient standard exceedences were predicted to
4 occur. As shown in Sierra Club's written
5 comments on the proposed rule, Gibson coal road
6 monitor is located in a doughnut hole, where
7 Sierra Club's modeling show no violations of the
8 standards when modeling actual Duke Gibson hourly
9 emissions.

10 Outside that doughnut hole, as I said, and
11 as IDEM's map shows, there are higher levels of
12 sulfur dioxide and our modeling shows these are
13 serious violations of the standards over a broad
14 area in Gibson County. Because the monitor does
15 not appear to properly capture emissions from the
16 Gibson plant, IDEM should reconsider its decision
17 to rely on this monitor to classify the entire
18 county.

19 CHAIRMAN GARD: Bowden, are you -- is
20 this about it with that statement? Because
21 you're a little over your five minutes.

22 MR. QUINN: Yeah, if I could just say
23 that we also believe that the Duke Gibson

1 emissions should be lowered because of its impact
2 on Pike and Daviess Counties as well and their
3 known exceedences.

4 CHAIRMAN GARD: Okay.

5 Are there any questions for Bowden?

6 (No response.)

7 CHAIRMAN GARD: Thank you.

8 MR. QUINN: Thank you.

9 CHAIRMAN GARD: Vicki Wright.

10 And I do want to remind presenters we're
11 trying to keep to -- close to five minutes.

12 MS. WRIGHT: Trust me, I will. Good
13 afternoon, Madam Chairwoman and members of the
14 Board. Very briefly, I am Vicki Wright. I
15 represent Hydraulic Press Brick, one of the
16 sources that Susan spoke about.

17 We very much support this final amendment
18 being adopted and would appreciate it happening
19 hopefully today, because we hope to move forward
20 in working towards meeting the goals that are set
21 forth, and I want to especially thank IDEM's
22 staff for their efforts here. It was a huge
23 undertaking for this particular source to come up

1 with a solution that works for them to stay as a
2 viable business in Indiana. I think we've
3 achieved that, and would appreciate adoption.
4 Again, thank you to the staff for taking the
5 little business into consideration.

6 That's all I have.

7 CHAIRMAN GARD: Are there questions
8 for Ms. Wright?

9 (No response.)

10 CHAIRMAN GARD: Thank you.

11 Dan Weiss.

12 MR. WEISS: Good afternoon, Madam
13 Chair and fellow Board members. My name is Dan
14 Weiss. I'm the Director of State Environmental
15 and Energy Affairs for Duke Energy, Indiana.
16 Duke Energy, Indiana generates and transmits
17 electricity to over 800,000 customers in 69
18 counties, and has a coal-fired electric
19 generating unit that is impacted by this rule.

20 My comments today will be directed at our
21 company's ongoing concern with the January 1st,
22 2017 compliance date proposed in the amendments
23 to Rules 326 IAC 7 concerning sulfur dioxide

1 emission limitations for our Wabash River
2 generating station in Vigo County outside of
3 Terre Haute.

4 First, let me express our thanks to the
5 Board for its recognition of this important issue
6 and its past efforts to develop a workable
7 solution to address our concerns and those raised
8 by other impacted sources. As we testified in
9 March at preliminary adoption and in our May
10 comments, and in subsequent discussions with IDEM
11 staff, the company is vigorously pursuing a range
12 of alternatives to bring the Wabash River site
13 into SO2 attainment while also balancing the
14 impact of our customers' rates and the need for
15 reliable and safe energy.

16 While our issues with this rulemaking have
17 been summarized in the response to comments
18 before you, I might just take a minute to review
19 some of those issues. The Wabash River
20 generating station received a one-year extension
21 to the April 16th, 2015 mercury and air toxics
22 rule compliance deadline so that we could
23 continue operations until April 16th, 2016.

1 Notwithstanding the one-year extension,
2 the Midcontinent Independent System Operator,
3 better known as MISO, the organization that's
4 responsible for the operation of the grid in the
5 midwest, found that Unit 6 -- that's what we call
6 one of the units there -- is an essential unit to
7 support the electric transmission grid in the
8 local Terre Haute area.

9 MISO's study of the electric grid found
10 the a new high-voltage transmission line could be
11 constructed to resolve the transmission
12 reliability issues and relieve Unit 6 of its
13 essential status. However, at this point, the
14 transmission line project is on hold subject to
15 various legal challenges before the presiding
16 judge. It is not known at this time what impact
17 the court's schedule will have on the ultimate
18 completion date of the line.

19 Construction of the transmission line did
20 not start by our deadline of July 1st, so
21 finishing the construction by June 1st of 2016 is
22 now in question, as well as us being able to
23 address MISO's grid reliability issues.

1 Furthermore, Unit 6 is incapable of
2 complying with this very stringent proposed SO2
3 limit in this rule while burning coal, and
4 conversion of the unit to natural gas could not
5 be completed in the time frame allowed.

6 Therefore, with IDEM setting the
7 January 1st, 2017 date as the compliance deadline
8 for this rule, it further limits our options at
9 Duke Energy, as well as MISO, if we are required
10 to extend operation of Unit 6 to continue to
11 resolve the transmission line construction
12 issues.

13 So, just in conclusion, again, we welcome
14 the opportunity to provide these updated comments
15 and to continue the discussions of various
16 options with the state, and to address these
17 ongoing important issues.

18 Thank you.

19 CHAIRMAN GARD: Dan, let me ask you
20 this: I mean do you think you're anywhere close
21 with working out an equitable solution both with
22 the state and --

23 MR. WEISS: On the --

1 CHAIRMAN GARD: The compliance date.

2 MR. WEISS: -- construction? Oh, the
3 compliance date? I think IDEM and EPA have
4 spoken. They are not going to budge on the
5 January 1st, 2017 date. We still have a
6 difference of opinion legally, and that applied
7 to an ozone standard just as an SO2 standard, so I
8 think there's some legal merit to a challenge to
9 that, but I think that time has passed, so I
10 think we're -- I think we're being forced to look
11 at the 2017 date at this time.

12 CHAIRMAN GARD: Okay.

13 Yes, Dr. Alexandrovich.

14 DR. ALEXANDROVICH: Do you think you
15 can comply by October 2017?

16 MR. WEISS: Well, we would certainly
17 hope so. It's really up to litigation at this
18 point. The Commissioner identified some options,
19 and we're pursuing every option that we can
20 pursue. A lot of these things are outside our
21 control, though. It's going to be up to the
22 local judge, and we don't usually discuss ongoing
23 litigation, but that will be a factor in

1 discussions, as well as working with MISO.

2 Since we missed the construction deadline,
3 we'll have to go back to MISO now. I'm sure
4 they'll want to restudy the issue just to verify,
5 you know, concerns, and then they'll come out
6 with a new report, which we'll have to wait to
7 see what the results are.

8 But we may need to go to EPA with MISO and
9 ask for another one-year extension. One has not
10 been granted, to our knowledge, so far. There is
11 one second-year extension that's in the pipeline,
12 but it has not been acted on, and --

13 COMM. EASTERLY: Let me clarify,
14 those are mercury extensions --

15 MR. WEISS: Mercury extensions.

16 COMM. EASTERLY: -- they're not SO2
17 extensions.

18 MR. WEISS: No. Yeah. We -- that
19 would only allow us to get past April of '16, but
20 we still obviously have to deal with the 2017
21 date. So, we're pursuing those kinds of options,
22 and that's where we're at at this point.

23 MR. RULON: Just a little

1 clarification, if I could. So, the -- you
2 proposed to solve the problem with the
3 transmission line that's been solved in the
4 courts, I presume, by similar parties who were
5 opposing you on the carbon dioxide -- the sulfur
6 dioxide; right?

7 MR. WEISS: No, it's a local easement
8 issue, basically.

9 MR. RULON: Okay.

10 MR. WEISS: Yeah, we have a 12-mile
11 transmission line that we need to build, and six
12 miles of that are being contested by landowners,
13 so we're dealing with that situation.

14 MR. RULON: Okay.

15 MR. CARMICHAEL: Would a state-issued
16 variance protect you, or protect you, from EPA
17 enforcement?

18 COMM. EASTERLY: We would have to get
19 it approved as a SIP revision, I believe.

20 MR. CARMICHAEL: How long does that
21 take?

22 COMM. EASTERLY: What really happens
23 is if they're not adamantly opposed to it, it

1 just sort of sits there until it -- the time runs
2 out.

