

1 BEFORE THE INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

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5 PUBLIC HEARING REGARDING
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
6 PUBLIC PARTICIPATION IN DEVELOPMENT OF
COAL COMBUSTION RESIDUALS
7 SOLID WASTE MANAGEMENT PLAN AMENDMENT

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10 PROCEEDINGS

11 in the above-captioned matter, before Hearing

12 Officer Jeff Sewell, taken before me, Lindy L.

13 Meyer, Jr., a Notary Public in and for the State

14 of Indiana, County of Shelby, at the Indiana

15 Government Center South, Conference Center,

16 Room C, 402 West Washington Street, Indianapolis,

17 Indiana, on Thursday, June 16, 2016 at

18 1:00 o'clock p.m.

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21 William F. Daniels, RPR/CP CM d/b/a
ACCURATE REPORTING OF INDIANA

22 12922 Brighton Avenue

23 Carmel, Indiana 46032

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1 APPEARANCES:

2 ON BEHALF OF IDEM:

Jeff Sewell, Hearing Officer

3

ON BEHALF OF U.S. EPA:

4 Carol L. Staniec

5

SPEAKERS PRESENT:

6 Timothy J. Rushenberg

Bowden Quinn

7 Richard Hill

Jodi Perras

8 Indra Frank

Tim Maloney

9 Mike Oles

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1 1:00 o'clock p.m.
June 16, 2016

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3 THE HEARING OFFICER: Good afternoon.

4 I'm going to go ahead and get started kind of on
5 time. We're about a minute or two after. I
6 think we'll go ahead and get started. I do want
7 to acknowledge that Carol Staniec, from the
8 U.S. EPA, is with us today. She's one of the
9 people that will review the plan we're talking
10 about today, if we -- when we submit it to EPA.

11 Again, my name is Jeff Sewell. I'm with
12 the Indiana Department of Environmental
13 Management. We also go by IDEM, as many of you
14 know. The purpose of the hearing today is to
15 receive public comments on the Draft Indiana Coal
16 Combustion Residuals Part 256 Solid Waste
17 Management Plan Amendment. That is a mouthful,
18 isn't it?

19 Before we begin receiving comments and
20 testimony, I'd like to provide some background
21 information about the Plan and its purpose. The
22 EPA Coal Combustion Residuals Rule, or also known
23 as the Coal -- the CCR Rule, became effective in

1 October of 2015. The CCR Rule applies to
2 electric utilities and independent power
3 producers, and has set standards for coal
4 combustion residuals in landfills and surface
5 impoundments.

6 The CCR Rule is structured to be
7 self-implementing, because under the Resource
8 Conservation Recovery Act, also known as RCRA,
9 the EPA is not authorized to enforce the program
10 or delegate enforcement to the states. The
11 citizens pursuit provision -- I'm sorry -- the
12 citizen suit provision -- I'll get it right -- of
13 RCRA is the only enforcement mechanism provided
14 under federal law.

15 The EPA is encouraging states to develop
16 equivalent regulations to implement the program
17 using state regulatory authority. The Solid
18 Waste Management Plan process described in
19 40 CFR 256 is the mechanisms the states -- is the
20 mechanism for states to describe how they intend
21 to develop a state CCR program.

22 Indiana already has an approved Solid
23 Waste Management Plan from the early '80's and

1 '90's, which guided the development of our solid
2 waste landfill program. IDEM has prepared an
3 amendment to the plan describing how we will
4 amend our Solid Waste Landfill Rules to address
5 the new requirements for CCR disposal facilities.

6 The plan covers the following topics:

7 First, a state with an approved Solid Waste
8 Management Plan may approve schedules for
9 facilities to come in compliance with the EPA CCR
10 Rule. The plan describes the criteria IDEM will
11 use when approving compliance schedules.

12 Second, the plan describes how IDEM will
13 regulate CCR facilities during the period when
14 amended rules are in development but are not yet
15 in effect.

16 Third, the plan describes how Indiana will
17 develop an Indiana CCR program by amending
18 Indiana's landfill rules to incorporate the
19 standards equivalent to the EPA CCR Rule.

20 Fourth, the plan describes how and when
21 IDEM will submit the final amended plan in the
22 amended state rules to EPA for recognition that
23 Indiana's rules are equivalent to the EPA CCR

1 Rule.

2 Fifth, the plan describes how IDEM will
3 coordinate with other regulatory agencies in
4 implementing the program.

5 Sixth, the plan describes the public
6 participation processes that IDEM will use in
7 developing the plan and the rest of the program.

8 A public hearing and public comment period are
9 required public participation steps in the solid
10 waste management plan approval process, and
11 that's why we are here today.

12 The CCR Part 256 Plan is posted on IDEM's
13 Coal Combustion Residuals Web page at
14 www.IN.gov/idem/landquality/ccr. You may sign up
15 to receive e-mail notices of updates to this Web
16 page following the instructions at the bottom of
17 that Web page.

18 We are also accepting written comments on
19 this plan until June 30th, 2016. You may give
20 written comments to me here today or address
21 written comments to: Jeff Sewell, Indiana
22 Department of Environmental Management,
23 IGCN 1101, 100 North Senate Avenue, Indianapolis,

1 Indiana, 46204-2251, or you may e-mail comments
2 to me at jsewell@idem.in.gov.

3 Our next step in the development process
4 for the solid waste management plan will be to
5 review the hearing comments and the public
6 comments we receive during this public comment
7 period. If after considering public comments
8 IDEM decides to approve the plan and submit it to
9 EPA, it will indicate IDEM's intent to amend
10 Indiana's landfill rules to make them equivalent
11 to the EPA CCR Rule.

