

1 BEFORE THE STATE OF INDIANA
2 ENVIRONMENTAL RULES BOARD

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6 PUBLIC MEETING OF JANUARY 14, 2015

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 PROCEEDINGS

11 before the Indiana Environmental Rules Board,

12 Beverly Gard, Chairman, 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 A, 402 West Washington Street, Indianapolis,

17 Indiana, on Wednesday, January 14, 2015 at 1:29

18 o'clock p.m.

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

1 APPEARANCES:

2 BOARD MEMBERS:

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

18 IDEM STAFF MEMBERS:

- 19 Christine Pedersen
- 20 Susan Bem
- 21 Dan Watts
- 22 Bruce Palin
- 23 Nancy King
- 24 Janet Pittman
- 25 Roger Letterman

26 PUBLIC SPEAKERS:

- 27 Josh Trenary
- 28 Andrew Gilbert
- 29 Bill Beranek
- 30 Bowden Quinn
- 31 Vince Griffin
- 32 Andrew Berger
- 33 Glenn Pratt
- 34 Ralph Roper (via Dr. Beranek)
- 35 David Wagner (via Dr. Beranek)
- 36 Larry Kane

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1 1:29 o'clock p.m.
January 14, 2015

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3 CHAIRMAN GARD: Thank you. I will
4 call the January 14th, 2015 meeting of the
5 Indiana Environmental Rules Board to order.
6 There is a quorum present. Let's go around the
7 room as usual and introduce ourselves and what
8 constituency you were appointed to represent.

9 Kelly?

10 MR. CARMICHAEL: Sure. Kelly
11 Carmichael, utilities.

12 MR. HORN: Chris Horn, labor.

13 MR. DAVIDSON: Calvin Davidson, solid
14 waste.

15 DR. ALEXANDROVICH: Joanne
16 Alexandrovich, local government.

17 MR. RULON: Ken Rulon, agriculture.

18 MR. POWDRILL: Gary Powdrill, the
19 general public.

20 MR. ANDERSON: Tom Anderson,
21 environmental.

22 MR. ETZLER: Bill Etzler, small
23 business.

1 CHAIRMAN GARD: Beverly Gard, general
2 public.

3 MS. BOYDSTON: Gail Boydston,
4 manufacturing.

5 MS. FISHER: Pam Fisher, proxy,
6 Secretary of Commerce Victor Smith.

7 MR. METTLER: Mike Mettler, proxy for
8 the State Health Commissioner, Dr. Adams.

9 MR. CLARK: Cam Clark, Director for
10 the Indiana Department of Natural Resources.

11 MR. BAUSMAN: David Bausman, proxy
12 for the Lieutenant Governor.

13 COMM. EASTERLY: Tom Easterly, the
14 Commissioner of IDEM, nonvoting.

15 CHAIRMAN GARD: Thank you.

16 The first order of business today is the
17 approval of the summary of the November 12th,
18 2014 Board meeting. Are there any additions or
19 corrections to the summary as distributed?

20 (No response.)

21 CHAIRMAN GARD: Seeing none, is there
22 a motion to approve the minutes as distributed?

23 MR. POWDRILL: So moved.

1 CHAIRMAN GARD: Is there a second?

2 DR. ALEXANDROVICH: Second.

3 CHAIRMAN GARD: All in favor, say

4 aye.

5 MR. HORN: Aye.

6 MS. FISHER: Aye.

7 MS. BOYDSTON: Aye.

8 MR. ETZLER: Aye.

9 MR. ANDERSON: Aye.

10 MR. BAUSMAN: Aye.

11 MR. POWDRILL: Aye.

12 MR. CLARK: Aye.

13 MR. METTLER: Aye.

14 MR. DAVIDSON: Aye.

15 MR. RULON: Aye.

16 DR. ALEXANDROVICH: Aye.

17 MR. CARMICHAEL: Aye.

18 CHAIRMAN GARD: Aye.

19 Opposed, nay.

20 (No response.)

21 CHAIRMAN GARD: The motion is

22 approved.

23 IDEM reports.

1 COMM. EASTERLY: Okay. I'll --

2 CHAIRMAN GARD: Commissioner?

3 COMM. EASTERLY: I'm sorry. I'll

4 tell you a couple of things. One is PM2.5 air

5 quality designations, EPA is the process. We

6 sent them information a number of months ago.

7 They have proposed final designations for

8 attainment and nonattainment for PM2.5.

9 And all of the state is attainment but for

10 Northwest Indiana, which is unclassifiable, and

11 I'll tell you why in a minute, and Southeast --

12 no -- that would be correct, Southeast Indiana,

13 Clark and Floyd, which is what they propose to

14 designate nonattainment based on the data ending

15 at the end of 2013.

16 I just signed today the letter sending

17 them the data at the end of 2014, which shows

18 that we're in attainment there now, so we're

19 asking them to designate that as attainment. But

20 we know they won't. It's going to be

21 unclassifiable also, because our neighbors in

22 Illinois and Louisville had all of their PM2.5 air

23 quality data voided because it didn't meet the

1 quality assurance criteria.

2 So, EPA's concern is that there may be
3 violations in either Louisville or Chicago that
4 they'll say we cause and contribute to, so they
5 won't let us be attainment. But being
6 unclassifiable, for all intents and purposes, is
7 as good as being attainment, so it's not damaging
8 to us. And if you want to look at the bright
9 side, it's possible there are violations in one
10 of those communities, and since there's no data,
11 we're at least getting to act like we're
12 attainment until there is data.

13 The other thing is our legislative agenda.
14 People have different questions about it. We
15 have three bills. One's in the House, and I
16 don't think it has a number yet. It's --
17 representative Wolkins is carrying it. I heard
18 him say what he thinks it -- which is a
19 legislative summary.

20 Here's what we want it to do: Operator
21 certification exams for water and wastewater. We
22 historically have given them twice a year at four
23 occasions around the state -- and there's such a

1 fire drill in people that just miss certif --
2 qualifying for the exam by a day, or people that
3 fail by, say, one question and want to take it
4 again but they can't for six months, and it's
5 really not convenient to the public.

6 So, we want -- and we work with Ivy Tech,
7 and they will do this now, although we only have
8 it working for some wastewater certification
9 exams. You can go to Ivy Tech, any -- almost
10 any -- any campus? Almost --

11 MR. PIGOTT: Twenty-six campuses.

12 COMM. EASTERLY: Twenty-six campuses,
13 and you can take the test if you qualify. And
14 they proctor it, and you get the results
15 immediately. So, that's a really good thing, but
16 they won't do it for free, so they need to be
17 paid a fee for that service. And so, we need
18 legislative authority to make it clear that we
19 can ask people to pay that fee.

20 So, that's what we're trying to do, and
21 that will -- you know, if you actually -- having
22 lived in Northwest Indiana, if you have to drive
23 down to Indy and stay overnight to be here for a

1 test, it's a whole lot cheaper to pay a few bucks
2 to a community college and go and take it near
3 your home.

4 Then electronic submission of information.
5 EPA is moving us towards what is something called
6 EDMR and FDMR, requiring everybody to send in
7 their discharge monitoring results for wastewater
8 electronically. Currently, the statute prohibits
9 us from requiring people to send that information
10 electronically, so we're trying to get that
11 changed so we can do that. And really, we want
12 to do it in all of our programs, not just in that
13 one. It's much more efficient for you to send us
14 something electronically and us not to monkey
15 around with it than it is to send us paper and
16 have us type it in.

17 In-lieu fees. We -- an in-lieu fee is for
18 if you -- what the -- "damage" is -- may be the
19 wrong word -- impact a wetland, you have to do
20 something, you have to mitigate that impact. And
21 right now, the current program generally is that
22 you have to do a mitigation project, and then you
23 can do your project that you want to do that

1 impacts the wetland.

2 This would allow us -- and we've been
3 working with DNR on this -- to let you pay money
4 to this fund, and then the fund will do the
5 wetland work, but you can do your project once
6 you've met your obligations with the in-lieu fee.
7 And the actual part of the rule -- or the law --
8 has to do with where that mitigation has to be,
9 because right now, the program won't work very
10 well the way it's been set up for your own
11 mitigation that you would do yourself.

12 Then the solid and hazardous waste fee
13 deadlines. There's too many different deadlines
14 and they're all over the place, and we're trying
15 to reduce the number of times that you have to
16 pay the fee, so it will be simpler for the people
17 that pay them and simpler for us, and it'll be
18 less total fee payments.

19 Variances. We want to extend the amount
20 of time we can issue a variance. Right now, most
21 variances, except for like the streamline mercury
22 variance, only last one year, and we would like
23 to be able to do it for five years. And yes, the

1 part that you heard representative Wolkins read,
2 there are other restrictions on that, but still,
3 it will give us more flexibility.

4 Then the dis -- we call it the display
5 device sales data report, but basically right
6 now, if you do e-recycling you have to report
7 twice a year the same information. We only want
8 it once. It's just a waste of time. So,
9 that's -- that's the one that will take the
10 longest to describe, and it's -- we'll see what
11 happens.

12 In the Senate, we have what we call the
13 state cleanup bill. It allows us to get cost
14 recovery for oversight and administrative
15 activities related to cleanup of properties
16 contaminated with petroleum. Now, we already get
17 that if it's under the Excess Liability Trust
18 Fund or the Voluntary Remediation Program, and we
19 get it for all hazardous waste cleanups, but we
20 don't have clear authority to do it for petroleum
21 right now, and we've asked for that, and then --
22 and it would be consistent with the other one.

23 Then the other thing, we -- there was a

1 court decision that -- I'll say scared us. It
2 said that we could not get damages for
3 pollution-related cleanups without a court order.
4 And that's fine with us, actually, but we're
5 worried that it's going to be interpreted to say
6 that we can't get oversight costs without a court
7 order.

8 We enter agreements with people all of the
9 time, under the Voluntary Remediation Program and
10 other places, that they pay for the oversight
11 costs of the cleanup. We want to make sure that
12 the law clearly recognizes our ability to do that
13 without going to court and getting a court order,
14 because that would be incredibly expensive.

15 And then the most controversial -- oh,
16 that's Senate Bill 311. It passed the
17 Environment Committee nine to nothing Monday, so
18 unless something comes up, it's got a fair
19 chance.

20 Then Senate Bill 312 we call our surface
21 water protection plan and above-ground storage
22 tanks bill. It is our best attempt to respond to
23 the fact that there's been two significant

1 surface water drinking water supplies that had to
2 close -- well, that had unsafe water in their
3 pipes this year, and had to tell people not to
4 use the water for some periods of time.

5 It does two parts. We want the drinking
6 water suppliers to -- that use surface water --
7 to have a plan for how they would respond to the
8 spill of harmful contaminants, and how they might
9 even find out, because we don't have that. We
10 have that only for groundwater supplies, a
11 wellhead protection plan, right now.

12 And then the other part is, in order for
13 them to do the plan well, they might need to know
14 what potential contaminants are coming, and we're
15 asking people that store liquids in tanks to
16 register them, and that part seems to be a little
17 bit controversial right now.

18 Those -- that's my report unless there's
19 questions, and Bruce has a separate report.

20 CHAIRMAN GARD: Are there questions
21 for the Commissioner?

22 (No response.)

23 CHAIRMAN GARD: Thank you.

1 COMM. EASTERLY: Thank you. Oh, the
2 rules update; I'm sorry.

3 CHAIRMAN GARD: Yeah, Chris Pedersen.

4 Is Chris here? Yes.

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

7 I have a couple of things I wanted to
8 mention before I talk about specific rule
9 updates. First of all, for the Board members
10 here that are not also state employees, in your
11 folder we've included a form, a conflict of
12 interest disclosure form. That is for you to
13 update if you need to. If you haven't filled one
14 out or if you have any changes that you need to
15 update that, you just fill that out and you can
16 give that back to us today, you can mail it in,
17 or you can bring it to the next meeting.

18 Also, in the Board packet that was mailed
19 out, under the Hazardous Waste Updates Rule,
20 there were two places in the documents where we
21 identified an incorrect date. One was in the
22 rule information sheet and one was in of the
23 history section of the proposed rule. And in

1 both of those, it referenced today's date as in
2 2014 rather than 2015. I just wanted to let you
3 know that those have been corrected on-line, and
4 also that they have no impact on the process of
5 rulemaking or anything like that. It doesn't
6 affect the hearing notice.

7 As far as the rules, I really don't have a
8 whole lot I can tell you about. I think that the
9 three rules that are before you today for
10 preliminary adoption, if they are adopted, they
11 could be ready for final adoption as soon as
12 March, and so we're anticipating that March 11th
13 is likely to be the next date that we would
14 suggest for a Board meeting.

15 And in addition to that, the SO₂ Emission
16 Limits Rule that I've mentioned before, that may
17 be ready for preliminary adoption, and that
18 particular rule revises or adds sulfur dioxide
19 emission limits in certain counties that have
20 townships that were designated as nonattainment
21 for the new one-hour SO₂ standard. It also
22 removes some sources and equipment that are no
23 longer in use.

1 The counties that would be affected by
2 this would be Marion, Morgan, Daviess, Pike and
3 Vigo. And as I said, we think that that should
4 be ready for preliminary adoption in March.

5 And that's all I have.

6 CHAIRMAN GARD: Any questions for
7 Chris?

8 (No response.)

