BEFORE THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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

PROCEEDINGS

in the above-captioned matter, before Hearing Officer Jeff Sewell, taken before me, Lindy L. Meyer, Jr., a Notary Public in and for the State of Indiana, County of Shelby, at the Indiana Government Center South, Conference Center, Room C, 402 West Washington Street, Indianapolis, Indiana, on Thursday, June 16, 2016 at 1:00 o'clock p.m.

William F. Daniels, RPR/CP CM d/b/a ACCURATE REPORTING OF INDIANA
12922 Brighton Avenue
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APPEARANCES:

ON BEHALF OF IDEM:
   Jeff Sewell, Hearing Officer

ON BEHALF OF U.S. EPA:
   Carol L. Staniec

SPEAKERS PRESENT:
   Timothy J. Rushenberg
   Bowden Quinn
   Richard Hill
   Jodi Perras
   Indra Frank
   Tim Maloney
   Mike Oles
THE HEARING OFFICER: Good afternoon.

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

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

Before we begin receiving comments and testimony, I'd like to provide some background information about the Plan and its purpose. The EPA Coal Combustion Residuals Rule, or also known as the Coal -- the CCR Rule, became effective in
October of 2015. The CCR Rule applies to electric utilities and independent power producers, and has set standards for coal combustion residuals in landfills and surface impoundments.

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

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

Indiana already has an approved Solid Waste Management Plan from the early ’80's and
'90's, which guided the development of our solid waste landfill program. IDEM has prepared an amendment to the plan describing how we will amend our Solid Waste Landfill Rules to address the new requirements for CCR disposal facilities.

The plan covers the following topics:

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

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

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

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

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

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

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

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

We are also accepting written comments on this plan until June 30th, 2016. You may give written comments to me here today or address written comments to: Jeff Sewell, Indiana Department of Environmental Management, IGCN 1101, 100 North Senate Avenue, Indianapolis,
Indiana, 46204-2251, or you may e-mail comments to me at jsewell@idem.in.gov.

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

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

As we prepare to receive testimony, we would appreciate your help in keeping this hearing on topic. If the plan is approved, there will be multiple opportunities for stakeholders, including members of the public, to review draft
rule language and provide comments on the
specific requirements of amended rules in future
stages of the process. We're not going to talk
about rule provisions and specific provisions
today.
IDEM will also provide opportunities for
public comment when we evaluate closure plans for
particular CCR facilities. Today we are only
seeking comments on the plan document itself.
Pertinent comments may express support or
opposition to the plan, or provide comments on
the content of the plan itself. Please help to
make sure we have time to listen to everyone who
wants to comment by limiting your comments to
only the topic covered at this hearing.
We are going to start the public hearing
now. If you want to present comments, we'd like
for you to sign the registration sheet at the
entrance.
Will the official reporter please raise
your right hand and state your name?
(Reporter sworn.)
THE HEARING OFFICER: Thank you.
We will now take comments and testimony regarding the draft CCR Part 256 Plan. When your name is called, please come to the microphone, state your name and address, and speak clearly so the court reporter can transcribe your comments accurately. We’d also like you to leave a written copy of your comments with the court reporter to aid in developing the transcript.

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

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

MS. STANIEC: Mr. Rushberg --

Rushenberg.

THE HEARING OFFICER: Okay.
MR. RUSHENBERG: Thank you very much.

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

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

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

IDEM has started rulemaking to incorporate the federal CCR standards into their existing solid waste permit programs to avoid a dual or
conflicting set of regulations on the same CCR units, which helps to limit compliance uncertainty for Indiana utilities. The utilities continue to perform dam safety assessments to ensure that our facilities are performing as required. As we plan for compliance and to meet requirements of the CCR Rule, additional testing and monitoring will be done in the years ahead to further enhance management of environmental issues related to operation of CCR surface impoundments and landfills. We believe all of our customers will benefit from science-based closure approaches because it allows the companies to pursue a range of closure options that have been provided [sic] to be protective of the environment, safe and cost effective, including dewatering and capping the CCR material on site with long-term monitoring, also known as closure in place. When compared to off-site landfill disposal, which does not provide additional protection to human health or the environment,
closure in place is less cost intensive and will
significantly reduce the cost implications to
customers while still limiting environmental
impact.

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

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

Thank you.

MS. STANIEC: Bowden Quinn.

