

1       BEFORE THE STATE OF INDIANA  
2       ENVIRONMENTAL RULES BOARD

3               - - -

4  
5       PUBLIC MEETING OF AUGUST 10, 2016

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9       PROCEEDINGS

10 before the Indiana Environmental Rules Board,  
11 Beverly Gard, Chairman, taken before me, Lindy L.  
12 Meyer, Jr., a Notary Public in and for the State  
13 of Indiana, County of Shelby, at the Indiana  
14 Government Center South, Conference Center,  
15 Room 22, 402 West Washington Street,  
16 Indianapolis, Indiana, on Wednesday, August 10,  
17 2016 at 1:30 o'clock p.m.

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

1 APPEARANCES:

2 BOARD MEMBERS:

- 3 Beverly Gard, Chairman
- 4 Gary Powdrill
- 5 Dr. Ted Niemiec
- 6 Joanne Alexandrovich
- 7 Kelly Carmichael
- 8 Ken Rulon
- 9 William Etzler
- 10 Chris Horn
- 11 Gail Boydston
- 12 Calvin Davidson
- 13 Devin Hillsdon-Smith, Proxy, Indiana Economic
- 14 Development Corporation
- 15 Carol S. Comer (nonvoting)

10  
IDEM STAFF MEMBERS:

- 11 Bruno Pigott
- 12 Chris Pedersen
- 13 MaryAnn Stevens
- 14 Lauren Aguilar
- 15 Keelyn Walsh
- 16 Dan Watts
- 17 Peggy Dorsey
- 18 Jeff Sewell
- 19 Jack Harmon
- 20 Nancy King

17  
PUBLIC SPEAKERS:

- 18 Bowden Quinn
- 19 Indra Frank
- 20 Tim Maloney
- 21 Bill Beranek

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22

23

1 1:30 o'clock p.m.  
August 10, 2016

2 - - -

3 CHAIRMAN GARD: Okay. Thank you.

4 The Chair sees a quorum, so we will call the  
5 August 10th, 2016 meeting of the Environmental  
6 Rules Board to order. I am going to have you go  
7 around the room, we do this every time, because I  
8 think sometimes there are probably new people in  
9 the room who would like to know who we are and  
10 who we represent.

11 (Mr. Rulon arrived.)

12 CHAIRMAN GARD: So, we'll start with  
13 Bruno.

14 MR. PIGOTT: Bruno Pigott, Chief of  
15 Staff, IDEM.

16 COMM. COMER: Carol Comer,  
17 Commissioner, Indiana Department of Environmental  
18 Management.

19 MR. HILLSDON-SMITH: Devin  
20 Hillsdon-Smith, proxy for the Secretary of  
21 Commerce and Economic Development.

22 MR. RULON: Ken Rulon, I represent  
23 agriculture.

1 MR. HORN: Chris Horn, representing

2 labor.

3 MS. BOYDSTON: Gail Boydston,

4 representing manufacturing.

5 CHAIRMAN GARD: Beverly Gard, general

6 public.

7 MR. ETZLER: Bill Etzler, small

8 business.

9 MR. DAVIDSON: Calvin Davidson, solid

10 waste.

11 MR. POWDRILL: Gary Powdrill, general

12 public.

13 CHAIRMAN GARD: And I will say that

14 congratulations are due to Gary, who is getting

15 married this weekend.

16 (Applause.)

17 MR. POWDRILL: Thank you.

18 DR. NIEMIEC: Ted Niemiec, medical.

19 MR. POWDRILL: Let the record show.

20 (Laughter.)

21 DR. NIEMIEC: It will show.

22 MS. ALEXANDROVICH: Joanne

23 Alexandrovich, local government.

1 MR. CARMICHAEL: Kelly Carmichael,  
2 public utilities.

3 CHAIRMAN GARD: Okay. The first  
4 order of business is the approval of the summary  
5 of the May 11th, 2016 Board meeting. Are there  
6 any additions or corrections to the summary as  
7 presented?

8 (No response.)

9 CHAIRMAN GARD: If not, do I hear a  
10 motion to approve the minutes as presented?

11 DR. NIEMIEC: So moved.

12 CHAIRMAN GARD: Is there a second?

13 MR. POWDRILL: Second.

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

16 MR. HORN: Aye.

17 DR. NIEMIEC: Aye.

18 DR. ALEXANDROVICH: Aye.

19 MS. BOYDSTON: Aye.

20 MR. POWDRILL: Aye.

21 MR. CARMICHAEL: Aye.

22 MR. RULON: Aye.

23 MR. ETZLER: Aye.

1 MR. DAVIDSON: Aye.

2 MR. HILLSDON-SMITH: Aye.

3 CHAIRMAN GARD: Aye.

4 Opposed, nay.

5 (No response.)

6 CHAIRMAN GARD: The minutes of May  
7 the 11th, 2016 are approved.

8 After our public hearings and board  
9 actions, we will have a report today from the  
10 above-ground storage tank advisory group, which  
11 has been meeting this spring and this summer with  
12 recommendations on how to proceed under the  
13 requirements of Senate Enrolled Act 312. We had  
14 our final meeting and approved the final report  
15 this morning.

16 The rules being considered at today's  
17 meeting were included in Board packets and are  
18 available for public inspection at the Office of  
19 Legal Counsel, 13th floor, Indiana Government  
20 Center North. The entire Board packet is also  
21 available on IDEM's Web site at least one week  
22 prior to each Board meeting.

23 A written transcript of today's meeting

1 will be made. The transcript and any written  
2 submissions will be open for public inspection at  
3 the Office of Legal Counsel. A copy of the  
4 transcript will be posted on the rules page of  
5 the agency Web site when it becomes available.

6 Will the official reporter of the cause  
7 please stand, raise your right hand and state  
8 your name?

9 (Reporter sworn.)

10 CHAIRMAN GARD: Thank you.

11 The Board will now consider adoption of an  
12 emergency rule.

13 (Discussion off the record.)

14 CHAIRMAN GARD: I'm sorry. I missed  
15 a page.

16 MS. KING: Sorry. It's just a list  
17 of the rules that are coming before the Board.

18 CHAIRMAN GARD: Okay.

19 MS. KING: I apologize.

20 CHAIRMAN GARD: We're going to back  
21 up, because I did miss a page.

22 Carol, Commissioner.

23 COMM. COMER: Oh, thank you. I

1 appreciate the opportunity to come speak today.

2 I just wanted to update the Rules Board on  
3 some executive staff changes that are going on in  
4 the agency. As most of you are aware, Bruce  
5 Palin retired after 40 years of service to the  
6 state. We had a little party for him, thanked  
7 him for his service, and it's very exciting. So,  
8 we'll be replacing the Assistant Commissioner in  
9 the Office of Land sometime in the future.

10 Roger Letterman, who is our Deputy  
11 Assistant Commissioner in the Office of Air  
12 Quality, has chosen to step down into a Section  
13 Chief position. He wanted to get back down to  
14 boots-on-the-ground kind of work, so that  
15 position is also going to be filled in the next  
16 few months.

17 Julie Lang, who is our Assistant -- Deputy  
18 Assistant Commissioner of the Office of Tanks  
19 Programs, will be returning to the Office of  
20 Legal Counsel. We have Amy Smith, who will be  
21 returning from her work at Barnes & Thornburg to  
22 take that position in the next week.

23 And just recently we learned Steve Howell

1 has taken a position outside the agency, so he  
2 will also be leaving us very shortly. So,  
3 there's a bit of a transition going in the  
4 agency, and I wanted to let the Board know that  
5 we have some movement going on.

6 CHAIRMAN GARD: Okay.

7 COMM. COMER: Thank you.

8 CHAIRMAN GARD: Thank you.

9 Does the Board have any questions of the  
10 Commissioner?

11 (No response.)

12 CHAIRMAN GARD: Thank you.

13 Chris Pedersen will give us rulemaking  
14 updates.

15 MS. PEDERSEN: Hello. I'm Chris  
16 Pedersen, with the Rules Development Branch.

17 First I'd like to go over a couple of  
18 administrative items. Within your packets today,  
19 there should be a list of upcoming Board meeting  
20 dates. We reserved the second Wednesday of each  
21 month in 2017 to use for these Board meetings as  
22 needed. All of the dates that were reserved, by  
23 the way, for 2018, are all in Conference Room A

1 in this building, unless we get bumped out of it.

2 In addition to that, the public entrance  
3 into the south building, which is this building,  
4 has been moved. It is now located at Ten North  
5 Senate Avenue. It's due to the construction  
6 that's going on around the state office  
7 buildings. At this time, we don't know that  
8 that's going to change, but if it does change  
9 from that particular location, we'll let you know  
10 if they give us a different entrance to use.

11 As far as upcoming rules, the next date  
12 that we anticipate having rules ready to come  
13 before you is November 9th, and that would be in  
14 Conference Room A. That is a tentative date, but  
15 that's what we're anticipating.

16 And before that particular meeting, we  
17 would have -- bring before you several of the  
18 rules that you're actually going to see today.  
19 In particular, the two emergency rules, the Total  
20 Coliform Revisions Rule as well as the Coal  
21 Combustion Residuals Rule.

22 In addition to that, if preliminarily  
23 adopted today, there are three rules that could

1 come before you for final adoption. Those are  
2 the Total Coliform Revisions Rule, Startup,  
3 Shutdown and Malfunctions Rule, and the  
4 Definition of Interference Rule. And also  
5 there's one other one. It's the Reference  
6 Updates for the Confined Feeding Rules.  
7 Final adoption of that was postponed from  
8 today's meeting because of the timing of the  
9 publication of the proposed rule with third  
10 comment period, which had a -- there was a 21-day  
11 comment period, so we weren't able to get that  
12 into the Board packet for this meeting.

13 There are other rules that are in process,  
14 but it's too early to anticipate when they're  
15 likely to be ready. That's it.

16 CHAIRMAN GARD: Any questions for  
17 Chris?

18 (No response.)

19 CHAIRMAN GARD: Thank you.

20 Today there will be public hearings prior  
21 to consideration for final adoption of the  
22 Title 326 CFR Update, Hazardous Waste Updates,  
23 Lawrenceburg Township, Dearborn County Emission

1 Reporting, and Coal Combustion Residuals.

2 We will have public hearings prior to  
3 consideration for preliminary adoption of Total  
4 Coliform Revisions, Startup, Shutdown and  
5 Malfunction Rules, and the Definition of  
6 Interference.

7 We also have two emergency rules that the  
8 Board will be asked to readopt. Revisions to the  
9 Total Coliform Rules and Coal Combustion  
10 Residuals.

11 And finally, we will have a public hearing  
12 on rules that do not expire under the sunset  
13 provisions IC 13-14-9.5-1.1.

14 The Board will now consider adoption of an  
15 emergency rule to incorporate federal updates to  
16 the Total Coliform Rules known as the Revised  
17 Total Coliform Rule. This is the second  
18 extension of the emergency rule which we  
19 originally adopted at the February Board meeting.

20 I will enter Exhibit A, the draft  
21 emergency rule, into the record of the meeting.

22 MaryAnn Stevens will present the rule.

23 MS. STEVENS: Is that working?

1 Good afternoon, members of the Board. I'm  
2 MaryAnn Stevens, a rule writer in the Office of  
3 Legal Counsel, Rules Development Branch. This is  
4 the third request by IDEM asking the Board to  
5 adopt an emergency rule that will provide Indiana  
6 with temporary requirements that are federally  
7 required by the Revisions to the Total Coliform  
8 Rule adopted by the United States Environmental  
9 Protection Agency under the Safe Drinking Water  
10 Act. Having the emergency rule in place has  
11 prevented Indiana from being deficient in meeting  
12 the federal requirements that went into effect as  
13 of April 1, 2016.

14 The original emergency document was filed  
15 on February 12, 2016 and expired on May 12, 2016.  
16 The second emergency document was filed on  
17 May 12, 2016 and expires today. There is a  
18 revision in the emergency rule for adoption today  
19 that was not part of the two previous emergency  
20 rules. The revision occurs in Section 2,  
21 subpart (c), where the wording, quote, by  
22 reference under this rule has been changed to,  
23 quote, by reference in this document. This

1 revision was requested by the editors of the  
2 Indiana Register because an emergency rule is  
3 temporary and noncode, so they refer to it as a  
4 document rather than a rule.

5 By making this change to the emergency  
6 rule, this version can be readopted in its same  
7 form for two additional times of 90 days duration  
8 for each adoption. The emergency rule is needed  
9 to continue the effectiveness of the federal  
10 requirements of the Revised Total Coliform Rule  
11 until the state's regular rulemaking is complete.

12 Later on today's agenda, the Board will be  
13 asked to consider preliminary adoption of the  
14 Revised Total Coliform Rule that will become a  
15 permanent part of Title 327. IDEM expects to be  
16 able to bring the rule before the Board for  
17 consideration of final adoption at the Board  
18 meeting to be held in November. The promulgation  
19 process for a final adoptive rule generally takes  
20 about four months, so that would mean the  
21 permanent Revised Total Coliform Rule will become  
22 effective in March of 2017.

23 To reiterate the information I've provided

1 at the May -- the February and May Board meetings  
2 regarding adoption of an emergency rule for the  
3 Revised Total Coliform Rule, the emergency rule  
4 adopts the requirements and a minor vision to  
5 various drinking water standards affected by the  
6 revisions to the Total Coliform Rule through  
7 incorporation by reference of the federal rule.