9 CHAIRMAN GARD: Thank you, Chris.
10 Bruce Palin?

11 MR. PALIN: You may want to either
12 close your eyes during the presentation or --

13 COMM. EASTERLY: Oh, close our eyes?

14 MR. PALIN: -- or move to one side,
15 or turn around.

16 (Discussion off the record.)

17 COMM. EASTERLY: There we go. You
18 might want to focus.

19 MR. PALIN: That's not good.

20 COMM. EASTERLY: Is there a focus?

21 You have to look for like a zoom.

22 (Discussion off the record.)

23 COMM. EASTERLY: There we go.

1 MR. RULON: There's a technical
2 expert.

3 MR. PALIN: As I trip over the cords
4 and kill myself.

5 COMM. EASTERLY: Can we go back?

6 MR. PALIN: Well, that's not actually
7 the first slide, but the first slide's just an
8 introduction slide, so at the risk of screwing
9 everything up and trying to go backwards, I'll
10 leave it where it's at.

11 Thank you, Chairwoman Gard and members of
12 the Environmental Rules Board. At the last -- I
13 believe it was the last meeting, the Board
14 preliminarily adopted the rules for satellite
15 manure storage structures, and there were several
16 comments that came up during that hearing.

17 What I wanted to do today is just give you
18 a little background and information on that rule
19 and give you an opportunity to ask questions, if
20 you have any, and try -- hopefully try to provide
21 some clarification on exactly what that rule is
22 doing.

23 Satellite manure structures is something

1 that was defined -- it's been defined in statute.
2 They are structures that are not located at a
3 livestock or poultry production area, they're not
4 owned or utilized by a confined feeding
5 operation, and they store at least one million
6 gallons of liquid manure or 5,000 cubic yards of
7 solid manure.

8 There are currently, as far as we know,
9 two satellite manure storage structures in the
10 state that were established prior to the
11 statutory requirement that they receive approval.
12 What we've done as far as putting in place
13 regulations to regulate those is we've
14 essentially copied the requirements designed in
15 siting requirements for -- that apply to confined
16 feeding operations and are applying them to the
17 satellite manure storage structures.

18 There's a list of setbacks in the rule,
19 and I've kind of regurgitated them here as far as
20 the amount of the setbacks from various features.
21 There is within the rule an ability to waive a
22 property line setback if the adjoining property
23 owner agrees to a lesser property line setback

1 than a hundred feet; that that is something that
2 can be waived by at least the property owner.

3 There's also within the rule an ability to
4 provide an alternative compliance design and to
5 request some reduction in a setback based on
6 specific designs that incorporate protections for
7 those. For example, if you happen to have a
8 storage area that was -- where the surface water
9 was actually upgradient from the impoundment,
10 then you certainly don't have the concerns with a
11 release from that impoundment going into that
12 surface water, then that's something that can be
13 considered as an alternative to reduce a setback.

14 But in general, these are -- the
15 setbacks -- and usually these are the ones
16 that -- at least the confined feeding operation
17 areas typically are what are complied with. We
18 don't run into much in the way of waivers or
19 reductions of those.

20 I knew I should have wore my glasses up
21 here. I think it's this one. There we go.
22 Siting Restrictions. One of the discussion items
23 that came up relative to the hundred-year flood

1 plain, the way the rule states it, it says you
2 cannot build within the hundred-year flood plain
3 unless you build the structure or design the
4 structure in such a way that -- for solid manure,
5 that the base is two feet above that hundred-year
6 flood elevation, or for the purpose of liquid
7 manure structures, the lowest access point to
8 that structure has to be two feet above the
9 hundred-year flood elevation.

10 So, it's possible to build dikes and
11 protections to a liquid manure storage structure
12 so that a flood -- a 100-year flood elevation
13 would not allow any water to flow into that
14 impoundment. Of course, you also have to look
15 at, structurally, that it's also sound from the
16 standpoint of the hydrostatic pressures that
17 would occur with a 100-year flood elevation
18 occurring.

19 So, it's a -- it kind of throws up a flag
20 that if you're in one of those areas, it's going
21 to require additional considerations and designs
22 for us to allow that type of structure to occur
23 there.

1 I included this map. It's kind of a -- it
2 gives you a general idea of the flood areas in
3 the state as far as where flooding may occur.
4 It's saying, like commercials, your results may
5 vary. Obviously the more detailed that -- if you
6 get down to and closer to particular streams,
7 they may not even show up on this map just
8 because of the scale of it currently.

9 But it kind of gives you an idea. The
10 blue areas are, in general, the flood areas
11 within the state, and then obviously the yellow
12 areas are the land areas that would not be
13 flooded. So, again, just to kind of give you a
14 sense of the amount of the state that may be
15 impacted relative to flooding.

16 There's also a restriction relative to
17 karst terrain, and again, this is put in to
18 provide opportunity for additional protections to
19 be put in place. In order to build in a karst
20 terrain, you do have to provide additional
21 information, soil information and design
22 information, to show that that structure would
23 be -- have structural integrity to be protective

1 in the event that you did have some type of a
2 karst feature occur near or under your facility.

3 This is also a map, kind of the south
4 central part of Indiana. The green area is
5 considered part of the karst terrain. There
6 would be some sinkhole features in those areas,
7 the darker -- I'm not sure what color that is,
8 brown, red, orange color, is where there would be
9 more frequent occurrences of sinkholes occurring.

10 And so, any construction in these, the
11 green or the orange area, would require
12 additional considerations as far as evaluation of
13 the property, evaluation of where the -- how deep
14 it is to the limestone that may be subject to
15 dissolution and creation of sinkholes. And so,
16 again, just to give you kind of an idea of the
17 portion of the state that's impacted by those
18 types of considerations.

19 A couple of other issues that came up in
20 the Board meeting were relative to good character
21 and financial assurance, and Nancy King met with
22 the Attorney General's Office to have some
23 discussion on that topic. We did not get an

1 official opinion from the Attorney General's
2 Office, which requires significant more review
3 and evaluation.

4 But in the discussion, what was discussed
5 was that given that there are other areas of the
6 statute that have given -- granted specific
7 authority to include consideration of good
8 character and financial assurance, and that both
9 of those concepts are outside the general realm
10 of Title 13 as far as regulating pollution, it
11 was their feeling that there needed to be
12 specific legislative authority given to the Board
13 in order to have rules to address those two
14 specific topics relative to satellite manure
15 storage structures.

16 We do have good character, currently,
17 requirements under the CFO portion of the statute
18 as well as under -- for solid waste and hazardous
19 waste facilities, and currently, financial
20 assurance in the statute is related specific to
21 solid and hazardous waste facilities. There is
22 no financial assurance considerations relative to
23 confined feeding operations in the statute. So,

1 I wanted to provide you that information, and I
2 think actually -- well, let's see. Is there
3 another -- yeah, I think that's essentially what
4 I said.

5 One of the things I did want to mention is
6 that there has been a Senate Bill 404 that's been
7 introduced that would require application of good
8 character to satellite manure storage structures.
9 It's taken the language that currently exists in
10 the confined feeding operation portion of the
11 statute and essentially copied that and put it in
12 to apply to satellite manure storage structures
13 as well.

14 So, we currently -- I believe that our
15 current CFO rules do not have -- do not address
16 good character, but because it's addressed in the
17 statute, we can implement those requirements.
18 So, if that particular bill goes through, we'll
19 have to look at where we are in the timing on
20 this particular regulation to see if it needs to
21 be included.

22 But I think not including it would not be
23 too big of an issue, because we'd do just like we

1 are with confined feeding operations and use the
2 statutory authority to implement that
3 requirement.

4 And that concludes my presentation. I
5 would be glad to answer any questions folks may
6 have.

7 CHAIRMAN GARD: Thank you, Bruce.
8 Have you received any suggestions from any Board
9 Members of changes to make to that rule?

10 MR. PALIN: Not specifically as far
11 as --

12 CHAIRMAN GARD: Because some concerns
13 were raised about several different issues, and a
14 couple -- there were a couple of others that
15 weren't up there.

16 MR. PALIN: Yeah. I'm not aware -- I
17 don't know if any of the rule folks have received
18 any comments.

19 UNIDENTIFIED SPEAKER: No.

20 MR. PALIN: Okay. No, they've not
21 received anything specifically.

22 CHAIRMAN GARD: But I would en -- if
23 Board members have any thoughts of things you

1 would like to -- changes you'd like to see with
2 that rule, it'd probably be a good time to talk
3 to Bruce or Nancy and at least see if it would
4 work.

5 MR. PALIN: Sure. We would be always
6 open to that.

7 CHAIRMAN GARD: Okay.

8 Any -- any other questions from Board
9 Members?

10 (No response.)

11 CHAIRMAN GARD: Thank you, Bruce.

12 MR. PALIN: Thank you.

13 CHAIRMAN GARD: Today there will be a
14 public hearing prior to consideration for final
15 adoption of Hazardous Waste Updates and public
16 hearings prior to consideration for preliminary
17 adoption of Walsh and Kelly SO₂ Limits,
18 Shipbuilding and Ship Repair, and Particulate
19 Matter Emission Limits. Today we will also have
20 a presentation of two nonrule policy documents by
21 IDEM's Office of Air Quality. Additionally, we
22 will have a public hearing on a citizen's
23 petition for rulemaking regarding the definition

1 of "interference" found at 327 IAC 5-17-11.

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

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

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

18 (Reporter sworn.)

19 CHAIRMAN GARD: Thank you.

20 This is a public hearing before the
21 Environmental Rules Board for the State of
22 Indiana concerning final adoption of amendments
23 to rules at 329 IAC 3, updating the Hazardous

1 Waste Rules.

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

6 Dan watts is going to present the rule.

7 MR. WATTS: Thank you. Good
8 afternoon, Chairwoman Gard, members of the Board.

9 My name is Dan Watts, a rule writer for the Rules
10 Development Branch, and I would like to present
11 LSA Document 14-288 for final adoption, which
12 proposes amendments to the Hazardous Waste
13 Management rules at 329 IAC 3.1.

14 The rulemaking will update IDEM's
15 Hazardous Waste Rules to be more -- to be
16 equivalent or consistent with recent changes to
17 EPA Hazardous Waste Rules published in the
18 Federal Register since 2010. These changes
19 address a variety of aspects of hazardous waste
20 management that were described at the first
21 public hearing.

22 IDEM asks that the Board adopt these rule
23 changes so IDEM can maintain an authorized

1 hazardous waste program that is equivalent and
2 consistent with EPA requirements. If IDEM does
3 not incorporate the required changes from the EPA
4 final rules into state rules, Indiana may lose
5 authorization and the EPA may take over the
6 implementation of the hazardous waste rules in
7 our state.

8 Since the preliminary adoption of this
9 rule at the November 12th, 2014 Environmental
10 Rules Board meeting, IDEM has made one small
11 change to an obsolete reference to the
12 now-defunct Solid Waste Management Board at
13 329 IAC 3.1-6-2 subdivision (3). No other
14 changes have been made since preliminary
15 adoption.

16 Representatives from IDEM are available to
17 answer any questions you may have for this
18 rulemaking. The Department asks that the Board
19 finally adopt this rule as presented.

20 Thank you.

21 CHAIRMAN GARD: No one has signed up
22 to testify on this. Is there anyone in the
23 audience that didn't sign up that would like to

1 comment on this rule?

2 (No response.)

3 CHAIRMAN GARD: Seeing none, the

4 hearing is concluded. Thank you.

5 Board discussion. Any questions? Any

6 discussion?

7 (No response.)

8 CHAIRMAN GARD: Okay. We need, first

9 of all, a motion to adopt IDEM's suggested

10 changes. Is there a motion?

11 MR. ANDERSON: So moved.

12 CHAIRMAN GARD: Second?

13 MR. DAVIDSON: Second.

14 CHAIRMAN GARD: All in favor, say

15 aye.

16 MR. HORN: Aye.

17 MS. FISHER: Aye.

18 MS. BOYDSTON: Aye.

19 MR. ETZLER: Aye.

20 MR. ANDERSON: Aye.

21 MR. BAUSMAN: Aye.

22 MR. POWDRILL: Aye.

23 MR. CLARK: Aye.

1 MR. METTLER: Aye.

2 MR. DAVIDSON: Aye.

3 MR. RULON: Aye.

4 DR. ALEXANDROVICH: Aye.

5 MR. CARMICHAEL: Aye.

6 CHAIRMAN GARD: Aye.

7 Opposed, nay.

8 (No response.)

9 CHAIRMAN GARD: The changes are
10 adopted. Now we need a motion to final adopt the
11 rule as amended.

12 MR. RULON: So moved.

13 MR. POWDRILL: Second.

14 CHAIRMAN GARD: This will be a
15 roll-call vote.

16 Mr. Rulon?

17 MR. RULON: Yes.

18 CHAIRMAN GARD: Dr. Alexandrovich?

19 DR. ALEXANDROVICH: Yes.

20 CHAIRMAN GARD: Mr. Carmichael?

21 MR. CARMICHAEL: Yes.

22 CHAIRMAN GARD: Mr. Powdrill?

23 MR. POWDRILL: Yes.

1 CHAIRMAN GARD: Mr. Anderson?

2 MR. ANDERSON: Yes.

3 CHAIRMAN GARD: Mr. Etzler?

4 MR. ETZLER: Yes.

5 CHAIRMAN GARD: Ms. Boydston?

6 MS. BOYDSTON: Yes.

7 CHAIRMAN GARD: Mr. Davidson?

8 MR. DAVIDSON: Yes.

9 CHAIRMAN GARD: Mr. Horn?

10 MR. HORN: Yes.

11 CHAIRMAN GARD: Ms. Fisher?

12 MS. FISHER: Yes.

13 CHAIRMAN GARD: Mr. Mettler?

14 MR. METTLER: Yes.

15 CHAIRMAN GARD: Mr. Bausman?

16 MR. BAUSMAN: Yes.

17 CHAIRMAN GARD: Mr. Clark?

18 MR. CLARK: Yes.

19 CHAIRMAN GARD: And the Chair votes

20 aye. Fourteen ayes, zero nays, so the rule is

21 adopted.