MR. QUINN: Good afternoon. I'm
Bowden Quinn. I'm the Chapter Director of the
Sierra Club Hoosier Chapter here in Indianapolis. I just wanted to address the financial assurance component. My understanding is that the plan is to not only continue the current rule requirement that landfills have financial assurance, but to incorporate the impoundments into that as well, and we certainly support that concept.

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

Another thought: There are various ways of meeting the financial assurance requirements. One of them is having an insurance policy, and my understanding from other examples that I've heard of is that can often be an obstacle, because
you're then adding another party who can really
slow down the process through litigation. So, I
think -- I think we need to seriously look at
that insurance component and whether it's meeting
the needs that we might have in making sure that
costs or financing is quickly available.
And the last part is there's a specific
component in the rule for utilities, which, you
know, my view of it is basically a
self-monitoring component, and we know from
what's happened with coal companies that can lead
you into trouble. So, I think we need to review
that component of the rule and whether it needs
to be modified.
And the other part of that, of course, is
the whole point of having financial assurance is
so that costs of remediation are not passed on to
the taxpayer, and yet, if you allow -- if you
have a special provision for utilities, that
is -- the cost is being passed on to their -- to
the rate payers, which is practically the same
thing. So, I think we need to look at that
component as well.
So, I certainly encourage IDEM to add the surface impoundments to the financial assurance requirements in the rule, and I think we also need to kind of review that section of the rule and see whether it's meeting all of our needs.

Thank you.

MS. STANIEC: Richard Hill?

MR. HILL: Excuse me. Good afternoon. Thank you for allowing us to speak to you today. My name is Richard Hill. I am the Chair of the Sierra Club Hoosier Chapter Executive Committee, but I'm here today primarily as a resident of Madison, Indiana that lives near the Clifty Creek Power Plant.

I'll give you just a real brief background of my experience with Clifty Creek and its coal combustion waste. It goes back quite a ways. I was involved in an administrative appeal of the landfill permit in 2003, I think. And I've also been a member of the Local Planning Team for Madison's Wellhead Protection Plan for about 16 years. I'm not speaking for them; I'm just giving you a little background there.
My major concern about this plant's waste disposal relates to its possible effects on our drinking water. Back in 2006, Save the Valley contracted with a professional hydrogeologist who concluded that the groundwater near the disposal area has been impacted by the ash-derived contaminants, such as boron, and it can be assumed that this condition continues to this day.

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

It is for those kind of reasons that I strongly believe the stronger regulations on these types of facilities should be required. Those regulations should include, at the very least, easier access to information about those
sites through the utility Web sites, and
long-term protection that guarantees the ability
of the utilities to react to problems that occur,
and cleanup of closed facilities, as Bowden just
spoke.

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

Thank you.

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

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

First of all, I want to thank IDEM for
preparing the state plan to take on the
administration and enforcement of these federal
rules, and Sierra Club will be submitting more,
you know, formal written comments by the end of
the month, but I also appreciate the opportunity
for us to have this public hearing today, for you to hear from real people who are affected by the real problems with coal ash.

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

Mr. Sewell, you were there as well.

And I'll just read what that petition says, and then I'll -- I want to comment specifically about the public transparency about the state plan. So, the petition says, "Nothing is more important than protecting sources of drinking water for Hoosier families. I ask you
to protect Indianapolis drinking water by safely
removing toxic coal ash from the unlined pits
near the Harding Street Power Plant and storing
it in a lined landfill on dry land.
"The Marion County Public Health
Department has found evidence that coal ash
contamination has leached into the groundwater
near Harding Street and is migrating toward
nearby neighborhoods. Both the White River and
drinking water wells in Indianapolis are at risk.
"It is vital that IPL take groundwater
samples, make water pollution data public, and
ensure safe cleanup of coal ash contamination
today so it doesn't become a drinking water
emergency for our community tomorrow."
And I want to touch on the issues of trust
and transparency and honesty. I -- I think we
all can see in our nation today that trust of
large institutions is an issue. You don't have
to look very far in today's news to see that
that's an issue.
And I think that there is an issue of
trust of whether the state will do the right
thing, whether the Federal Government will do the
right thing, and whether utility companies will
do the right thing. And the best way to remedy
that lack of trust is through transparency and
honesty.