12 If IDEM decides not to proceed with the
13 plan, IDEM will continue to regulate CCR
14 facilities under existing Indiana rules. In
15 either case, electric utilities will have to
16 continue to comply with the EPA CCR Rule under
17 the self-implementing model that currently
18 exists.

19 As we prepare to receive testimony, we
20 would appreciate your help in keeping this
21 hearing on topic. If the plan is approved, there
22 will be multiple opportunities for stakeholders,
23 including members of the public, to review draft

1 rule language and provide comments on the
2 specific requirements of amended rules in future
3 stages of the process. We're not going to talk
4 about rule provisions and specific provisions
5 today.

6 IDEM will also provide opportunities for
7 public comment when we evaluate closure plans for
8 particular CCR facilities. Today we are only
9 seeking comments on the plan document itself.
10 Pertinent comments may express support or
11 opposition to the plan, or provide comments on
12 the content of the plan itself. Please help to
13 make sure we have time to listen to everyone who
14 wants to comment by limiting your comments to
15 only the topic covered at this hearing.

16 We are going to start the public hearing
17 now. If you want to present comments, we'd like
18 for you to sign the registration sheet at the
19 entrance.

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

22 (Reporter sworn.)

23 THE HEARING OFFICER: Thank you.

1 We will now take comments and testimony
2 regarding the draft CCR Part 256 Plan. When your
3 name is called, please come to the microphone,
4 state your name and address, and speak clearly so
5 the court reporter can transcribe your comments
6 accurately. We'd also like you to leave a
7 written copy of your comments with the court
8 reporter to aid in developing the transcript.

9 We are not responding to questions during
10 this hearing, but will prepare a response to the
11 comments and questions that we receive during the
12 hearing and public comment period. We will post
13 the response to comments on IDEM's CCR Web page
14 and mail or e-mail the copy to everyone who has
15 signed our interested parties list today. That's
16 the sign-in sheet.

17 We have six people? Okay. So, I don't
18 think, with only six, we'll need to limit the
19 time today. So, with that, who's the first
20 person on the list?

21 MS. STANIEC: Mr. Rushberg --
22 Rushenberg.

23 THE HEARING OFFICER: Okay.

1 MR. RUSHENBERG: Thank you very much.

2 My name is Tim Rushenberg, Vice-President of the
3 Indiana Energy Association. We're located at One
4 American Square, Suite 1600 here in Indianapolis,
5 Indiana.

6 The Indiana Energy Association, of which
7 I'm Vice-President, is the trade association of
8 the investor-owned electric and natural gas
9 utilities here in Indiana. We want to take the
10 opportunity to thank the panel for the
11 opportunity to comment on the CCR Part 256 Solid
12 Waste Management Plan amendment this afternoon.

13 The IEA supports IDEM's rulemaking efforts
14 to establish a state-based permit program. The
15 federal rule is self-implementing, which means
16 there is no requirement that states adopt these
17 new federal standards into their existing solid
18 waste management programs; however, many states,
19 including Indiana, have requirements that
20 regulate some of the same CCR units.

21 IDEM has started rulemaking to incorporate
22 the federal CCR standards into their existing
23 solid waste permit programs to avoid a dual or

1 conflicting set of regulations on the same CCR
2 units, which helps to limit compliance
3 uncertainty for Indiana utilities.
4 The utilities continue to perform dam
5 safety assessments to ensure that our facilities
6 are performing as required. As we plan for
7 compliance and to meet requirements of the CCR
8 Rule, additional testing and monitoring will be
9 done in the years ahead to further enhance
10 management of environmental issues related to
11 operation of CCR surface impoundments and
12 landfills.

13 We believe all of our customers will
14 benefit from science-based closure approaches
15 because it allows the companies to pursue a range
16 of closure options that have been provided [sic]
17 to be protective of the environment, safe and
18 cost effective, including dewatering and capping
19 the CCR material on site with long-term
20 monitoring, also known as closure in place.

21 When compared to off-site landfill
22 disposal, which does not provide additional
23 protection to human health or the environment,

1 closure in place is less cost intensive and will
2 significantly reduce the cost implications to
3 customers while still limiting environmental
4 impact.

5 The IEA companies look at our
6 environmental management over the short- and
7 long-term to make the best technology investment
8 decisions on behalf of our customers. Protecting
9 the environment, minimizing impacts to
10 communities, and managing costs are examples of
11 ways our companies support the economy and the
12 people of Indiana. We feel that the adoption of
13 the federal CCR Rule as outlined in the CCR
14 Part 256 Plan will help balance these goals by
15 not making state rules more restrictive than the
16 federal rules.

17 That concludes my comments, and I
18 appreciate the panel allowing me to comment this
19 afternoon.

20 Thank you.

21 MS. STANIEC: Bowden Quinn.

22 MR. QUINN: Good afternoon. I'm
23 Bowden Quinn. I'm the Chapter Director of the

1 Sierra Club Hoosier Chapter here in Indianapolis.

2 I just wanted to address the financial
3 assurance component. My understanding is that
4 the plan is to not only continue the current rule
5 requirement that landfills have financial
6 assurance, but to incorporate the impoundments
7 into that as well, and we certainly support that
8 concept.