22 This is a public hearing before the

23 Environmental Rules Board of the State of Indiana

1 concerning preliminary adoption of amendments to
2 rules at 326 IAC 7-4.1-21 concerning Sulfur
3 Dioxide Limits at Walsh and Kelly.

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

6 Susan Bem will present the rule.

7 MS. BEM: My name is Susan Bem, and I
8 work in the Rules Development Branch.

9 Walsh and Kelly is a hot-mix asphalt plant
10 located in Griffith, Indiana, Lake County. They
11 have requested a revision to the sulfur dioxide
12 emission limits in Title 326, Article 7-4.1-21.
13 These emission limits are part of the
14 U.S. EPA-approved Indiana State Implementation
15 Plan, or SIP, for SO₂.

16 Walsh and Kelly installed the new, more
17 efficient 115 million BTU per hour aggregate
18 dryer/burner in 2013 to replace a unit rated at
19 120 million BTU per hour. The old unit was
20 regulated by Article 7-4.1-21 with specific
21 limits for that dryer/burner and allowed the use
22 of re-refined waste oil. As required by
23 Article 7-4.1-1, all new combustion units in Lake

1 County are required to burn natural gas unless
2 specifically regulated by a source specific
3 emission limit listed in the rule.

4 Without adding the new unit to the source
5 specific listing in the Article 7, the asphalt
6 plant would not be able to continue to use
7 refined waste oil in the new unit that replaced
8 the former unit. The rulemaking was requested by
9 the affected source to allow for operational
10 flexibility.

11 EPA -- or IDEM will submit this rulemaking
12 to EPA for SIP approval once it is effective, and
13 modeling done by the Department has shown that
14 there will not be an increased impact on air
15 quality.

16 The Department requests that the Board
17 preliminarily adopt the rule as presented.

18 Thank you. Any questions?

19 CHAIRMAN GARD: Are there any
20 questions?

21 DR. ALEXANDROVICH: Yeah, I have a
22 couple of questions.

23 MS. BEM: Uh-huh.

1 DR. ALEXANDROVICH: What's the
2 difference in the PT if it was just natural gas
3 versus these limits?

4 MS. BEM: Well, the emission limits
5 in the current rule haven't changed from the old
6 limit to the new unit. The PT, there would be a
7 difference in particulate emissions between
8 burning natural gas and the refined waste oil,
9 but I don't know what the emission factor is.

10 DR. ALEXANDROVICH: Okay. But not
11 SO₂? So, the SO₂ is --

12 MS. BEM: I'm sorry. For SO₂, the
13 emission factor would be different between
14 natural gas and waste oil, but I don't know what
15 the emission factor is. But the allowed emission
16 limit is not changing in the rule.

17 DR. ALEXANDROVICH: Okay. And one
18 other question: Have you already met with EPA on
19 this issue?

20 MS. BEM: Yeah, we've -- they've
21 reviewed the modeling to go over it to see what
22 the impact would be, and they've -- they're in
23 agreement that the modeling showed -- continues

1 to show attainment.

2 CHAIRMAN GARD: Any other questions?

3 (No response.)

4 CHAIRMAN GARD: Thank you.

5 This hearing is concluded. The Board will

6 now consider preliminary adoption of amendments

7 to Walsh and Kelly Sulfur Dioxide Rules. Any

8 further Board discussion?

9 (No response.)

10 CHAIRMAN GARD: Is there a motion to

11 preliminarily adopt the rules?

12 MR. CARMICHAEL: So moved.

13 CHAIRMAN GARD: Is there a second?

14 MR. HORN: Second.

15 CHAIRMAN GARD: All in favor, say

16 aye.

17 MR. HORN: Aye.

18 MS. FISHER: Aye.

19 MS. BOYDSTON: Aye.

20 MR. ETZLER: Aye.

21 MR. ANDERSON: Aye.

22 MR. BAUSMAN: Aye.

23 MR. POWDRILL: Aye.

1 MR. CLARK: Aye.

2 MR. METTLER: Aye.

3 MR. DAVIDSON: Aye.

4 MR. RULON: Aye.

5 DR. ALEXANDROVICH: Aye.

6 MR. CARMICHAEL: Aye.

7 CHAIRMAN GARD: Aye.

8 Opposed, nay.

9 (No response.)

10 CHAIRMAN GARD: The rule is

11 preliminarily adopted.

12 This is a public hearing before the

13 Environmental Rules Board concerning preliminary

14 adoption of amendments to rules at 326 IAC 8-12-4

15 regarding Shipbuilding and Ship Repair.

16 I will now introduce Exhibit C, the draft

17 rules, into the record of the hearing.

18 Susan Bem.

19 MS. BEM: Again, name is a Susan Bem,

20 and I work in the Rules Development Branch.

21 IDEM regulates volatile organic compound,

22 or VOC, emissions from surface coating operations

23 at shipbuilding and ship repair facilities in

1 Article 8-12. The rule -- this rule was
2 originally adopted in 1995 to address ozone
3 nonattainment areas classified as moderate or
4 above and is limited to facilities in Clark,
5 Floyd, Lake and Porter Counties.

6 This rulemaking was requested by the one
7 affected source, Jeffboat, a barge manufacturer
8 located in Clark County, to address the limited
9 availability of antifoulant coatings. Section
10 4(a)(1)(E) of the rule indicates that specialty
11 coatings not specifically listed shall not exceed
12 a VOC content of 2.83 pounds per gallon.

13 Antifoulant coatings are not specifically
14 listed and are not -- and are subject to the
15 2.83-pounds-per-gallon limit. The antifoulant
16 coating that Jeffboat was using with a VOC
17 content that meets the 2.83-pounds-per-gallon
18 limit was discontinued by the supplier and is no
19 longer available.

20 IDEM had adopted this limit in the 1995
21 rule to meet Clean Air Act deadlines before the
22 U.S. EPA had finalized the Control Technique
23 Guidelines for this source category and before

1 the EPA finalized the National Emission Standard
2 for Hazardous Air Pollutants, or NESHAP, for
3 shipbuilding. The CTG's are developed by EPA to
4 assist states in analyzing and determining
5 reasonable available control technology, or RACT,
6 for sources located in ozone nonattainment areas.

7 With this rulemaking, IDEM is proposing an
8 antifoulant VOC content limit at 3.3 pounds per
9 gallon, and this is consistent with the limit
10 that ended up in the final NESHAP and the final
11 CTG that was issued by EPA after the original
12 rule was adopted in 1996.

13 There are two antifoulant coatings
14 remaining on the market that meet the more
15 stringent Indiana requirements in Article 8, but
16 neither of these are appropriate for Jeffboat.
17 One is designed for yachts, not barges, and the
18 other is cost prohibitive.

19 A customer may request a specific
20 manufacturer and coating system to be used on a
21 barge. If Indiana sources cannot offer the same
22 options as other manufacturers in other states,
23 they may have to decline business or send the

1 barge to an outside independent shipyard in
2 another state for surface coating. Suppliers do
3 not go to the expense to test antifoulants with
4 other suppliers' epoxy resins, and do not
5 warranty their coating systems with other
6 suppliers' antifoulants.

7 The current limit in Article 8 is part of
8 the Indiana State Implementation Plan, or SIP,
9 and once this rulemaking is final, we'll submit
10 it to EPA for SIP approval.

11 The Department requests that the Board
12 preliminarily adopt the rule as presented.

13 Any questions?

14 CHAIRMAN GARD: Any questions for
15 Susan?

16 DR. ALEXANDROVICH: Can I just
17 comment.

18 CHAIRMAN GARD: Yes.

19 DR. ALEXANDROVICH: -- on --

20 CHAIRMAN GARD: Certainly.

21 DR. ALEXANDROVICH: -- something? In
22 the proposed changes to the rule, some dates are
23 kind of crossed out, and then there are some that

1 are left, "...before January 1[st]...96." Is
2 this the appropriate time to mention it?

3 CHAIRMAN GARD: Do you want to
4 address that, please?

5 MS. BEM: Yes.

6 DR. ALEXANDROVICH: On page 3 and 4.

7 MS. BEM: Yeah. The initial date in
8 the rule was crossed out so that it didn't look
9 like, now that we were changing the antifoulant
10 coating limit from 2.83 to 3.3, that the 3.3
11 limit always applied. So, it would make the --
12 so it's -- in that initial section, Section 4, we
13 crossed out the date, and, you know, that -- once
14 these changes are effective, those are the limits
15 that will apply from that date forward.

16 DR. ALEXANDROVICH: Right. There are
17 still some dates that --

18 MS. BEM: Yeah.

19 DR. ALEXANDROVICH: -- have not been
20 crossed out, so I was wondering if that was just
21 an oversight or if there was a reason for that.

22 MS. BEM: And then some of the other
23 dates, as we went through -- but we felt like we

1 should leave those dates in there because they
2 were training program dates, and we wanted to
3 make sure people knew there was a difference
4 for -- when certain parts of the rule, you know,
5 were applicable.

6 DR. ALEXANDROVICH: Okay.

7 MS. BEM: So, we thought there was --

8 DR. ALEXANDROVICH: I gotcha.

9 MS. BEM: -- a reason to keep those
10 in this.

11 (Discussion off the record.)

12 MR. ETZLER: I honestly think in the
13 realm of consistency, since the 1996 date has
14 passed, that the rule should state that you have
15 to be in compliance, so I don't think elimination
16 of the date creates a problem, because today you
17 would have to have a training program. So, I
18 concur with the Doctor that -- I think those
19 dates should be eliminated.

20 MS. BEM: Okay.

21 MR. ETZLER: I certainly would like
22 you to look at that before we finally adopt the
23 rule.

1 MS. BEM: Before final adoption,
2 we'll definitely go back and take a look at that
3 and give that some consideration.

4 MR. ETZLER: Thank you.

5 CHAIRMAN GARD: Yes, Cal.

6 MR. DAVIDSON: If there becomes a --
7 if the second available antifoulant becomes
8 unavailable, then they have to go to the more
9 expensive product at some time in the future and
10 shipbuilding just becomes more expensive, I
11 guess. Would we -- would it require another
12 revision, or have you looked at that other
13 alternative? Would we have to do this again if
14 they go to another product?

15 MS. BEM: We -- hopefully we wouldn't
16 have to do this again, since the limit that we're
17 putting in the rule, the 3.3 pounds per gallon,
18 is the same limit that's applicable in every
19 other state because of the National Emission
20 Standards for Hazardous Air Pollutants, that
21 there's enough manufacturers out there. You
22 know, since they're not just having a supplier
23 from one state, they're supplying for all barge

1 manufacturers, that hopefully -- you know, it
2 would cause a problem for all barge
3 manufacturers, not just the Indiana ones, so
4 hopefully we wouldn't have to go back. It
5 wouldn't be a problem in the future.

6 MR. DAVIDSON: Thank you.

7 CHAIRMAN GARD: Any other questions?

8 (No response.)

9 CHAIRMAN GARD: Thank you, Susan.

10 MS. BEM: Thank you.

11 CHAIRMAN GARD: We don't have any
12 speaker cards. Is there anyone in the audience
13 that would like to comment on this rulemaking?

14 (No response.)

15 CHAIRMAN GARD: Seeing none, the
16 hearing is concluded. The Board will now
17 consider preliminary adoption of amendments to
18 the Shipbuilding Rules at 326 IAC 8-12-4. Any
19 Board discussion -- any more Board discussion?

20 (No response.)

21 CHAIRMAN GARD: Is there a motion
22 to -- for preliminary adoption of the rule?

23 MR. ANDERSON: So moved.

1 CHAIRMAN GARD: Is there a second?

2 MR. DAVIDSON: Second.

3 CHAIRMAN GARD: All in favor, say

4 aye.

5 MR. HORN: Aye.

6 MS. FISHER: Aye.

7 MS. BOYDSTON: Aye.

8 MR. ETZLER: Aye.

9 MR. ANDERSON: Aye.

10 MR. BAUSMAN: Aye.

11 MR. POWDRILL: Aye.

12 MR. CLARK: Aye.

13 MR. METTLER: Aye.

14 MR. DAVIDSON: Aye.

15 MR. RULON: Aye.

16 DR. ALEXANDROVICH: Aye.

17 MR. CARMICHAEL: Aye.

18 CHAIRMAN GARD: Aye.

19 Opposed, nay.

20 (No response.)

21 CHAIRMAN GARD: The rule is

22 preliminarily adopted.

23 This is a public hearing before the

1 Environmental Rules Board of the State of Indiana
2 concerning preliminary adoption of amendments to
3 rules at 326 IAC 6.5 and 6.8, Particulate Matter
4 Emissions Limit.