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

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

And so, I would encourage IDEM to
courage utilities to not repeat that with other
ash ponds that are closed. I'm looking forward
to seeing the final closure plan from IPL and working with IDEM as that moves forward.

As Mr. Sewell mentioned, the Federal CCR Rule is enforceable by states and citizens but not by EPA, and we feel that -- as U.S. EPA has observed -- that citizens play a crucial role in partnering and in helping the state in the implementation and enforcement of the rule.

And EPA has designed the record keeping and Internet requirements, Internet posting requirements, as part of the final rule, of its final rule, to help ensure that transparency that is so important, and to assist citizens in playing our role to enforce the CCR requirements.

The final rule that EPA created requires comprehensive and regular disclosure to states and communities so that they can monitor and oversee these requirements. Because IDEM’s own enforcement resources are limited, we believe the agency should do everything that it can to ease the role of citizens in enforcing these critical requirements as well.

And we find it regrettable that IDEM
appears to intend to eliminate a key provision of these public accountability requirements from the State Plan, and that's the requirement that each utility post CCR information on a Web site maintained by the utility.

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

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

(Some hands raised.)

MS. PERRAS: Did anyone -- and how
many have found that Virtual File Cabinet easy to
find information on?
(No response.)
MS. PERRAS: How many think your
mother or your grandmother or your neighbor would
find it easy to find information on that Web
site?
(No response.)
MS. PERRAS: So, I -- you know, I
think that the a utility -- if somebody's looking
for information about their utility and what's
going on there, they should know that they can go
to the utility Web site to find that. It only
takes a Google search and a few seconds, for
example, to find the Fugitive Dust Control Plan
for the A. B. Brown Plant on Vectren's Web site.
Finding that document on IDEM's Web site would
take hours for the average citizen unfamiliar
with how that system works.
Second, including the Web site in
information posting requirements in the State
Plan poses no additional burden on utilities.
All of the Indiana utilities already have coal
ash Web sites, either Indiana-specific ones for NIPSCO or Hoosier Energy, for example, or as part of the parent corporation's national coal ash Web site, such as with Duke or I&M, which you would find on the AEP Web site.

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

So, we believe that although it's not a change, that since the information -- these information requirements will apply in any case, that simplicity and public accountability would demand that the applicable federal requirement that a utility must maintain a Web site to have
this information available to the public should also be incorporated into the State Plan. That way, utilities and citizens alike can look to the State Plan for all of the requirements that apply, instead of having to refer to both the State Plan and a federal rule to know what's required.

So, again, I thank you for the opportunity to speak to you today. I bring these petitions on behalf of nearly 450 Hoosiers who are concerned about these issues, and I think they represent many thousands of others as well.

MS. STANIEC: Indra Frank?

MS. FRANK: Mr. Sewell and --

THE HEARING OFFICER: Sure.

MS. FRANK: -- Carol, thank you for the opportunity to speak. My name is Indra Frank. I'm a physician specialized in environmental health, and I serve as the Director of Environmental Health and Water Policy for the Hoosier Environmental Council. I work at 3951 North Meridian, Suite 100, Indianapolis, Indiana, 46208.
I'd like to address three main points,

first to comment on public health implications of coal ash; next, a response to points in the draft CCR Part 256 Plan; and third, a couple of additional comments on Indiana's opportunity as the plan is being developed.

As with many waste materials, coal ash, if improperly handled, can be a threat to human health. There are three ways this happens:

Spills, fugitive dust and water contamination.

Spills like those in Kingston, Tennessee in 2008 and in Martinsville, Indiana in 2007 and 2008 and many others damage property, pollute waterways, and can threaten human life. There can be releases of millions of gallons of coal ash slurry from weak or defective impoundments.

So, the second manner that coal ash impacts human health is through fugitive dust.

When the ash is dry, it can become airborne during loading, unloading, transport, landfill grading, or by wind, and some of the particles in coal ash are less than 2.5 microns in aerodynamic diameter, which means they qualify as fine
particulate matter under the U.S. air quality standards.

Fine particulate is small enough to be inhaled all of the way into the microscopic air sacs in the lungs. Epidemiologic studies show that once they are there, they can irritate the lungs, trigger asthma attacks, worsen other lung conditions, and contribute to cardiovascular disease. Exposure to fine particulate is known to shorten life expectancy.

And then water contamination.