3 MR. CARMICHAEL: If EPA isn't --

4 COMM. EASTERLY: Yes.

5 MR. CARMICHAEL: Okay.

6 COMM. EASTERLY: I mean they could do
7 it, but they usually don't get them done quickly.

8 MR. CARMICHAEL: And can you talk a
9 little bit about the state sanctions -- or the
10 EPA sanctions on the state?

11 COMM. EASTERLY: Yeah. So, once EPA
12 makes a failure to submit an approvable SIP
13 finding, that starts a clock, and I think it's 18
14 months later, one of two things happens: Highway
15 funding or enhanced new source review offsets.
16 And then six months later, the other one kicks
17 in, and then -- this has never gone this far, so
18 we don't really know.

19 They -- the EPA threatens that while the
20 issue could be in a small area like Vigo County,
21 the sanctions could apply statewide, particularly
22 the highway funding sanction, but it's never
23 happened, so we really don't know.

1 And also at that time, by law -- but they
2 haven't succeeded at this anywhere in the country
3 either -- the EPA FIP would go into effect, and
4 then they would be in violation of the FIP
5 instead of the SIP. I mean I'm not sure -- I
6 can't give you a good answer because it's never
7 happened, Kelly. I mean, you know, the process
8 is there, but it hasn't ever gone through.

9 MR. CARMICHAEL: Has it been
10 challenged. I mean has it gone and EPA didn't
11 actually implement the sanctions, but it got to
12 the point where --

13 COMM. EASTERLY: And then --

14 MR. CARMICHAEL: -- the clock had
15 expired?

16 COMM. EASTERLY: Yes, in California,
17 and then environmental groups filed suits to
18 require EPA to take action. They settled those
19 suits with a date to take action, and then
20 usually somebody caves during the process. But
21 that would give more time, I mean as a practical
22 matter.

23 DR. ALEXANDROVICH: Tom, so, I think

1 you answered one of my questions. Those
2 two-to-one offsets for -- in NSR, would that just
3 apply to the nonattainment area of the state, and
4 then how long would that apply; forever, or until
5 we were back in attainment?

6 COMM. EASTERLY: Until it's cured,
7 so, until we had an approved SIP, which would --
8 in this case, since we blew through the date,
9 would have to actually get us to attainment, I
10 believe. We'd probably really have to be in
11 attainment, we believe, but nobody's tested this
12 entirely. It should only apply in the
13 nonattainment area, so it would be a relatively
14 small area around that plant.

15 CHAIRMAN GARD: Any other questions
16 for Mr. Weiss?

17 (No response.)

18 MR. WEISS: Thank you.

19 CHAIRMAN GARD: Thank you.

20 I don't have any other sign-up cards.

21 Does anybody in the audience want to speak?

22 Yes.

23 MR. BAUGUES: I'm Keith Baugues,

1 Assistant Commissioner for the Office of Air
2 Quality.

3 I'd like to clarify some of the comments
4 by Bowden Quinn. This rulemaking for SO2 is
5 really based on monitored violations of SO2.
6 Modeled violations did not count, so there are
7 actually four -- there were four SO2 monitors at
8 Gibson, so it was not just one Coal Road monitor.
9 There were four that showed attainment, so that's
10 why it isn't in this proceedings.

11 However, Sierra Club sued EPA, and we have
12 been required to look at five coal-fired power
13 plants by this September and address whether
14 those are in attainment or not, so Gibson County
15 is in that proceeding. So, it really does not
16 need to be part of this rulemaking. It's another
17 action that we will be taking in a few months, so
18 it -- in no way does it need to be part of this
19 action at all. It has its own separate track
20 that we're addressing.

21 Thank you.

22 CHAIRMAN GARD: Uh-huh.

23 MR. BAUGUES: Any questions?

1 CHAIRMAN GARD: Thank you.

2 Any questions?

3 MR. RULON: Do you believe the
4 plant's in -- I mean do you believe that it --
5 what the Sierra Club is saying? Do you believe
6 that you put the monitors in the wrong place on
7 purpose?

8 MR. WEISS: We just put out --

9 (Laughter.)

10 MR. RULON: That's what it says.

11 MR. WEISS: EPA approved where the
12 monitors were. I do not believe they're in the
13 wrong place. We just put out an 85-page study
14 that shows the model that's used for these
15 monitor -- to compare with the monitors
16 overpredicts by more than a factor of two or
17 three.

18 So, yeah, I could run a model and I could
19 show you problems. I do not believe those are
20 real, and that's based on real data from that
21 facility, monitoring and modeling, modeling
22 actual hour-by-hour emissions. So, yeah, we can
23 run the model, we can make up numbers, but I

1 don't believe there's a real problem there.

2 MR. RULON: Thank you.

3 MR. WEISS: Thanks.

4 CHAIRMAN GARD: Any other questions?

5 (No response.)

6 CHAIRMAN GARD: Thank you.

7 Any other comments from anybody in the
8 audience?

9 (No response.)

10 CHAIRMAN GARD: If not, this hearing
11 is concluded. The Board will now consider final
12 adoption of amendments to the Sulfur Dioxide
13 Emission Limits Rules in 326 IAC 7-1.1 and 7-4.
14 Further Board discussion?

15 (No response.)

16 CHAIRMAN GARD: If not --

17 DR. ALEXANDROVICH: I do.

18 CHAIRMAN GARD: Yes.

19 DR. ALEXANDROVICH: I've looked at
20 this and the memo and the guidance, and I kind of
21 disagree with the memo from IDEM, because it says
22 while EPA may exercise judgment concerning the
23 approval of SIP's with varying compliance dates

1 for source emissions reductions, affected
2 agencies should be aware that EPA would not be
3 able to make a determination of attainment.

4 So, that has nothing to do with SIP
5 approval. On EPA's Web site, Larry Wallace of
6 EPA says, and I quote, and I can tell you where
7 it was on there, EPA may be able to approve the
8 SIP if control measures can be operated by the
9 attainment date. So, in other words, if there
10 were attainment dates of October 4th, 2018 --
11 yeah, I think that's the right one -- they could
12 approve it.

13 And also, looking at the way the rule is,
14 there's an attainment compliance date for each
15 county. Why could we not maybe add some
16 flexibility there where there are known issues,
17 while we get the majority of the sources that can
18 change their fuel mix and get all of the things
19 done that need to get done by the compliance
20 date?

21 But maybe we can work in the flexibility
22 there rather than having to rely on a variance,
23 because that compliance date is there for each

1 individual county, and then you have the sources
2 coming to the counties. So, why can't you have a
3 compliance date for the source?

4 And quite frankly, EPA knows for years
5 they've had these disaligned date requirements,
6 you need to get your compliance by this date and
7 attainment by this date, and they don't match.
8 And, you know, I think in the case for Duke, at
9 least, you know, we're talking about EPA and
10 approvable between reality and achievable.

11 So, I really feel strongly that we should
12 try to consider some other way to -- to change
13 the compliance date where the compliance date can
14 be met with due diligence.

15 CHAIRMAN GARD: Commissioner, do you
16 know?

17 COMM. EASTERLY: I'm not sure. Well,
18 do -- can we send in a bifurcated SIP? Because
19 they aren't going to approve the other part, so
20 could we really just send in a SIP for the other
21 counties? Yeah. So, then this county would roll
22 into the nonattainment. Now, you're saying that
23 they said they could approve it.

1 Dan's first problem, and which he alluded
2 to, is: Even if he gets the second MACT
3 extension for the mercury MACT, which will get
4 him -- which has never been granted -- that will
5 get him to April of 2016 -- '16? '17.

6 MR. WEISS: 2017.

7 COMM. EASTERLY: I'm sorry; 2017.
8 So, there's no legal -- and that actually is a
9 compliance agreement that says you're in
10 violation; right?

11 MR. WEISS: Uh-huh.

12 COMM. EASTERLY: So, there's no legal
13 way for them to be in compliance and get to --
14 even past that date. They're going to be out of
15 compliance somewhere, and I think that would all
16 wrap into a federal consent decree. That's what
17 usually happens.

18 And at the same time, if they cannot
19 approve the SIP there, you're subjecting all --
20 well, there's not that many people in that part
21 of the county, but you're subjecting those people
22 to the nonattainment problem for a while.

23 DR. ALEXANDROVICH: But EPA's own

1 guidance says they can approve a SIP even if the
2 dates are not Octo -- January 1st, 2017. That's
3 highly recommended, and I get it, and I've looked
4 at the SO2 data to see, you know, if that four
5 months would be a seasonal thing, and it's not,
6 but there -- I mean read the guidance, listen to
7 their video on the --

8 MR. BAUGUES: But ask EPA. That is
9 not what they tell us. I don't care --

10 DR. ALEXANDROVICH: That's --

11 MR. BAUGUES: -- what it says on
12 their --

13 DR. ALEXANDROVICH: -- Region V?

14 MR. BAUGUES: Yes.

15 DR. ALEXANDROVICH: Okay.

16 COMM. EASTERLY: Who will turn down
17 our SIP.

18 DR. ALEXANDROVICH: They're not --

19 COMM. EASTERLY: If you go to
20 Washington, they say the SIP decisions are made
21 in the regions.

22 DR. ALEXANDROVICH: Well --

23 COMM. EASTERLY: And when you push

1 really hard, they say, "Tom, this is a one-voice
2 EPA answer. The answer's no." And then you
3 litigate, and then it's ten years later.