5 I will now introduce Exhibit D, the draft
6 rule, into the record of the hearing.

7 Susan?

8 MS. BEM: Once again, my name is
9 Susan Bem.

10 The purpose of this rulemaking is to
11 update the source specific information found
12 within Indiana's rules for particular matter
13 emission limit in Article 6.5 and Article 6.8.
14 These rules are also part of Indiana's SIP and
15 they are permanent and enforceable provisions
16 that are needed to address attainment of
17 particulate matter air quality standards, and
18 they must be maintained for continued attainment
19 unless replaced with a comparable reduction. The
20 Department has been notified by several regulated
21 sources that information contained within these
22 rules have become inaccurate or obsolete.

23 There are two sources located in Lake

1 County with proposed changes that are more than
2 just an administrative update in this rule. They
3 are for Jupiter Aluminum in 6.8-2-18 and
4 Huhtamaki Foodservice in 6.8-2-34.

5 For Jupiter Aluminum, there's been a
6 request by the source that the references to the
7 aluminum reverberatory furnaces at 3 -- for
8 Unit 3, 4 and 5 be removed, as these furnaces no
9 longer exist. The reductions in allowed
10 emissions from these furnaces will be used to
11 compensate for an increase in the PM limits to
12 Furnaces 2 and 6.

13 For Huhtamaki Foodservice, they have
14 requested an increase in individual dryer
15 emission limits with an overall cap to maintain
16 PM emissions at the current level. The current
17 individual dryer emissions do not allow the
18 source to operate a dryer at full capacity, and
19 the increased limits will allow the source to do
20 so.

21 IDEM, in coordination with EPA, has
22 modeled the proposed emission limit changes for
23 both of these sources and has shown that

1 compliance with the National Ambient Air Quality
2 Standards will be maintained. U.S. EPA has also
3 requested additional record keeping to show
4 compliance with the combined limit for Huhtamaki
5 Foodservice.

6 There are several source specific rule
7 sections that have been repealed because all of
8 the emission units listed in the rule are no
9 longer operating or the entire source has been
10 closed.

11 And once again, when this rulemaking --
12 once this rulemaking is effective, we'll be
13 submitting it to EPA for SIP approval.

14 The Department requests that the Board
15 preliminarily adopt the rule as presented.

16 Any questions?

17 CHAIRMAN GARD: Any questions from
18 Board members?

19 DR. ALEXANDROVICH: I do.

20 CHAIRMAN GARD: That's fine.

21 DR. ALEXANDROVICH: The first one, I
22 think, is an easy one. On page 9, I think it's a
23 typo. It says, "Molder pulp dryers number 1, 2,

1 3...."

2 COMM. EASTERLY: Oh, and all of the
3 rest say, "Molded"?

4 DR. ALEXANDROVICH: Yeah.

5 MS. BEM: On page 9?

6 DR. ALEXANDROVICH: Yeah, it's in
7 bold, halfway down.

8 MS. BEM: Okay. Yeah, yes, I see
9 that one.

10 DR. ALEXANDROVICH: Okay. But my
11 second question, I'm confused a little bit.
12 Under the OU, it's stated that the individual
13 emission limits with an overall cap to maintain
14 particulate matter emissions at the current
15 level. I'm not sure I see where the cap is in
16 the rulemaking.

17 MS. BEM: Okay. The -- so, in that
18 Section 34 on page 9, the overall cap on the
19 pound-per-hour emission limit is that -- the
20 bolded language that we were just looking at with
21 the typo. That's capped at 2.41 pounds per hour,
22 so it's a --

23 DR. ALEXANDROVICH: Okay.

1 MS. BEM: -- a combined limit that
2 applies to all of the dryers.

3 DR. ALEXANDROVICH: Okay.

4 CHAIRMAN GARD: Is that it?

5 DR. ALEXANDROVICH: Yeah, I think I'm
6 done.

7 CHAIRMAN GARD: Any other questions
8 for Susan?

9 (No response.)

10 CHAIRMAN GARD: No one presented
11 speaker cards. Anybody else out there want to
12 comment?

13 (No response.)

14 CHAIRMAN GARD: Okay. The hearing is
15 concluded. The Board will now consider
16 preliminary adoption of amendments to the
17 Particulate Matter Emission Limits Rules at
18 326 IAC 6.5 and 6.8. Further Board discussion?

19 (No response.)

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

22 MR. HORN: So moved.

23 CHAIRMAN GARD: Is there a second?

1 MR. RULON: Second.

2 CHAIRMAN GARD: All in favor, say

3 aye.

4 MR. HORN: Aye.

5 MS. FISHER: Aye.

6 MS. BOYDSTON: Aye.

7 MR. ETZLER: Aye.

8 MR. ANDERSON: Aye.

9 MR. BAUSMAN: Aye.

10 MR. POWDRILL: Aye.

11 MR. CLARK: Aye.

12 MR. METTLER: Aye.

13 MR. DAVIDSON: Aye.

14 MR. RULON: Aye.

15 DR. ALEXANDROVICH: Aye.

16 MR. CARMICHAEL: Aye.

17 CHAIRMAN GARD: Aye.

18 Opposed, no.

19 (No response.)

20 CHAIRMAN GARD: The rule is

21 preliminarily adopted.

22 We now have a presentation of two nonrule

23 policy documents by IDEM's Office of Air Quality.

1 The first document is titled, "Permitting of
2 Activities Located at Livestock Production
3 Operations including Concentrated Animal Feeding
4 Operations. The second document is titled,
5 Permitting of Activities Located at Crop
6 Production Operations.

7 Okay. Do you want to state your name,
8 please?

9 MR. LETTERMAN: Okay. My name is
10 Roger Letterman. I'm the Deputy Assistant
11 Commissioner for the Office of Air Quality.
12 I'm here to present the two nonrule policy
13 documents, and I'm going to try and do it
14 together, because they're very similar in the way
15 they're organized and the information that we
16 have in them. Both nonrule policy documents are
17 meant to provide guidance to the owners and
18 operators of these types of operations, to try
19 and help them determine if in fact an air permit
20 or registration would be needed for their
21 operation.

22 Both policies describe the rule
23 requirements for air permitting for these types

1 of facilities. The livestock production policy
2 also provides a background as far as the work
3 that's been done at the federal level to date.
4 The policies describe what activities or
5 equipment would have emissions that may result in
6 needing an air permit, and include a discussion
7 of what is considered to be a source for the
8 purposes of permitting.

9 The policies also include tables that list
10 certain activities or equipment, capacity and
11 utilization information, critical pollutants, and
12 emissions on a yearly basis. The capacity and
13 utilization columns include numbers that would
14 equal an emission rate that, when aggravated for
15 a specific pollutant, would be below regis --
16 excuse me -- registration levels, which is the
17 lowest level of approval.

18 It is intended that these tables could be
19 used to compare to what is actually at the
20 operation so they can decide whether they need to
21 do more work or they don't need to worry about
22 anything. Even though some of the equipment or
23 operations may not need a permit, they may be

1 subject to federal rule requirements, and so
2 we've included all of the federal rule
3 requirements, and also web links where they can
4 find more information.

5 Now, we did receive comments; you should
6 have a copy of the comments. And we also made
7 revisions, and you should have a copy of the
8 revisions that include both, and show those
9 changes. And what I'd like to do is kind of go
10 through some -- the comments and kind of let you
11 know about the changes and where they're located.

12 I'll summarize them, and I'll start with
13 the Farm Bureau comments. The policy should
14 better express how the potential to emit
15 calculations for activities other than digesters,
16 engines, flares are based on EPA's guidance for
17 grain-handling facilities.

18 To address this, what we did in the
19 potential to emit definition on page 2 of each of
20 the policies, we added language that clarifies
21 that the historical production levels should be
22 used for these type of operations when
23 calculating potential to emit.

1 In addition, language is included in
2 Section 6.3 of both policies. That's page 3 on
3 the livestock, page 4 on the crop production, and
4 here again, we clarify that the historical
5 production data should be used for the potential
6 to emit calculations.

7 The second comment is Section -- excuse
8 me -- Section 6.4 on page 6 of the livestock
9 production policy omits language that is included
10 in Section 6.4 of the crop production policy.
11 The way we addressed this is we simply copied the
12 language in the crop production policy and
13 replaced the language that was in the livestock
14 policy. We also included language indicating
15 that source determination information could be
16 reviewed by IDEM prior to an application being
17 submitted.

18 The third comment, both policies do not
19 include a reference to recent EPA guidance for
20 farm engines. On page 7 of the livestock policy
21 and page 5 of the crop policy, we included the
22 language as far as the recent guidance, and also
23 information about how to access it.

1 The crop production policy does not
2 include a reference to the Spark Ignition Engine
3 New Source Performance Standard. We addressed
4 this by including, on page 5 of the crop
5 production policy, the reference to the NSPS.

6 An issue has come up concerning the low
7 threshold for particulate matter. We suggest
8 that the threshold should be reviewed for whether
9 it is appropriate for all circumstances. We
10 didn't make any changes to the policy on this
11 yet. We're working internally to look at this.
12 We're also going to be meeting with the Farm
13 Bureau and others to go over this and discuss how
14 best to address it.

15 There's a concern with the use of
16 definition in 40 CFR 122.23 to discuss what
17 activities may require air permits in Section 6.2
18 of the livestock policy. On page 3, we deleted
19 all of the references to 40 CFR and replaced that
20 with just a simple list of activities that should
21 be reviewed when you're looking at the need for
22 an air permit.

23 We also went ahead and -- we had a

1 definition for "production area" in the
2 definitions section. We went ahead and deleted
3 that definition also, because, there again, it
4 was from the 40 CFR 122.23.

5 That was all of the comments from the Farm
6 Bureau. We did get comments from Earthwise. The
7 first comment, policy should state that IDEM will
8 use all three criteria in source determinations,
9 and those criteria are basically location, common
10 ownership of the control, and the same SIC
11 number.

12 We didn't make any changes to the policy,
13 because if you look at the definition of "source"
14 in the definitions section, the very first
15 sentence of the definition requires that we use
16 all three of these criteria.

17 IDEM should clearly and precisely explain
18 how they determine when sources are functionally
19 interrelated when determining when sources are
20 adjacent. This is an issue that's really
21 evolving in the courts right now. There's been
22 some recent decisions. It's kind of gone back
23 and forth, so what we did was, on page 6 of the

1 livestock and page 3 of the crop, we included a
2 sentence basically saying we're going to use the
3 most recent state and federal guidance and court
4 decisions when we're doing the source
5 determinations.

6 And that was all of the comments that we
7 had received.

8 CHAIRMAN GARD: I have a question,
9 and a little bit of this is process. It's my
10 understanding, and somebody correct me if I'm
11 wrong, that this Board doesn't have any authority
12 to veto this or -- I mean no action is required
13 by this Board, but it is required that the
14 document be presented to us in its final -- in
15 its final form.

16 One thing -- you commented that there was
17 one thing, and I don't remember which thing it
18 was, you were going to look at and make the
19 change later. Now, does that -- how does that
20 apply with the fact that the final document is
21 supposed to be presented to us?

22 COMM. EASTERLY: We will make another
23 document and we will put it out for public

1 notice --

2 CHAIRMAN GARD: Okay.

3 COMM. EASTERLY: -- get our comments,

4 and bring it back. But my -- and they talked

5 about not doing anything, but we'd already

6 noticed that we're going to do this today, and a

7 lot of people need the information now, even in

8 its imperfect form, because we have some things

9 that have been held up for a year waiting for a

10 clear interpretation of how we're going to do

11 this.

12 CHAIRMAN GARD: Okay. Thank you.

13 Any -- any questions from anybody on the

14 Board about the process at this point?

15 Yes.

16 MR. RULON: So, Tom, just to be

17 clear, then in the interim we're going to just

18 proceed this way, then if the rules change, we're

19 going to -- you guys are going to -- does that

20 kind of leave this in limbo, or not?

21 COMM. EASTERLY: Well, these are, we

22 believe, useable.

23 MR. RULON: Okay.

1 COMM. EASTERLY: After we go through
2 and figure out how we're going to like -- I don't
3 want to give you all of our internal discussions.
4 If we need to change this, we will public notice
5 it again and then wait for the comments, and then
6 bring it to another Board -- I don't know what
7 else to say.

8 And they're both -- we need to make a
9 decision. And remember, a nonrule policy
10 document doesn't change the law or the rule, so
11 if you believe that we have something wrong here,
12 you still have every legal right to, you know,
13 say, "No, you have to follow this other thing."

14 CHAIRMAN GARD: Any other questions?

15 (No response.)

16 CHAIRMAN GARD: Thank you.

17 DR. ALEXANDROVICH: Oh, I'm sorry.

18 CHAIRMAN GARD: Yes.

19 DR. ALEXANDROVICH: I did have one
20 point. Under -- in both documents, and the one
21 I'm looking at is the CAFO one, on 6.6,
22 "Assistance," it says, "IDEM has developed some
23 instructional guidance and example calculations

1 for emission units," dah-dah-dah-dah, and I
2 looked for them on your Web page and could not
3 locate those. Are they going to go up there?

4 MR. LETTERMAN: Okay. Yeah, I'll
5 check with our Permits Branch and make sure that
6 we get those up there. Well, and that's that one
7 reason we wanted to try and provide the tables to
8 begin with was so there's a fairly clear cutoff,
9 that if you were below those, don't even worry
10 about it. Now, if you're above them, we wanted
11 to have some information so that people could
12 kind of see, "well, am I a minor source, am I,
13 you know, a major source, or where would I fall?"

14 DR. ALEXANDROVICH: So, yeah, we will
15 look for them.

16 MR. LETTERMAN: Okay.

17 CHAIRMAN GARD: Thank you.

18 We do have two people that have signed up
19 to make comments on these documents. I will
20 request that comments be limited to no more than
21 five minutes per person.