Unfortunately, when coal is burned, the -- a number of the constituents left behind in the ash are toxic, including arsenic, selenium, hexavalent chromium, and many others. The toxic contaminants get into surface water via the effluent that's legally released from coal ash ponds and from seeps through the enclosing structures around the ponds. Once they are in surface water, people can be affected if that water is a source of drinking water or if the contaminants get into the fish.

Coal ash contaminants also get into
groundwater, and that happens when water from 
coal ash ponds soaks into the ground or 
precipitation passes through a landfill and 
carries contaminants into groundwater. 
Groundwater does not stay in one place. It 
moves, so once in the groundwater, the 
contaminants can be carried to nearby drinking 
water wells. 
There are multiple potential contaminants 
that can get into coal ash. Each has its own 
health implications. Some examples are arsenic 
and hexavalent chromium, which are known 
carcinogens; vanadium, which is a possible 
carcinogen; cadmium, which is toxic to the 
kidneys; arsenic, manganese and selenium, which 
can damage the nervous system. 
Strontium impairs bone growth in children. 
Sodium, which is part of table salt, so we don't 
usually think of it as toxic, leaches from coal 
as in sufficient quantity to raise blood 
pressure and contribute to hypertension, and that 
leads to cardiovascular disease. 
Also, most of the coal ash contaminants
can have adverse effects on the developing child,
either during pregnancy or in early childhood,
and because of this potential to impact public
health, we must exercise care in how coal ash is
handled and how it is disposed of, and, of
course, that's why the CCR Rule was written and
why Indiana is paying careful attention to
implementation here.

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

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

So, there is a provision in EPA's rule
that will allow the states to look at alternative
time lines, and she states that the EPA confirms
that the EPA must first determine that a facility is an open dump before the state can grant an alternative compliance schedule. EPA does this by publishing a list of open dumps based on facilities where they have determined noncompliance. We're concerned that Indiana take that authority as EPA intended it, that compliance deadlines can't be rewritten except under those circumstances.

The second point of the draft plan pertains to interim regulation of CCR facilities until Indiana's Solid Waste Management Plan has been revised. I have a concern about the plan's statement on CCR landfills. The plan states that, quote, IDEM will impose permit conditions as necessary to achieve the minimum criteria in the CCR Rule when granting, modifying or renewing permits for CCR landfills. This makes it sound like CCR landfills will only have to meet the CCR Rule standards if they need a new, modified or renewed permit during the interim period. The interim period is going to be long. It's already estimated to run
until December of 2018th, and -- 2018, and it
could run longer. So, instead, I would request
that you consider finding a way to require the
CCR Rule standards of all of the landfills, not
just those who come up for modified or renewed
permits.
The third point of the draft plan pertains
to developing Indiana's CCR program, and first,
the Hoosier Environmental Council would like to commend the state's plan to move ahead with this,
and the statement in the draft plan that the Indiana CCR Rule will not be self-implementing.
We take this to mean that IDEM will be able to enforce provisions of the rule.
However, we disagree with the contention that Indiana should therefore not incorporate this section of the federal rule on CCR Web sites, and I will defer there to Jodi's comments.
We agree with those.
There are two additions that I'd like to propose to the draft plan, the CCR Part 256 Plan.
First, I think it would be helpful if the Indiana plan stated explicitly that compliance with the
Indiana regulation does not affect the duty of the owner or operator to comply with federal regulation. I think most people are aware that the duty is -- remains to comply with the federal regulation, but we think it would be helpful to state that explicitly.

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

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

And next, there are some things that Indiana has the opportunity to do. Now that IDEM intends to update the land disposal regulations to incorporate coal ash disposal, we have an
opportunity to improve on some things that are
lacking in the federal rule.

First, I -- through all of the study that
I've done on coal ash situations and the Hoosier
Environmental Council and Sierra Club have done,
we've come to the conclusion that only dry, lined
and capped landfills are protective of water
resources, and we'd like to -- IDEM to consider
requiring dry, lined and capped landfills for all
coal ash disposal.