4 MR. CARMICHAEL: This is a very bad
5 position in that it's the heavy hand of EPA, and
6 they have a lot of power. You know, they can
7 pull Indiana's hide away from us.

8 CHAIRMAN GARD: So, Kelly, do you
9 have a suggestion of how we deal with this?
10 You're the expert on the Board.

11 (Laughter.)

12 MR. CARMICHAEL: You sound like my
13 boss. Dealing with EPA, you know, it's a
14 dangerous game of chicken, I mean with EPA. They
15 haven't done it before, but by not approving the
16 SIP, we're giving EPA the authority to impose
17 some very severe sanctions on the State of
18 Indiana. By approving it, we're hoping that this
19 can all get worked out, either through vari --
20 either the reliability concern doesn't arise, or
21 that a variance for Duke is issued and everybody
22 comes to the table and understands that we can't
23 turn the lights out.

1 CHAIRMAN GARD: Well, which is the
2 lesser of the two evils?

3 MR. CARMICHAEL: I don't know. I --
4 in my opinion, we can't put the state in that
5 much risk in terms of sanctions.

6 CHAIRMAN GARD: So, you're saying
7 just go with the proposed rule?

8 MR. CARMICHAEL: And hope that the
9 reliability issues don't arise or they get worked
10 out in time, with all of the parties.

11 MR. DAVIDSON: Can the variance be
12 asked for before a reliability issue presents
13 itself? Can that be requested, based on certain
14 conditions?

15 COMM. EASTERLY: They would have to
16 make representations that this is what's going to
17 happen, and yes, then we could attempt to
18 evaluate that and say, "This makes sense to us,"
19 and send it in as a SIP revision, which probably
20 won't be acted on, but at least it's the process,
21 the legal process.

22 MR. CARMICHAEL: This issue has
23 arisen once before. This has happened out on the

1 East Coast, where a utility had -- in their
2 office in the moment, a very hot day -- had EPA,
3 and I believe at the time, FERC. And EPA says,
4 "If you run, you're out of compliance, and we
5 will enforce," and FERC said, "If you don't run,
6 we're going to enforce against you." In the
7 moment.

8 MR. RULON: And just what is FERC?

9 MR. CARMICHAEL: Pardon?

10 MR. RULON: What is --

11 MR. CARMICHAEL: I'm sorry. The
12 Federal Energy Regulatory Commission. You have
13 two federal agencies telling the utility the
14 exact opposite, that "you are -- you will be in
15 violation if you do," and "you'll be in violation
16 if you don't."

17 CHAIRMAN GARD: Gary, did you --

18 MR. POWDRILL: Tom, I think -- well,
19 he asked about the variance, and the variance for
20 SO2 is only going to buy them four months, isn't
21 it, because then the mercury --

22 COMM. EASTERLY: No, well, the
23 mercury --

1 MR. POWDRILL: The variance --

2 COMM. EASTERLY: Well, okay. You're
3 right, yes.

4 MR. RULON: It only buys them four
5 months.

6 COMM. EASTERLY: Yeah. So, they're
7 already going to be in some kind -- if they have
8 to operate that long, some kind of consent degree
9 with EPA that goes beyond the MACT extension and
10 a second extension. And so, none of us know what
11 that looks like with EPA, because it's not
12 happened.

13 DR. ALEXANDROVICH: I have another
14 question about the sanctions. Are we talking
15 non-SIP approved sanctions or nonattainment
16 sanctions? Are they the same? Which is worse?

17 COMM. EASTERLY: No, they're --

18 DR. ALEXANDROVICH: Because first
19 they don't approve the SIP, and then if we don't
20 meet the standard --

21 COMM. EASTERLY: Then they'll say the
22 SIP doesn't meet the requirements, which -- and
23 the ultimate underlying requirement is you must

1 attain the standard -- well, actually it says as
2 expeditiously as practicable, but no later than
3 that date that we wound up at, the 2017 October
4 date. And expeditiously as practicable,
5 unfortunately, is one of those nondefined terms.
6 And clearly for the other areas, nobody's raised
7 evidence that January of 2017 is not as
8 expeditiously as practicable.

9 MR. CARMICHAEL: When do we have to
10 adopt? Is it -- to stay on schedule.

11 DR. ALEXANDROVICH: Pretty fast.

12 COMM. EASTERLY: I don't know. And
13 I'm really torn, because I won't be here when we
14 send it in, but --

15 (Laughter.)

16 MR. DELONEY: It was the April date.

17 COMM. EASTERLY: Okay. Scott knows.
18 What?

19 MR. DELONEY: This past -- April of
20 the past year.

21 COMM. EASTERLY: We were supposed to
22 send it in by?

23 MR. DELONEY: Yes.

1 COMM. EASTERLY: So, we're already in
2 the ticking time crunch.

3 CHAIRMAN GARD: Well, first of all,
4 do I have a motion to adopt IDEM's suggested
5 changes?

6 MR. HORN: So moved.

7 CHAIRMAN GARD: Is there a second?

8 MR. POWDRILL: Second.

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

11 MR. HORN: Aye.

12 DR. NIEMIEC: Aye.

13 MR. ETZLER: Aye.

14 MR. CARMICHAEL: Aye.

15 DR. ALEXANDROVICH: Aye.

16 MR. BAUSMAN: Aye.

17 MR. POWDRILL: Aye.

18 MR. CLARK: Aye.

19 MR. METTLER: Aye.

20 MR. DAVIDSON: Aye.

21 MR. HILLSDON-SMITH: Aye.

22 CHAIRMAN GARD: Aye.

23 Opposed, nay.

1 MR. RULON: Aye -- nay.

2 CHAIRMAN GARD: Okay. Changes are
3 approved. Now we need to make a motion on
4 adopting the final -- the rule as amended, and is
5 there a motion?

6 MR. CARMICHAEL: So moved.

7 CHAIRMAN GARD: Is there a --

8 MR. ETZLER: Second, reluctantly.

9 CHAIRMAN GARD: Is there any further
10 Board discussion?

11 (No response.)

12 CHAIRMAN GARD: This is really
13 disturbing to me. It really is.

14 COMM. EASTERLY: Us, too.

15 CHAIRMAN GARD: I wish there was
16 something we could send EPA, a strong, strong
17 message, without jeopardizing, you know, the
18 people of Indiana, and unfortunately I think they
19 manipulate this thing so that it's not possible.

20 COMM. EASTERLY: The only thing that
21 will work is an election, and there's not one
22 between now and then.

23 CHAIRMAN GARD: Yeah, unfortunately.

1 Okay.

2 MR. DAVIDSON: Well stated, too.
3 It's the people, not just Duke, that suffer.

4 CHAIRMAN GARD: Oh, no, I mean it's
5 everybody, yes.

6 MR. DAVIDSON: That's right.

7 MR. CARMICHAEL: Especially if the
8 lights go out.

9 CHAIRMAN GARD: Uh-huh.

10 Mr. Rulon?

11 MR. RULON: No. I -- you know, I'm
12 just a farmer, and this really is a position that
13 nobody should have to be put in.

14 CHAIRMAN GARD: That's right.

15 MR. RULON: And so, my -- you know, I
16 was going to ask for Gary and Bill, who have been
17 on these committees for a long time. I've been
18 on a state committee for 16 months now, and I'd
19 like to know what they think before I vote. Can
20 I ask -- can I poll them for their opinions?

21 CHAIRMAN GARD: If they want to give
22 an opinion.

23 MR. POWDRILL: I guess I've not been

1 involved in air problems before, because I was on
2 the Water Board, and so it never came up where we
3 had a "Do it now or the state is going to get
4 sanctioned to the extent that it's going to be an
5 economic hardship on all of the people of the
6 state," and so I'm really -- I'm in the same --
7 I'm in new territory as much as you are.

8 MR. ETZLER: And I come at it from a
9 different perspective, because I'm putting this
10 box in a different realm. It's -- we need to
11 protect the health and well being of our
12 citizens, and we do that at the expense of
13 running the risk that we're going to create a
14 hardship for business, but they -- they have to
15 work through that.

16 The other side of it is that if we don't
17 approve it, then it's -- it's not just that
18 segment of our society that's impacted, but we
19 impact the entire state, because I'm going to
20 tell you that EPA would probably come after our
21 entire funding mechanism if we didn't pass this
22 and at least present it to them.

23 You know, and there's still no guarantee

1 that EPA's going to approve it after it gets
2 submitted. You know, we're just at the beginning
3 stages of this process. They could very well
4 throw it back at us.