9 One thing we would like to see added --
10 and my understanding is that the financial
11 assurance requirements now only cover closure and
12 post-closure. We think there should also be
13 financial assurance for any emergency action that
14 might be required in case of an unexpected
15 release or corrective action. So, we would like
16 to see that added to the financial assurance
17 requirements, certainly for the surface
18 impoundments.

19 Another thought: There are various ways
20 of meeting the financial assurance requirements.
21 One of them is having an insurance policy, and my
22 understanding from other examples that I've heard
23 of is that can often be a -- an obstacle, because

1 you're then adding another party who can really
2 slow down the process through litigation. So, I
3 think -- I think we need to seriously look at
4 that insurance component and whether it's meeting
5 the needs that we might have in making sure that
6 costs or financing is quickly available.

7 And the last part is there's a specific
8 component in the rule for utilities, which, you
9 know, my view of it is basically a
10 self-monitoring component, and we know from
11 what's happened with coal companies that can lead
12 you into trouble. So, I think we need to review
13 that component of the rule and whether it needs
14 to be modified.

15 And the other part of that, of course, is
16 the whole point of having financial assurance is
17 so that costs of remediation are not passed on to
18 the taxpayer, and yet, if you allow -- if you
19 have a special provision for utilities, that
20 is -- the cost is being passed on to their -- to
21 the rate payers, which is practically the same
22 thing. So, I think we need to look at that
23 component as well.

1 So, I certainly encourage IDEM to add the
2 surface impoundments to the financial assurance
3 requirements in the rule, and I think we also
4 need to kind of review that section of the rule
5 and see whether it's meeting all of our needs.

6 Thank you.

7 MS. STANIEC: Richard Hill?

8 MR. HILL: Excuse me. Good

9 afternoon. Thank you for allowing us to speak to
10 you today. My name is Richard Hill. I am the
11 Chair of the Sierra Club Hoosier Chapter
12 Executive Committee, but I'm here today primarily
13 as a resident of Madison, Indiana that lives near
14 the Clifty Creek Power Plant.

15 I'll give you just a real brief background
16 of my experience with Clifty Creek and its coal
17 combustion waste. It goes back quite a ways. I
18 was involved in an administrative appeal of the
19 landfill permit in 2003, I think. And I've also
20 been a member of the Local Planning Team for
21 Madison's Wellhead Protection Plan for about 16
22 years. I'm not speaking for them; I'm just
23 giving you a little background there.

1 My major concern about this plant's waste
2 disposal relates to its possible effects on our
3 drinking water. Back in 2006, Save the Valley
4 contracted with a professional hydrogeologist who
5 concluded that the groundwater near the disposal
6 area has been impacted by the ash-derived
7 contaminants, such as boron, and it can be
8 assumed that this condition continues to this
9 day.

10 He concluded that this contamination is
11 migrating past the monitoring wells. He informed
12 us that the Atherton Formation Aquifer lies
13 beneath the coal combustion waste disposal area,
14 and there are likely hydrological connections
15 between the landfill and the aquifer. The
16 majority of Jefferson County residents, including
17 myself, get their drinking water from this
18 aquifer.

19 It is for those kind of reasons that I
20 strongly believe the stronger regulations on
21 these types of facilities should be required.
22 Those regulations should include, at the very
23 least, easier access to information about those

1 sites through the utility Web sites, and
2 long-term protection that guarantees the ability
3 of the utilities to react to problems that occur,
4 and cleanup of closed facilities, as Bowden just
5 spoke.

6 I will defer to others from the Sierra
7 Club, Hoosier Environmental Council and others to
8 provide more specifics on these and other desired
9 requirements.

10 Thank you.

11 MS. STANIEC: Jodi Perras -- Perras,
12 I'm sorry.

13 MS. PERRAS: Thank you. My name is
14 Jodi Perras, and I am the Indiana representative
15 for the Sierra Club's Beyond Coal Campaign. I
16 work at 1100 West 42nd Street in Indianapolis,
17 46208, and I also live here in Indianapolis.

18 First of all, I want to thank IDEM for
19 preparing the state plan to take on the
20 administration and enforcement of these federal
21 rules, and Sierra Club will be submitting more,
22 you know, formal written comments by the end of
23 the month, but I also appreciate the opportunity

1 for us to have this public hearing today, for you
2 to hear from real people who are affected by the
3 real problems with coal ash.

4 Now, unfortunately, having this hearing at
5 1:00 o'clock in the afternoon on a weekday has
6 made it very difficult for a lot of people who
7 would like to be here to speak, in particular, a
8 lot of people who live near these coal ash ponds,
9 but I do have copies of 450 petitions that we've
10 collected, mostly in the Indianapolis area, but
11 we've also been collecting these in other parts
12 of the state that are targeted at -- that are
13 addressed to both IDEM Commissioner Carol Comer
14 as well as the CEO of Indianapolis Power & Light
15 because of the Harding Street coal ash pond
16 closures that we had a meeting on last night.
17 Mr. Sewell, you were there as well.

18 And I'll just read what that petition
19 says, and then I'll -- I want to comment
20 specifically about the public transparency about
21 the state plan. So, the petition says, "Nothing
22 is more important than protecting sources of
23 drinking water for Hoosier families. I ask you

1 to protect Indianapolis drinking water by safely
2 removing toxic coal ash from the unlined pits
3 near the Harding Street Power Plant and storing
4 it in a lined landfill on dry land.