8 If IDEM does not amend the state rules to  
9 include the federally required changes to the  
10 Total Coliform Rule and the various minor  
11 revisions to drinking water standards, there  
12 would be a potential for IDEM to lose primacy to  
13 conduct the state's drinking water program as  
14 required under the Safe Drinking Water Act, loss  
15 of federal funding for the drinking water  
16 programs, and regulated entities would still be  
17 required to comply with the federal standards,  
18 but without the support, training or educational  
19 assistance provided by IDEM's drinking water  
20 programs.

21 U.S. EPA's intent in revising the 1989  
22 Federal Total Coliform Rule was to provide  
23 greater public health protection beyond the

1 original rule. Under the Revised Total Coliform  
2 Rule, there is no longer a monthly maximum  
3 contaminant level violation for multiple total  
4 coliform detections.

5 Instead, public water systems that have an  
6 indication of coliform contamination in the  
7 distribution system will be required to assess  
8 the problem and take corrective action that may  
9 reduce cases of illnesses and deaths due to  
10 potential fecal contamination and waterborne  
11 pathogen exposure.

12 The Revised Total Coliform Rule also  
13 updates provisions in other drinking water rules  
14 that reference analytical methods and other  
15 requirements in the 1989 Total Coliform Rule; for  
16 example, the Public Notification and Ground Water  
17 Rules.

18 These revisions to the total coliform rule  
19 are in accordance with the 1996 Safe Drinking  
20 Water Act Amendments that require the U.S. EPA to  
21 review and revise, as appropriate, each national  
22 primary drinking water regulation not less often  
23 than every six years. These revisions also

1 conform to the Safe Drinking Water Act provision  
2 that requires any revision to maintain or provide  
3 for greater protection of the health of persons.

4 And if there are any questions, I can  
5 answer, and we also have Drinking Water Branch  
6 staff here for more detailed questions and  
7 answers.

8 CHAIRMAN GARD: Any questions for  
9 MaryAnn or staff?

10 (No response.)

11 CHAIRMAN GARD: No?

12 Thank you.

13 Is there Board discussion?

14 (No response.)

15 CHAIRMAN GARD: If not, do I hear a  
16 motion to adopt the emergency rule?

17 MR. RULON: So moved.

18 CHAIRMAN GARD: Is there a second?

19 MR. HILLSDON-SMITH: Second.

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

22 MR. HORN: Aye.

23 DR. NIEMIEC: Aye.

1 DR. ALEXANDROVICH: Aye.

2 MS. BOYDSTON: Aye.

3 MR. POWDRILL: Aye.

4 MR. CARMICHAEL: Aye.

5 MR. RULON: Aye.

6 MR. ETZLER: Aye.

7 MR. DAVIDSON: Aye.

8 MR. HILLSDON-SMITH: Aye.

9 CHAIRMAN GARD: Aye.

10 Opposed, nay.

11 (No response.)

12 CHAIRMAN GARD: The emergency rule

13 has been adopted.

14 The Board will now consider adoption of an

15 emergency rule to incorporate federal

16 requirements for Coal Combustion Residuals. This

17 is the second extension of this emergency rule,

18 which the Board adopted at the February Board

19 meeting.

20 I will enter Exhibit B, the draft

21 emergency rule, into the record of the meeting.

22 Lauren Aguilar will present the rule.

23 MS. AGUILAR: Good afternoon,

1 Chairwoman Gard, members of the Board.

2 As Chairwoman Gard already mentioned, this  
3 will be an extension of two similar rules that  
4 were previously adopted by the Board. This rule,  
5 much like MaryAnn's in the Total Coliform Rule,  
6 is slightly different from the previous adoptions  
7 that you guys made.

8 One of the major differences I do want to  
9 point out was a deletion of the specific phrase  
10 of "not to exceed a height of 6 inches above the  
11 slope of the dike." This has to do with a court  
12 case that involved the U.S. EPA and many of the  
13 utilities. Basically the court handed down a  
14 decision that struck that from the Federal CFR,  
15 so we're going to go ahead and take that out of  
16 the emergency rule.

17 To step back a little bit, we are putting  
18 together -- we are adopting -- asking you to  
19 adopt this emergency rule so that the Department  
20 can pursue an amendment to the Solid Waste  
21 Management Plan. We've talked about this  
22 previously, and we're well on our way. We  
23 actually have the permanent rule scheduled to

1 come before you a little later.

2 And like MaryAnn also mentioned, it takes  
3 about four months for promulgation if you choose  
4 to adopt that rule, so we're going to go ahead  
5 and adopt this emergency -- ask you to adopt this  
6 emergency rule as a gap-filling measure, and we  
7 will also be back in November to ask you to adopt  
8 it again.

9 You will notice that there are some slight  
10 differences between the emergency rule in front  
11 of you today in comparison to the permanent rule  
12 that's going to come before you in a little  
13 while. We made some of those changes, one of  
14 them actually being a little last minute, and I  
15 do apologize for that, but like I said before, we  
16 are working with EPA to amend our Solid Waste  
17 Management Plan, and when we get in comments from  
18 them, we like to accommodate them as much as  
19 possible. And some of those comments came in a  
20 little last minute, which caused us to change the  
21 rule a little last minute.

22 Basically we are incorporating 40 CFR 257,  
23 subpart (d). We originally excluded the last

1 section of 40 CFR 257.107. That particular  
2 section dealt with the utilities to maintain a  
3 CCR Web site. At first, IDEM didn't necessarily  
4 feel it was necessary for us to regulate that  
5 because all of the utilities are maintaining  
6 their Web sites, plus we link to our Web site all  
7 of the information that you may need. So, we  
8 didn't think that that was necessary, but EPA  
9 felt differently, so we're going to go ahead and  
10 put that in the regular rulemaking.

11 But like I said before, this emergency  
12 rule just kind of fills the gap while we're  
13 working on that permanent rulemaking, so the  
14 Department respectfully requests that the Board  
15 adopt the emergency rule as presented.

16 CHAIRMAN GARD: Are there questions  
17 for Lauren?

18 (No response.)

19 CHAIRMAN GARD: Thank you.

20 Is there any Board discussion?

21 (No response.)

22 CHAIRMAN GARD: If not, do I hear a  
23 motion to adopt the emergency rule?

1 MR. CARMICHAEL: So moved.

2 CHAIRMAN GARD: Is there a second?

3 MR. RULON: Second.

4 CHAIRMAN GARD: All in favor, say

5 aye.

6 MR. HORN: Aye.

7 DR. NIEMIEC: Aye.

8 DR. ALEXANDROVICH: Aye.

9 MS. BOYDSTON: Aye.

10 MR. POWDRILL: Aye.

11 MR. CARMICHAEL: Aye.

12 MR. RULON: Aye.

13 MR. ETZLER: Aye.

14 MR. DAVIDSON: Aye.

15 MR. HILLSDON-SMITH: Aye.

16 CHAIRMAN GARD: Aye.

17 Opposed, nay.

18 (No response.)

19 CHAIRMAN GARD: The emergency rule is

20 adopted.

21 This is a public hearing before the

22 Environmental Rules Board of the State of Indiana

23 concerning final adoption of updates to CFR

1 references entitled 326 of the Indiana  
2 Administrative Code.

3 I will now introduce Exhibit C, the  
4 proposed rules, into the record of the hearing.

5 Is there anyone from the Department who  
6 will present the rule?

7 MS. WALSH: Yes, me.

8 CHAIRMAN GARD: Kayleen Walsh.

9 MS. WALSH: Keelyn Walsh, yeah.

10 CHAIRMAN GARD: Keelyn Walsh.

11 MS. WALSH: Thank you, and good  
12 afternoon. I'm Keelyn Walsh, with the Rules  
13 Development Branch of the Office of Legal  
14 Counsel, and I am here to present Rule  
15 No. 16-208, References to the Code of Federal  
16 Regulations, for consideration.

17 This rulemaking is intended to update the  
18 yearly edition of the Code of Federal  
19 Regulations, referenced in 326 IAC 1-1-3, to mean  
20 the 2015 edition. The latest edition of the CFR  
21 contained in 326 IAC 1-1-3 is July 1st, 2013.  
22 Since that date, a number of new federal  
23 regulations have been promulgated that are not

1 reflected in the current version of Title 326 of  
2 the IAC.

3 By updating the reference date to  
4 July 1st, 2015, IDEM is incorporating by  
5 reference the latest version of the CFR, with the  
6 exception of those regulations most recently  
7 published in the Federal Register. This will  
8 ensure that Title 326 of the IAC will be  
9 consistent with those regulations that the  
10 Federal Government promulgated between July 1st,  
11 2013 and June 30th, 2015.

12 Without this rulemaking, state rules would  
13 not be consistent with federal standards. This  
14 may cause problems for businesses or entities who  
15 believe they are in compliance with state and  
16 federal requirements, but are actually not in  
17 compliance and could be subject to fines and  
18 penalties. This rulemaking will ensure that all  
19 citations to the CFR entitled 326 are  
20 incorporated by reference and consistent with  
21 federal rule amendments, and that all businesses  
22 in the state are in compliance.

23 IDEM requests that the Board final adopt

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

4 Thank you.

5 CHAIRMAN GARD: Are there any  
6 questions?

7 MS. ALEXANDROVICH: I do have --

8 CHAIRMAN GARD: Yes.

9 MS. ALEXANDROVICH: -- a question.

10 Can we change it to July 2016?

11 MS. WALSH: Oh, I -- I'm not sure.

12 Maybe I can -- Chris?

13 MS. PEDERSEN: There's a bit of a  
14 delay in our adoptions to CFR because of how long  
15 it takes the Federal Government to actually  
16 publish them, so we don't normally get the  
17 July 1st version until possibly October of the  
18 next year, so there is a bit of a delay. We try  
19 to start these early enough to get them as soon  
20 as possible, but with the notice and things, it  
21 sometimes takes a little longer. So, we don't  
22 really have all of the 2016 things that we could  
23 actually incorporate at this point.

1 MS. ALEXANDROVICH: I'm just  
2 wondering if we could set the schedule for this,  
3 because we're two years behind anyway, 2013 to  
4 2015, so that if we could maybe do this -- I mean  
5 I -- I'm not saying we ought to do it now, but in  
6 the future, start something maybe in October, so  
7 by the end of the year, we can adopt 2016, and  
8 then have that going so we stay up to date every  
9 year. Just a suggestion.

10 MS. WALSH: Yeah. Well, you know,  
11 I'd be happy to check further into that, you  
12 know, for the future, sure.

13 CHAIRMAN GARD: Any other questions  
14 or comments?

15 (No response.)

16 CHAIRMAN GARD: Thank you.

17 I don't have any speaker cards for this.  
18 Is there anyone that would like to comment?

19 (No response.)

20 CHAIRMAN GARD: Okay. This hearing  
21 is concluded.

22 The Board will now consider final adoption  
23 of the rules updating the CFR reference entitled

1 326 of the Indiana Administrative Code. Is there  
2 any Board discussion?

3 (No response.)

4 CHAIRMAN GARD: Do I hear a motion to  
5 final adopt the rule?

6 MR. POWDRILL: So moved.

7 CHAIRMAN GARD: Is there a second?

8 MR. DAVIDSON: Second.

9 CHAIRMAN GARD: All in favor -- well,  
10 this is roll call.

11 Dr. Alexandrovich?

12 MS. ALEXANDROVICH: Yes.

13 CHAIRMAN GARD: Ms. Boydston?

14 MS. BOYDSTON: Yes.

15 CHAIRMAN GARD: Mr. Powdrill?

16 MR. POWDRILL: Yes.

17 CHAIRMAN GARD: Mr. Davidson?

18 MR. DAVIDSON: Yes.

19 CHAIRMAN GARD: Mr. Horn?

20 MR. HORN: Yes.

21 CHAIRMAN GARD: Mr. Hillsdon-Smith?

22 MR. HILLSDON-SMITH: Yes.

23 CHAIRMAN GARD: Mr. Carmichael?

1 MR. CARMICHAEL: Yes.

2 CHAIRMAN GARD: Dr. Niemiec?

3 DR. NIEMIEC: Yes.

4 CHAIRMAN GARD: Mr. Rulon?

5 MR. RULON: Yes.

6 CHAIRMAN GARD: Mr. Etzler?

7 MR. ETZLER: Yes.

8 CHAIRMAN GARD: And the Chair votes

9 aye. Is there anybody that we missed?

10 (No response.)

11 CHAIRMAN GARD: Okay. The vote is 11

12 ayes, zero nays. The rule is adopted.

13 This is a public hearing before the

14 Environmental Rules Board of the State of Indiana

15 concerning final adoption of the Updates to the

16 Hazardous Waste Rules at 329 IAC 3.1.

17 I will now introduce Exhibit D, the

18 proposed rules, into the record of the hearing.

19 Dan Watts will present the rule.

20 MR. WATTS: Hello. Thank you. Good

21 afternoon, Chairwoman Gard, members of the Board.

22 I'm Dan Watts, with the Rules Development Branch.

23 I'm presenting LSA Document No. 16-93 for

1 adoption. This rulemaking proposes updates to  
2 the Hazardous Waste Rules at 329 IAC 3.1 with the  
3 incorporation by reference of recent federal  
4 hazardous waste rules promulgated by the U.S.  
5 EPA.

6 As a component of administering an  
7 authorized state hazardous waste program, IDEM  
8 must maintain requirements that are consistent  
9 with and no less stringent than the federal  
10 hazardous waste requirements. In addition, the  
11 rulemaking proposes technical amendments and  
12 corrections throughout 329 IAC 3.1 for  
13 incorporation by reference language, statutory  
14 citations, contact information, technical errors  
15 and outdated requirements.