22 Josh Trenary, Indiana Pork.

23 MR. TRENARY: Good afternoon, Madam

1 Chair, members of the Board. I appreciate the
2 opportunity to speak to you today. My name's
3 Josh Trenary. I'm the Executive Director of
4 Indiana Pork. I'm here today representing the
5 Indiana Pork Advocacy Coalition and the Indiana
6 Farm Bureau. I appreciate the opportunity to
7 comment on these -- on both of these nonrule
8 policy documents. I will comment on them both in
9 tandem as they were presented to you by
10 Mr. Letterman.

11 Most of the ag organizations, and you have
12 a copy here today, submitted joint comments
13 regarding the proposed documents, and several of
14 us throughout the process have been working with
15 IDEM to gather information to make sure everyone
16 understands how the rules are going to apply
17 going forward. We thank IDEM for that
18 opportunity to further define that process, and
19 we also appreciate the efforts to address the
20 concerns that were submitted to the agency in the
21 written comments.

22 There were a few remaining concerns, as
23 was noted by Mr. Letterman. It would have been

1 our preference that the issues were resolved
2 before they were presented here today.
3 Nonetheless, we'll continue to work with the
4 agency to make sure that the information in the
5 documents is going to accurately capture the
6 regulatory requirements and how it's going to
7 apply to all of the different and very -- varied
8 aspects of agricultural operations in the state.

9 Thank you.

10 CHAIRMAN GARD: Any questions for
11 Mr. Trenary?

12 (No response.)

13 CHAIRMAN GARD: Thank you.

14 MR. TRENARY: Thanks.

15 CHAIRMAN GARD: Andrew Gilbert.

16 MR. GILBERT: Hello. My name is
17 Andrew Gilbert, and I'm here on behalf of
18 Earthwise. We were the other group that
19 submitted comments on the NPD's.
20 Earthwise is an environmental consulting
21 firm that represents -- or actually just provides
22 consulting services to primarily dairy farms in
23 Indiana, including some CAFO-sized dairy farms in

1 Northwest, Indiana.

2 I'm sorry I'm not dressed as nicely as
3 all of you, but it was a last-minute, three-hour
4 trip here, which I didn't realize the meeting was
5 at 1:30. So, I'm just up here to kind of
6 reiterate one of the comments that we submitted
7 in writing to IDEM, and it was regarding the
8 Section 6.4 of both documents, I believe,
9 regarding co-located CAFO's and farming
10 operations.

11 Basically this is the source determination
12 section, where they determine when to combine --
13 IDEM will determine when to combine two or more
14 emission units into a single source and permit
15 them as a single source; so, possibly two
16 emergency generators being combined together, you
17 add up the total potential to emit, and then
18 permit it accordingly.

19 The reason it's important to us to clearly
20 delineate how this process will work is because
21 you could also end up combining multiple sources
22 under the source determination process. So, you
23 might have two separate farming operations that,

1 because they meet the three legs of the test on
2 source determination, become one source and are
3 permitted as such, so that can result in more
4 permits for farms or higher level permits for
5 farms, which obviously is increased costs,
6 et cetera.

7 Specifically, what I wanted to address,
8 one of the legs of the test is that the two
9 emission units or sources be on the same
10 property, contiguous property, or adjacent
11 property. The same property, pretty self
12 explanatory. Contiguous property, typically
13 interpreted as touching property borders.

14 And then there's adjacent, which is
15 interpreted as meaning nearby, which doesn't
16 necessarily mean touching, but it doesn't
17 necessarily say how far those emission units or
18 sources can be and still be adjacent. There's a
19 little bit of vagueness to that term.

20 In order to help determine when emissions
21 should be combined, EPA has provided guidance in
22 the past that says essentially that if two
23 emission units or sources are functionally

1 interrelated, then they could be considered one
2 source for permitting purposes.

3 The document -- the revised documents that
4 you have in front of you, the NPD's, I believe
5 they actually say, "Keep in mind that the term
6 'adjacent' means 'nearby' and the term 'nearby'
7 does not require [that] parcels of land...touch;
8 only that they be in close proximity to each
9 other. U.S. EPA guidance suggests that the
10 physical proximity that determines 'adjacency'
11 can expand to larger distances if the activities
12 at the different sites are functionally
13 interrelated."

14 We're happy that IDEM did revise the
15 document to include that language in both
16 documents. The only issue that we have is that
17 the way that it's worded, it makes it sound like
18 functional interrelatedness, or that concept of
19 functional interrelatedness, is only used to
20 combine more sources, and we believe that it also
21 can be used to separate sources.

22 In other words, if you find two emission
23 units or two sources and they are not

1 functionally interrelated, then we shouldn't be
2 combining them into one single source. It
3 shouldn't satisfy that leg of the test that
4 requires adjacency.

5 So, the only thing that we really were
6 asking, then, is that the nonrule policy
7 documents acknowledge that if two sources or
8 emission units is not functionally interrelated,
9 then IDEM does not intend to combine those two
10 sources as a single source and permit them as
11 such.

12 So, hopefully that is relatively clear,
13 and hopefully I haven't gone over five minutes,
14 but I think that's our main comment. But we do
15 appreciate that IDEM did at least copy the
16 language from the crop production NPD over to the
17 livestock NPD.

18 CHAIRMAN GARD: Thank you.

19 Any questions for Mr. Gilbert?

20 (No response.)

21 CHAIRMAN GARD: Thank you.

22 MR. GILBERT: Thank you.

23 CHAIRMAN GARD: There's no one else

1 that signed an appearance card. Is there anyone
2 in the audience that didn't sign up that wants to
3 comment on these documents?

4 (No response.)

5 CHAIRMAN GARD: Hearing none, this
6 hearing is -- this hearing is over.

7 Okay. Public hearing before the
8 Environmental Rules Board, State of Indiana, in
9 accordance with IC 13-14 --

10 MR. RULON: Chairman, may I make a --

11 CHAIRMAN GARD: Yes, certainly.

12 MR. RULON: I'm sorry to cut you off.

13 CHAIRMAN GARD: That's all right.

14 MR. RULON: I'd just like to make a
15 comment for Tom or the Board. So, what he just
16 said about adjacent rules, our particular farm, I
17 really don't know how to fill out the paperwork
18 on my farm.

19 CHAIRMAN GARD: Pardon.

20 MR. RULON: I don't know how to fill
21 the paperwork out on my farm, because they're
22 half a mile apart, they're co-owned by certain
23 individuals and not by all of the other

1 individuals.

2 CHAIRMAN GARD: Uh-huh.

3 MR. RULON: And that's pretty much
4 the way every farm now operates; you have
5 multiple families and multiple levels. So, as we
6 get further into the revisions, it would be nice
7 if we got some clarity, Tom, on the issues so we
8 know how to fill out the paperwork, because I
9 have to fill it out. If I interpret it one way,
10 I don't have to fill out any other forms. If I
11 interpret it the other way -- I don't think, as a
12 farmer, I should have to interpret that. I'd
13 like you to tell me what I should do. Do you
14 know what I mean? Does that make sense?

15 COMM. EASTERLY: On most things, but
16 they're so fact specific, the only way to make
17 them simple is to go broader than we have to and
18 say they all go together, because I -- one of my
19 goals is that if you get a piece of paper from us
20 or if you get a letter saying that you don't need
21 one or if you just follow our procedures and it
22 says you don't need one, that is true and legally
23 defensible. And so, that's why we can't -- we

1 can't really answer that question without a
2 little more knowledge.

3 MR. RULON: Okay.

4 COMM. EASTERLY: But if you -- well,
5 I guess you already did this. If you add up all
6 of your things on both sources and they're still
7 below the limit, you're home free no matter what,
8 but if it is over, then yes, you have to talk to
9 us, really. I can't -- there's no general way to
10 give an answer for every case.

11 (Mr. Clark left the room.)

12 MR. RULON: Okay. And so, then the
13 plan's going to be -- will I be getting a letter
14 about this? I don't do the paperwork now for --

15 COMM. EASTERLY: I'm sorry?

16 MR. RULON: How will I know I need to
17 do something?

18 COMM. EASTERLY: You already had the
19 obligation just by existing, if you had it. If
20 you don't have it, you have don't have it. This
21 was just to help people understand. We ran into
22 a number of cases, primarily related to
23 digesters, where people -- and they're right, the

1 actual digester itself is exempt from -- there's
2 no permitting requirements in general. But what
3 you do with gas can cause a permitting
4 requirement.

5 MR. RULON: Uh-huh.

6 COMM. EASTERLY: And so, they were
7 understandably upset when we came in and said,
8 "You constructed this source without a permit,"
9 because they said, "Well, I don't need a permit."
10 So, we're trying to get information out there so
11 farmers can make informed decisions as they go
12 forward.

13 MR. RULON: Okay.

14 CHAIRMAN GARD: You know, sometimes
15 what looks good on paper in practical application
16 doesn't work.

17 COMM. EASTERLY: Yes.

18 CHAIRMAN GARD: I almost forgot
19 Nancy, and I don't want to do that, because she
20 has some important review to do with us on the
21 hearing process and the Board's options
22 concerning citizen petitions.

23 MS. KING: Thank you, Chairman Gard.

1 As you know, I'm Nancy King, and because
2 we are now getting ready to do our hearing on our
3 citizens petition, I just wanted to briefly go
4 over the options that the Board has. We have --
5 we don't really do these very often and we
6 haven't really gotten to this point, so I just
7 basically wanted to talk about that a little bit.

8 The Board determined that the petition to
9 amend the definition of "interference" met the
10 requirements of the statute and was not devoid of
11 merit, so we held -- we put a notice in the
12 Register, and today we're holding a hearing on
13 that particular matter. After the hearing is
14 concluded, this Board has a number of options,
15 but basically the statute on citizens petitions
16 is silent after that fact.

17 So, there are a number of ways that you
18 can proceed. You can decide that you want the
19 agency to proceed with a rulemaking; you can
20 decide to take no further action; you can ask for
21 additional information, either from the agency or
22 from the petitioner or from whomever testifies
23 before you; and you can also decide that you want

1 to take all of this in and think about it and
2 ruminate and make your determination or any
3 motions that you want to make at the next Board
4 meeting if you want to do that.

5 You can do it today or you can do it then.
6 It's up to you, but because the statute is
7 silent, I just kind of wanted to touch base with
8 you on that a little bit, because it's kind of,
9 you know, you're on your own. So, if you have
10 any questions, I'm happy to answer them, but it
11 was just a little process that I wanted to
12 refresh everyone on.

13 Gary?

14 MR. POWDRILL: Nancy, if we take no
15 action, does that mean the petition dies?

16 MS. KING: Yeah, basically. I mean
17 you can word your motion however you want, but in
18 this particular case, because it's kind of "are
19 we going to amend this particular rule or not?"
20 that's the subject of this particular petition,
21 if this Board decided -- you know, "We've decided
22 that we think the definition is fine the way it
23 is," then your no further action would mean that

1 the Board doesn't -- isn't going to do anything
2 else with that petition. So, yeah, essentially
3 the petition dies, the subject matter of it goes
4 away.

5 Or if -- another example would be if you
6 decided that, "Well, maybe it's just a gray area
7 and we should do a nonrule policy document on
8 it," you could direct the agency to do that, for
9 example. That's not a great example in this
10 particular situation, but what I'm saying is
11 there are all kinds of options for what you
12 decide to do with that information.

13 So, I just wanted to touch base with you,
14 and again, if you have any questions, I'm happy
15 to answer them.

16 CHAIRMAN GARD: Any other questions
17 for Nancy on the process and options?

18 (No response.)

19 CHAIRMAN GARD: Thank you, Nancy.

20 MS. KING: Thank you.

21 CHAIRMAN GARD: Now, this is a public
22 hearing before the Environmental Rules Board in
23 accordance with IC 13-14-8-5, the citizen

1 petition statute. Under that law, this Board has
2 provided notice and scheduled a public hearing on
3 the proposal. If you would like to speak at this
4 hearing and you have not yet filled out an
5 appearance card, please do so now.

6 Dr. Beranek is the Petitioner, and he will
7 present his petition.

8 DR. BERANEK: Thank you, Madam
9 Chairman, and let me say I agree completely with
10 what Nancy told you about the process. That is
11 exactly the way I understand it, including that a
12 nonrule policy document would not be appropriate
13 for this particular petition, because we're
14 dealing with the Federal Government's
15 interpretation, and they do not follow Indiana
16 nonrule policy documents necessarily.

17 I am -- my name is Bill Beranek. I live
18 at 6479 Robinsrock Drive in Indianapolis, and I'm
19 the lead Petitioner bringing this request for a
20 rule change before you on behalf of 217 other
21 signators. I am talking to you from the
22 perspective of boots-on-the-ground professionals
23 who have to under -- who have to comply with this

1 particular rule.

2 The boots-on-the-ground professionals that
3 I'm representing are three groups. One is the
4 group of industrial managers that have to be sure
5 their discharge is okay every hour of every day.

6 There's another group that I'm
7 representing, which are the municipalities who
8 have to assure that the industrial dischargers
9 are discharging into their sewer systems
10 appropriately each day.

11 And then, finally, the professional
12 engineers who advise both of those groups, to
13 explain to them what it is to be in compliance
14 with a discharge to a sewage treatment plant.
15 That's the group that I'm -- that I'm
16 representing with respect to the concerns about
17 this Indiana definition.