5 "The Marion County Public Health
6 Department has found evidence that coal ash
7 contamination has leached into the groundwater
8 near Harding Street and is migrating toward
9 nearby neighborhoods. Both the White River and
10 drinking water wells in Indianapolis are at risk.

11 "It is vital that IPL take groundwater
12 samples, make water pollution data public, and
13 ensure safe cleanup of coal ash contamination
14 today so it doesn't become a drinking water
15 emergency for our community tomorrow."

16 And I want to touch on the issues of trust
17 and transparency and honesty. I -- I think we
18 all can see in our nation today that trust of
19 large institutions is an issue. You don't have
20 to look very far in today's news to see that
21 that's an issue.

22 And I think that there is an issue of
23 trust of whether the state will do the right

1 thing, whether the Federal Government will do the
2 right thing, and whether utility companies will
3 do the right thing. And the best way to remedy
4 that lack of trust is through transparency and
5 honesty.

6 And I -- you know, last night we had a
7 meeting about the Harding Street Plant in which
8 there were groundwater samples that had been
9 taken so far that clearly show very high levels
10 of arsenic, high levels of boron and other
11 constituents that aren't so bad in the first
12 round of samples.

13 But it would have been really helpful for
14 someone to just be honest about that up front and
15 talk to the public who was there, that "We do
16 have some high levels, and we're going to
17 continue to take samples and we're going to work
18 to make sure that you are protected." And
19 instead, we got a very -- kind of a stonewall
20 sort of approach.

21 And so, I would encourage IDEM to
22 encourage utilities to not repeat that with other
23 ash ponds that are closed. I'm looking forward

1 to seeing the final closure plan from IPL and

2 working with IDEM as that moves forward.

3 As Mr. Sewell mentioned, the Federal CCR

4 Rule is enforceable by states and citizens but

5 not by EPA, and we feel that -- as U.S. EPA has

6 observed -- that citizens play a crucial role in

7 partnering and in helping the state in the

8 implementation and enforcement of the rule.

9 And EPA has designed the record keeping

10 and Internet requirements, Internet posting

11 requirements, as part of the final rule, of its

12 final rule, to help ensure that transparency that

13 is so important, and to assist citizens in

14 playing our role to enforce the CCR requirements.

15 The final rule that EPA created requires

16 comprehensive and regular disclosure to states

17 and communities so that they can monitor and

18 oversee these requirements. Because IDEM's own

19 enforcement resources are limited, we believe the

20 agency should do everything that it can to ease

21 the role of citizens in enforcing these critical

22 requirements as well.

23 And we find it regrettable that IDEM

1 appears to intend to eliminate a key provision of
2 these public accountability requirements from the
3 State Plan, and that's the requirement that each
4 utility post CCR information on a Web site
5 maintained by the utility.

6 I urge IDEM to reconsider this. I believe
7 IDEM should include that requirement in the State
8 Plan, that utilities need to put coal ash data,
9 coal ash information, on their Web site. That
10 should be part of the enforceable State Plan, for
11 these reasons: First, public involvement and
12 awareness are critical, and the
13 utility-maintained Web sites are easiest for the
14 public to access.

15 People who live near coal ash pits have
16 the most interest and need for this information,
17 and IDEM's own Web site is not sufficient. It is
18 much easier for citizens to access the
19 utility-owned Web sites. In fact, I would ask,
20 is there anyone in this room who's tried to use
21 IDEM's Virtual File Cabinet?

22 (Some hands raised.)

23 MS. PERRAS: Did anyone -- and how

1 many have found that Virtual File Cabinet easy to

2 find information on?

3 (No response.)

4 MS. PERRAS: How many think your

5 mother or your grandmother or your neighbor would

6 find it easy to find information on that Web

7 site?

8 (No response.)

9 MS. PERRAS: So, I -- you know, I

10 think that the a utility -- if somebody's looking

11 for information about their utility and what's

12 going on there, they should know that they can go

13 to the utility Web site to find that. It only

14 takes a Google search and a few seconds, for

15 example, to find the Fugitive Dust Control Plan

16 for the A. B. Brown Plant on Vectren's Web site.

17 Finding that document on IDEM's Web site would

18 take hours for the average citizen unfamiliar

19 with how that system works.

20 Second, including the Web site in

21 information posting requirements in the State

22 Plan poses no additional burden on utilities.

23 All of the Indiana utilities already have coal

1 ash Web sites, either Indiana-specific ones for
2 NIPSCO or Hoosier Energy, for example, or as part
3 of the parent corporation's national coal ash Web
4 site, such as with Duke or I&M, which you would
5 find on the AEP Web site.

6 Third, and related to that, the utilities
7 will have to continue to maintain their coal ash
8 Web sites regardless of what ends up in the
9 Indiana State Plan. They already have to
10 maintain such a Web site under federal
11 requirements, and the CCR Rule is
12 self-implementing, which means that if -- the
13 facilities must comply with the requirements
14 without oversight, and if any Indiana utility
15 took down its Web site or stopped posting data to
16 it, a citizen could sue to enforce the
17 requirement.

18 So, we believe that although it's not a
19 change, that since the information -- these
20 information requirements will apply in any case,
21 that simplicity and public accountability would
22 demand that the applicable federal requirement
23 that a utility must maintain a Web site to have

1 this information available to the public should

2 also be incorporated into the State Plan.

3 That way, utilities and citizens alike can

4 look to the State Plan for all of the

5 requirements that apply, instead of having to

6 refer to both the State Plan and a federal rule

7 to know what's required.