16 For this rulemaking, IDEM is using the  
17 abbreviated rulemaking process authorized under  
18 IC 13-14-9-8 because the proposed rule  
19 incorporates by reference federal rules without  
20 amendments that will have a substantive effect  
21 upon the scope or intended application of the  
22 federal rules, and the technical amendments  
23 clarify or correct existing Indiana rules and

1 will not have a substantive effect on existing  
2 Indiana rules.

3 Exposing the rulemaking to additional  
4 comment periods and public hearings will not  
5 provide a reasonable benefit to the environment  
6 and persons affected by this rulemaking.

7 IDEM is proposing to incorporate the  
8 following recent amendments to federal hazardous  
9 waste requirements included in U.S. EPA final  
10 rules. Those final rules include the following:

11 Revisions to the hazardous waste manifest system  
12 that establishes requirements and framework for  
13 the use of electronic manifests, and the  
14 electronic manifest system will not be fully  
15 implemented and effective until fee structure and  
16 system readiness are established in federal  
17 documents published at a later date. The  
18 proposed rule for that was published on  
19 July 26th, and we anticipate the final rule in  
20 2017 at some point.

21 The next rule is updates to the  
22 international export provisions for used cathode  
23 ray tubes. There was also revisions to the

1 definition of solid waste that encourage the  
2 reclamation of certain hazardous secondary  
3 materials rather than disposal or incineration of  
4 the materials.

5       And the revisions proposed for adoption  
6 include requirements that were published in a  
7 January 13th, 2015 EPA final rule, and also  
8 requirements in its October 30th, 2008 final rule  
9 that were not amended or deleted in the  
10 succeeding 2016 final rule. The majority of  
11 authorized states did not adopt the revisions to  
12 the definition of solid waste in the 2008 final  
13 rule because of concerns raised by stakeholders  
14 about effects on human health and the  
15 environment.

16       In the final EPA final rule -- this  
17 rulemaking is a response to the vacatur of the  
18 comparable fuels exclusion and gasification  
19 exclusion ordered by the U.S. Court of Appeals  
20 for the D.C. Circuit. This court order vacates  
21 previously promulgated U.S. EPA final rules for  
22 exclusions from the definition of hazardous waste  
23 for comparative fuels and oil-bearing hazardous

1 secondary materials inserted into gasification  
2 units. IDEM is removing any requirements in the  
3 rules related to those federal exclusions.

4 And as a result of comments received  
5 during the comment period, which ran from  
6 March 16th to April 16th -- or April 15th, IDEM  
7 has made amendments to clarify a few  
8 requirements. At 3.1-1-7(a), IDEM is clarifying  
9 that the version of the CFR incorporated by  
10 reference includes the definition of solid waste  
11 requirements that became effective on July 13th,  
12 2015.

13 And at 3.1-6-2(11), IDEM is clarifying  
14 that it did not intend to fully replace the  
15 federal requirements for the use or reuse of  
16 secondary materials, but rather supplement the  
17 federal requirements with the provisions at  
18 3.1-6-5.

19 Representatives from IDEM are available to  
20 answer questions you may have for this  
21 rulemaking. The Department respectfully requests  
22 that the Board adopt this rule as presented to  
23 maintain an authorized hazardous waste program

1 that is consistent with and no less stringent  
2 than federal hazardous waste requirements.

3 Thank you.

4 CHAIRMAN GARD: Thank you.

5 Are there any questions from the Board?

6 (No response.)

7 CHAIRMAN GARD: I have no speaker  
8 cards. Is there anyone in the audience that  
9 wishes to speak on this?

10 (No response.)

11 CHAIRMAN GARD: If not, the hearing  
12 is concluded. Thank you.

13 The Board will now consider final adoption  
14 of updates to the Hazardous Waste Rules at  
15 329 IAC 3.1. Is there any Board discussion?

16 (No response.)

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

19 MR. RULON: So moved.

20 CHAIRMAN GARD: Is there a second?

21 MR. DAVIDSON: Second.

22 CHAIRMAN GARD: Dr. Alexandrovich?

23 MS. ALEXANDROVICH: Yes.

1 CHAIRMAN GARD: Ms. Boydston?

2 MS. BOYDSTON: Yes.

3 CHAIRMAN GARD: Mr. Powdrill?

4 MR. POWDRILL: Yes.

5 CHAIRMAN GARD: Mr. Davidson?

6 MR. DAVIDSON: Yes.

7 CHAIRMAN GARD: Mr. Horn?

8 MR. HORN: Yes.

9 CHAIRMAN GARD: Mr. Hillsdon-Smith?

10 MR. HILLSDON-SMITH: Yes.

11 CHAIRMAN GARD: Mr. Carmichael?

12 MR. CARMICHAEL: Yes.

13 CHAIRMAN GARD: Dr. Niemiec?

14 DR. NIEMIEC: Yes.

15 CHAIRMAN GARD: Mr. Rulon?

16 MR. RULON: Yes.

17 CHAIRMAN GARD: Mr. Etzler?

18 MR. ETZLER: Yes.

19 CHAIRMAN GARD: And the Chair votes

20 aye. That is 11 ayes and zero nays. The rule is

21 adopted.

22 This is a public hearing before the

23 Environmental Rules Board of the State of Indiana

1 concerning final adoption of Emission Reporting  
2 Rules at 326 IAC 2-6-1 for Lawrenceburg Township  
3 in Decatur County.

4 I will now introduce Exhibit E, the  
5 proposed rules, into the record of the hearing.

6 Keelyn Walsh will present the rule.

7 MS. WALSH: Hello again. I am Keelyn  
8 Walsh, a rule writer with the Rules Development  
9 Branch of OLC, and I am here to present Rule  
10 No. 16-162, Emissions Reporting for Lawrenceburg  
11 Township in Dearborn County, for your  
12 consideration.

13 This rulemaking is intended to amend the  
14 Emission Reporting Rule at 326 IAC 2-6 to apply  
15 the reporting thresholds for nonattainment areas  
16 to the eight-hour ozone nonattainment area of  
17 Lawrenceburg Township, Dearborn County. IDEM  
18 must create permanent and enforceable limits for  
19 sources that emit air pollutants in nonattainment  
20 areas in order to obtain U.S. EPA's approval of  
21 requests for redesignation to attainment.

22 The Cincinnati-Hamilton area, which  
23 includes Dearborn County in Indiana, has recorded

1 three years of complete, quality-assured ambient  
2 air quality monitoring data for the years 2013  
3 to 2015, demonstrating attainment of the  
4 eight-hour ozone standard. This rulemaking is  
5 required by federal law and is one of the  
6 elements of the process necessary to redesignate  
7 Lawrenceburg Township in Dearborn County to  
8 attainment for the eight-hour ozone National  
9 Ambient Air Quality Standards.

10 This rulemaking is a component of the  
11 redesignation process that will save money for  
12 sources that expand existing operations, as well  
13 as encourage new sources to locate in the area.  
14 When this rule is complete, it will be submitted  
15 to U.S. EPA with the redesignation request for  
16 approval into the Indiana SIP to redesignate  
17 Lawrenceburg Township, Dearborn County to  
18 attainment for the 2008 eight-hour ozone  
19 standard.

20 Redesignating the area to attainment will  
21 also allow affected sources to be permitted under  
22 the PSD program under 326 IAC 2-2 instead of the  
23 emission offset programs under 326 IAC 2-3, which

1 will provide cost savings for sources.

2 IDEM requests that the Board final adopt  
3 this rule as presented, and there is program  
4 staff available to answer any further questions  
5 you may have.

6 Thank you.

7 CHAIRMAN GARD: Are there any  
8 questions? Yes.

9 MR. HILLSDON-SMITH: Yeah.

10 So, how long, in your experience, would it  
11 take for the U.S. EPA to respond and then us  
12 to -- I mean best case scenario -- for us to then  
13 have Dearborn Township redesignated as in  
14 attainment?

15 MS. WALSH: Good question. I might  
16 defer that to program staff or Chris.

17 MS. PEDERSEN: Generally speaking,  
18 when we submit redesignation requests, it can  
19 take anywhere from three to six months up to even  
20 18 months. They are really acting much quicker  
21 than they used to, so I would anticipate it would  
22 be sooner rather than later.

23 MR. HILLSDON-SMITH: Okay. Thank

1 you.

2 CHAIRMAN GARD: Any additional  
3 questions?

4 (No response.)

5 CHAIRMAN GARD: Thank you.

6 I don't have any speaker cards turned in.

7 Is there anyone in the audience that would like  
8 to address this issue?

9 (No response.)

10 CHAIRMAN GARD: This hearing is  
11 concluded.

12 The Board will now consider final adoption  
13 of Emission Reporting Rules at 326 IAC 2-6-1 for  
14 Lawrenceburg Township in Dearborn County. Is  
15 there any Board discussion?

16 (No response.)

17 CHAIRMAN GARD: Do I hear a motion to  
18 adopt the final rule?

19 MR. HORN: So moved.

20 MS. ALEXANDROVICH: Second.

21 CHAIRMAN GARD: Dr. Alexandrovich?

22 MS. ALEXANDROVICH: Yes.

23 CHAIRMAN GARD: Ms. Boydston?

1 MS. BOYDSTON: Yes.

2 CHAIRMAN GARD: Mr. Powdrill?

3 MR. POWDRILL: Yes.

4 CHAIRMAN GARD: Mr. Davidson?

5 MR. DAVIDSON: Yes.

6 CHAIRMAN GARD: Mr. Horn?

7 MR. HORN: Yes.

8 CHAIRMAN GARD: Mr. Hillsdon-Smith?

9 MR. HILLSDON-SMITH: Yes.

10 CHAIRMAN GARD: Mr. Carmichael?

11 MR. CARMICHAEL: Yes.

12 CHAIRMAN GARD: Dr. Niemiec?

13 DR. NIEMIEC: Yes.

14 CHAIRMAN GARD: Mr. Rulon?

15 MR. RULON: Yes.

16 CHAIRMAN GARD: Mr. Etzler?

17 MR. ETZLER: Yes.

18 CHAIRMAN GARD: The Chair votes aye.

19 There are 11 ayes and zero nays. The rule has  
20 been adopted.

21 This is a public hearing before the  
22 Environmental Rules Board of the State of Indiana  
23 concerning final adoption of amendments to rules

1 at 329 IAC 10-3 and 10-9 regarding Coal

2 Combustion Residuals.

3 I will now introduce Exhibit F, the  
4 proposed rules, into the record of the hearing.

5 Lauren Aguilar will present the rule.

6 MS. AGUILAR: Good afternoon again,  
7 Chairwoman Gard, members of the Board. My name  
8 is Lauren Aguilar. I'm here to represent the  
9 Department.

10 Just a moment ago you were so kind as to  
11 adopt a similar emergency rule as a gap-filling  
12 measure until this rule can become effective.  
13 Should you choose to final adopt this rule today,  
14 we estimate it will take about four months to get  
15 through the rest of the promulgation process  
16 until it is effective.

17 This rulemaking addresses coal combustion  
18 residual impoundments, which we have talked about  
19 previously. They are fly ash, bottom ash, boiler  
20 slag, and flue gas desulfurization materials  
21 generated from burning coal for the purposes of  
22 generating electricity by the electric utilities  
23 and independent power producers.

1 In -- on October 19th of 2015, 40 CFR 257,  
2 subpart (d) became effective, and some interested  
3 stakeholders asked IDEM to amend the Solid Waste  
4 Management Plan to incorporate subpart (d) so  
5 that we may work with them more closely on  
6 compliance schedules and the like.

7 In order to move forward with the Solid  
8 Waste Management Plan amendment, IDEM must show  
9 that we have enforcement authority over  
10 40 CFR 257, subpart (d). We have been able to  
11 show that through your adoption of the emergency  
12 rules, and the Solid Waste Management Plan  
13 amendment is well on its way. This will be one  
14 of the last pieces of that puzzle.

15 There were a few slight changes to this  
16 version, which I alluded to during the emergency  
17 rule, but I would like to walk through those with  
18 you now, just to make sure that we're clear. At  
19 329 IAC 10-3-1, we made some changes to  
20 inclusions (8) and (9), and basically this is to  
21 just make it clear that besides what is included  
22 in 329 IAC 10-9-1, which is basically 40 CFR 257,  
23 that the CCR impoundments will only be subject to

1 those standards as opposed to 329 IAC 10-9 as --  
2 or 10 as a whole.

3 We thought that this language more clearly  
4 presented to the public as well as interested  
5 stakeholders that those had been our intentions  
6 all long, so we just wanted to make sure that the  
7 language was as clear as possible, so we made  
8 that slight change.

9 Also, in 329 IAC 10-9-1, we made changes,  
10 as I mentioned before in the emergency rule, to  
11 reflect the order that came down from the federal  
12 courts which struck the phrase about the height  
13 of the grass on the dike, and we also went ahead  
14 and incorporated all of 40 CFR 257 subpart (d),  
15 which is 257.50 through 257 -- or 257.107, which  
16 includes that little piece about the Web sites  
17 that was, once again, in response to the EPA's  
18 comments regarding our Solid Waste Management  
19 Plan amendment.