18 I personally have worked in Indiana since
19 1990 with industry, environmental advocates and
20 government officials on compliance with all
21 environmental regulations, with special focus on
22 all of the state water law and regulations over
23 that period of time.

1 The Petitioners are bringing this to you
2 after many years of intense discussion with IDEM.
3 This is not something -- I could tell you their
4 position, they could tell you my position. This
5 is something that IDEM and the Petitioners have
6 discussed intensely, and we have disagreed on
7 what should happen, and that's why we're forced
8 to bring it before you. There's no other
9 mechanism that Indiana has to do that.

10 The rulemaking being requested is to
11 modify the state regulatory definition of
12 "interference" of a sewage treatment plant to be
13 the same meaning as the federal definition of
14 "interference" for the purpose of compliance with
15 the Clean Water Act. That's what we're asking.
16 We want the two to be the same.

17 It is the wording change, essentially, of
18 an "or" to an "and" in the language to return it,
19 as it used to be in Indiana, to the federal
20 wording. As it is, the state definition makes it
21 impossible for either the municipalities
22 enforcing the regulation or the indirect
23 dischargers trying to comply with meeting the

1 regulation to know how much inhibition or how
2 much interference of a sewage treatment plant is
3 enough to create a violation of the Clean Water
4 Act in Indiana.

5 The federal regulation, on the other hand,
6 is clear. It is enough inhibition or enough
7 disturbance to cause the NPDES permit of the
8 sewage treatment plant itself to be in violation.
9 The Indiana regulation leaves it up to the
10 subjective judgment of the state officials, after
11 the fact, to say that you did it wrong.

12 Worse than that, worse than leaving it up
13 to the state officials -- and to the time that
14 this rule has been in place, I'm aware of no
15 abuse by state officials of this -- worse than
16 leaving it up to the state officials, because
17 this is part of compliance with the Clean Water
18 Act, this leaves it up to the subjective judgment
19 of the federal officials or -- and the subjective
20 judgment of judges in a court if a citizen suit
21 is raised.

22 That makes it impossible for any of my
23 boots-on-the-ground people to be able to predict

1 what to do to be in compliance all of the time.

2 A good, fair, effective regulation is one that

3 the parties know how to comply and the parties

4 enforcing it are able to make consistent

5 predictable judgment about noncompliance.

6 Now, in addition to the legal

7 vulnerabilities created for the municipalities

8 for failure to enforce it the way some federal

9 official later thinks they should have enforced

10 it, in today's world, we have another group of

11 people that are being asked to interpret rules of

12 State and Federal Government to say whether the

13 client is in compliance.

14 We have the SEC, we have Wall Street

15 asking each corporation to testify that they are

16 in compliance with all of their local, state and

17 federal rules. They don't care whether Indiana

18 says the people are in compliance any more than

19 they care in Mexico whether a particular Mexican

20 official in Tijuana says they're in compliance

21 with the Mexican rules.

22 They want to know -- the SEC, when they do

23 the audit, they want to know whether the company

1 thinks it's in compliance. They want to know
2 whether the company's consulting advisors think
3 it's in compliance. Therefore, you have other
4 people looking at that wording of that Indiana
5 rule to try to estimate whether the company's in
6 compliance enough so they can sign a piece of
7 paper that says, "We know they're in compliance,"
8 and they can't do that with this particular rule.

9 ISO 14000 and ISO 9000 the same thing.
10 With companies, if you're doing international
11 trade, they want to know whether you think you're
12 in compliance. Third-party auditors come in and
13 look at that rule and try to guess whether the
14 company's in compliance with that rule. And so,
15 that's a whole 'nother layer that comes into
16 this.

17 Unfortunately, there have been some abuses
18 so far, and unfortunately also -- and not by the
19 state officials, but by federal officials of
20 this. And unfortunately also, it's very
21 difficult to talk in a public forum about these
22 abuses, because people want to maintain good
23 relations with IDEM, they want to maintain good

1 relations with EPA. And so, they cannot come and
2 testify about that, they cannot make that public,
3 and I can't talk about that in depth. But it --
4 those events have happened, I can say that.

5 Now, this petition is supported by many,
6 many other people besides just the 217 that had
7 the courage to sign it, even though they felt
8 that they could have retribution against them,
9 because of people -- because they're complaining
10 about this particular rule, with the implication
11 that somebody might be doing something wrong in
12 the state government.

13 The petition as submitted before you in --
14 June 11th, 2014, requests that you initiate
15 rulemaking to change the Indiana definition of
16 "interference" at 327 IAC 5-17-11 to make it to
17 have the same meaning as the corresponding
18 federal definition at 40 CFR 403.3(k).

19 I thank you for your consideration of
20 this, and that ends my -- my testimony. Now, I
21 do have other people. If we'd like to -- if
22 you'd like me to orchestrate that --

23 CHAIRMAN GARD: Well, I would -- the

1 Commissioner's going to speak first.

2 DR. BERANEK: Oh, okay.

3 CHAIRMAN GARD: And then we'll take
4 testimony beyond that.

5 But first of all, are there any questions
6 for Dr. Beranek before we move to the
7 Commissioner?

8 (No response.)

9 CHAIRMAN GARD: Thank you.
10 Commissioner?

11 COMM. EASTERLY: Thank you.

12 I -- there's two parts to this issue that
13 are why I'm reluctant to go forward. The first
14 one's simply resources and priorities. From our
15 standpoint -- and Dr. Beranek says, "Well, that's
16 because we don't know about it," this rule passed
17 in 2000. There was no comments, not in the
18 written part, not in the oral part, saying that
19 the rule shouldn't be what it is, and from our
20 standpoint, this rule has not caused a problem
21 for 15 years.

22 So, in an ideal world, I suppose we'd be
23 looking at all of our rules all of the time,

1 saying, "What can we tweak?" We have substantial
2 unresolved issues all around the state I would
3 rather spend our resources on, and one, just in
4 the rulemaking area that Dr. Alexandrovich
5 brought up is: What is a SIP?

6 I actually -- unfortunately we had a death
7 of a lawyer over the Christmas holidays, but I
8 have a full-time person working on trying to
9 figure out what parts of our air rules are
10 federally approved, what parts have been
11 submitted and not approved, and what parts have
12 never been submitted and maybe should be.

13 We don't know those things, unfortunately.
14 Maybe we should. And if we ever finish that,
15 we're going to move on to our water rules and our
16 land rules. So, I'm worried about things like
17 that, so that's why I'm not enthusiastic. That's
18 the first reason.

19 But the other reason is the merits of
20 this. The pretreatment program is supposed to
21 prevent -- and I forget the three words. It's
22 supposed to prevent -- one thing is interference
23 with treatment, one thing is sludge disposal, and

1 there was a third thing. But let's go back to
2 interference.

3 So, what is interference? The way that
4 the good doctor and his friends would have it,
5 and it is apparently the federal definition, you
6 have to both interfere with treatment enough to
7 cause a violation in the effluent.

8 So, what does that mean to IDEM? Let me
9 go to a place -- our water quality -- well, first
10 we'll talk about our water. Our water quality is
11 improving, but it is not outstanding, and so
12 every extra pollutant that we put in our water
13 that we don't have to is going to make it harder
14 to get to where we'd like to be, whether the
15 water is officially impaired or not.

16 And so, we'll go to a place where it's not
17 officially impaired, Lake Erie, where Toledo had
18 that blue-green algae problem and had to shut
19 down. That's clearly related to nutrients, and
20 one of the solutions of the region up there --
21 meaning Ohio, Michigan and Indiana and their look
22 at the science -- is that we should impose at
23 least .6-milligram-per-liter phosphorous limits

1 on all of our dischargers there.

2 And if you'll remember, we just had a
3 meeting where we told you we were going to impose
4 one milligram per liter and a nonrule policy, but
5 for Fort Wayne, which is the big discharger up
6 there, I told them it's not a problem, because
7 Fort Wayne, while their limit is one, they've
8 been running below .6 forever. I mean we have
9 good data. So, that's fine.

10 But under this interpretation, you could
11 move a facility into Fort Wayne that could cause
12 the Fort Wayne treatment plan to go from .6 to
13 one, and it would be completely legal, nobody
14 should ask you a question about it. And this is
15 what we want.

16 We're saying there's billions of dollars
17 spent in Indiana on wastewater treatment, and it
18 meets some level of treatment that keeps our
19 water at this level that it's at. Why should
20 people be allowed to make it substantially worse
21 without us at least having the authority to come
22 and ask about it and try and figure out what's
23 going on and see if it can be improved?

1 So, you'd say, "Well, then why don't you
2 just change all of the limits to what you really
3 want?" The good news about having a limit that's
4 substantially higher than where you can operate
5 is you can have upsets and other things that are
6 going to happen and not get into a noncompliance
7 situation where we, or citizens, or EPA, are
8 compelled to take action against you.

9 We want people to operate where they
10 operate, and many of our sewage treatment plants
11 operate at between a third and a half of their
12 limits almost all of the time. Under this
13 proposal, you could be a business, come in, do
14 some things under pretreatment, and cause that to
15 get much worse.

16 So, I could lower all of the limits, the
17 discharge limits, and that would be very hard on
18 us and very hard on the municipalities, and then
19 they would be more likely to be in violation, or
20 there's a whole other host of chemicals where we
21 don't put limits on plants because they, based on
22 monitoring of their current discharge, have no
23 reasonable potential to exceed the standard.

1 I would either have to put standards for
2 all of those chemicals that some business may
3 choose to discharge into the system onto those
4 permits to make sure that they don't actually
5 cause a water quality problem, or else this rule
6 would let you discharge an unlimited amount of
7 those other chemicals, because you wouldn't have
8 been causing a violation of the wastewater
9 permit.

10 Now, there are some general narrative
11 standards that we might choose to use in those
12 examples, but they're -- that's a much more
13 difficult discussion, because they're subjective,
14 just like this discussion here is subjective.

15 So, my concern is, we don't -- if some --
16 if somebody's actions cause a sewage treatment
17 plant to treat significantly less effectively
18 than it has in the past, we need a tool to allow
19 us to go and try and figure out what happened and
20 to hold somebody accountable to not do it in the
21 future. I know they're worried about
22 enforcement. Our number-one goal is compliance.
23 We work with almost everybody. Now, if you do it

1 on purpose, absolutely, or if you kill a lot of
2 something, yes, there'll be enforcement also.

3 So, that's really the two reasons that I'm
4 not really in favor of this. It is a legitimate,
5 as we said, discussion to have, and we'll wait
6 and see what you decide on this.

7 CHAIRMAN GARD: Are there questions
8 for the Commissioner before we move on to public
9 testimony?

10 Yes.

11 MR. POWDRILL: Madam Chair.

12 Tom, when you said a new industry moved
13 into town, and you said the City of Fort Wayne is
14 now discharging at .6 nutrients, and the limit is
15 one, and that new industry caused the City of
16 Fort Wayne to go up to higher than the .6 that
17 they've traditional run at --

18 COMM. EASTERLY: Yeah.

19 MR. POWDRILL: -- what if a new
20 industry moved into town and sought their own
21 NPDES permit to discharge to the stream? What
22 limit would you give them?

23 COMM. EASTERLY: We would have to go

1 through -- remember that we have the famous
2 antidegradation rule now, so the first question
3 would be: Is it necessary for them to have their
4 own discharge, or should that discharge be
5 through Fort Wayne?

6 Then the second question, which is sort of
7 related, is: If their increase was de minimis --
8 and that would be the first place we'd look; what
9 is the concentration in the stream? What's a
10 de minimis increase from that concentration?
11 Then after that, it becomes a pretty difficult
12 technical judgment. Their limit may well be
13 below .6, though, because they're adding mass to
14 a place that's a concern. But I don't honestly
15 know what we'll come up with at that time.

16 MR. POWDRILL: Well, is there a TMDL?

17 COMM. EASTERLY: There's not a TMDL
18 yet because the stream's not officially impaired
19 because we don't have a nutrient water quality
20 standard, which if Bowden was up here, he'd say I
21 should.

22 (Laughter.)

23 COMM. EASTERLY: So, it's a -- yeah,

1 I don't know.

2 CHAIRMAN GARD: Other -- are there
3 other questions?

4 Yes, Cam.

5 MR. DAVIDSON: Commissioner, that
6 discretion to have the discussion, or the
7 discretion to go to enforcement -- I don't know
8 if that's a fair way to kind of split the paths.
9 Are you concerned about your successor, or
10 successor inspectors? When you have that
11 discretion, that's great if you're the right
12 person, but if you're not the right person,
13 discretion --

14 COMM. EASTERLY: I've been a
15 regulated industry in Indiana, but with people
16 that maybe had a different philosophy than I do.
17 Here is the challenge -- and I've thought about
18 this a lot. Sen. Gard knows I've thought about
19 how do you constrain future administrations to do
20 what I think they should do?

21 You can't. Elections have consequences.
22 If the people of Indiana decide they want to be
23 like the people of California, Mr. Rulon knows

1 there won't be hardly any farms, but that is
2 their right as citizens, and I don't know what --
3 it's the system we live under, which is actually
4 normally good. I wouldn't be here, in fact, if
5 the citizens of Indiana didn't have the right to
6 change the administration they had before Mitch
7 Daniels got elected; right? And we'd still be
8 running the other way.

9 CHAIRMAN GARD: Yes, Kelly.

10 MR. CARMICHAEL: Have the POTW's
11 expressed an opinion to IDEM on this? And maybe
12 this question's for Dr. Beranek, too, but have
13 you gotten any input?