8 So, again, I thank you for the opportunity

9 to speak to you today. I bring these petitions

10 on behalf of nearly 450 Hoosiers who are

11 concerned about these issues, and I think they

12 represent many thousands of others as well.

13 MS. STANIEC: Indra Frank?

14 MS. FRANK: Mr. Sewell and --

15 THE HEARING OFFICER: Sure.

16 MS. FRANK: -- Carol, thank you for

17 the opportunity to speak. My name is Indra

18 Frank. I'm a physician specialized in

19 environmental health, and I serve as the Director

20 of Environmental Health and Water Policy for the

21 Hoosier Environmental Council. I work at

22 3951 North Meridian, Suite 100, Indianapolis,

23 Indiana, 46208.

1 I'd like to address three main points,
2 first to comment on public health implications of
3 coal ash; next, a response to points in the draft
4 CCR Part 256 Plan; and third, a couple of
5 additional comments on Indiana's opportunity as
6 the plan is being developed.

7 As with many waste materials, coal ash, if
8 improperly handled, can be a threat to human
9 health. There are three ways this happens:
10 Spills, fugitive dust and water contamination.
11 Spills like those in Kingston, Tennessee in 2008
12 and in Martinsville, Indiana in 2007 and 2008 and
13 many others damage property, pollute waterways,
14 and can threaten human life. There can be
15 releases of millions of gallons of coal ash
16 slurry from weak or defective impoundments.

17 So, the second manner that coal ash
18 impacts human health is through fugitive dust.
19 When the ash is dry, it can become airborne
20 during loading, unloading, transport, landfill
21 grading, or by wind, and some of the particles in
22 coal ash are less than 2.5 microns in aerodynamic
23 diameter, which means they qualify as fine

1 particulate matter under the U.S. air quality
2 standards.
3 Fine particulate is small enough to be
4 inhaled all of the way into the microscopic air
5 sacs in the lungs. Epidemiologic studies show
6 that once they are there, they can irritate the
7 lungs, trigger asthma attacks, worsen other lung
8 conditions, and contribute to cardiovascular
9 disease. Exposure to fine particulate is known
10 to shorten life expectancy.

11 And then water contamination.
12 Unfortunately, when coal is burned, the -- a
13 number of the constituents left behind in the ash
14 are toxic, including arsenic, selenium,
15 hexavalent chromium, and many others.

16 The toxic contaminants get into surface
17 water via the effluent that's legally released
18 from coal ash ponds and from seeps through the
19 enclosing structures around the ponds. Once they
20 are in surface water, people can be affected if
21 that water is a source of drinking water or if
22 the contaminants get into the fish.

23 Coal ash contaminants also get into

1 groundwater, and that happens when water from
2 coal ash ponds soaks into the ground or
3 precipitation passes through a landfill and
4 carries contaminants into groundwater.

5 Groundwater does not stay in one place. It
6 moves, so once in the groundwater, the
7 contaminants can be carried to nearby drinking
8 water wells.

9 There are multiple potential contaminants
10 that can get into coal ash. Each has its own
11 health implications. Some examples are arsenic
12 and hexavalent chromium, which are known
13 carcinogens; vanadium, which is a possible
14 carcinogen; cadmium, which is toxic to the
15 kidneys; arsenic, manganese and selenium, which
16 can damage the nervous system.

17 Strontium impairs bone growth in children.
18 Sodium, which is part of table salt, so we don't
19 usually think of it as toxic, leaches from coal
20 ash in sufficient quantity to raise blood
21 pressure and contribute to hypertension, and that
22 leads to cardiovascular disease.

23 Also, most of the coal ash contaminants

1 can have adverse effects on the developing child,
2 either during pregnancy or in early childhood,
3 and because of this potential to impact public
4 health, we must exercise care in how coal ash is
5 handled and how it is disposed of, and, of
6 course, that's why the CCR Rule was written and
7 why Indiana is paying careful attention to
8 implementation here.

9 I'd like to go now into response to some
10 particular items in the draft plan. The first
11 point of the draft plan pertains to compliance
12 schedules. We'd like to urge IDEM to keep the
13 deadlines as consistent as possible with the
14 federal rule.

15 I received an e-mail just a couple of
16 hours ago after drafting my comments, and I'd
17 like to read a portion of that e-mail. It's from
18 Lisa Evans, who's the attorney with Earth Justice
19 who spent many years looking at coal ash and some
20 of the legal implications.

21 So, there is a provision in EPA's rule
22 that will allow the states to look at alternative
23 time lines, and she states that the EPA confirms

1 that the EPA must first determine that a facility
2 is an open dump before the state can grant an
3 alternative compliance schedule. EPA does this
4 by publishing a list of open dumps based on
5 facilities where they have determined
6 noncompliance. We're concerned that Indiana take
7 that authority as EPA intended it, that
8 compliance deadlines can't be rewritten except
9 under those circumstances.

10 The second point of the draft plan
11 pertains to interim regulation of CCR facilities
12 until Indiana's Solid Waste Management Plan has
13 been revised. I have a concern about the plan's
14 statement on CCR landfills. The plan states
15 that, quote, IDEM will impose permit conditions
16 as necessary to achieve the minimum criteria in
17 the CCR Rule when granting, modifying or renewing
18 permits for CCR landfills.

19 This makes it sound like CCR landfills
20 will only have to meet the CCR Rule standards if
21 they need a new, modified or renewed permit
22 during the interim period. The interim period is
23 going to be long. It's already estimated to run

1 until December of 2018th, and -- 2018, and it
2 could run longer. So, instead, I would request
3 that you consider finding a way to require the
4 CCR Rule standards of all of the landfills, not
5 just those who come up for modified or renewed
6 permits.