20 So, that should get us all set and ready  
21 to go to pursue our Solid Waste Management Plan  
22 amendment, which should be coming anytime soon --  
23 or should be coming anytime here soon, and so the

1 Department respectfully requests that the Board  
2 adopt the rule as presented to you today.

3 CHAIRMAN GARD: Okay. Thank you.

4 Are there any questions? Yes, Gary.

5 MR. POWDRILL: Yes.

6 Lauren, on item no. (8) at the --

7 MS. AGUILAR: Yes.

8 MR. POWDRILL: -- top of page 2 --

9 MS. AGUILAR: Yes.

10 MR. POWDRILL: -- it appears there is  
11 a connecting word missing between "construction  
12 permit" and "327 IAC 3."

13 MS. ALEXANDROVICH: They struck out  
14 "under."

15 MR. POWDRILL: Either they should --  
16 yeah. Either "under" should be, or "at," one of  
17 the two.

18 MS. AGUILAR: And on which page no. 2  
19 are you looking at?

20 MR. POWDRILL: Page no. 2, the very  
21 top, item no. (8).

22 MS. AGUILAR: Uh-huh.

23 MR. POWDRILL: The last line -- the

1 last two lines.

2 MS. AGUILAR: Oh, you are correct.

3 What an eagle eye. I guess they just --

4 CHAIRMAN GARD: Should it be "under"

5 or "at"?

6 MS. AGUILAR: I mean either/or is

7 fine. I think we typically use "under." I

8 don't -- I'm not sure how we would formally

9 handle that. Maybe you could make a motion to

10 amend that.

11 MR. POWDRILL: Make a motion to amend

12 it.

13 MS. AGUILAR: Okay.

14 CHAIRMAN GARD: Which do you want;

15 "under" or "at"?

16 MS. ALEXANDROVICH: The other ones

17 are "under."

18 MS. AGUILAR: The other ones are

19 "under." We typically use "under."

20 MR. POWDRILL: Okay. Let's make it

21 "under."

22 MS. AGUILAR: Okay.

23 MR. POWDRILL: I move that we make it

1 "under."

2 MR. RULON: Second.

3 CHAIRMAN GARD: All in favor of that  
4 change, say aye.

5 MR. HORN: Aye.

6 DR. NIEMIEC: Aye.

7 DR. ALEXANDROVICH: Aye.

8 MS. BOYDSTON: Aye.

9 MR. POWDRILL: Aye.

10 MR. CARMICHAEL: Aye.

11 MR. RULON: Aye.

12 MR. ETZLER: Aye.

13 MR. DAVIDSON: Aye.

14 MR. HILLSDON-SMITH: Aye.

15 CHAIRMAN GARD: Aye.

16 Opposed, no.

17 (No response.)

18 CHAIRMAN GARD: Okay. We'll make  
19 that change. Okay. Anything else that anybody's  
20 noticed? Any periods missing, Gary?

21 (Laughter.)

22 MS. AGUILAR: He's going to get me  
23 out of a job. I mean he's good.

1 CHAIRMAN GARD: Okay.

2 MS. AGUILAR: Thank you.

3 CHAIRMAN GARD: Thank you. We have  
4 one person that submitted an appearance card.

5 Bowden Quinn.

6 MR. QUINN: Thank you, Madam Chair,  
7 members of the Board. I'm Bowden Quinn. I'm the  
8 State Director of the Indiana Chapter of the  
9 Sierra Club. Actually, I think there are two  
10 more people who are going to want to speak on  
11 this rule. I think they arrived too late to get  
12 their cards in.

13 CHAIRMAN GARD: That's fine. We'll  
14 call them.

15 MR. QUINN: I will be brief. They  
16 are going to go more into detail. But what we  
17 wanted to bring to the Board is: There's a  
18 tremendous amount of public interest in the coal  
19 ash problem, from those members of the public  
20 specific -- mostly from those members of the  
21 public who live in areas around these coal ash  
22 disposal units.

23 And they're all over the state,

1 particularly the southern part of the state, but  
2 there also is one right here in Indianapolis.  
3 The Harding Street Plant has coal ash lagoons,  
4 which Indianapolis Power and Light is planning to  
5 close, but they're not planning the type of clean  
6 closure, the complete removal of the coal ash  
7 that we would like to see, and that the people of  
8 Indianapolis, especially people around that  
9 plant, would like to see.

10 And we would like to see the Board, as the  
11 broadest representatives of the public, to become  
12 more involved in this coal ash problem. I don't  
13 think it's been specifically brought out that the  
14 amendment to the Solid Waste Management Plan that  
15 has been referred to calls for an extensive  
16 'nother rulemaking taking like two years to  
17 really incorporate the coal ash problem, and as  
18 well as some other solid waste issues, into our  
19 regulations.

20 We would like to see the Board really get  
21 involved in that process, perhaps even, you know,  
22 forming a work group. I don't know what IDEM's  
23 plans are, but we would like to see a clear

1 involvement from the Board. And as I say, people  
2 from the Hoosier Environmental Council are going  
3 to talk more about what our specific requests  
4 would be.

5 What I have here, when we were involved in  
6 this, we've been involved in the issue of coal  
7 ash, the coal ash ponds around the Harding Street  
8 Plant, for several years, and when this new --  
9 when they decided to close the ponds, we had  
10 circulated petitions among the public, and we got  
11 400 signatures to these petitions asking for  
12 clean closure.

13 So, I just wanted to bring that to the  
14 Board's attention to show you how much concern  
15 there is about the coal ash disposal problem.  
16 And if I may, I just have a copy of the first --  
17 the alphabetically first petition. If I could  
18 give one -- a copy to the Board, just to show  
19 what they were concerned about.

20 CHAIRMAN GARD: Are there any  
21 questions for Mr. Quinn?

22 (No response.)

23 CHAIRMAN GARD: Okay. Bowden, is

1 that the end of your --

2 MR. QUINN: That's all, yes. Thank  
3 you.

4 CHAIRMAN GARD: Okay.

5 Tim Maloney? Tim, did you want to go  
6 first, or Dr. Frank?

7 MR. MALONEY: If it's all right with  
8 you, if Dr. Frank could go first.

9 CHAIRMAN GARD: That'll be just fine,  
10 uh-huh.

11 DR. FRANK: Thank you, Madam Chair,  
12 members of the Board. My name is Indra Frank.  
13 I'm the Director of Environmental Health and  
14 Water Policy for the Hoosier Environmental  
15 Council.

16 The adoption today will incorporate the  
17 federal rule on coal ash by reference, but it's  
18 our understanding, as Bowden mentioned, that  
19 there's going to be a longer process of revision  
20 of the Indiana Solid Waste Management Rules, and  
21 we're planning to follow that revision closely.

22 What I want to do today is just briefly  
23 outline some of the points that we're planning to

1 pursue as the revision goes forward. Coal ash  
2 contains toxic substances, including heavy  
3 metals, so it's important to dispose of it  
4 carefully and in a manner that protects Indiana's  
5 water resources.

6 In particular, there is strong evidence  
7 that destroying coal ash without an impermeable  
8 liner leads to ground water contamination, so  
9 we're encouraging Indiana to require composite  
10 liners under coal ash disposal sites. Other  
11 states are already moving in that direction. The  
12 federal rule requires liners only in certain  
13 situations.

14 On a related point, when coal ash is used  
15 either as fill or as soil amendment, there is  
16 also evidence to show that that can contaminate  
17 ground water, and so we would like consideration  
18 of whether those should be permitted as  
19 beneficial uses.

20 We are further concerned that coal ash  
21 storage currently is -- much of it is located in  
22 the hundred-year flood plain of our major rivers,  
23 and we feel that measures should be taken to

1 ensure that flooding in the future doesn't carry  
2 the coal ash into the rivers, where we would wind  
3 up with damage similar to what happened in  
4 Tennessee and in North Carolina with the spills  
5 they've had there.

6 Another issue that will need to be raised  
7 as the revision goes forward is that the EPA has  
8 agreed to changes in the coal ash rule, and those  
9 changes will go through as soon as they are  
10 approved in court, and those changes include the  
11 addition of boron in monitoring groundwater or  
12 looking for coal ash impact, the requirement that  
13 inactive coal ash ponds comply with the same  
14 requirements as existing ponds, and the  
15 requirement that inactive ponds undergo  
16 inspections. Once the court has approved those  
17 changes that the EPA is making, it's likely that  
18 Indiana will also have to incorporate those  
19 changes.

20 The current Indiana solid waste  
21 regulations require financial assurance for  
22 landfills and impoundments in order to protect  
23 Indiana taxpayers from possible cleanup costs,

1 and we feel it's important to maintain those same  
2 requirements as we go forward looking at  
3 impoundments in landfills for coal ash.

4 Finally, we're concerned that IDEM made a  
5 statement in its published plan about granting  
6 extensions on complying with the federal coal ash  
7 rule. According to the EPA, such extensions can  
8 only be granted after the state's revised Solid  
9 Waste Management Plan has been approved by EPA.

10 Also, coal ash sites are only eligible for  
11 extensions after they have been added to the  
12 federal list of open dumps, and so we want to  
13 raise that issue with IDEM. Their plans seem to  
14 imply that they already have the authority to  
15 grant extensions.

16 And with that, I wanted to provide --  
17 that's just a brief outline, but I wanted to  
18 provide a full copy of the comments that were  
19 submitted to IDEM by eight different  
20 organizations.

21 CHAIRMAN GARD: Yeah, that's fine.

22 MR. PIGOTT: Thank you.

23 DR. FRANK: And that was all. Thank

1 you.

2 CHAIRMAN GARD: Okay.

3 Are there any questions for Dr. Frank?

4 Yes.

5 MR. POWDRILL: Dr. Frank, which  
6 beneficial uses did you say you wish to restrict?

7 DR. FRANK: I'm concerned about use  
8 of coal ash for fill or for soil amendment,  
9 because in both cases, the contaminants in coal  
10 ash can be carried downward into ground water.

11 MR. POWDRILL: Thank you.

12 DR. FRANK: Yeah.

13 CHAIRMAN GARD: Any other questions  
14 for Dr. Frank?

15 (No response.)

16 CHAIRMAN GARD: Thank you.

17 DR. FRANK: Thank you.

18 CHAIRMAN GARD: Tim?

19 MR. MALONEY: Thank you, Chairperson  
20 Gard and members of the Board. Tim Maloney with  
21 the Hoosier Environmental Council. I just wanted  
22 to add a few supplemental comments to what  
23 Dr. Frank mentioned and that were contained in

1 our detailed comments that were submitted to the  
2 agency on the Solid Waste Management Plan  
3 amendment.

4 But first of all, more broadly, we think  
5 that the recent adoption by U.S. EPA of both its  
6 Coal Combustion Residuals Rule as well as the  
7 Pollutant Limitations Guideline Rule are both --  
8 were both long overdue in terms of bringing  
9 sensible regulation to this major waste stream  
10 that in many instances was almost unregulated for  
11 decades and led to a number of environmental  
12 problems and contamination of drinking water  
13 supplies, and in the instance of the Town of  
14 Pines in Northern Indiana, an entire community  
15 was contaminated and is now considered a  
16 Superfund site.

17 So, it's a very important issue, and we're  
18 also encouraged by IDEM's decision to assume  
19 implementation of the Federal CCR rules. That  
20 was an optional decision by the state, it was not  
21 required by EPA, and we think it's a good thing  
22 generally that the state is -- has chosen to  
23 implement these rules.

1 But to get to a couple more issues in  
2 detail, Dr. Frank mentioned the concerns about  
3 beneficial use of coal combustion residuals, and  
4 EPA really distinguishes this beneficial use in  
5 two categories, either encapsulated use or  
6 unencapsulated use, and encapsulated use would be  
7 use of the ash as a supplement to -- in the  
8 manufacture of concrete or asphalt or road  
9 materials, and in that way, the ash is  
10 encapsulated in other substances and the risk of  
11 the metals leaching out is greatly reduced.

12 On the other hand, unencapsulated reuse,  
13 such as just unconsolidated fill or as a soil  
14 amendment, exposes the ash to contact with water,  
15 and that is where the environmental problems come  
16 from coal ash disposal is when it's exposed to  
17 water and the metals and other contaminants leach  
18 out of the ashes.

19 So, in the Federal Register publication of  
20 the EPA CCR rules, EPA identified seven proven  
21 damage cases associated with unencapsulated uses  
22 of ash, and in our comments you'll see there's an  
23 appendix there that has a list of studies of

1 what -- the potential adverse impacts of use of  
2 ash as a soil amendment, and so there's been a  
3 lot of research looking at that and raising  
4 concerns about both soil and water contamination  
5 as well as contamination of food -- potential  
6 contamination of food crops.

7 And from a procedural standpoint, the  
8 IDEM's draft plan amendment identified that there  
9 is a statutory prohibition on Indiana regulating  
10 beneficial use of coal ash, yet the EPA rule  
11 provides for that to be a component of these  
12 rules. So, while Indiana is undertaking this  
13 comprehensive rule revision, we also need to be  
14 considering whether we need a statutory change to  
15 fix that problem, and it's our view that we do.  
16 I realize the agency and the Board can't do that,  
17 but both agency and the Board could make a  
18 recommendation to the General Assembly on that  
19 topic.

20 And then the one other point that I would  
21 emphasize, and this is not necessarily a  
22 rulemaking issue, but in IDEM's draft management  
23 plan amendment, it talks about -- and in the

1 federal requirements, the importance of state  
2 agencies coordinating with other programs as this  
3 regulatory process goes forward, for our coal ash  
4 impoundments and lagoons in Indiana, a lot of  
5 those are encircled by embankments or berms that  
6 are potentially subject to state regulation by  
7 the Indiana Department of Natural Resources.