14 COMM. EASTERLY: I'm only aware that
15 Ann, who said she might testify, Ann McIver, had
16 something happen that we aren't really involved
17 in. So, I have heard no others.

18 CHAIRMAN GARD: Any other questions?

19 (No response.)

20 CHAIRMAN GARD: Thank you,
21 Commissioner.

22 We have a number of people actually that
23 have signed up to comment during this hearing.

1 There's well over a half dozen. I am going to
2 ask that these people speak for no more than five
3 minutes each.

4 Can you watch the time?

5 MR. ETZLER: Uh-huh.

6 CHAIRMAN GARD: The first one is
7 Bowden Quinn.

8 MR. QUINN: Thank you, Madam
9 Chairwoman, members of the Board. I'm Bowden
10 Quinn, Conservation Director of the Sierra Club,
11 Hoosier Chapter.

12 We do not see the need to change the rule.
13 We would oppose a new rulemaking. We support
14 IDEM in this position. I am not an expert in
15 this field. I'm not one of the boots on the
16 ground that Dr. Beranek mentioned, but I feel
17 confident in the experts at IDEM, and if they
18 feel this is the best way to do their job, to
19 protect our waters, I agree with them.

20 It does seem to me that having the
21 definition of "interference" the way it is now,
22 IDEM doesn't need to wait. If they see a problem
23 coming up, they don't need to wait until it's

1 actually caused a violation, which is harm for
2 our waters. They can act beforehand. I think
3 that's a good thing.

4 Also it seems to me, given the complexity
5 of discharging to a POTW, that there would be
6 this unnecessary defense from a discharger, who
7 could say, "Oh, we didn't cause that violation.
8 You've got this guy who's contributing. If it
9 had been just our discharge, it wouldn't have
10 violated the permit." So, if IDEM feels this the
11 best way to enforce, use their authority, I agree
12 with them.

13 The other thing I have to say, I don't
14 think it's fair to say that this rule is more
15 stringent than the federal rule, and given the
16 notoriety of certain bills over the last few
17 years in the legislature, I think that's
18 unnecessarily waving a red flag.

19 The -- Dr. Beranek's analysis says that
20 IDEM does have the authority to achieve the same
21 end through permits to dischargers. It seems to
22 me that would be more onerous not just for IDEM,
23 but also for those dischargers. This seem to be

1 a much more flexible, rational way of achieving
2 the same end. I feel confident that IDEM uses
3 its authority in a way that's fair to dischargers
4 as well as protective of our waters.

5 And apparently the reason for this
6 petition is that EPA has abused its authority
7 using our state law. I don't think EPA, with all
8 of its resource problems, would have acted unless
9 they saw that there was a real threat to our
10 waters, and I think we all know, given certain
11 comments that the Commissioner has made here and
12 other venues, he does not always hold the EPA in
13 the highest regard, so if he's comfortable --

14 (Laughter.)

15 MR. QUINN: -- that this law -- this
16 rule will not be abused by the EPA, I'm
17 comfortable with that, too.

18 Thank you.

19 CHAIRMAN GARD: Any questions for
20 Mr. Quinn?

21 (No response.)

22 CHAIRMAN GARD: Thank you.

23 Vince Griffin.

1 MR. GRIFFIN: Thank you, Madam Chair
2 and members of the Environmental Rules Board.
3 I'm Vince Griffin, Vice-President of
4 Environmental Energy Policy with the Indiana
5 Chamber.

6 I believe that Dr. Beranek has well
7 explained this conundrum -- that's his word, so I
8 had to use it -- the conundrum that this does
9 indeed create, with the interference definition
10 interpreted in different ways by the feds and by
11 the state, and the Chamber supports a
12 clarification of this interpretation so that it
13 does simply align Indiana's interpretation with
14 the feds.

15 Thank you.

16 CHAIRMAN GARD: Any questions for
17 Vince?

18 (No response.)

19 CHAIRMAN GARD: Thank you.
20 Andrew Berger.

21 MR. BERGER: Thank you, Madam
22 Chairwoman, members of the Board. My name's
23 Andrew Berger. I'm with the Indiana

1 Manufacturers Association. I'm new to the IMA,
2 I'm new to environmental issues, so it's good to
3 be with you here today.

4 I've not had the pleasure of representing
5 dischargers in the past, which is what I'm here
6 to do today. The IMA does support the petition
7 as described by Dr. Beranek. Just as the Chamber
8 is after more certainty, less ambiguity, so is
9 the IMA.

10 I was listening to the Commissioner's
11 comments, and he used the phrase "de minimis,"
12 or -- I hope I'm quoting here correctly -- to
13 cause them to operate less or significantly less
14 effectively. Now, those terms, as you know, are
15 not in the fact in the rule. That's, I think,
16 the problem that we're trying to address here
17 today. It may be comfortable with the current
18 Commissioner's interpretation, but maybe not
19 everybody who may enforce these in the future, or
20 even today.

21 So, certain certainty and, you know, less
22 subjective interpretations is things that
23 manufacturers in Indiana need to be competitive

1 around the state. And, of course, many of our
2 members have options on where to locate their
3 operations, and any advantage we can have in
4 Indiana is one we should take advantage of.

5 Thank you.

6 CHAIRMAN GARD: Are there any
7 questions for Andrew?

8 (No response.)

9 MR. BERGER: Thank you.

10 CHAIRMAN GARD: Thank you.

11 Glenn Pratt.

12 MR. PRATT: I guess I'm starting to
13 show my age, which is why I have to put my
14 glasses on before I can read.

15 I guess probably a lot of you remember me.

16 I was an Assistant Commissioner under the

17 Orr-Mutz Administration, and have been involved

18 in Indiana issues way back many years ago when I

19 worked with the Federal Environmental Agency,

20 where I did reports on the dying Lake Erie and

21 burning Cuyahoga and what have you.

22 And I just want to say I think Indiana and

23 other states have made dramatic improvements in

1 the water quality, and I want to thank all of you
2 who have been involved in it, and we do need to
3 do a bit more, but we have made dramatic
4 progress.

5 As a former U.S. EPA water official
6 working on the first federal initiative at Lake
7 Erie, with work on the Maumee River, the Cuyahoga
8 River and the Buffalo River, let me assure you:
9 The best way to achieve effective water pollution
10 control is through the city officials managing
11 sewage treatment plants to work cooperatively
12 with dischargers to assist them to devise
13 effective and practical ways to assure the
14 highest quality effluent.

15 Similarly, the best way the state and
16 federal officials can help is by regulations that
17 are unambiguous and reasonable and that are
18 consistently and firmly enforced. And I think
19 this is one thing that I think has worked, of all
20 of us working together to make a difference.

21 The state rule is ambiguous and cannot be
22 consistently -- this state rule is ambiguous and
23 cannot be consistently enforced. It relies

1 completely on the subjective judgment of whatever
2 state or federal official later reviews the
3 situation.

4 I am well aware there can be situations of
5 a discharger being unfair to the sewage treatment
6 plant, either accidentally or intentionally. The
7 first approach should be for the city and the
8 discharger to reserve -- to work to resolve the
9 operation problems, or for the city to work with
10 the discharger to change the permit.

11 In no case should this change result in
12 preventing beneficial use of the sewage sludge or
13 have negative impacts on water quality or
14 operation of a wastewater treatment plant. I
15 think these things are all critical. Other
16 states solve this using the federal definition of
17 "interference." Please consider changing the
18 Indiana rule.

19 Thank you.

20 CHAIRMAN GARD: Any questions for
21 Glenn?

22 (No response.)

23 CHAIRMAN GARD: Thank you, Glenn.

1 Ralph Roper?

2 DR. BERANEK: Madam Chair, Ralph
3 Roper e-mailed me last night at 3:00 in the
4 morning saying that he had an -- well, he's ill,
5 and it was sudden, and he asked me if I could
6 read his testimony.

7 CHAIRMAN GARD: Yes.

8 DR. BERANEK: Ralph is a civil
9 engineer that's worked for 30 years in wastewater
10 treatment. His specialty is helping small
11 wastewater treatment operators comply with --
12 with the laws, and what he would say about the
13 Fort Wayne situation is that we do have the
14 tools. He's a boot-on-the-ground guy. If we
15 wanted Fort Wayne to discharge at .6 parts per
16 million total phosphate, we say it, "Discharge at
17 .6 total phosphate." If we want them to
18 discharge at one, we say, "one."

19 Anything in between, if we want any
20 dischargers to discharge such that they do keep
21 it as low as possible, we put that into the
22 pretreatment permits as to what we want them to
23 do. The professionals have no problem doing

1 anything that needs to be done. It's the after
2 the fact. It's saying artificially that
3 Fort Wayne had interfered, somehow there's an
4 interference with the treatment plant, because
5 it's now going from .6 to .1, when the standard
6 in the treatment plant was .1.

7 So, that's the dicey part of what Ralph
8 would say. Now, what he actually did say in
9 writing was --

10 (Laughter.)

11 DR. BERANEK: -- was that "My name is
12 Ralph Roper. I'm an environmental engineer and
13 [I] have been actively engaged in facility
14 planning, design and operation of municipal and
15 industrial wastewater treatment facilities for
16 nearly 40 years...the early part of my
17 career...was an engineering consultant with HNTB
18 here in Indianapolis and have continued to work
19 with...cities and industries as an independent
20 consultant.

21 "I also work full time in applied
22 environmental research at the Heritage Research
23 Group, and have served on several of

1 Dr. Beranek's technical advisory committees...."

2 The one he's talking about is, we -- I'm the

3 chair of an advisory committee for the

4 Indianapolis sewage treatment plant for 20 years.

5 "EPA's current definition of

6 'interference' dates back to 1978 when EPA was

7 developing General Pretreatment Regulations and

8 Industrial Categorical Pretreatment Standards.

9 The purpose of the pretreatment regulations and

10 standards [were] to prevent NPDES violations

11 caused by interferences from industrial users.

12 Thus a permit violation was, and still is, an

13 intrinsic component of EPA's definition of

14 interference, as it should be.

15 "Several years later, in 1987, EPA

16 published their 'Guidance Manual for Preventing

17 Interferences at POTW's.' Among other things,

18 EPA made is clear that the detection, tracking

19 and mitigation of an interference issue should be

20 done locally because of all the site-specific

21 issues that could be involved. The manual

22 presented many case histories that by today's

23 standards would represent egregious

1 interferences.

2 "Now days, interference issues are more
3 likely subtle and mild while maintaining strict
4 compliance. Resolution is often more
5 like...learning curve using the talents and
6 experience of the plant operators and engineering
7 consultants. I would refer to this as progress.
8 However, under Indiana's current vague definition
9 of the term 'interference', others might call
10 this a Clean Water Act violation.

11 "I certainly endorse [the] petition to
12 change the state's definition of the term
13 'interference' to match EPA's current and
14 longstanding federal regulation."

15 So, that's Ralph Roper.

16 CHAIRMAN GARD: Will you give a
17 copy --

18 DR. BERANEK: Yes.

19 CHAIRMAN GARD: -- to whoever's back
20 there, for the record, please?

21 DR. BERANEK: To --

22 MR. POWDRILL: The reporter.

23 CHAIRMAN GARD: That's fine.

1 Any questions on the letter from the
2 witness?

3 (No response.)

4 CHAIRMAN GARD: Okay. Dave Wagner.

5 Is he -- you've got a letter from him, too.

6 DR. BERANEK: On behalf of Dave

7 Wagner --

8 CHAIRMAN GARD: Yes. Let's just go

9 with the letter, Bill.

10 DR. BERANEK: Okay.

11 (Laughter.)

12 DR. BERANEK: "Dear Board Members."

13 (Laughter.)

14 DR. BERANEK: "I am unable to attend

15 your January 14, 2015 meeting, so I am writing

16 this correspondence to express my support of the

17 citizen's petition to initiate a rule -- a

18 rulemaking to amend 327 IAC 5-17-11. The

19 proposed rulemaking will make the definition of

20 'interference' for all dischargers to publicly

21 owned treatment works in Indiana consistent with

22 the federal definition found in 40 CFR 403.3(k).

23 "I do not encourage this support without

1 experience and consideration. I started [out] as
2 a laborer at a wastewater treatment plant more
3 than 50 years ago and worked my way through
4 undergraduate, [Bachelor's of] Science and
5 graduate, [Master's of] Environmental Engineering
6 [with a] water quality emphasis...while
7 continuing to work as an operator and laboratory
8 technician in wastewater treatment plants in
9 Iowa.

10 "After graduate school, I helped establish
11 a community college curriculum to train
12 wastewater operators and taught at a community
13 college for 5 years. I worked for U.S. EPA,
14 Region 5, for almost ten years. I spent time in
15 Indiana establishing the safe drinking
16 water...program and on loan to Indiana to
17 establish the state construction grants program
18 to fund wastewater collection and treatment
19 construction.

20 "I left EPA in 1985 to be the first Deputy
21 Commissioner of IDEM and left IDEM at the end
22 of 1988 and have worked in the private sector as
23 a consultant since 1989. My work as a consultant

1 has involved helping communities with
2 NPDES...compliance issues, including those with
3 problems with their industrial treatment
4 programs.

5 "I was also a member of the Indiana Water
6 Pollution Control Board from March 2001 through
7 December 2012. Thus, I believe I have
8 familiarity with the issue you are addressing in
9 deciding to move forward with a rulemaking to
10 make Indiana's definition of 'interference'
11 consistent with the federal definition.