5 CHAIRMAN GARD: And let me give you a
6 little different example, but it still speaks to
7 the long arm of the EPA. I mean there are any
8 number of things that, when I was in the General
9 Assembly, they told us we had to do that we
10 didn't want to do; we didn't think it was in the
11 best interest of the people of the state.

12 But then they come back at you and say,
13 "Well, we're going to remove IDEM's authority
14 to -- to be the agency that permit -- issues
15 those permits. They're going to revert back, and
16 Region V's going to take the authority for that
17 program."

18 So, I mean in my opinion, this is all --
19 this is all designed at EPA to put you in this
20 position that you don't have any choice.

21 MR. RULON: All right. So, are you
22 calling the question again?

23 CHAIRMAN GARD: Yes. Mr. Rulon?

1 MR. RULON: The one thing about this
2 rule is no lights. The solar panels that power
3 our farm date back to four years, so that's
4 really a nice thing to help us. But a long time
5 ago, my grandfather said, "If somebody tells you
6 you have to do something, you don't have to do
7 it," so I'm going to vote no.

8 CHAIRMAN GARD: Okay.

9 Dr. Alexandrovich?

10 DR. ALEXANDROVICH: Well, yeah, I'm a
11 little ticked off at the EPA about these
12 compliance dates and -- and everything, but Bill,
13 you convinced me that we really need to get it
14 done. It's been an incredible amount of work,
15 and I think what IDEM has told us, that they
16 already shared all of the modeling and everything
17 and that they should approve it if we don't
18 change that date. So, I hope I'm voting
19 correctly, and I'll vote yes.

20 CHAIRMAN GARD: Mr. Carmichael?

21 MR. CARMICHAEL: I vote yes, and
22 recommend that this get turned over to the
23 Attorney General.

1 CHAIRMAN GARD: Okay.

2 Mr. Powdrill?

3 MR. POWDRILL: Yes, and I agree with
4 Kelly.

5 CHAIRMAN GARD: Mr. Etzler?

6 MR. ETZLER: A reluctant yes.

7 CHAIRMAN GARD: Mr. Davidson?

8 MR. DAVIDSON: Yes.

9 CHAIRMAN GARD: Mr. Horn?

10 MR. HORN: Yes.

11 CHAIRMAN GARD: Mr. Hillsdon-Smith?

12 MR. HILLSDON-SMITH: Yes.

13 CHAIRMAN GARD: Mr. Bausman?

14 MR. BAUSMAN: Yes.

15 CHAIRMAN GARD: Mr. Clark?

16 MR. CLARK: Yes.

17 CHAIRMAN GARD: Dr. Niemiec?

18 DR. NIEMIEC: Yes.

19 CHAIRMAN GARD: The Chair votes aye.

20 Eleven yes, one no, so the rule is finally

21 adopted.

22 Okay. This is a public hearing before the

23 Environmental Rules Board of the State of Indiana

1 concerning final adoption of new rules at
2 327 IAC 20, Satellite Manure Storage Structures.

3 I will now introduce Exhibit F, the
4 preliminarily adopted rules with IDEM's suggested
5 changes incorporated, into the record of the
6 hearing.

7 Lauren Aguilar will present the rule.

8 MS. AGUILAR: Chair Gard, members of
9 the Board, my name is Lauren Aguilar. I'm here
10 on behalf of IDEM.

11 I hope to be brief on this long-running
12 meeting, but Indiana statute requires approval
13 from IDEM before a satellite manure storage
14 structure may be constructed or manure capacity
15 expanded. Further, state statute defines what a
16 satellite manure storage structure is. It is a
17 building, lagoon, pad, pit, pond or tank that is
18 not located at a livestock or poultry production
19 area, otherwise known as a CFO, and is designed
20 to store at least one million gallons of manure
21 or five thousand cubic yards of manure.

22 The SMSS rules that you, the Board,
23 preliminarily adopted on September 10th of 2014

1 will require owners and operators to obtain a
2 permit from IDEM and meet certain standards for
3 the construction, operation and maintenance of
4 these structures. These standards are based
5 largely on national engineering standards as well
6 as current standards for similarly situated
7 manure storage structures found at confined
8 feeding operations, which have regulated
9 since 1971.

10 The Department did review and considered
11 the comments received during the public comment
12 periods and the preliminary adoption hearing, and
13 has made the following suggested changes:
14 Sinkholes to be measured from the outer limit of
15 the depression rather than the surficial opening,
16 and prohibition of construction of an SMSS in a
17 one-hundred-year flood plain.

18 The Department respectfully requests that
19 the Board final adopt the rule with the
20 Department's suggested changes. I will be happy
21 to answer any questions, and anything that I
22 cannot answer, IDEM has staff available to
23 further assist.

1 CHAIRMAN GARD: Are there questions
2 for Lauren?

3 (No response.)

4 CHAIRMAN GARD: Okay. Seeing none,
5 Bowden Quinn.

6 (Mr. Clark left the room.)

7 MR. QUINN: Thank you, Madam
8 Chairwoman, members of the Board. Bowden Quinn,
9 Chapter Director, Sierra Club Hoosier Chapter.

10 I appreciate the work that IDEM has done
11 on this rule and their willingness to respond to
12 our comments, and also I think a big part of that
13 was the very good discussion that this Board had,
14 and for preliminary -- at the preliminary
15 adoption. I think that was helpful.

16 But specifically, I want to thank IDEM for
17 changing the definition of how a sinkhole is
18 measured from the hole in the ground in the
19 middle of the depression to the outer -- the
20 outer rim of that depression.

21 Now, I believe that the former definition,
22 former way of measuring, is in the other confined
23 feeding rules, so I would hope that at some point

1 IDEM would go back and make all of the rules
2 consistent and stick to this way of measuring a
3 sinkhole.

4 And I also appreciate the decision to not
5 allow these structures in a hundred-year flood
6 plain. I do still think that because these
7 structures could be in remote areas where
8 certainly not the public, and maybe not even the
9 operator, would see them on a daily basis, that
10 stricter regulations for these structures and
11 those that are regulating sewer -- manure
12 structures on operating farms would be in order.
13 But I do appreciate what IDEM has done with this
14 part of the rule.

15 Thank you.

16 CHAIRMAN GARD: Are there questions
17 for Mr. Quinn?

18 (No response.)

19 CHAIRMAN GARD: Thank you.

20 Justin Schneider.

21 MR. SCHNEIDER: Thank you, Madam
22 Chair, members of the Board. Justin Schneider
23 here on behalf of the members of the Indiana Farm

1 Bureau, and today I've also been authorized by
2 Josh Trenary to speak on behalf of the Indiana
3 Pork Advocacy Coalition.

4 I want to thank IDEM for all of the work
5 that's gone into this, and also the Chair,
6 Sen. Gard. It's been several years since we
7 worked on this in the General Assembly --

8 CHAIRMAN GARD: That's true.

9 MR. SCHNEIDER: -- and so, it's
10 actually good to see something finalized here
11 today, I think. And, you know, this has -- it's
12 been a long process to get this in place.
13 There's not a lot of satellite manure storage
14 structures in Indiana, but there are some, and
15 there have been a few proposed in the last year,
16 so we do think it's important to have the
17 regulations in place.

18 We're comfortable with the regulations. I
19 do want to raise one point on the change to
20 prohibit construction in a hundred-year flood
21 plain. You know, we're confident that the design
22 standards that would have been in place would
23 have been sufficient to prevent any sort of harm,

1 because they would have been constructed to
2 address the issues of the hundred-year flood
3 plain.

4 (Mr. Clark returned.)

5 MR. SCHNEIDER: However, we do
6 recognize the concern of these often being in a
7 more remote location and not having someone
8 on-site daily taking care of the livestock. So,
9 with that, we actually have no opposition to the
10 adoption of the rule as it's been revised.

11 Thank you.

12 CHAIRMAN GARD: Thank you.

13 Any questions for Justin?

14 (No response.)

15 CHAIRMAN GARD: Thank you.

16 Anybody else want to speak to the proposed
17 rule? Nobody else signed up.

18 (No response.)

19 CHAIRMAN GARD: Seeing none, the
20 hearing is concluded. The Board will now
21 consider final adoption of new rules at
22 327 IAC 20, Satellite Manure Storage Structures.
23 Board discussion. Any questions?

1 (No response.)