8 The inspections, annual inspections, that  
9 have been done under the federal rules have  
10 indicated that there are structural concerns with  
11 a number of these impoundments, and so we have  
12 urged that even as the rulemaking goes forward,  
13 that IDEM pursue coordination with DNR, close  
14 coordination, to make sure that the issues raised  
15 in those inspection reports are being properly  
16 addressed by the utilities and that the DNR is  
17 fully engaged in that process.

18 And this is a public safety issue. These  
19 embankments or berms around impoundments have  
20 been evaluated under the hazard ratings system  
21 that's used nationally for dams, and a number of  
22 them have been identified as either high hazard  
23 or significant hazard facilities, which means

1 there could be -- if they fail, there could be  
2 threats to human life or significant threats to  
3 property. So, that's another area that could --  
4 where the state could be proceeding with before  
5 the comprehensive rule update is completed.

6 So, I just wanted to emphasize those as  
7 well. I appreciate the Board allowing these  
8 comments and additional remarks beyond the exact  
9 content of this particular rule.

10 Thank you.

11 CHAIRMAN GARD: Are there any  
12 questions for Mr. Maloney? Yes, Dave.

13 MR. POWDRILL: Mr. Maloney, would  
14 utilization of the product under a road as a  
15 substrate be considered encapsulated or not  
16 encapsulated, when you pour the concrete on top  
17 of it or --

18 MR. MALONEY: Well, I would say if  
19 it's -- if it's really just fill that the road is  
20 built on top of, then that would be an  
21 unencapsulated use. If it's actually  
22 incorporated into the roadbed, that would  
23 potentially be --

1 MR. POWDRILL: Meaning that it's part  
2 of the concrete --

3 MR. MALONEY: Yes.

4 MR. POWDRILL: -- that gets hard?

5 MR. MALONEY: Yeah, correct.

6 MR. POWDRILL: All right.

7 CHAIRMAN GARD: Any other questions  
8 for Mr. Maloney?

9 (No response.)

10 CHAIRMAN GARD: Thank you.

11 MR. MALONEY: Thank you.

12 CHAIRMAN GARD: Is there anyone else  
13 who wishes to speak on this issue?

14 (No response.)

15 CHAIRMAN GARD: This hearing is  
16 concluded.

17 The Board will now consider final adoption  
18 to rules at 329 IAC 10-3 and 10-9 regarding Coal  
19 Combustion Residuals. Is there any Board  
20 discussion?

21 DR. NIEMIEC: I would ask IDEM to  
22 comment and respond to this, including how it may  
23 or may not apply to the rule before us, as well

1 as upcoming actions.

2 CHAIRMAN GARD: Okay.

3 COMM. COMER: Peggy, do you want to

4 take that?

5 MS. DORSEY: I would respectfully

6 defer to Jeff Sewell.

7 MR. PIGOTT: Jeff Sewell --

8 COMM. COMER: Jeff Sewell will be --

9 MR. PIGOTT: -- from IDEM will come

10 up.

11 CHAIRMAN GARD: Okay.

12 Jeff, you may need to use the microphone.

13 MR. SEWELL: My name is Jeff Sewell.

14 I'm the Branch Chief for the Office of Land

15 Quality's Permits Branch.

16 And would you clarify the question again

17 for me?

18 DR. NIEMIEC: Asking to reply to the

19 comments as they are relevant to this rule and/or

20 upcoming actions.

21 MR. SEWELL: Okay. The emergency

22 rule and the amendments you adopted today allow

23 us in the very immediate term to enforce the

1 federal requirements for CCR impoundments, and  
2 that's distinct from landfills that are also  
3 regulated by the federal rule, which are not the  
4 subject of the two rules you passed today. They  
5 allow us to enforce those requirements, and that  
6 positions the agency then to be able to entertain  
7 variances and compliance schedules to assist the  
8 utilities that are having trouble with certain  
9 deadlines in the federal requirements.

10 The prospect of undertaking the full  
11 comprehensive update to the land disposal  
12 regulations to blend existing landfill rules  
13 together with the federal criteria is really a  
14 project that involves a lot of stakeholders and  
15 it's a complex project, and not one that can be  
16 completed in such a short amount of time.

17 So, that's the reason we proceeded the way  
18 we did in this case, and we look forward to  
19 working with stakeholders in the future on the  
20 more comprehensive project.

21 CHAIRMAN GARD: Any other questions?

22 (No response.)

23 CHAIRMAN GARD: Thank you.

1 MR. SEWELL: Uh-huh.

2 CHAIRMAN GARD: Is there any Board  
3 discussion?

4 (No response.)

5 CHAIRMAN GARD: Okay. We need a  
6 motion to adopt the rule as amended.

7 MR. CARMICHAEL: So moved.

8 MR. DAVIDSON: Second.

9 CHAIRMAN GARD: Did you say second?

10 MR. DAVIDSON: Yes.

11 CHAIRMAN GARD: Dr. Alexandrovich?

12 MS. ALEXANDROVICH: Yes.

13 CHAIRMAN GARD: Ms. Boydston?

14 MS. BOYDSTON: Yes.

15 CHAIRMAN GARD: Mr. Powdrill?

16 MR. POWDRILL: Yes.

17 CHAIRMAN GARD: Mr. Davidson?

18 MR. DAVIDSON: Yes.

19 CHAIRMAN GARD: Mr. Horn?

20 MR. HORN: Yes.

21 CHAIRMAN GARD: Mr. Hillsdon-Smith?

22 MR. HILLSDON-SMITH: Yes.

23 CHAIRMAN GARD: Mr. Carmichael?

1 MR. CARMICHAEL: Yes.

2 CHAIRMAN GARD: Dr. Niemiec?

3 DR. NIEMIEC: Yes.

4 CHAIRMAN GARD: Mr. Rulon?

5 MR. RULON: Yes.

6 CHAIRMAN GARD: Mr. Etzler?

7 MR. ETZLER: Yes.

8 CHAIRMAN GARD: And the Chair votes

9 aye. Eleven ayes, zero nays. The rule is

10 adopted.

11 This is a public hearing before the

12 Environmental Rules Board of the State of Indiana

13 concerning preliminary adoption of amendments to

14 rules at 327 IAC 8, Total Coliform Rules.

15 I will now introduce Exhibit G, the draft

16 rules, into the record of the hearing.

17 MaryAnn Stevens will present the rule.

18 MS. STEVENS: Good afternoon. I'm

19 MaryAnn Stevens, a rule writer in the Office of

20 Legal Counsel, Rules Development Branch. This is

21 the hearing for consideration of preliminary

22 adoption of the federally required revisions to

23 the Total Coliform Rule adopted by the United

1 States Environmental Protection Agency under the  
2 Safe Drinking Water Act.

3 An emergency rule has been in place since  
4 February to temporarily provide for the  
5 requirements of the revised Total Coliform Rule.  
6 This is the rulemaking that will permanently  
7 include requirements in Indiana's administrative  
8 rules as part of Title 327.

9 As I explained in my presentation for the  
10 emergency rule, this rulemaking makes revisions  
11 to the 1989 Total Coliform Rule and makes minor  
12 revisions to various drinking water standards  
13 affected by the revisions to the Total Coliform  
14 Rule.

15 The federal revisions to the Total  
16 Coliform Rule are found at 40 CFR 141, Subpart Y,  
17 which in the state's rule has been included  
18 through incorporation by reference of the federal  
19 language. The minor revisions to the various  
20 drinking water standards occur in existing rules  
21 of Title 327, Article 8, and have been included  
22 by making the full text changes to the affected  
23 existing rule language of Article 8.

1 Without these federal requirements of the  
2 revised Total Coliform Rule being included in the  
3 state's rules, there would be the potential for  
4 IDEM to lose primacy to conduct the state's  
5 drinking water program as required under the Safe  
6 Drinking Water Act, loss of federal funding for  
7 the drinking water programs, and regulated  
8 entities would still be required to comply with  
9 the federal standards, but without the support,  
10 training, or educational assistance provided by  
11 IDEM's drinking water programs.

12 IDEM received no comments during the first  
13 and second notices of comment period. It has  
14 been the norm with drinking water standards  
15 rulemakings that no comments are submitted by the  
16 affected public water systems because they know  
17 that the state's rules must contain the same  
18 requirements as federal rules.

19 As I also explained in my presentation for  
20 the emergency rule, U.S. EPA's intent in revising  
21 the 1989 federal Total Coliform Rule was to  
22 provide for greater public health protection  
23 beyond the original rule. Under the revised

1 Total Coliform Rule, there is no longer a monthly  
2 maximum contaminant level violation for multiple  
3 total coliform detections.

4 Instead, public water systems that have an  
5 indication of coliform contamination in the  
6 distribution system will be required to assess  
7 the problem and take corrective action that may  
8 reduce cases of illnesses and deaths due to  
9 potential fecal contamination and waterborne  
10 pathogen exposure.

11 The revised Total Coliform Rule also  
12 updates provisions in other drinking water rules  
13 that reference analytical methods and other  
14 requirements in the 1989 Total Coliform Rule; for  
15 example, Public Notification and Ground Water  
16 Rules.

17 These revisions to the Total Coliform Rule  
18 are in accordance with the 1996 Safe Drinking  
19 Water Act Amendments that require the U.S. EPA to  
20 review and revise, as appropriate, each national  
21 primary drinking water regulation not less often  
22 than every six years. These revisions also  
23 conform to the Safe Drinking Water Act provision

1 that requires any revision to maintain or provide  
2 for greater protection of the health of persons.

3 A question that arises with some  
4 regularity from people who read our drinking  
5 water rules is why the rules contain dates that  
6 are now past. The short answer is that U.S. EPA  
7 wants the rules to include those dates, and we  
8 want our rules to be approved by U.S. EPA without  
9 difficulty.

10 The fuller explanation is that U.S. EPA  
11 believes it would compromise enforcement of the  
12 rules if a violation that began under the  
13 original rule is not resolved when the revised  
14 rule becomes effective. If the rules do not  
15 contain the date requirements for the original  
16 rule, then enforcement of unresolved violations  
17 under them would be difficult since the  
18 requirement no longer exists in the rule.

19 If there are any questions, I can answer,  
20 and we have additional program staff available.

21 Excuse me.

22 CHAIRMAN GARD: Are there any  
23 questions? Yes.

1 MR. POWDRILL: This is a preliminary  
2 adoption; correct?

3 MS. STEVENS: Yes.

4 MR. POWDRILL: On page 2 of 85, it  
5 says "until March 31[st] of 2016," which is  
6 already past.

7 MS. STEVENS: Yes.

8 MR. POWDRILL: So, should that be  
9 retained in the document, or should it go away  
10 because March 31st is past?

11 MS. STEVENS: No. That's what I just  
12 explained with my last discussion.

13 MR. POWDRILL: I didn't hear it that  
14 way. Okay.

15 MS. STEVENS: Should I -- would you  
16 like me to repeat?

17 MR. POWDRILL: Please.

18 MS. STEVENS: Okay. A question that  
19 arises with regularity from people who read our  
20 drinking water rules is why the rules contain  
21 dates that are now past. The short answer is  
22 that U.S. EPA wants the rules to include those  
23 dates, and we want our rules to be approved by

1 U.S. EPA without difficulty.

2 MR. POWDRILL: Okay.

3 MS. STEVENS: The fuller explanation  
4 is that U.S. EPA believes it would compromise  
5 enforcement of the rules if a violation that  
6 began under the original rule is not resolved  
7 when the revised rule becomes effective. If the  
8 rules do not contain the date requirements for  
9 the original rule, then enforcement of unresolved  
10 violations under them would be difficult since  
11 the requirement no longer exists in rule.

12 MR. POWDRILL: Thank you, MaryAnn.

13 MS. STEVENS: Does that help?

14 MR. POWDRILL: Yes.

15 MS. STEVENS: I'd just like to add in  
16 that I did just learn today that EPA produced, at  
17 the end of 2015, what they called a transition  
18 memo, which is a process of transitioning through  
19 this process, and you know we had the original  
20 Total Coliform Rule that the requirements expired  
21 as of -- you just named the date -- March 31,  
22 2016. April 1, the next day, April 1, 2016 is  
23 the date when the requirements under the revised

1 rule become effective. But there's this, you  
2 know, transition. The public water supplies have  
3 a period of time of getting up to standards, and  
4 so this transition memo that I learned about that  
5 EPA produced at the end of last year tells the  
6 states, the primacy agencies, how to move through  
7 that process and help the public water supplies  
8 get to the point where they are compliant with  
9 the April 1st, 2016 requirements of the revised  
10 Total Coliform Rule. Excuse me.

11 CHAIRMAN GARD: Yes,  
12 Dr. Alexandrovich.

13 MS. ALEXANDROVICH: I have a couple  
14 of things, one about the dates. I could have  
15 sworn -- and, you know, there's a lot of rules to  
16 read here -- that in one of the rules, and it  
17 might have been the Startup-Shutdown-Malfunction,  
18 the dates were deleted, because you guys do a lot  
19 of cleaning up, and I know we've talked about  
20 deleting the dates. So, is it only the water  
21 rule where EPA wants the old dates to stay in,  
22 or -- because I'm pretty sure somewhere in here,  
23 I can't remember where --

1 MS. STEVENS: I probably shouldn't  
2 speak on -- which rule did you think it was?

3 MS. ALEXANDROVICH: I think it was  
4 SSM, but I'm not a hundred percent on that.

5 MS. STEVENS: Well, okay. I'm going  
6 to make a guess here as to the answer. We  
7 discussed the drinking water rules, which there  
8 are other places in water rules that aren't  
9 drinking water rules where there are dates that  
10 are past, and they may just be an issue of that  
11 rule hasn't been opened in a very long time, and  
12 it could be that a cleanup could occur on that  
13 date.