12 "This issue has been under discussion for
13 several years and initially I was opposed to
14 changing the state's definition. However, I
15 believe the definition should be changed based on
16 three principles discussed when developing a rule
17 and which are always requested by the regulated
18 community -- uniformity, consistency and
19 fairness.

20 "I would like to briefly elaborate and
21 request that you consider the following:
22 Uniformity [means] not varying; the same for
23 everyone; the same for all cases and all times.

1 Consistency -- unchanging over a period of time;
2 always acting in the same way. Fairness -- does
3 not favor someone or something over another.

4 "The state's definition of 'interference'
5 that uses 'or' rather than 'and' (as in the
6 federal definition) introduces subjectivity into
7 the determination of when interference -- the
8 inhibition or disruption of the treatment process
9 at a POTW -- has occurred.

10 "Subjectivity clearly interferes,
11 inhibits, disrupts and can be adverse to
12 uniformity, consistency and fairness. What is
13 determined in 1 instance to be interference may
14 not be determined to be interference in a similar
15 instance at another time with the subjectivity
16 contained in the state definition.

17 "In addition, Indiana municipalities and
18 industrial dischargers are exposed to 2
19 definitions, I -- 1 which is subjective and 1
20 which is objective. In addition to rules that
21 are uniform, consistent and fair, the overriding
22 factor [in] any rule must be objectivity, which
23 the simple use of 'and' entails.

1 "Thus, I encourage and request that the
2 Board approve the initiation of a rulemaking to
3 remove the subjectivity of the state definition
4 of interference. Thank you for your attention to
5 this matter and consideration of my
6 correspondence."

7 CHAIRMAN GARD: Any questions
8 concerning this letter?

9 (No response.)

10 CHAIRMAN GARD: Thank you. And that
11 should also be submitted for the record.

12 DR. BERANEK: Oh, yes.

13 CHAIRMAN GARD: That concludes the --
14 going through the number of people that signed --
15 okay.

16 MR. KANE: I'm sorry, Madam
17 Chairperson, that I didn't get the sheet to you
18 ahead of time.

19 CHAIRMAN GARD: Okay. Thank you.

20 MR. KANE: Madam Chairperson, members
21 of the Board, good afternoon. As one of the
22 signatories of the petition on this matter, I
23 appreciate the opportunity to speak to you in

1 support of the petition. My name is Larry Kane,
2 and my address, 11268 Williams Court in Carmel.

3 By way of background, I'm an environmental
4 attorney with over 39 years of experience;
5 presently a senior partner at Bingham Greenebaum
6 Doll. Today I represent only myself, as a
7 petitioner in this matter.

8 My initial environmental experience was
9 gained at the Indiana State Board of Health, in
10 the Water Pollution Control Division. While
11 there, I drafted the official pretreatment rules
12 for the State of Indiana that were adopted by the
13 Stream Pollution Control Board in 1980. Those
14 initial rules for the pretreatment program in the
15 State of Indiana included a definition of
16 "interference" that was essentially the same as
17 that of the Federal Government, under EPA and
18 40 CFR 403.3.

19 Since that time, the federal definition
20 has remained substantially unchanged.
21 Unfortunately, in 2000 the Water Pollution
22 Control Board revised the state's definition, at
23 IDEM's request, to make it substantially more

1 stringent. And I must disagree with my
2 colleague, Mr. Quinn. It is more stringent.
3 There is no way you can look at the state rule
4 and compare it with the federal and not conclude
5 that the state rule is more stringent.

6 And it's also unfortunately vague and
7 uncertain of meaning, which becomes problematic
8 for the regulated stakeholders, who have the
9 unenviable task of trying to determine how to
10 comply.

11 As a general matter, I do not think it
12 wise for state environmental agencies to adopt
13 rules that are more stringent than their federal
14 counterparts. In my view, the interference
15 definition issue provides no cause to deviate
16 from that general view.

17 I believe Indiana stakeholders received a
18 bad bargain when the Water Board replaced the
19 federal definition with the current unique state
20 definition. And why do I say this? The federal
21 definition provides a clear objective standard
22 for actionable interference. It occurs when an
23 industrial user's discharge to a POTW causes

1 inhibition or disruption of the POTW's treatment
2 processes to such an extent as to cause a
3 violation of the NPDES permit for the POTW. This
4 is very objective.

5 In contrast, under the state definition,
6 interference occurs when an industrial user's
7 discharge to a POTW causes inhibition or
8 disruption of the treatment processes to any
9 degree, to any extent, no matter how small,
10 regardless of the effect or the lack of an effect
11 upon the POTW's ability to meet its NPDES permit.

12 In practical terms, since any amount of
13 inhibition or disruption of the POTW operation
14 down to the smallest detectable level can be
15 interference, there is no bright-line standard to
16 guide actions by POTW's in setting local
17 pretreatment limits or to guide the actions of
18 the industrial dischargers in discharging to a
19 POTW, particularly if there are no local limits
20 for the pollutants being discharged.

21 This lack of a bright-line standard opens
22 the door to potentially arbitrary determinations,
23 and not only by IDEM, but potentially by EPA,

1 potentially by citizen suit proponents. The fact
2 that IDEM, as Comm. Easterly is indicating, is
3 very reasonable in their approach is little
4 solace when other entities can likewise use the
5 broad, if you will, discretion from the rule as
6 it exists against either municipalities or
7 against the industrial dischargers of those
8 municipalities.

9 Comm. Easterly pointed out some reasons
10 why he's reluctant, and -- to consider this, and
11 one of those is workload on staff. This is one
12 of the simplest rule changes possibly to
13 consider, so I don't think there's much effort
14 involved in undertaking this particular matter.

15 I think I will just proceed to the final
16 point, and that is that we respectfully request
17 your action to approve the petition to initiate a
18 rulemaking on the proposed change of the
19 interference definition to revert to the federal
20 definition. We recognize IDEM is likely to be
21 opposed to this petition. We've heard from
22 Comm. Easterly that he really is reluctant.

23 COMM. EASTERLY: Yeah.

1 MR. KANE: He's not saying totally
2 opposed, but he's reluctant.

3 Now, while I have great respect -- and I
4 do, I have great respect for those who work at
5 IDEM, including the Commissioner and everyone
6 else.

7 CHAIRMAN GARD: Your time is up.

8 MR. KANE: Well, I simply wanted to
9 point out in closing, one second, or two seconds,
10 that I believe IDEM is mistaken in their
11 position, and we would respectfully offer to the
12 Board that the Board has the authority to make
13 decisions independently of IDEM's preference or
14 position.

15 Thank you very much.

16 CHAIRMAN GARD: Uh-huh. Thank you.

17 Is there -- are there any other people out
18 there that didn't sign an appearance form that
19 want to make a statement?

20 (No response.)

21 CHAIRMAN GARD: If not, this hearing
22 is concluded. Now it's up to the Board to decide
23 what we're going to do, and as Nancy described,

1 we have lots of options. We can defer action
2 until the next meeting, which apparently will be
3 March; we can approve the petition; we can deny
4 the petition; we can ask for a nonrule policy
5 document to clarify the petition. I mean we can
6 do a lot of things.

7 MR. ETZLER: May I speak?

8 CHAIRMAN GARD: You may.

9 MR. ETZLER: Thank you.

10 I'll give you a personal perspective,
11 because I have been a treatment plant operator.
12 I am a professional engineer and deal with the
13 issue of interference that some of our clients
14 experience from dischargers, and I have exactly a
15 180-degree opinion from the Petitioners, because
16 in my experience, the IDEM rule has allowed me
17 personally as an operator to reach out to some of
18 the people that have discharged into the
19 facilities that I operated, and to be able to
20 bring them to the table and get them to react.

21 My vision of this rule is, as an operator
22 with the federal definition, I have to have both
23 interference and a violation in order for action

1 to be taken. And so, as an operator, my choice
2 would be to not expend all of the resources to
3 prevent a violation and let the violation happen,
4 because it's the only way that I can get back at
5 a discharger.

6 That is not an acceptable way for a
7 treatment plant operator to react to these kinds
8 of situations. You throw every resource that you
9 have available at that discharger. And you can
10 say, "Well, you should have pretreatment rules,"
11 and I don't disagree with that, but if you're a
12 small community, generally you don't have
13 pretreatment rules in place. It's very difficult
14 to bring them to the table, and so you have to
15 rely on the agency to lend assistance and
16 guidance.

17 The other side of this, we have heard a
18 lot of talk about there being industries or
19 utilities that have been attacked because of
20 Indiana's rules. I personally don't know of any
21 that have had this problem, and -- well, Doctor,
22 you mentioned that people don't want to step
23 forward because they're afraid that they're going

1 to get beat up by this.

2 I would say that that's bad policy on the
3 part of whoever has felt the attack, because if
4 an agency is going to turn around and be
5 vindictive, then we need to make changes in the
6 leadership of that organization. People need to
7 speak their piece and they need to stand up and
8 be heard.

9 And I understand they're being heard
10 through you, but on the other hand, I've not seen
11 or heard of any abuses of this. So, I find it
12 very difficult to be in favor of making a change
13 to something that I personally have experienced
14 has helped me when I was a treatment plant
15 operator.

16 Now, with that, I think there is still a
17 lot of room for additional discussion and
18 information gathering. I'm not in favor of
19 saying yes or no at this point, but I think this
20 Board needs the opportunity to hear more stories
21 and get more information about how this rule has
22 been affecting more affected parties.

23 Thank you.

1 CHAIRMAN GARD: Thank you. I
2 appreciate that. I had been concerned throughout
3 the hearing that we haven't heard specific
4 examples of abuses. We've heard a lot of
5 generalities, so I appreciate this.

6 Are there other comments?

7 MR. CARMICHAEL: Madam Chairwoman,
8 may I?

9 CHAIRMAN GARD: Yes.

10 MR. CARMICHAEL: So, I echo some of
11 those comments, and even if folks are afraid to
12 step forward in name, I think specific examples,
13 non-named examples, would benefit this Board, to
14 understand how material this issue is. So, I
15 echo Mr. Etzler's sentiment that I'm not ready to
16 vote yes or no. I want to hear more about where
17 the issues are.

18 My second request is that it seems the
19 heart of the issue here is what is "inhibits" and
20 "disrupts," and is there any state guidance or
21 definition or precedent or practice that can help
22 guide this Board in terms of what constitutes
23 "inhibits" or "disrupts"?

1 Again, because I think at issue is
2 potential abuse or interpretation or
3 misinterpretation of "inhibits" or "disrupts."
4 So, I would like to hear from IDEM, or others,
5 for that matter, what in fact "inhibits" or
6 "disrupts" actually means in practice or
7 precedent or definition or guidance.

8 CHAIRMAN GARD: Thank you.

9 Are there other comments, questions,
10 discussion from Board Members?

11 Mr. Rulon.

12 MR. RULON: I just wanted to put a
13 motion out there to kind of -- so it's on the
14 floor, that I think we want -- after I hear
15 something like this, I'd like to just take 60
16 days and talk to people and find out this
17 information that both Bill and other testifiers
18 have talked about. So, I'd like to make a motion
19 that we defer actually voting on a resolution
20 until the March meeting. It gives us all time to
21 review it on our own.

22 CHAIRMAN GARD: And as part of that
23 motion, do you want to allow more testimony, to

1 answer the questions that have been posed?

2 MR. RULON: I'll leave that up to the
3 members of the Board.

4 MR. CARMICHAEL: I would like --
5 again, in particular about is this a material
6 issue; and secondly, help guide me on "inhibits"
7 or "disrupts."

8 MR. RULON: Yes, yes, Madam Chair.

9 CHAIRMAN GARD: Okay.

10 (Laughter.)

11 CHAIRMAN GARD: Okay. Is there a
12 second to Mr. Rulon's motion?

13 MR. CARMICHAEL: Second.

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

16 MR. HORN: Aye.

17 MS. FISHER: Aye.

18 MS. BOYDSTON: Aye.

19 MR. ETZLER: Aye.

20 MR. ANDERSON: Aye.

21 MR. BAUSMAN: Aye.

22 MR. POWDRILL: Aye.

23 MR. METTLER: Aye.

1 MR. DAVIDSON: Aye.

2 MR. RULON: Aye.

3 DR. ALEXANDROVICH: Aye.

4 MR. CARMICHAEL: Aye.

5 CHAIRMAN GARD: Aye.

6 All opposed, nay.

7 (No response.)

8 CHAIRMAN GARD: We will continue this
9 in March with further discussion and testimony.

10 So, thank you. Thank you.

11 Thank you, Dr. Beranek.

12 And thank you, Commissioner.

13 The next item on the agenda is the open
14 forum. Is there anyone who wishes to address the
15 Board today?

16 (No response.)

17 CHAIRMAN GARD: Seeing none, the next
18 meeting of this Board is scheduled for Wednesday,
19 March the 11th at 1:30 p.m., and hopefully it
20 will be a little warmer.

21 Is there a motion to adjourn?

22 MR. RULON: So moved.

23 MR. ANDERSON: Second.

1 CHAIRMAN GARD: With a motion and a
2 second, we are adjourned.

3 - - -
4 Thereupon, the proceedings of
5 January 14, 2015 were concluded
6 at 3:35 o'clock p.m.

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1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Wednesday, January 14, 2015 in this matter and
8 transcribed by me.

9

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Lindy L. Meyer, Jr.,

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Notary Public in and

13

for the State of Indiana.

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15 My Commission expires October 27, 2016.

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