7 The third point of the draft plan pertains
8 to developing Indiana's CCR program, and first,
9 the Hoosier Environmental Council would like to
10 commend the state's plan to move ahead with this,
11 and the statement in the draft plan that the
12 Indiana CCR Rule will not be self-implementing.
13 We take this to mean that IDEM will be able to
14 enforce provisions of the rule.

15 However, we disagree with the contention
16 that Indiana should therefore not incorporate
17 this section of the federal rule on CCR Web
18 sites, and I will defer there to Jodi's comments.
19 We agree with those.

20 There are two additions that I'd like to
21 propose to the draft plan, the CCR Part 256 Plan.
22 First, I think it would be helpful if the Indiana
23 plan stated explicitly that compliance with the

1 Indiana regulation does not affect the duty of
2 the owner or operator to comply with federal
3 regulation. I think most people are aware that
4 the duty is -- remains to comply with the federal
5 regulation, but we think it would be helpful to
6 state that explicitly.

7 Second, there are changes to the federal
8 CCR Rule that are happening as a result of a
9 settlement that was reached in March of this year
10 between EPA and environmental groups. The
11 Indiana plan should incorporate those changes
12 since there are going to be changes to the
13 federal rule.

14 The two changes are that all inactive coal
15 ash ponds will now be subjected -- or subject to
16 the CCR requirements, and that boron will be
17 included in Appendix 4 as an indicator of
18 groundwater impact, and we'd like to encourage
19 Indiana to include those going forward.

20 And next, there are some things that
21 Indiana has the opportunity to do. Now that IDEM
22 intends to update the land disposal regulations
23 to incorporate coal ash disposal, we have an

1 opportunity to improve on some things that are

2 lacking in the federal rule.

3 First, I -- through all of the study that

4 I've done on coal ash situations and the Hoosier

5 Environmental Council and Sierra Club have done,

6 we've come to the conclusion that only dry, lined

7 and capped landfills are protective of water

8 resources, and we'd like to -- IDEM to consider

9 requiring dry, lined and capped landfills for all

10 coal ash disposal.

11 Unlined landfills and unlined coal ash

12 ponds lead to water contamination. This has been

13 documented in multiple locations, including the

14 Chisman site, where coal ash created a Superfund

15 site in Yorktown, Virginia;

16 A DOE Superfund site in Oak Ridge,

17 Tennessee, where the coal ash pond was capped and

18 subsequently a wetland had to be constructed to

19 treat the contaminated groundwater;

20 Dominion's coal ash landfill and pond in

21 Chesapeake, Virginia, where leaching into

22 groundwater has been determined;

23 The Battlefield Golf Course in Virginia,

1 where Dominion's ash was used in an unlined
2 manner as fill to shape the golf course and led
3 to groundwater contamination;

4 The many private wells that have been
5 tested in North Carolina and found to be
6 impacted;

7 The recently published study from Duke
8 University of seeps into surface water and
9 leaching into groundwater, looking at five
10 different states and finding that water near coal
11 ash was impacted at every location that they
12 examined.

13 In Indiana, we also have proof of impacts
14 to water when coal ash is unlined: The Yard 520
15 Landfill in Pines, Indiana;

16 NIPSCO's Bailly site, where an old
17 disposal site caused contamination that is
18 migrating to the Dunes lakeshore;

19 The Gibson Generating Station, where
20 groundwater contamination from an old ash pond
21 led Duke Energy to supply safe drinking water to
22 nearby homes;

23 Clifty Creek in Madison, Indiana, where

1 coal ash landfill and pond contaminated
2 groundwater;
3 The Petersburg Station, where arsenic and
4 boron contamination has been found in coal ash
5 monitoring wells;

6 And A. B. Brown's -- the unlined portion
7 of their landfill, where groundwater
8 contamination was detected -- first detected in
9 the early 1990's.

10 Essentially, everywhere that coal ash has
11 been stored without a liner and the groundwater
12 has been checked, the ash has contaminated the
13 groundwater. Therefore, capping coal ash in
14 place without a liner really should not be part
15 of our plans going forward.

16 We also have evidence from South Carolina
17 that removing coal ash from unlined sites reduces
18 the impact to groundwater. At the watery coal
19 ash ponds where they've been excavating the ash,
20 arsenic levels in the underlying groundwater is
21 already going down and going down significantly.

22 In South Carolina, a lawsuit resulted in a
23 settlement in which all coal ash is being removed

1 from lined landfills, and other states are moving
2 in that direction. It would be less expensive in
3 the long run if Indiana could start its rule with
4 what we know to be the best solution -- dry,
5 lined and capped landfills -- rather than start
6 down some other path and then have to backtrack.

7 Second, liners really need to be
8 composite, not just compacted soil. Composite
9 liners incorporate both clay and an impermeable
10 membrane and have the best performance.

11 Before creation of any new coal ash
12 landfill, possible sites should be carefully
13 investigated to make sure that they aren't
14 impacted by a potential earthquake zone, flood --
15 being on a flood plain. They should be looked at
16 very careful for local environmental and human
17 health impacts.

18 And finally, I'd like to urge prompt
19 attention to the most imminent public health
20 implication of coal ash. Since we know that
21 unlined storage leads to groundwater
22 contamination, all drinking water wells within a
23 half mile of unlined coal ash ponds and landfills

1 in Indiana should be tested for coal ash
2 pollutants, and if contamination is detected, the
3 responsibility should fall to the utility to
4 supply an alternative water supply.