14 MR. PIGOTT: And Joanne, I did notice  
15 a date that was struck from the Startup-Shutdown,  
16 so that may be what you saw.

17 MS. ALEXANDROVICH: Right. So, I  
18 guess --

19 MR. PIGOTT: It was just different.

20 DR. ALEXANDROVICH: -- it's different  
21 in the air --

22 MR. PIGOTT: I would say yes, it's  
23 different.

1 MS. STEVENS: But it may be that  
2 whatever provision is being talked about in that  
3 part of the rule that contains the date that you  
4 saw struck -- and I'm just talking --

5 MS. ALEXANDROVICH: Yeah.

6 MS. STEVENS: -- off the top of my  
7 head because it's not my rule, but I'm guessing  
8 it might be possible that that date was struck  
9 because the provision being talked about in that  
10 requirement is something that has totally been  
11 addressed, all entities that fall under that  
12 requirement have fulfilled it, I don't know, but  
13 that's not the case, as I just explained --

14 DR. ALEXANDROVICH: Yes.

15 MS. STEVENS: -- with drinking water  
16 rules.

17 MS. ALEXANDROVICH: I was just  
18 wondering why it's different, and maybe --

19 DR. NIEMIEC: I think there's a  
20 reference on page 4 of 7 --

21 MR. PIGOTT: Yes, it is.

22 DR. NIEMIEC: -- under there, and it  
23 is listed right there, under 326 IAC 1-6-6,

1 section (6)(a).

2 MS. STEVENS: You're talking about  
3 the location of the rule where --

4 DR. NIEMIEC: The date is stricken.

5 MS. STEVENS: -- a date is struck?

6 MS. ALEXANDROVICH: Yeah.

7 MS. STEVENS: And that's an air rule,  
8 and my explanation was just a supposition, a  
9 guess.

10 MS. PEDERSEN: Was that on target  
11 with the explanation?

12 DR. ALEXANDROVICH: I don't know the  
13 details. Anyway, I just -- because we had talked  
14 about the dates before.

15 MS. PEDERSEN: A different situation.

16 MS. ALEXANDROVICH: So, I do have one  
17 other thing, because I did try to go through this  
18 rule, and it's kind of -- you know, you're  
19 cleaning things up, and this kind of popped out  
20 at me, and I just wanted to bring it up to ask a  
21 question. At the bottom of page 18 of 85, and  
22 this is about laboratory functions, measuring  
23 false positive rates, it says, "The commissioner

1 strongly recommends that laboratories do the  
2 following." How does a public water system  
3 comply with a strong recommendation?

4 (Laughter.)

5 MS. STEVENS: Can I reread that  
6 sentence about we want our rules to be approved  
7 by EPA with the least difficulty as possible?

8 (Laughter.)

9 MS. STEVENS: Just -- everything you  
10 see, especially in drinking water rules, is  
11 almost verbatim, with the exception of  
12 adjustments because of our LSA style  
13 requirements -- I remember that, I do remember  
14 that, that wording where they strongly  
15 encouraged, strongly recommended. It's federal  
16 language.

17 MR. ETZLER: It is.

18 MS. STEVENS: We do the best that we  
19 can.

20 MS. ALEXANDROVICH: Okay.

21 MR. PIGOTT: And that provision on  
22 page 18 deals with holding samples below ten  
23 degrees Celsius. So, in context, the language

1 talks about the requirements, and what we're  
2 doing is suggesting that it would be good,  
3 "Here's what you have to do, but here's what you  
4 must do."

5 MS. ALEXANDROVICH: So, you wouldn't  
6 take an enforcement action on that, or say,  
7 "Well, you failed to --"

8 MR. PIGOTT: Well, it might --

9 DR. ALEXANDROVICH: "-- do that, and  
10 we recommended that you --"

11 MR. PIGOTT: Right, and especially  
12 regarding evaluating false positive and negative  
13 rates. So, it's the context in which you read  
14 this stuff that it does make a difference.

15 DR. ALEXANDROVICH: Funky language.

16 MR. PIGOTT: It is.

17 MR. HILLSDON-SMITH: Yes.

18 CHAIRMAN GARD: Any other questions?

19 (No response.)

20 CHAIRMAN GARD: Anybody else want to  
21 speak on this?

22 (No response.)

23 CHAIRMAN GARD: Then the hearing is

1 concluded.

2 The Board will now consider preliminary  
3 adoption of amendments to the Total Coliform  
4 Rules at 327 IAC 8. Is there Board discussion?

5 (No response.)

6 CHAIRMAN GARD: Is there a motion to  
7 preliminarily adopt the rule?

8 MR. ETZLER: So moved.

9 CHAIRMAN GARD: Is there a second?

10 MR. HORN: Second.

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

13 MR. HORN: Aye.

14 DR. NIEMIEC: Aye.

15 DR. ALEXANDROVICH: Aye.

16 MS. BOYDSTON: Aye.

17 MR. POWDRILL: Aye.

18 MR. CARMICHAEL: Aye.

19 MR. RULON: Aye.

20 MR. ETZLER: Aye.

21 MR. DAVIDSON: Aye.

22 MR. HILLSDON-SMITH: Aye.

23 CHAIRMAN GARD: Aye.

1 Opposed, nay.

2 (No response.)

3 CHAIRMAN GARD: The rule is  
4 preliminarily adopted.

5 This is a public hearing before the  
6 Environmental Rules Board of the State of Indiana  
7 concerning preliminarily adoption of amendments  
8 to rules at 326 IAC 1-6 and 2-9, the Startup,  
9 Shutdown and Malfunction Rules.

10 I will now introduce Exhibit H, the draft  
11 rules, into the record of the hearing.

12 Jack Harmon will present the rule.

13 MR. HARMON: Good afternoon,  
14 Chairwoman Gard, members of the Board. I'm Jack  
15 Harmon, with the Office of Legal Counsel, with  
16 the Rules Development Branch, and today I am  
17 going to present information on Rule No. 15-326,  
18 on the Startup, Shutdown and Malfunction, or SSM  
19 Rule for your consideration.

20 Before you today are amendments to  
21 Indiana's SSM Rules at 326 IAC 1-6 for your  
22 consideration for preliminary adoption. The SSM  
23 Rules describe for -- how owners and operators of

1 industrial processes treat excessive emissions  
2 from their processes during periods of startup,  
3 during periods of shutdown and during periods of  
4 malfunction.

5       When an industrial process goes through  
6 periods of startup or shutdown or malfunctions,  
7 excessive emissions may occur because processes  
8 and/or control devices are not warmed up yet, or  
9 they're in the process of shutting down, or  
10 because of a sudden malfunction that suddenly  
11 interrupted the process and abruptly halted  
12 control devices. Currently, Indiana Rules at 326  
13 IAC 1-6-4(a) provide that an exemption for  
14 noncompliance with emission limitations could be  
15 allowed during certain SSM events.

16       On June 12th, 2015, U.S. EPA published its  
17 findings in the Federal Register, 80 Federal  
18 Register 33839, taking actions against 36 states,  
19 including Indiana, concerning inadequacies to  
20 startup, shutdown and malfunction provisions  
21 within the state rules. The SIP Call instructed  
22 states, including Indiana, to correct specific  
23 instructions and provisions in the State

1 Implementation Plans, or SIP's, concerning the  
2 treatment of these excess emissions to be  
3 consistent with the Clean Air Act.  
4 Section 302(k) of the Clean Air Act  
5 requires SIP's to contain emission limitations  
6 that limit the quantity, the rate, or the  
7 concentration of emissions of air pollutants on a  
8 continuous basis without any regard to periods of  
9 startup, shutdown or malfunctions. The SIP Call  
10 required Indiana to submit a revision correcting  
11 its inadequate SSM provisions at 326 IAC 1-6 for  
12 approval into the SIP by EPA by November 22nd,  
13 2016.

14 Following our first comment period for  
15 this rulemaking, IDEM responded to several  
16 comments when it published its draft rule and its  
17 second notice of public comment period.  
18 Following the second comment period, IDEM  
19 received no public comments.

20 IDEM has been in communication with U.S.  
21 EPA regarding this rulemaking action, and EPA is  
22 satisfied that the revision will allow Indiana to  
23 be in full compliance with the Clean Air Act with

1 regard to SSM provisions.

2 The rule at 326 IAC 1-6-4(a) has been  
3 amended per the SIP Call to remove language that  
4 exempted when an SSM would be considered as a  
5 violation. The rule now requires compliance at  
6 all times with all emissions standards and  
7 limitations, and makes no distinction between  
8 periods of regular operations during periods of  
9 SSM -- versus periods of SSM.

10 The rule at 326 IAC 2-9-1(h) has also been  
11 changed, just because it references this rule in  
12 its requirements, and, therefore, had to be  
13 updated to correspond to the changes at  
14 326 IAC 1-6. Other areas of the rule have been  
15 changed to update minor standard language and  
16 style changes.

17 The amendments to 326 IAC 1-6 and  
18 326 IAC 2-9 before you will ensure that IDEM  
19 complies with the federal Clean Air Act  
20 requirements, and will enable EPA to approve  
21 Indiana's SIP revision. Having an approved  
22 program benefits the regulated community, because  
23 they're not subject to both federal and state

1 rules. Complying with the federal requirements  
2 is also important so that IDEM continues to  
3 receive federal funding, which is provided to  
4 states, such as Indiana, that have approved  
5 programs.

6 The Department respectfully requests today  
7 that the Board preliminarily adopt this rule as  
8 presented, and IDEM technical staff, program  
9 staff, is here and available should you have any  
10 questions.

11 Thank you.

12 CHAIRMAN GARD: Are there any  
13 questions for Mr. Harmon?

14 MS. ALEXANDROVICH: Yes.

15 A couple of comments. In the rule  
16 information sheet, affected -- under affected  
17 persons, I believe it requires to obtain a permit  
18 under 326 IAC 2-5.1 and 2-6.1. And you also left  
19 out on the overview the changes to 2-9-1.

20 But my question is why that is struck out  
21 of (h). I know -- because what you've changed is  
22 saying basically you're not off the hook if you  
23 have a malfunction, you know, for a violation,

1 but the sentence that was struck, "If an  
2 exceedence is the result of a malfunction, then  
3 the provisions of 326 IAC 1-6 apply," which is  
4 regarding malfunctions and how to report them to  
5 the agency and then make corrections for them.

6 So, I'm not really -- so, I would be  
7 concerned that EPA would kind of look a little  
8 funny at that being struck.

9 MR. HARMON: Specifically what  
10 language are you looking at?

11 MS. ALEXANDROVICH: I'm under 2-9(h).

12 MR. HARMON: 2-9-1?

13 MS. ALEXANDROVICH: Page 6, 2-9-1.

14 MR. HARMON: On page?

15 MS. BOYDSTON: 6.

16 DR. ALEXANDROVICH: 6 of 7.

17 COMM. COMER: Yeah.

18 MR. HARMON: 6 of 7?

19 MS. ALEXANDROVICH: Yeah.

20 MR. HARMON: And the comment is what,  
21 ma'am?

22 MS. ALEXANDROVICH: Why that sentence  
23 is struck.

1 MR. HARMON: "If an exceedence is the  
2 result of a malfunction," that one?

3 MS. ALEXANDROVICH: (Nodded yes.)

4 MR. HARMON: Well, 2-9-1 is a  
5 completely separate rule and it's for specific --  
6 specific source operating agreements, SSOA's, in  
7 2-9, and -- but in there, the rule currently says  
8 that if an SSOA has an exceedence that's the  
9 result of a malfunction, then the provisions of  
10 1-6 apply.

11 And we had to change that because we  
12 changed 1-6, which basic -- well, 1-6 says it  
13 doesn't matter whether you have a malfunction or  
14 what, you have -- you're required to comply with  
15 your emission limitations at all times; okay?  
16 This was changed because there was a reference to  
17 1-6. Did I answer your question of what the  
18 understanding is?

19 DR. ALEXANDROVICH: Well, yeah. I --  
20 yeah. I just -- I'm not sure, because really,  
21 the way I see it, I mean you've essentially, by  
22 striking the stuff out of 1-6-4 --

23 MR. HARMON: Okay.

1 MS. ALEXANDROVICH: -- you're making  
2 that rule more stringent, so then -- so this is  
3 taking out all -- and the rest of 1-6 goes to  
4 reporting on malfunctions and stuff like that.  
5 So, you're taking out the reporting stuff. So,  
6 I'm just -- if EPA is okay with it, I guess I am,  
7 but I'm just still a little confused.

8 MR. HARMON: Okay.

9 CHAIRMAN GARD: Yes.

10 MR. HILLSDON-SMITH: So, looking at  
11 this from an economic development, industrial  
12 development perspective in particular, these  
13 facilities will be treated the same for excess  
14 emissions across all states; right, because it's  
15 U.S. EPA that's telling -- as far as our  
16 competitiveness is concerned --

17 MR. HARMON: That's correct.

18 MR. HILLSDON-SMITH: -- it's a level  
19 playing field?

20 MR. HARMON: That's correct.

21 MR. HILLSDON-SMITH: Some states may  
22 have more requirements, but we're doing what the  
23 U.S. EPA is telling us?