2 CHAIRMAN GARD: Okay. Is there a
3 motion to adopt IDEM's suggested changes?

4 MR. METTLER: So moved.

5 MR. POWDRILL: Second.

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

8 MR. HORN: Aye.

9 DR. NIEMIEC: Aye.

10 MR. ETZLER: Aye.

11 MR. CARMICHAEL: Aye.

12 MR. RULON: Aye.

13 DR. ALEXANDROVICH: Aye.

14 MR. BAUSMAN: Aye.

15 MR. POWDRILL: Aye.

16 MR. CLARK: Aye.

17 MR. METTLER: Aye.

18 MR. DAVIDSON: Aye.

19 MR. HILLSDON-SMITH: Aye.

20 CHAIRMAN GARD: Aye.

21 Opposed, nay.

22 (No response.)

23 CHAIRMAN GARD: The suggested changes

1 are adopted. Is there a motion to adopt finally
2 the rule as amended?

3 MR. HILLSDON-SMITH: So moved.

4 CHAIRMAN GARD: Is there a second?

5 MR. POWDRILL: Second.

6 CHAIRMAN GARD: Any Board discussion?

7 (No response.)

8 CHAIRMAN GARD: Mr. Rulon?

9 MR. RULON: Yes.

10 CHAIRMAN GARD: Dr. Alexandrovich?

11 DR. ALEXANDROVICH: Yes.

12 CHAIRMAN GARD: Mr. Carmichael?

13 MR. CARMICHAEL: Yes.

14 CHAIRMAN GARD: Mr. Powdrill?

15 MR. POWDRILL: Yes.

16 CHAIRMAN GARD: Mr. Etzler?

17 MR. ETZLER: Yes.

18 CHAIRMAN GARD: Mr. Davidson?

19 MR. DAVIDSON: Yes.

20 CHAIRMAN GARD: Mr. Horn?

21 MR. HORN: Yes.

22 CHAIRMAN GARD: Mr. Hillsdon-Smith?

23 MR. HILLSDON-SMITH: Yes.

1 CHAIRMAN GARD: Mr. Bausman?

2 MR. BAUSMAN: Yes.

3 CHAIRMAN GARD: Mr. Clark?

4 MR. CLARK: Yes.

5 CHAIRMAN GARD: Dr. Niemiec?

6 DR. NIEMIEC: Yes.

7 CHAIRMAN GARD: The Chair votes aye.
8 The rule is adopted twelve to zero. It really is
9 nice for us to see something that was started
10 four years ago --

11 (Laughter.)

12 CHAIRMAN GARD: -- finally resolved,
13 so, thank you all for that one, thank IDEM and
14 all of the interested parties for working through
15 this.

16 Citizen Petitions. Today the Board will
17 discuss the silica dust citizen petition that was
18 presented at our March meeting. In accordance
19 with the statute governing citizen rulemaking
20 petitions, IC 13-14-8.5, the Board must decide
21 whether a public hearing should be held on the
22 petition.

23 That statute requires the following: One,

1 that the written proposal is supported by a
2 statement of reasons; two, that the proposal is
3 accompanied by a petition signed by at least 200
4 people; three, that the proposal is not plainly
5 devoid of merit; and four, that the proposal does
6 not deal with a subject on which a hearing has
7 been held within the previous six months of the
8 submission of the proposal.

9 IDEM's Office of Legal Counsel has
10 determined that the petition was signed by at
11 least 400 -- by at least 200 people, and that the
12 proposal is supported by a statement of reason.
13 Additionally, the ERB has not held a hearing in
14 the previous six months prior to March 2015, when
15 the petition was presented to the Board.

16 Therefore, what the Board must determine
17 today is whether the proposal meets the
18 not-plainly-devoid-of-merit standard. If that
19 standard is met in the eyes of the Board, the law
20 requires that we give notice and hold a hearing
21 on the proposal. The purpose of the hearing
22 would be for the Board to receive testimony on
23 the proposal and decide what, if any, action

1 should be taken.

2 I, at this point, open the floor to Board
3 discussion, and I do have a letter that I will
4 pass out to each of you. This is from the Gibson
5 County Public Health Nurse, so you all can read
6 that.

7 DR. NIEMIEC: Will you also present
8 the advisory group report?

9 CHAIRMAN GARD: We didn't have one on
10 this.

11 DR. NIEMIEC: Okay.

12 CHAIRMAN GARD: This is on the --

13 DR. NIEMIEC: I guess that's the
14 second one.

15 CHAIRMAN GARD: Yes, the second one,
16 right.

17 So, this vote would be to just move
18 forward with the public hearing. It would not be
19 to automatically move forward to a rulemaking.
20 It would be a hearing, and then after that
21 hearing, we would determine whether or not there
22 would be a rulemaking.

23 MR. POWDRILL: Just as a piece of

1 information, I read the other day that the OSHA
2 is tightening the regulations on silica workers
3 for what they are allowed to be exposed to in
4 their workplace.

5 CHAIRMAN GARD: But that doesn't go
6 to surrounding properties.

7 MR. POWDRILL: No, it does not.

8 CHAIRMAN GARD: Right.

9 There are two potential motions that can
10 be made. One would be that it is devoid of
11 merit, and the second would be to hold a public
12 hearing.

13 DR. ALEXANDROVICH: Madam Chair?

14 CHAIRMAN GARD: Yes.

15 DR. ALEXANDROVICH: The last time we
16 had one of these petitions, well, the climate
17 change one --

18 CHAIRMAN GARD: Yes.

19 DR. ALEXANDROVICH: -- we got a lot
20 of pushback about how we viewed devoid of merit.
21 It would be nice if we had a better definition,
22 where we could clarify what devoid of merit is,
23 because, you know, unless people are totally

1 insane, they're going to bring something
2 reasonable --

3 CHAIRMAN GARD: Right.

4 DR. ALEXANDROVICH: -- you know, and
5 a public health environmental perspective is one
6 of them, most likely.

7 CHAIRMAN GARD: You know, I tend to
8 agree with you, because these are becoming more
9 and more frequent, and, you know, that definition
10 has to be set by statute, so I think that's
11 something I certainly would not mind talking to
12 the people in the General Assembly that consider
13 these things and suggest that they may want to
14 look at this.

15 DR. ALEXANDROVICH: Because in this
16 case, I think the petition was pretty specific to
17 list silica dust as a hazardous air pollutant,
18 but in 326, we adopt the 40 CFR listing of
19 hazardous air pollutants --

20 CHAIRMAN GARD: Uh-huh.

21 DR. ALEXANDROVICH: -- rather than
22 having our own individual, but, you know, the
23 other stuff we received in this letter is about

1 the fugitive dust rules and --

2 CHAIRMAN GARD: Yes.

3 DR. ALEXANDROVICH: -- whether this
4 happens during coal mining blasting or
5 afterwards, I have no idea.

6 CHAIRMAN GARD: Right.

7 DR. ALEXANDROVICH: So, you know, I
8 don't know where I want to go with this.

9 MR. CARMICHAEL: Yeah. The letter,
10 just reading it now off the top of my head, isn't
11 necessarily consistent with the petition.
12 There's other asks in here, and I think we ought
13 not confuse the two.

14 CHAIRMAN GARD: Right.

15 MR. CARMICHAEL: The petition in
16 front of us is different with the asks.

17 CHAIRMAN GARD: This was kind of an
18 alternative.

19 MR. CARMICHAEL: Right, that's in
20 here, so I'm assuming this is --

21 CHAIRMAN GARD: I just received that,
22 and I -- when I receive these things, I feel an
23 obligation to --

1 MR. CARMICHAEL: Yes.

2 CHAIRMAN GARD: -- distribute it on.

3 MR. CARMICHAEL: I appreciate that,
4 but that's not the petition that's --

5 CHAIRMAN GARD: No, this is not the
6 petition. And if you want to review, you can go
7 back to the summary of the meeting in the front
8 of your packet.

9 MR. RULON: Silica dust is the dust
10 off of the gravel pit; right?

11 CHAIRMAN GARD: There are a number of
12 sources of silica dust, actually, but yeah,
13 uh-huh.

14 MR. POWDRILL: But I think the
15 original petition was for us to make a new rule,
16 whereas what Nurse Kelley here is talking about
17 is applying the fugitive dust rule and modifying
18 the fugitive dust rule to --

19 CHAIRMAN GARD: Right.

20 MR. POWDRILL: -- make it more
21 stringent, so --

22 CHAIRMAN GARD: And this is -- this
23 letter is the comment, but it really doesn't

1 specifically address the petition, in my view.

2 It kind of raises it.

3 MR. POWDRILL: But does it give us an
4 alternative?

5 CHAIRMAN GARD: I think -- I think
6 what you would -- that alternative would have to
7 come -- and Nancy, correct me if I'm wrong on
8 there, but that alternative would present itself
9 if you had a public hearing and voted to move
10 forward with a rulemaking. Then that would be
11 the direction your rulemaking would go.

12 DR. NIEMIEC: You're asking a
13 hypothetical question of IDEM experts regarding
14 adding potentially some substance such a silica
15 dust to the list. Could you discuss the process
16 if you did such a thing -- what would follow, and
17 would you classify different types of dust at
18 different levels and so on -- just briefly, for
19 the Board?