5 This is a requirement that was included in
6 North Carolina's Coal Ash Management Act of 2014,
7 and there are other states that are starting to
8 follow suit. So, I'd encourage IDEM to help
9 private well owners that are close to coal ash
10 disposal.

11 Thank you for the opportunity to speak. I
12 have a copy of the five-state study that I wanted
13 to give to you as well.

14 THE HEARING OFFICER: Thank you.

15 MS. FRANK: Uh-huh.

16 MS. STANIEC: Tim Maloney.

17 MR. MALONEY: Thank you. My name is
18 Tim Maloney. I work for the Hoosier
19 Environmental Council, and I'm also located at
20 our office at 3951 North Meridian Street,
21 Indianapolis. And I also want to express my
22 appreciation for IDEM in scheduling this public
23 hearing and the public comment period to take

1 input on your proposed Solid Waste Management
2 Plan amendment, and to U.S. EPA for being here
3 today as well.

4 I'm going to focus on a couple of topics
5 from the plan that I don't think any others have
6 covered yet. First of all is the matter of coal
7 ash impoundment and landfill inspections. This
8 is a requirement of the federal rule that
9 utilities are required to be complying with at
10 this time and had a deadline to submit its
11 annual -- their first annual inspection reports,
12 I think, back in February.

13 And in the -- in the state's proposed
14 plan, there is a section about coordinating with
15 other agencies, including the Indiana DNR, which
16 regulates dams and levies and construction and
17 floodways.

18 So, what we would like to recommend is
19 that given that action is already being -- taking
20 place on -- with those inspection requirements,
21 that IDEM immediately begin this coordination
22 with the Indiana DNR to review and follow up on
23 the inspection reports that have been filed.

1 And let me just cite a couple of those
2 reports from some facilities that indicate that
3 there is attention needed promptly, starting with
4 the Duke Energy's Gibson Generating Station.
5 Their inspection found that there were multiple
6 areas requiring general maintenance, including
7 erosion rails, vegetation, tire rutting, and
8 sparse vegetation.

9 Also, I think was found at a number of
10 sites in Southwest Indiana concern about the
11 adequacy of liquefaction analysis in the event of
12 an earthquake, and Southwest Indiana is clearly
13 in an earthquake-risk area and has experienced a
14 number of earthquakes.

15 And with respect to Duke's Gibson ash
16 ponds, it says slope stability analyses indicate
17 calculated factors of safety for post-earthquake
18 conditions at all four pond locations are below
19 target values indicated by CFR 257.73. And you
20 find that in -- I think, in a couple of the other
21 inspections for Duke plants.

22 At -- at the F. B. Culley Station,
23 Vectren's power plant in Newburgh, one of the ash

1 ponds there has been rated conditionally poor and
2 indicates that the pond's not equipped with a
3 principal or emergency spillway as originally
4 designed, and due to the height of the pool level
5 and presence of accumulated ash, the west berm of
6 the pond is in danger of failure and release of
7 coal ash into Culley Station during a storm
8 event.

9 Another finding, because the height of the
10 east pond exceeds 20 feet, the pond should be
11 permitted by IDNR, but it currently is not. Also
12 mentions that there is a lack of proper slope
13 protection as well, and that the east pond was
14 rated conditionally poor due to failure to take
15 remediation measures identified at least two
16 years ago.

17 So, that's just a couple of examples that
18 the inspections being done by the utilities -- to
19 their credit, they are conducting those
20 inspections generally -- are identifying problems
21 that we need to be sure that Indiana agencies,
22 both IDEM and Indiana DNR, are reviewing and
23 monitoring and making sure that the appropriate

1 corrections take place.

2 One last item on inspections is also the

3 need to make sure that all utilities and all

4 ponds are being inspected and posting those

5 inspection reports as required by the federal

6 rule that -- in determining if there are ponds

7 that should have been inspected and have not

8 been.

9 One that is a potential question here is

10 NIPSCO's Michigan City ponds. There are no

11 inspection reports filed on -- at least posted on

12 the Web site for that facility, and so there

13 should be a determination made whether that

14 should have happened and has not.

15 And then finally, on that topic, I think

16 it would be good, given our recommendations, that

17 the final plan amendment contains more

18 specificity about the nature of the coordination

19 between IDEM and DNR and what process is being

20 followed to make sure that the structural

21 stability and safety of these facilities is

22 maintained and continues in a safe and protective

23 fashion.

1 The other point that I wanted to focus on
2 is the plans and EPA rule treatment of beneficial
3 use and the question of whether fill, structural
4 fill, is a beneficial use.

5 And in the draft plan, page five, IDEM
6 does identify that there may be a problem with
7 the ability of the state's plan to be approved
8 given the statutory restrictions on IDEM's
9 ability to regulate certain uses of coal
10 combustion products. That's Indiana
11 Code 13-19-3-3 that contains that prohibition,
12 which basically says that IDEM cannot regulate
13 the use of coal ash as fill.

14 And so, that raises the question of -- for
15 the rulemaking process going forward and the plan
16 process, whether IDEM can appropriately
17 incorporate the federal requirements into the
18 state rules without violating IC 13-19, and
19 calling into question whether EPA can approve the
20 state's plan.