1 MR. HARMON: Our original SIP was  
2 approved by EPA --

3 MR. HILLSDON-SMITH: Right.

4 MR. HARMON: -- and then there was  
5 some litigation, and EPA actually changed its  
6 stance in 2015 and said, "Okay. Yeah, you're  
7 right. We were allowing -- when we approved  
8 these SIP's, we were allowing for violations of  
9 the Clean Air Act." So, EPA changed their stance  
10 and went through all of the language of all 50  
11 states, found 36 of them to be deficient --

12 MR. HILLSDON-SMITH: Okay.

13 MR. HARMON: -- in the provisions  
14 for -- related to the Clean Air Act, and issued  
15 SIP Calls at that point. So, Indiana is  
16 responding specifically to that SIP Call.

17 MR. HILLSDON-SMITH: Yeah. I haven't  
18 received any comments or questions from industry.  
19 I just want to make sure I -- thank you.

20 MR. HARMON: Uh-huh.

21 CHAIRMAN GARD: Any other questions?  
22 Gary.

23 MR. POWDRILL: I'd like to comment,

1 first of all, that we made a quantum leap of two  
2 centuries when we struck the word "telegraph" and  
3 inserted --

4 (Laughter.)

5 MR. POWDRILL: -- and inserted "other  
6 electronic means." And in that same sentence,  
7 you talk about the time -- the time in which you  
8 must report, and it is "...no...later than  
9 four...business hours, daylight -- daytime  
10 business hours after the beginning of the  
11 occurrence." But it's moot on what the rule is  
12 if the occurrence happens on a nonbusiness day.  
13 So, should there be something in there that says,  
14 "first business day within so many hours of the  
15 first -- beginning of the first business day  
16 after the event," or what?

17 MR. HILLSDON-SMITH: Just default to  
18 noon on Monday, I guess.

19 MR. POWDRILL: I don't know. That's  
20 why I asked.

21 MR. HILLSDON-SMITH: Yeah.

22 MR. HARMON: Okay. I made a note of  
23 that, and it's something we'll have to discuss.

1 You know, I mean we're asking for a preliminary  
2 adoption, so certainly --

3 MR. POWDRILL: This is preliminary.

4 MR. HARMON: -- there could be  
5 revisions between now and the final adoption.  
6 But certainly we respect your comments. That's a  
7 good question.

8 MR. CARMICHAEL: Do you have any  
9 sense of how often this has been used in the  
10 past?

11 MR. HARMON: Actually, we do. We  
12 looked at the impact of that, and there have  
13 been -- in the last five years there's been one  
14 report turned in, in five years. This rule  
15 actually applies -- 1-6 actually applies to a  
16 very small population within the state. It's a  
17 small group of sources that actually this applies  
18 to; okay?

19 We have the Title V and the FESOP program  
20 that have a lot more sources, a lot of different  
21 sources. They've got their own set of rules.  
22 This particular rule, 1-6, applies to the very  
23 small sources, and program tells us that within

1 the last five years there's been one -- one  
2 occurrence of a malfunction report turned in.

3 MR. CARMICHAEL: And is that in  
4 looking at removing emergency provisions from  
5 Title V as well?

6 MR. HARMON: At this point in time,  
7 we're not planning on any other rule except for  
8 this right now. I don't know what the future  
9 would bring; okay?

10 MR. CARMICHAEL: Do you know what the  
11 derivation of EPA's change was that drove this?  
12 Was it a court case?

13 MS. ALEXANDROVICH: Here.

14 MR. HARMON: Yeah, it was litigation.  
15 I'm not exactly sure of the exact citation, but  
16 it --

17 MS. ALEXANDROVICH: It's in that.

18 MR. HARMON: It's in the framework of  
19 the rule, so --

20 MR. POWDRILL: The industrial  
21 facilities that are included in this rule don't  
22 necessarily have to generate electricity;  
23 correct?

1 MR. HARMON: That's correct.

2 MR. POWDRILL: They can be just  
3 boilers for heat treatment? Okay.

4 CHAIRMAN GARD: Any other questions?

5 (No response.)

6 CHAIRMAN GARD: Okay. I have no  
7 speaker cards. Is there anybody that wants to  
8 speak on this from the audience?

9 (No response.)

10 CHAIRMAN GARD: Seeing none, this  
11 hearing is concluded.

12 MR. HARMON: Thank you.

13 CHAIRMAN GARD: The Board will now  
14 consider preliminary adoption of amendments to  
15 326 IAC 1-6 and 2-9, the Startup, Shutdown and  
16 Malfunction Rules. Any further Board discussion?

17 (No response.)

18 CHAIRMAN GARD: Is there a motion to  
19 preliminarily adopt the rules?

20 MR. HILLSDON-SMITH: So moved.

21 MR. DAVIDSON: Second.

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

1 MR. HORN: Aye.

2 DR. NIEMIEC: Aye.

3 DR. ALEXANDROVICH: Aye.

4 MS. BOYDSTON: Aye.

5 MR. POWDRILL: Aye.

6 MR. CARMICHAEL: Aye.

7 MR. RULON: Aye.

8 MR. ETZLER: Aye.

9 MR. DAVIDSON: Aye.

10 MR. HILLSDON-SMITH: Aye.

11 CHAIRMAN GARD: Aye.

12 Opposed, nay.

13 (No response.)

14 CHAIRMAN GARD: The rules are

15 preliminarily adopted.

16 This is a public hearing before the

17 Environmental Rules Board of the State of Indiana

18 concerning preliminary adoption of amendments to

19 rules at 327 IAC 5-7-11, the Definition of

20 "Interference."

21 I will now introduce Exhibit I, the draft

22 rules, into the record of the hearing.

23 MaryAnn Stevens will present the rule.

1 MS. STEVENS: All these tall people.  
2 Good afternoon. I am MaryAnn Stevens, a  
3 rule writer in the Office of Legal Counsel, Rules  
4 Development Branch.

5 This Board, in response to a citizen's  
6 petition under Indiana Code 13-14-8-5, held a  
7 hearing on the citizen's proposal requesting  
8 revision of the definition of "interference" at  
9 327 IAC 5-17-11 as it relates to a publicly owned  
10 treatment works, also called a POTW.

11 The proposal was discussed at several  
12 Board meetings after the initial presentation and  
13 was the subject of a Board hearing. The Board's  
14 final action at its October 2015 meeting was to  
15 direct IDEM to conduct rulemaking to revise the  
16 definition at 327 IAC 5-17-11 to be consistent  
17 with the federal definition at 40 CFR 403.3,  
18 subsection (k).

19 The revision to the state definition of  
20 "interference" will more narrowly define the  
21 term, which is intended to give more certainty to  
22 a POTW as to what is interference. The existing  
23 state definition of "interference" is met if only

1 one element is present among the three  
2 characteristics of: (1) inhibits or disrupts the  
3 POTW; (2) causes a violation of the POTW's  
4 discharge permit; and (3) prevents the use of the  
5 POTW's sewage sludge.

6 The revision to the definition of  
7 "interference" will make the claim of  
8 interference possible only if inhibition or  
9 disruption to the POTW is also accompanied by  
10 either a violation of the POTW's discharge permit  
11 or prevention of use of the POTW's sewage sludge.

12 The first notice of comment period posted  
13 in the Indiana Register on January 13, 2016. One  
14 comment letter was submitted. The second notice  
15 of comment period, including the draft rule,  
16 posted in the Indiana Register on April 13, 2016.  
17 No comment letters were submitted.

18 IDEM believes the draft rule fulfills the  
19 Board's directive to revise the definition of  
20 "interference" at 327 IAC 5-17-11 to be  
21 consistent with the federal definition at  
22 40 CFR 403.3(k), and asks the Board's vote of  
23 approval. If there are any questions, I can

1 provide answers, as well as the Office of Water

2 Quality staff members are available also.

3 CHAIRMAN GARD: I have one speaker

4 card. Before that, are there any questions?

5 (No response.)

6 CHAIRMAN GARD: Okay. Bill Beranek.

7 DR. BERANEK: Thank you. My name is

8 Bill Beranek, and I'm speaking on behalf of the

9 petitioners. I will not say anything about this,

10 because MaryAnn did a superb job of describing

11 exactly what the purpose of the petition is, and

12 the petitioners would recommend that you

13 preliminarily adopt this rule as IDEM has drafted

14 it.

15 CHAIRMAN GARD: Thank you.

16 Are there any questions for Dr. Beranek?

17 Yes.

18 MR. RULON: Is it okay if we call

19 this "Bill's Rule"?

20 (Laughter.)

21 DR. BERANEK: Not today, no.

22 CHAIRMAN GARD: Any other questions

23 or comments?

1 (No response.)

2 CHAIRMAN GARD: Thank you.

3 Anybody in the audience wish to comment?

4 (No response.)

5 CHAIRMAN GARD: Seeing none, the  
6 hearing is concluded.

7 The Board will now consider preliminary  
8 adoption of amendments to rules at  
9 327 IAC 5-7-11, the Definition of "interference."

10 Any further Board discussion?

11 (No response.)

12 CHAIRMAN GARD: Is there a motion to  
13 preliminarily --

14 MR. RULON: Chairman?

15 CHAIRMAN GARD: -- adopt -- yes.

16 MR. RULON: I just wanted to make a  
17 comment, having served on the Above-Ground  
18 Storage Tank Committee, that in my view, this is  
19 a great example of using the laws in Indiana to  
20 the benefit of the citizens, where we listen to a  
21 citizen petition and we're actually taking action  
22 in implementing it.

23 When we look at this above-ground storage

1 tank report in a little bit, you know, one of the  
2 findings in that is that we will respond if  
3 people point out where there are holes in  
4 existing rules, as opposed to writing an entirely  
5 new regulatory structure.

6 CHAIRMAN GARD: Uh-huh.

7 MR. RULON: So, I just want to  
8 commend Bill for bringing this forward, and I  
9 want to also really commend IDEM staff for, in a  
10 really quick manner, bringing this whole thing  
11 forward. So, thank you, Bruno, and anybody else.

12 CHAIRMAN GARD: Yes, this has worked  
13 out very well. It's been actually a good civic  
14 exercise, I think.

15 Any further Board discussion?

16 (No response.)

17 CHAIRMAN GARD: Do I hear a motion to  
18 preliminarily adopt the rule? We already -- did  
19 we already do that?

20 MS. BOYDSTON: No.

21 CHAIRMAN GARD: Okay. Preliminarily  
22 adopt the rule, is there a motion?

23 MR. POWDRILL: So moved.

1 CHAIRMAN GARD: Second?

2 MR. DAVIDSON: Second.

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

5 MR. HORN: Aye.

6 DR. NIEMIEC: Aye.

7 DR. ALEXANDROVICH: Aye.

8 MS. BOYDSTON: Aye.

9 MR. POWDRILL: Aye.

10 MR. CARMICHAEL: Aye.

11 MR. RULON: Aye.

12 MR. DAVIDSON: Aye.

13 MR. HILLSDON-SMITH: Aye.

14 CHAIRMAN GARD: Aye.

15 Opposed, nay.

16 MR. ETZLER: Nay.

17 CHAIRMAN GARD: One nay?

18 MR. ETZLER: One nay.

19 CHAIRMAN GARD: One nay. Okay.

20 MR. ETZLER: I'm still standing my  
21 ground.

22 CHAIRMAN GARD: Okay. That's fine.

23 The rule is preliminarily adopted with a vote --

1 voice vote of ten to one.

2 This is a public hearing before the  
3 Environmental Rules Board for rules not subject  
4 to the sunset provisions of IC 13-14-9.5. Rules  
5 that are exempt from expiration under law and  
6 have been effective for seven years are to be the  
7 subject of a public notice asking for comment on  
8 any of the listed rules in a public hearing  
9 before the Board.

10 A notice for each effective title of the  
11 Indiana Administrative Code Titles 326 and 329  
12 was published in the Indiana Register with a  
13 request for written comments on either -- why any  
14 of the listed rules should be reviewed under the  
15 regular rulemaking process at IC 13-14-9.

16 I will now introduce Exhibits J and K, the  
17 two notices published in the Indiana Register,  
18 into the record of the hearing.

19 No written comments were received for any  
20 of the rules listed in the notices. Is there  
21 anyone who wishes to provide comments to the  
22 Board on any of the rules at this time?

23 (No response.)

1 CHAIRMAN GARD: Hearing none, the  
2 hearing is concluded.

3 The Board must determine whether, based on  
4 comments received, it would like to direct the  
5 agency to open a new rulemaking for any of the  
6 rules listed as being exempt from the sunset  
7 process.

8 If the Board chooses not to ask for  
9 rulemaking, a motion must be made for no further  
10 action to be taken on the rules. If you have any  
11 questions on the nonsunset process, Nancy King is  
12 available to answer any questions. Is there any  
13 Board discussion?

14 (No response.)

15 CHAIRMAN GARD: Is there a motion for  
16 no further action?

17 MR. RULON: So moved.

18 CHAIRMAN GARD: Is there a second?

19 MR. CARMICHAEL: Second.

20 MR. POWDRILL: Second.

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

23 MR. HORN: Aye.

1 DR. NIEMIEC: Aye.

2 DR. ALEXANDROVICH: Aye.

3 MS. BOYDSTON: Aye.

4 MR. POWDRILL: Aye.

5 MR. CARMICHAEL: Aye.

6 MR. RULON: Aye.

7 MR. ETZLER: Aye.

8 MR. DAVIDSON: Aye.

9 MR. HILLSDON-SMITH: Aye.

10 CHAIRMAN GARD: Aye.

11 Opposed, nay.

12 (No response.)