20 COMM. EASTERLY: We have never --
21 that's not quite true. A long, long time ago we
22 had what, hydrogen sulfide and a few other things
23 regulated as state only as a -- I think the

1 legislature did that. We have never done one of
2 these, as a state, list a hazardous air
3 pollutant. We would in theory -- well, we don't
4 know that.

5 The Federal Government, when something is
6 added as an air pollutant, they come up with some
7 kind of risk level, and then they say you have to
8 do MACT, maximum achievable control technology,
9 if any source exceeds the risk level, and then
10 every source has to do the MACT, and then you
11 look and see what the residual risk is. Those
12 are things that are out -- I mean we could look
13 at literature, but they're far beyond our basic
14 capabilities, so we're going to be out there on
15 the edge.

16 On the other hand is the question of
17 whether crystalline silica should be a hazardous
18 air pollutant. A valid question. It probably
19 is. So, we can't say that there shouldn't be
20 consideration of that question. I'm just saying
21 that if you decide that it should be, we'll need
22 a lot of help that we don't have.

23 MR. CARMICHAEL: Yeah, typically

1 these are done at the EPA level, and --

2 COMM. EASTERLY: Yes.

3 MR. CARMICHAEL: -- secondly, I would
4 say listing it as a hazardous air pollutant
5 potentially has a lot of tentacles to it, and
6 tentacles that I wouldn't fully understand. For
7 example, construction sites where they're cutting
8 concrete, now is that all of the sudden regulated
9 or -- you know, it's a big question that you ask.

10 COMM. EASTERLY: But aren't those
11 questions you would consider at the hearing if
12 you decided to have a hearing, as opposed --

13 MR. CARMICHAEL: Yeah.

14 COMM. EASTERLY: -- to not
15 considering it at all? I guess that's my
16 concern. I don't think the question is devoid of
17 merit.

18 CHAIRMAN GARD: Uh-huh.

19 COMM. EASTERLY: And we don't know
20 the answer to the question.

21 CHAIRMAN GARD: I think --

22 DR. NIEMIEC: There are many types of
23 silica, there are many risks of different types.

1 Some, you can tolerate large amounts, so, you
2 know, it sorts of --

3 COMM. EASTERLY: You probably know.
4 I thought that the Indiana Dunes Beach actually
5 ceded that -- what was it, oceanite, whatever,
6 silica -- crystalline silica exposure level.

7 DR. NIEMIEC: That would not be
8 surprising.

9 MR. CARMICHAEL: I guess where I'm
10 at, and I think I mentioned this last time, is we
11 have a fugitive dust rule in place. I believe
12 it's 50 micrograms per cubic meter at the fence
13 line. That so happens to be the OSHA standard
14 for silica. Now, certainly all dust is not
15 silica, but it seems to me that the rule is
16 already in place, so I'm not sure what we would
17 do to specifically address this -- this issue.
18 What rulemaking would we do here if it's
19 currently on the books?

20 CHAIRMAN GARD: Well, I think she was
21 asking that we move forward with a rulemaking to
22 actual -- you know, to classify it as --

23 MR. POWDRILL: As a hazard.

1 CHAIRMAN GARD: -- as a hazardous
2 material, and then, you know, if that happens,
3 there's just a whole 'nother realm of regulation
4 that comes into being when something's hazardous.

5 You know, I look at hazardous versus
6 nuisance. When something's a nuisance, there may
7 be easier ways to control it than dealing with
8 hazardous. You know, what would happen if you
9 reclassify something as hazardous? What would it
10 look like? I mean I agree with the Commissioner.
11 I mean there's going to have to be all sorts of
12 analytical data to consider if this is listed as
13 hazardous material.

14 DR. NIEMIEC: And I would just remind
15 the group that one of her main concerns was --
16 that we discussed briefly -- was that when she
17 brought up the problem that she perceived to
18 IDEM, she thought that she was being dismissed,
19 because the people from IDEM did not observe this
20 occurring, or something to --

21 CHAIRMAN GARD: Uh-huh.

22 DR. NIEMIEC: -- that effect, and so
23 there was a question of whether there was a

1 violation occurring, and how does one get a
2 timely response if there appears to be a problem?

3 CHAIRMAN GARD: Uh-huh.

4 DR. NIEMIEC: -- and to resolve it,
5 even if it is really a nuisance rather than a
6 hazard --

7 CHAIRMAN GARD: Uh-huh.

8 DR. NIEMIEC: -- in the amounts that
9 exist. So, I think we should maybe have some
10 follow-up discussion at this time of any further
11 information we have about that since the last
12 meeting --

13 CHAIRMAN GARD: Uh-huh.

14 DR. NIEMIEC: -- if there's been
15 discussion within IDEM.

16 MR. CLARK: If I could follow up on
17 that point, is that she seemed to be going, if I
18 can characterize it, in two parallel directions;
19 one as categorizing it as a toxin or however she
20 wanted it done, and then talked about it in terms
21 of fugitive dust.

22 CHAIRMAN GARD: Uh-huh.

23 MR. CLARK: And to Kelly's point is

1 if it is already regulated, if you will, by our
2 fugitive dust rule, is it better that we look at
3 this in terms of categorizing it differently, or
4 look at it in terms of sort of this alternative
5 that was presented by Nurse Kelley?

6 And that goes to sort of her point and the
7 point that you just made and that was raised is,
8 if we do have a fugitive dust rule in place that
9 isn't -- that we're not equipped -- the state is
10 not equipped to monitor or enforce, do we
11 consider other enforcement opportunities like
12 what's being proposed here?

13 CHAIRMAN GARD: Uh-huh. Of course,
14 that isn't -- that letter isn't presented as an
15 official petition.

16 MR. CLARK: So -- okay. Then with
17 regard to what we're considering today, it seems
18 to me that regardless of what direction we feel
19 this should ultimately go, if any direction, it
20 goes back to our, "Does the citizen's petition
21 have merit?"

22 CHAIRMAN GARD: Uh-huh.

23 MR. CLARK: And regardless of where

1 we think it should be, my thoughts are it appears
2 that it does have enough merit that it should go
3 forward.

4 MR. HILLSDON-SMITH: Right.

5 CHAIRMAN GARD: Uh-huh. And if that
6 is the determination then in a hearing, I think
7 we can kind of get into some of these other
8 things.

9 Yes.

10 MR. METTLER: Along the lines of what
11 may be valid for a citizen's petition to go
12 forward, I think not only does it have merit, I
13 think to that list needs to be added: Do we have
14 the authority to even write such a -- do we have
15 the statutory authority to write such a rule?
16 And the climate change thing, there's a problem
17 there, because I feel we can't get authority to
18 do it, even though it may have been a good idea.

19 CHAIRMAN GARD: And I don't know
20 whether we do or not. I think --

21 MR. METTLER: Yeah. Well --

22 CHAIRMAN GARD: -- that could take a
23 long research to find out.

1 MR. METTLER: On this one, that would
2 be my question on top of "Does it have merit?" is
3 "Do we also have the authority to pursue it
4 statutorily?"

5 CHAIRMAN GARD: Uh-huh.

6 MR. DAVIDSON: Do we know if this
7 material is listed as hazardous in any other
8 state? Has any other state taken it on
9 independently of federal regulations?

10 COMM. EASTERLY: I don't know the
11 answer. Do we know, Keith?

12 MR. BAUGUES: No.

13 DR. ALEXANDROVICH: I think we could
14 conceivably find that it was --

15 MR. CARMICHAEL: Obviously we have
16 OSHA --

17 COMM. EASTERLY: Okay. It is in --

18 MR. CARMICHAEL: -- inside the
19 facility.

20 CHAIRMAN GARD: Uh-huh. Well, is
21 there -- is there a motion one way or the other?
22 Or if there is no motion, then nothing happens.

23 MR. HORN: I would make a motion that

1 it does have merit and we should proceed down
2 those lines.

3 CHAIRMAN GARD: Is there a second?

4 MR. CLARK: If I could comment --

5 CHAIRMAN GARD: Yes.

6 MR. CLARK: -- on that. Is this
7 something that we have to take on today? Because
8 Mike raised a pretty good point. If we decide
9 it's got merit, does that also indicate that we
10 feel like we have the statutory authority to do
11 something about it? That takes us back to the
12 petition relative to the climate change, is that
13 merit or not, we -- it would seem more of a
14 policy rather than something --

15 CHAIRMAN GARD: Yeah, I think Nancy
16 can answer that.

17 MS. KING: Yeah, I think I can speak
18 to the statutory authority related to this
19 specific petition. If you remember, this
20 specific petition asked us to amend an existing
21 rule that -- that basically incorporates by
22 reference the federal definition of hazardous air
23 pollutant, and there are several listed hazardous

1 air pollutants. We clearly have the statutory
2 authority to write that rule and amend that rule.
3 That is different from the citizen's petition
4 related to climate change, which did not suggest
5 a specific amendment to anything, but was a much
6 more broad and open-ended concept.