Unlined landfills and unlined coal ash
ponds lead to water contamination. This has been
documented in multiple locations, including the
Chisman site, where coal ash created a Superfund
site in Yorktown, Virginia;
A DOE Superfund site in Oak Ridge,
Tennessee, where the coal ash pond was capped and
subsequently a wetland had to be constructed to
treat the contaminated groundwater;
Dominion's coal ash landfill and pond in
Chesapeake, Virginia, where leaching into
groundwater has been determined;
The Battlefield Golf Course in Virginia,
where Dominion's ash was used in an unlined manner as fill to shape the golf course and led to groundwater contamination;

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

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

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

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

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

Clifty Creek in Madison, Indiana, where
coal ash landfill and pond contaminated groundwater;
The Petersburg Station, where arsenic and boron contamination has been found in coal ash monitoring wells;
And A. B. Brown's -- the unlined portion of their landfill, where groundwater contamination was detected -- first detected in the early 1990's.
Essentially, everywhere that coal ash has been stored without a liner and the groundwater has been checked, the ash has contaminated the groundwater. Therefore, capping coal ash in place without a liner really should not be part of our plans going forward.

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

In South Carolina, a lawsuit resulted in a settlement in which all coal ash is being removed
from lined landfills, and other states are moving in that direction. It would be less expensive in the long run if Indiana could start its rule with what we know to be the best solution -- dry, lined and capped landfills -- rather than start down some other path and then have to backtrack.

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

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

And finally, I'd like to urge prompt attention to the most imminent public health implication of coal ash. Since we know that unlined storage leads to groundwater contamination, all drinking water wells within a half mile of unlined coal ash ponds and landfills
in Indiana should be tested for coal ash pollutants, and if contamination is detected, the responsibility should fall to the utility to supply an alternative water supply.

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

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

THE HEARING OFFICER: Thank you.

MS. FRANK: Uh-huh.

MS. STANIEC: Tim Maloney.

MR. MALONEY: Thank you. My name is Tim Maloney. I work for the Hoosier Environmental Council, and I'm also located at our office at 3951 North Meridian Street, Indianapolis. And I also want to express my appreciation for IDEM in scheduling this public hearing and the public comment period to take
input on your proposed Solid Waste Management
Plan amendment, and to U.S. EPA for being here
today as well.

I'm going to focus on a couple of topics
from the plan that I don't think any others have
covered yet. First of all is the matter of coal
ash impoundment and landfill inspections. This
is a requirement of the federal rule that
utilities are required to be complying with at
this time and had a deadline to submit its
annual -- their first annual inspection reports,
I think, back in February.
And in the -- in the state's proposed
plan, there is a section about coordinating with
other agencies, including the Indiana DNR, which
regulates dams and levies and construction and
floodways.
So, what we would like to recommend is
that given that action is already being -- taking
place on -- with those inspection requirements,
that IDEM immediately begin this coordination
with the Indiana DNR to review and follow up on
the inspection reports that have been filed.
And let me just cite a couple of those reports from some facilities that indicate that there is attention needed promptly, starting with the Duke Energy's Gibson Generating Station. Their inspection found that there were multiple areas requiring general maintenance, including erosion rails, vegetation, tire rutting, and sparse vegetation. Also, I think was found at a number of sites in Southwest Indiana concern about the adequacy of liquefaction analysis in the event of an earthquake, and Southwest Indiana is clearly in an earthquake-risk area and has experienced a number of earthquakes. And with respect to Duke's Gibson ash ponds, it says slope stability analyses indicate calculated factors of safety for post-earthquake conditions at all four pond locations are below target values indicated by CFR 257.73. And you find that in -- I think, in a couple of the other inspections for Duke plants. At -- at the F. B. Culley Station, Vectren's power plant in Newburgh, one of the ash
ponds there has been rated conditionally poor and
indicates that the pond's not equipped with a
principal or emergency spillway as originally
designed, and due to the height of the pool level
and presence of accumulated ash, the west berm of
the pond is in danger of failure and release of
coal ash into Culley Station during a storm
event.

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

So, that's just a couple of examples that
the inspections being done by the utilities -- to
their credit, they are conducting those
inspections generally -- are identifying problems
that we need to be sure that Indiana agencies,
both IDEM and Indiana DNR, are reviewing and
monitoring and making sure that the appropriate
corrections take place.

One last item on inspections is also the need to make sure that all utilities and all ponds are being inspected and posting those inspection reports as required by the federal rule that -- in determining if there are ponds that should have been inspected and have not been.

One that is a potential question here is NIPSCO's Michigan City ponds. There are no inspection reports filed on -- at least posted on the Web site for that facility, and so there should be a determination made whether that should have happened and has not.