13 CHAIRMAN GARD: The motion passes.

14 Now we will have a brief presentation of  
15 the final report from the Above-Ground Storage  
16 Tank Advisory Group that we put together this  
17 past spring to gather information and discuss the  
18 best way to implement the requirements of Senate  
19 Enrolled Act --

20 COMM. COMER: 312.

21 CHAIRMAN GARD: -- 312 regarding  
22 rulemaking on the protection of the surface water  
23 drinking [sic] supplied through above-ground

1 storage tank reporting requirements, and water  
2 supply threats.

3 Nancy, do you want to give that report?

4 MR. POWDRILL: Question.

5 CHAIRMAN GARD: Yes.

6 MR. POWDRILL: Didn't we have two of  
7 these to review of nonexpiring rules to look at,  
8 Title I, LSA Document 16-139, and LSA  
9 Document 16-143? Did we vote on both of them  
10 with that same --

11 CHAIRMAN GARD: Yeah, both of them  
12 with the same motion.

13 MR. POWDRILL: Okay. Thank you.

14 CHAIRMAN GARD: I hope so. My voice  
15 is going to be gone by the time we get through  
16 with this meeting.

17 Okay. Nancy.

18 MS. KING: Thank you, Chair Gard.

19 As the Chair pointed out, we had our last  
20 AST Advisory Group meeting this morning, and  
21 finalized the report. We have provided a copy of  
22 the final report for everyone here. There should  
23 be some extras back there. We will also be

1 putting it on the IDEM Web site.

2 This Group met. It was also -- I should  
3 say included with this particular report is a  
4 list of the Advisory Group members on the back  
5 page, all of the folks that spent time doing  
6 this. We had five meetings in total over the  
7 spring and summer to discuss the requirements of  
8 Senate Enrolled Act 312.

9 I will not read this entire report to you.  
10 I would like to go over the conclusions and the  
11 recommendations that the Group came up with.  
12 This was based on a lot of really good  
13 information gathering. We had a lot of folks  
14 come and give presentations to -- not to the  
15 Board -- to the Advisory Group, just to gather  
16 information for the first three meetings. Then  
17 the next two meetings we talked about the report  
18 and what we would like to see in this report.

19 So, I will just briefly go over these  
20 conclusions, and we have several members of our  
21 Board here who were on the Group, as well as  
22 Sen. Gard, so they can certainly answer  
23 questions, and we probably have some members of

1 the Advisory Group in the audience as well, and  
2 it was a very, I think, eye-opening experience  
3 for everyone.

4 Based on the information that was gathered  
5 by the Group, the conclusions that were reached  
6 by the Group was that the overarching intent of  
7 Senate Enrolled Act 312 was to protect Indiana's  
8 drinking water supply from contamination of  
9 surface water intakes by the use of several  
10 mechanism, including gathering information on  
11 potential threats to the drinking water supply,  
12 and requiring public water supplies to assess  
13 such threats and develop emergency plans.

14 Protection of groundwater as a drinking  
15 water source was not the subject of SEA 312.  
16 Groundwater is protected under the Wellhead  
17 Protection Rules developed under the Safe  
18 Drinking Water Act, and the Indiana Groundwater  
19 Protection Act requirements.

20 As I look at this, because I revised this  
21 before our meeting today, that's actually the  
22 first bulleted conclusion, so I will be  
23 renumbering this, so I will get you the corrected

1 one. I told you I'm not the best secretary. I  
2 apologize for that. So, we actually had nine  
3 conclusions.

4 So, the second conclusion, the reporting  
5 requirements for above-ground storage tanks under  
6 SEA 312 did not materially increase the  
7 information available to assess such threats,  
8 given the small number of tanks that are required  
9 to report to IDEM. Further, most owners of AST's  
10 are already required to report tank and content  
11 information under a variety of state and federal  
12 laws to various agencies.

13 There are many existing sources of  
14 information to aid in the development of a  
15 comprehensive threat assessment, but the sources  
16 are spread throughout state and federal agencies  
17 and present a challenge for water utilities to  
18 access. There's currently no single place where  
19 that information gathered by state and federal  
20 agencies pertaining to potential threats is  
21 housed. The development of a clearinghouse for  
22 such information would be invaluable to public  
23 water suppliers and state and local emergency

1 responders.

2       Enabling public water suppliers to  
3 directly gather information on potential threats  
4 within the zones of drinking water intakes,  
5 specifically what materials are stored upstream  
6 of surface water intakes, may be more beneficial  
7 to protecting the public water supply than  
8 requiring additional recording of AST's to IDEM.

9 Treatment capabilities differ for various  
10 chemicals. Therefore, knowledge of materials  
11 stored allows public water suppliers to plan  
12 accordingly. This approach is similar to the  
13 existing Wellhead Protection Rules.

14       Review and updating of existing mechanisms  
15 to prevent or report spills to surface waters,  
16 such as spill reporting and secondary containment  
17 rules, may be more beneficial to protecting the  
18 public water supply than developing rules for  
19 additional tank reporting to IDEM.

20       Public education and outreach both prior  
21 to and in the event of an emergency situation is  
22 an important component of ensuring the safety of  
23 Indiana's drinking water supply.

1 The Indiana Emergency Response Commission,  
2 IERC, and the 88 Local Emergency Planning  
3 Committees, known as the LEPC's, could play a  
4 valuable role in aiding public water supplies  
5 with threat assessment and public outreach.

6 The basic requirements for adequate  
7 response in the event of an incident are timely  
8 reporting of the material and volume spilled into  
9 surface waters, and evaluation of the time of  
10 travel and expected pollutant concentration at  
11 the time the pollutant reaches the intake, and  
12 what action the supplier can take to ensure  
13 protection of the public water supply.

14 Those were the conclusions that the Group  
15 reached based on the information from the various  
16 presentations that we were provided. There's a  
17 brief background at the beginning of this report  
18 that talks about that a little bit.

19 The recommendations based on those  
20 conclusions are as follows: The requirements for  
21 additional tank reporting to IDEM under SEA 312  
22 should be revisited to determine whether an  
23 additional regulatory program is beneficial in

1 protecting the public water supply, given the  
2 fact that initial reporting under SEA 312 did not  
3 materially enhance the existing known information  
4 about AST's in the area of concern for drinking  
5 water intakes.

6 Two, the rulemaking requirements under  
7 SEA 312 for classifying AST's based on materials  
8 stored, location, and capacity should be  
9 revisited after a determination is made as to  
10 whether an additional regulatory program furthers  
11 the goal of protecting Indiana's public water  
12 supply.

13 IDEM should evaluate whether updating  
14 existing rules for spill reporting with secondary  
15 containment would enhance public water supply  
16 protection and information sharing in the event  
17 of a spill to surface waters.

18 The requirement for public water supply  
19 systems to develop a surface water quality threat  
20 minimization and response plan should be retained  
21 in statute, as the statutory directive under  
22 IC 13-18-16-7.5 is clear. No additional rules  
23 are required.

1 The legislature should study the option of  
2 providing additional resources to assist public  
3 water systems' efforts to assess threats, develop  
4 and maintain emergency plans, and engage in  
5 public education regarding drinking water safety.

6 Such studies should include review of  
7 authorities for public water systems to compel  
8 information from potential threats, and the need  
9 for such information to remain confidential when  
10 shared with public water systems. Included in  
11 such studies should be the consideration of how  
12 emergency responders should be able to access  
13 information from threat assessments to aid in an  
14 emergency response.

15 Many agencies require the reporting of  
16 tank information that may be useful in developing  
17 threat minimization plans. The legislature  
18 should study the efficacy of developing a central  
19 repository for such information, and the ability  
20 of public water systems to access the  
21 information.

22 The legislature should study the role that  
23 existing resources, such as the IERC and the

1 LEPC's, should play in furthering the goals of  
2 drinking water protection and public education  
3 and outreach.

4 Specifically, the IERC and LEPC's may be  
5 very useful resources to assist public water  
6 system information gathering and incident  
7 response planning. The IERC currently houses a  
8 significant amount of potentially helpful tank  
9 information.

10 Rulemaking for AST reporting should not be  
11 initiated until the legislature has the  
12 opportunity to review the information available  
13 related to the recommendations in this report.

14 Rulemaking for the threat minimization and  
15 response plans for public water supplies is not  
16 necessary, given the clarity of existing  
17 legislation, IC 13-18-16-7.5, as added under  
18 SEA 312, regarding the development and  
19 implementation of such plans.

20 The information gathered by the Advisory  
21 Group is extensive and very instructive as to the  
22 current state of tank reporting and how and where  
23 such information is stored.

1 The work done by the Indiana Finance  
2 Authority to develop draft threat assessment and  
3 response plans for public water supplies will be  
4 of great benefit to water utilities, and provides  
5 valuable information as to the difficulties  
6 utilities face in gathering threat information.

7 If the primary goal of SEA 312 is to put  
8 in place mechanisms to ensure the safety of  
9 Indiana's surface water/drinking water systems,  
10 finding ways to coalesce existing information  
11 sources and making them available to Indiana's  
12 drinking water utilities and emergency responders  
13 is of paramount importance.

14 Furthermore, enhancement of existing  
15 resources, such as those available under the IERC  
16 and the LEPC's and existing rules for spill  
17 reporting and secondary containment, may prove  
18 more beneficial to meeting the goals of SEA 312  
19 than the creation of an additional reporting  
20 program as originally envisioned under the  
21 legislation.

22 That is it in a nutshell.

23 (Laughter.)

1 MS. KING: We also -- it took us  
2 months to get here.

3 CHAIRMAN GARD: Thank you.

4 MS. KING: We also provided -- there  
5 was a request that we include the language under  
6 SEA 312 that has the various exclusions that were  
7 provided for the various tanks so that the folks  
8 have kind of a frame of reference of how the  
9 reporting came to be.

10 Early on in a meeting, you may recall --  
11 it would be the end of last year -- Bruce Palin  
12 gave a report to the Board on the tank reporting,  
13 and we did an emergency rule to put that in place  
14 for folks to report on the tanks, so that  
15 information was also provided to the Group.

16 And so, with all of the information that  
17 was gathered, this is the report that came about,  
18 and I leave it to you to discuss.

19 Thank you.

20 CHAIRMAN GARD: Well, first of all, I  
21 want to thank Nancy for serving as our note taker  
22 and our scribe in providing the staff support,  
23 and there were other IDEM people that worked with

1 us as well, but thank you, Nancy.

2 And I also want to thank the members of  
3 the Committee. A few of you on this Board were  
4 on the Committee, and then some from the public  
5 that were -- had a particular interest, and it  
6 was an excellent subcommittee, I think. I  
7 learned a lot of information that we didn't have  
8 before, and I think that had the General Assembly  
9 gotten all -- had all of the information that we  
10 received on this issue, probably the legislation  
11 would have come out quite differently.

12 What we thought, and I'd like to get you  
13 all's opinion, but I think at some point this  
14 report needs to be approved by this Board.  
15 This -- the subcommittee recommended that it be  
16 submitted and approved by the Board. Rather than  
17 ask you all to do it kind of blindly, since  
18 you've been presented with it, if you don't have  
19 any objections, we will take it up for a vote in  
20 November. Is that all right?

21 MR. HILLSDON-SMITH: Sure.

22 CHAIRMAN GARD: So, take a chance and  
23 an opportunity to look at it. It will eventually

1 be on the IDEM Web site and be submitted to  
2 appropriate people in the General Assembly and  
3 available for public consumption.

4 So, does anybody that was on the Committee  
5 want to make any comments about it at all?

6 (No response.)

7 CHAIRMAN GARD: Well, thank you all  
8 very much for participating.

9 Let's see. What's next? This is Open  
10 Forum. Is there anybody in the audience that  
11 wanted to address the Board today?

12 (No response.)

13 CHAIRMAN GARD: Seeing none, the next  
14 meeting of the Environmental Rules Board is set  
15 for, tentatively, November 9th at 1:30 in  
16 Conference Room A. They're moving us around.  
17 That's the day after election, which may not  
18 be -- everyone may not be totally awake by then,  
19 but anyway, that's tentatively the next meeting.

20 Is there anything else to come before the  
21 Board?

22 (No response.)

23 CHAIRMAN GARD: If not, is there a

1 motion to adjourn?

2 DR. NIEMIEC: So moved.

3 CHAIRMAN GARD: Is there a second?

4 MR. HILLSDON-SMITH: Second.

5 CHAIRMAN GARD: All in favor, say

6 aye.

7 MR. HORN: Aye.

8 DR. NIEMIEC: Aye.

9 DR. ALEXANDROVICH: Aye.

10 MS. BOYDSTON: Aye.

11 MR. POWDRILL: Aye.

12 MR. CARMICHAEL: Aye.

13 MR. RULON: Aye.

14 MR. ETZLER: Aye.

15 MR. DAVIDSON: Aye.

16 MR. HILLSDON-SMITH: Aye.

17 CHAIRMAN GARD: Aye.

18 Opposed, nay.

19 (No response.)

20 CHAIRMAN GARD: We are adjourned.

21 - - -

22 Thereupon, the proceedings of  
23 August 10, 2016 were concluded  
at 3:14 o'clock p.m.

23 - - -

1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned  
3 Court Reporter and Notary Public residing in the  
4 City of Shelbyville, Shelby County, Indiana, do  
5 hereby certify that the foregoing is a true and  
6 correct transcript of the proceedings taken by me  
7 on Wednesday, August 10, 2016 in this matter and  
8 transcribed by me.

9

10

\_\_\_\_\_

11

Lindy L. Meyer, Jr.,

12

Notary Public in and

13

for the State of Indiana.

14

15 My Commission expires October 27, 2016.

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