7 So, what you're talking about is the
8 specific petition that was put before you, and
9 how we've handled these petitions so far with the
10 ones that have come before you is to look at the
11 specific language of the petition, and the
12 discussion that you folks have been having goes
13 to the testimony that Ms. Tokar has provided to
14 the Board. She actually wanted to be able to be
15 here today, but was unable to attend.

16 And that did -- as you correctly pointed
17 out, she had subsequently done more investigation
18 and looked at the existing regulations we have,
19 which is where the concept of fugitive dust came
20 about, and I believe several of you mentioned
21 that to her.

22 But the petition and what you're actually
23 making a determination on today is whether the

1 rule that adopts -- that has the list of
2 hazardous air pollutants -- and it is a 40 CFR
3 reference, because it incorporates that by
4 reference -- to amend that to include silica dust
5 in that list.

6 So, that's what this particular
7 determination of what -- whether it's a
8 meritorious position or not is about, not the
9 surrounding testimony nor the additional
10 information that you have. We do have the
11 statutory authority to adopt and amend that rule,
12 if that's -- if that's ultimately what you guys
13 decide to do.

14 COMM. EASTERLY: And if you have the
15 hearing, we'll probably be against doing the
16 work, but that's different than whether the
17 question has merit.

18 (Laughter.)

19 COMM. EASTERLY: You know, because we
20 don't know -- we don't really know how to
21 actually do all of that work with the staff and
22 expertise that we have.

23 DR. ALEXANDROVICH: But Madam Chair,

1 we could have a hearing on it and then, as the
2 Board, decide to change the direction, say,
3 "Okay. The problem isn't really what the
4 petition was about, amending the definition," and
5 then maybe address it in other rules.

6 CHAIRMAN GARD: Well, yeah, we could
7 do that.

8 DR. NIEMIEC: Right. Because, for
9 example, we could find that your average citizen
10 is not really going to be exposed. We may find,
11 for example, based on evidence, that they're not
12 really going to be exposed to a level that's
13 really going to be substantially hazardous to
14 their health, as opposed to intense occupational
15 exposure. So, that's true, we could look at --
16 we could have a hearing about the issue, and what
17 she is looking for may be different from what we
18 find, and so on.

19 CHAIRMAN GARD: Sure, we could.

20 So, we have a motion on the floor. Is
21 there a second?

22 MR. POWDRILL: Second.

23 CHAIRMAN GARD: Okay. Any further

1 discussion?

2 (No response.)

3 CHAIRMAN GARD: All in favor of the
4 motion to move forward with a public hearing, say
5 aye.

6 MR. HORN: Aye.

7 DR. NIEMIEC: Aye.

8 MR. ETZLER: Aye.

9 MR. CARMICHAEL: Aye.

10 MR. RULON: Aye.

11 DR. ALEXANDROVICH: Aye.

12 MR. BAUSMAN: Aye.

13 MR. POWDRILL: Aye.

14 MR. CLARK: Aye.

15 MR. METTLER: Aye.

16 MR. DAVIDSON: Aye.

17 MR. HILLSDON-SMITH: Aye.

18 CHAIRMAN GARD: Aye.

19 Any opposed, nay.

20 (No response.)

21 CHAIRMAN GARD: Okay. The motion
22 passes, and we'll move forward with the public
23 hearing. We'll need to get with the petitioner

1 and see if she'll be ready the next -- at the
2 next Board meeting, would like to be here at the
3 board meeting. Will you convey to her the --

4 MS. KING: I will. I told her I
5 would let her know what happened, and we can get
6 information to you on when would be a good time
7 for the hearing.

8 CHAIRMAN GARD: Okay.

9 At our last meeting, there was a
10 discussion on the citizen petition to amend the
11 definition of "interference" in the water rules
12 at 327 IAC 5-17-11. I appointed an advisory
13 committee as allowed under IC 13-13-8-14. At
14 this time, I open the floor to a report by the
15 committee. David Pippen was Chairman of that
16 group.

17 And thank you, David, for chairing that.

18 MR. PIPPEN: Sure. Chairman Gard,
19 members of the Board, my name is David Pippen,
20 with Bose McKinney & Evans, and I represent Fort
21 Wayne City Utilities.

22 Sen. Gard appointed a work group to take a
23 look at the interference rule and the citizen's

1 petition on this, and I think, more than
2 anything, to distill the issue down to the policy
3 choice that is in front of the Board.

4 (Mr. Horn left the room.)

5 MR. PIPPEN: Because what we have is:
6 Years ago, Indiana changed our definition of the
7 interference rule that gave a more broad
8 authority to IDEM and, hence, to public utilities
9 on dealing with effluent coming in and what that
10 would do. So, the interference rule in -- on the
11 second page there, I've got the federal rule, and
12 then I've got the current rule for Indiana.

13 The primary difference on these two is:
14 The federal rule required an interference which
15 is prohibited, to inhibit or disrupt a POTW, its
16 treatment processes, operations, sludge
17 processes, user disposal, and therefore cause a
18 violation of any requirement under the NPDES
19 permit. Indiana's rule is an "or." So, there's
20 a list of inhibit or disrupt or causes a
21 violation or prevents the use of the sewage or
22 sludge, and has a list. So, Indiana has a more
23 broad use for that.

1 So, inhibits can be as much as a slowdown,
2 it doesn't have to be preventing the operations
3 of the utility and that. We have concrete
4 examples. In the work group, we've had a
5 conference call, we've had a very good discussion
6 through e-mail where there are utilities that
7 have used this provision and this definition to
8 get recalcitrant folks to the table to talk about
9 controlling what they are sending through the
10 system to the utility.

11 It's not necessarily people that have
12 pretreat -- are in the pretreatment program,
13 things like that, but it is a tool that has been
14 used. It's also an Indiana-specific definition,
15 so it's interpreted by IDEM rather than reliance
16 on the federal interpretation on that. And
17 again, the definition's been in place for many
18 years.

19 We've had some discussion about the fact
20 that nobody's come forward with concrete examples
21 of a problem in using this definition. It's more
22 potential problems that we have. We've also had
23 discussion that there's a disincentive for people

1 to come forward with problems, because then
2 you're on the radar of what's happening with
3 violations and whether your systems are operating
4 properly or not.

5 From the consistency side of this, if
6 we're looking for regulations to be the road map
7 for good behavior for everybody rather than how
8 we deal with the bad actors or with problems, if
9 you adopt the -- if we go back to the federal
10 standard, you get consistency within the permits
11 in the state, because, again, we've got some that
12 are -- that have federal, some that don't.

13 So, consistency with the Feds, but that
14 also allows businesses, a lot of businesses that
15 operate throughout the country and not just in
16 Indiana, their experts then know that our
17 standards are in line with the federal standards,
18 and they understand the terms as they are used,
19 rather than having to learn specific Indiana
20 provisions.

21 And the flip side of that change in the
22 Indiana specific, whether we've had problem or
23 not, is the definition was -- we used the federal

1 definition for many years in Indiana, and we
2 didn't have specific examples demonstrating a
3 need to change from that, so the federal standard
4 is used obviously in a lot of places. We didn't
5 do a survey of how many states have altered that,
6 but the federal standard has been pretty
7 consistent and hasn't changed.

8 So, really what we've come down to is:
9 Are we regulating for the many, those who are
10 being cooperative and working with utilities, or
11 those that do not? It is a tool that's available
12 to IDEM and to the utilities to force folks to
13 talk to them that might not otherwise, but then
14 there's also the question of, "What else is
15 available out there?"

16 So, if you flip, in what I handed out,
17 past the different language provisions, because
18 we went through and looked and said there's
19 different ways of doing this. You can leave it
20 as is, you can do the language that was in the
21 citizen's petition, you can do rewrites of the
22 language.

23 And as we started to look at that, I saw

1 more and more problems developing with it,
2 because the rule as written doesn't really follow
3 LSA standard format, and if you go in and say,
4 "Well, let's fix it," you change a lot, and it
5 becomes more of a problem in rewriting it in the
6 proper format than it does doing one of a couple
7 of other ways.

8 But even before we get to the language, I
9 think it's important that you all make the
10 decision on the policy of how -- what do we want
11 the regulation to do? How are we using the
12 regulation? Because that gives guidance to the
13 lawyers to say, "Okay. Now we know what you
14 want. We can go back into it and redraft this in
15 a different way."