And then finally, on that topic, I think it would be good, given our recommendations, that the final plan amendment contains more specificity about the nature of the coordination between IDEM and DNR and what process is being followed to make sure that the structural stability and safety of these facilities is maintained and continues in a safe and protective fashion.
The other point that I wanted to focus on is the plans and EPA rule treatment of beneficial use and the question of whether fill, structural fill, is a beneficial use.

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

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

And our concern about beneficial use is one that was evaluated by EPA in their rulemaking process and whether unencapsulated uses of coal
ash is -- should be considered a beneficial use.

In our view, it is not, it's really tantamount to disposal and should be regulated as such.

And so, two points there, again, is:

Number one, how does the state deal with this legislative restriction that calls into question approval of the state plan; and number two, going forward, once that problem is solved, then how do the state's rules deal with the question of beneficial use and structural fill?

And again, we would ask that the state not consider any -- any structural fill or any unencapsulated reuses of coal ash to be a beneficial use because of the risk it poses to environmental contamination, and that, again, was an issue discussed in EPA's rulemaking process, and they did identify that there were a number of damage cases to groundwater and water resources from unencapsulated fills.

Dr. Frank mentioned one of those at the Battlefield Golf Course in Chesapeake, Virginia, where a million and a half yards of fly ash were used to fill and contour a golf course, and there
has been groundwater contamination found at the
edges and corners of the golf course area.

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

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

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

Thank you.

THE HEARING OFFICER: Okay. That's
everyone who signed up to give testimony. Is
there anyone would didn't sign in who would like
to give testimony at this time?
MR. OLES: I'm sorry.

THE HEARING OFFICER: That's okay.

Come on up.

MR. OLES: Good morning. My name is Mike Oles, and I'm the Organizing Director for Hoosier Interfaith Power & Light. We are an Indiana-wide, faith-rooted movement who believes that caring for the Earth is part of spiritual practice and a major part of the world's sacred -- a significant part of what the world's sacred religious scriptures and traditions have to say.

We are deeply alarmed that Indiana has become the number one coal ash lagoon state or coal ash pond state in the country, and deeply alarmed that -- you know, I think there's been over 13 documented spills. We're deeply alarmed that these lagoons are a threat to drinking water and a threat to communities across Indiana.

As a faith-rooted organization, we have a deep hope in the future and feel that Indiana can begin to heal some of its worst environmental problems. To do so, we must deal with this coal
ash problem in the near future, or now. We must not let our utility companies get away with ignoring this toxic threat that has been created. We need long-term protection from coal ash pollution and coal ash pond -- coal ash pond failure. We are concerned that our drinking water and our rivers and our creeks and our streams and the groundwater near our homes are at risk. We're concerned about the congregations and communities across the state that are at risk because of coal ash.

We find the current situation immoral and unacceptable. And where will it be ten, twenty, fifty or a hundred years from now? Our organization and people of faith across the state want action now. We want to avoid those tragic situations that have happened recently on the Dan River in Virginia and also in Tennessee.

We want action. We believe that IDEM must -- must require utility companies to show that they have enough money to set aside -- that they have enough money set aside to clean up coal ash landfills and ponds. We don't want Hoosier
taxpayers or Hoosier communities stuck with bills. If a utility tries to walk away from the mess that they first created. That's one of our biggest concerns.

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

I thank you so much.

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

MR. OLES: Okay.

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

MR. OLES: Okay.

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

MR. OLES: Where do I sign in?

THE REPORTER: Up there.
MR. OLES: Okay. Thank you.

THE HEARING OFFICER: Is there anyone else?

(No response.)

THE HEARING OFFICER: Last call.

(No response.)

THE HEARING OFFICER: Okay. We'd like to thank everyone for coming. I do have a copy of the public notice for this hearing, and it has my name and address and contact information if you'd like to submit comments.

Again, I want to remind you we're taking comments until June 30th. I appreciate you coming and participating today.

And this concludes our hearing.

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

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CERTIFICATE

I, Lindy L. Meyer, Jr., the undersigned Court Reporter and Notary Public residing in the City of Shelbyville, Shelby County, Indiana, do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me on Thursday, June 16, 2016 in this matter and transcribed by me.

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

My Commission expires October 27, 2016.