21 And our concern about beneficial use is
22 one that was evaluated by EPA in their rulemaking
23 process and whether unencapsulated uses of coal

1 ash is -- should be considered a beneficial use.

2 In our view, it is not, it's really tantamount to

3 disposal and should be regulated as such.

4 And so, two points there, again, is:

5 Number one, how does the state deal with this

6 legislative restriction that calls into question

7 approval of the state plan; and number two, going

8 forward, once that problem is solved, then how do

9 the state's rules deal with the question of

10 beneficial use and structural fill?

11 And again, we would ask that the state not

12 consider any -- any structural fill or any

13 unencapsulated reuses of coal ash to be a

14 beneficial use because of the risk it poses to

15 environmental contamination, and that, again, was

16 an issue discussed in EPA's rulemaking process,

17 and they did identify that there were a number of

18 damage cases to groundwater and water resources

19 from unencapsulated fills.

20 Dr. Frank mentioned one of those at the

21 Battlefield Golf Course in Chesapeake, Virginia,

22 where a million and a half yards of fly ash were

23 used to fill and contour a golf course, and there

1 has been groundwater contamination found at the
2 edges and corners of the golf course area.

3 Another instance of proven damage in the
4 EPA review was in Gambrills, Maryland, where ash
5 was used as fill in sand and gravel quarries, and
6 there has been contamination found in residential
7 drinking wells near the site.

8 So, there are just many, many problems
9 inherent in the idea of using unconsolidated
10 unencapsulated ash as fill. It leads to the
11 likely outcome of the ash coming into contact
12 with water, which is where all of the problems
13 come from in terms of ash-related contamination,
14 at least of waterways.

15 So, I think that covers those
16 particular -- two particular points, and again,
17 we will submit supplemental written comments by
18 the end of the comment period.

19 Thank you.

20 THE HEARING OFFICER: Okay. That's
21 everyone who signed up to give testimony. Is
22 there anyone who didn't sign in who would like
23 to give testimony at this time?

1 MR. OLES: I'm sorry.

2 THE HEARING OFFICER: That's okay.

3 Come on up.

4 MR. OLES: Good morning. My name is

5 Mike Oles, and I'm the Organizing Director for

6 Hoosier Interfaith Power & Light. We are an

7 Indiana-wide, faith-rooted movement who believes

8 that caring for the Earth is part of spiritual

9 practice and a major part of the world's

10 sacred -- a significant part of what the world's

11 sacred religious scriptures and traditions have

12 to say.

13 We are deeply alarmed that Indiana has

14 become the number one coal ash lagoon state or

15 coal ash pond state in the country, and deeply

16 alarmed that -- you know, I think there's been

17 over 13 documented spills. We're deeply alarmed

18 that these lagoons are a threat to drinking water

19 and a threat to communities across Indiana.

20 As a faith-rooted organization, we have a

21 deep hope in the future and feel that Indiana can

22 begin to heal some of its worst environmental

23 problems. To do so, we must deal with this coal

1 ash problem in the near future, or now. We must
2 not let our utility companies get away with
3 ignoring this toxic threat that has been created.
4 We need long-term protection from coal ash
5 pollution and coal ash pond -- coal ash pond
6 failure. We are concerned that our drinking
7 water and our rivers and our creeks and our
8 streams and the groundwater near our homes are at
9 risk. We're concerned about the congregations
10 and communities across the state that are at risk
11 because of coal ash.
12 We find the current situation immoral and
13 unacceptable. And where will it be ten, twenty,
14 fifty or a hundred years from now? Our
15 organization and people of faith across the state
16 want action now. We want to avoid those tragic
17 situations that have happened recently on the Dan
18 River in Virginia and also in Tennessee.
19 We want action. We believe that IDEM
20 must -- must require utility companies to show
21 that they have enough money to set aside -- that
22 they have enough money set aside to clean up coal
23 ash landfills and ponds. We don't want Hoosier

1 taxpayers or Hoosier communities stuck with
2 bills. If a utility tries to walk away from the
3 mess that they first created. That's one of our
4 biggest concerns.

5 Overall, we feel that we can make Indiana
6 a better, less polluted place, a better place for
7 children and for the environment and for
8 congregations, and we believe dealing with the
9 coal ash situation now and not putting it off
10 will be a great victory for our environment here
11 in Indiana and our communities.

12 I thank you so much.

13 THE HEARING OFFICER: You can give
14 him a copy --

15 MR. OLES: Okay.

16 THE HEARING OFFICER: -- of your
17 transcript if you'd like, and we'd love for you
18 to sign in so we can --

19 MR. OLES: Okay.

20 THE HEARING OFFICER: -- make sure we
21 get a response to your comments back to you.

22 MR. OLES: Where do I sign in?

23 THE REPORTER: Up there.

1 MR. OLES: Okay. Thank you.

2 THE HEARING OFFICER: Is there anyone

3 else?

4 (No response.)

5 THE HEARING OFFICER: Last call.

6 (No response.)

7 THE HEARING OFFICER: Okay. We'd

8 like to thank everyone for coming. I do have a

9 copy of the public notice for this hearing, and

10 it has my name and address and contact

11 information if you'd like to submit comments.

12 Again, I want to remind you we're taking comments

13 until June 30th. I appreciate you coming and

14 participating today.

15 And this concludes our hearing.

16 - - -

17 Thereupon, the proceedings of
18 June 16, 2016 were concluded
19 at 1:54 o'clock p.m.

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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 Thursday, June 16, 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.

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15 My Commission expires October 27, 2016.

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