16 So, if you flip past the different options
17 for how we could write this, we've got a list --
18 and for those of you that have read your eyes
19 into problems, it's difficult to read, but rather
20 than giving you 38 pages of a spreadsheet, I
21 wanted to distill this down as much as I could.
22 We've got a list of regulations that already
23 exist on dealing with effluent and what happens

1 before -- what regulations we have on it before
2 it gets to the utilities.

3 We've also put a column on the far right
4 side whether it's proactive or reactive, so is
5 this a regulation that -- how do we penalize
6 somebody who violates one of these regulations,
7 or is this a proactive prohibition at the front
8 end of that?

9 And the purpose of this is for you to
10 understand that the interference rule is not a
11 stand-alone. This is how we keep a utility,
12 waste water utility, operating properly. But it
13 fits into a larger perspective of many other
14 regulations, and we're not going to go through
15 all of that. Sen. Gard and I talked about this
16 and thought that it was better to get the
17 information in your hands so that you could look
18 and see a lot of that, rather than try and get to
19 a decision today.

20 The work group did not reach a consensus
21 on this. We had very good discussion, and I
22 think that you can see, when you look at the use
23 of the regulation or the decision that I've put

1 forward to you, there's reasons for both
2 positions to be taken. There's logical arguments
3 for both reasons to be taken, and what we wanted
4 to do was get this kind of information in front
5 of you so that we can have a more informed
6 discussion on it before you vote, and probably
7 get some questions.

8 So, my offer and recommendation would be,
9 as you go through this information, not sitting
10 here today, but in, you know, a more relaxed
11 format, sketch down some questions and some
12 things like that, get those to Sen. Gard, the
13 Chairman can send it to the work group, and we
14 can work on getting more answers to that. That
15 way you've got more -- a more informed basis to
16 make the decision when you ultimately vote on it.

17 CHAIRMAN GARD: Thank you, David, for
18 this report. It's good. We appreciate the work
19 group working on it, and it was a work group of
20 diverse interests on this group.

21 Okay. Any Board discussion?

22 DR. NIEMIEC: I have one brief
23 question. Without studying this -- you've

1 already looked at this. Can you tell us the
2 substantial differences between options 3 and 4?
3 Because I didn't completely look at it in detail
4 yet, but --

5 MR. PIPPEN: There's not necessar --
6 it's more stylistic.

7 DR. NIEMIEC: Okay.

8 MR. PIPPEN: When you get into the
9 different options, it becomes more stylistic.
10 And again, if we were doing it for pure LSA
11 format, it would look different than any of the
12 options that are here. The problem was, as we
13 tried to do it, it got more confusing the more
14 you tried to put things where they ideally would
15 be --

16 DR. NIEMIEC: Right.

17 MR. PIPPEN: -- because it has to
18 work with the larger regulatory framework. So,
19 there's different ways of doing this. Three --
20 three leaves [sic], a couple of options under
21 causes, so you've got -- you've got an "and" and
22 "as" and "and" and "or," and then you've got kind
23 of yet that list of the -- on section 4 of 5.

1 And so, those are subsets. When you look
2 at 4, it tries to break it out a little bit
3 differently than that. So, they're just --
4 they're more stylistic than anything else, which
5 is why I preferred to offer it as, "Let's get the
6 policy first, and then let us try and get the
7 language to say what you want it to say."

8 DR. ALEXANDROVICH: I have a couple
9 of questions about what you were saying earlier.
10 You said some permits you looked at had the
11 federal definition and others had the state
12 definition. That's within the State of Indiana?

13 MR. PIPPEN: Yes.

14 DR. ALEXANDROVICH: And that's
15 because some permits were old, or some permits
16 were under the local designated programs?

17 MR. PIPPEN: Both. So, some were
18 renewed permits that the language didn't go in
19 and get excised out and done, so it got renewed
20 with the old language.

21 DR. ALEXANDROVICH: Okay. Kind of on
22 that, the local -- the city designated permit
23 issuers, do they have to go by the state, or can

1 they choose the Feds? You know, there's the
2 state -- the state has to meet the minimum
3 requirements of the Feds. Do the locals have to
4 meet the minimum requirements of the state?

5 COMM. EASTERLY: Bruno?

6 MR. PIGOTT: Yes.

7 MR. PIPPEN: I would think so.

8 MR. PIGOTT: Yes, yes.

9 (Laughter.)

10 COMM. EASTERLY: He's not a hundred
11 percent sure.

12 DR. ALEXANDROVICH: But if they're --

13 MR. PIGOTT: They're designated by
14 U.S. EPA to be pretreatment entities, these
15 communities, and they write the permits, but they
16 do have to abide by the --

17 DR. ALEXANDROVICH: Okay.

18 MR. PIGOTT: -- state rules, as long
19 as the state rules are as stringent as --

20 DR. ALEXANDROVICH: Right. Okay.

21 MR. PIGOTT: -- the federal. If
22 they're more stringent, then they have to follow
23 the state rules.

1 DR. ALEXANDROVICH: Okay. Thank you.
2 One more question. You also mentioned that this
3 definition has been used to maybe nudge some
4 recalcitrant people.

5 MR. PIPPEN: Uh-huh.

6 DR. ALEXANDROVICH: In Indiana?

7 MR. PIPPEN: Yes.

8 DR. ALEXANDROVICH: Okay. That's my
9 questions.

10 CHAIRMAN GARD: Okay. Thank you,
11 David.

12 And, you know, I propose that we study
13 this, make it an agenda item for the next meeting
14 and try to put this thing to bed one way or the
15 other at the next meeting. This -- this is good.
16 Thank you.

17 MR. ETZLER: May I add, I'll send you
18 some recommended reading. If we thought 112
19 pages was bad, read the guidance for interfere --
20 preventing interference.

21 DR. ALEXANDROVICH: Put that down to
22 look at.

23 (Laughter.)

1 MR. ETZLER: It'll put you to sleep.

2 CHAIRMAN GARD: Okay. Let's see.

3 MR. RULON: Chairman Gard, what is
4 our procedure now for dealing with this?

5 CHAIRMAN GARD: We're going to take
6 the report under advisement, and it'll be an --

7 MR. RULON: Okay.

8 CHAIRMAN GARD: -- agenda item next
9 time we meet --

10 MR. RULON: Okay.

11 CHAIRMAN GARD: -- to make the
12 determination whether or not we'll move forward
13 with a rulemaking.

14 MR. RULON: Thank you.

15 CHAIRMAN GARD: Open Forum. Is there
16 anyone who wishes to address the Board today?

17 (No response.)

18 CHAIRMAN GARD: We don't have another
19 meeting set. As soon as we get a date, as soon
20 as you all look at your schedule, and we'll try
21 to get that to you sooner rather than later so
22 you can get it on your calendar. You don't think
23 it'll be before October?

1 MS. STEVENS: I would doubt it.

2 CHAIRMAN GARD: Okay. So, if it's
3 October, chances are we may not have to have that
4 November meeting, so -- and before I call for an
5 adjournment, again, Commissioner, thank you.

6 COMM. EASTERLY: Oh, thank you.

7 CHAIRMAN GARD: Thank you for 10
8 years of great service, and we hope you enjoy
9 being down there close to Walt Disney.

10 (Laughter.)

11 COMM. EASTERLY: Me, too. I was
12 there this weekend. It's sort of warm down
13 there, but I got used to it.

14 (Laughter.)

15 CHAIRMAN GARD: It wouldn't be hard
16 to.

17 So, is there a motion to adjourn?

18 DR. NIEMIEC: So moved.

19 MR. POWDRILL: Second.

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

22 MR. HORN: Aye.

23 DR. NIEMIEC: Aye.

1 MR. ETZLER: Aye.
2 MR. CARMICHAEL: Aye.
3 MR. RULON: Aye.
4 DR. ALEXANDROVICH: Aye.
5 MR. BAUSMAN: Aye.
6 MR. POWDRILL: Aye.
7 MR. CLARK: Aye.
8 MR. METTLER: Aye.
9 MR. DAVIDSON: Aye.
10 MR. HILLSDON-SMITH: Aye.
11 CHAIRMAN GARD: Aye.

12 Opposed, nay.

13 (No response.)

14 CHAIRMAN GARD: We are adjourned.

15 Thank you all.

16 - - -
17 Thereupon, the proceedings of
18 July 8, 2015 were concluded
19 at 4:22 o'clock p.m.
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CERTIFICATE

I, Lindy L. Meyer, Jr., the undersigned
Court Reporter and Notary Public residing in the
City of Shelbyville, Shelby County, Indiana, do
hereby certify that the foregoing is a true and
correct transcript of the proceedings taken by me
on Wednesday, July 8, 2015 in this matter and
transcribed by me.

Lindy L. Meyer, Jr.,
Notary Public in and
for the State of Indiana.

My Commission expires October 27, 2016.

