

In The Matter Of:
INDIANA ENVIRONMENTAL RULES BOARD

May 12, 2021

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BEFORE THE STATE OF INDIANA
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF MAY 12, 2021

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PROCEEDINGS

before the Indiana Environmental Rules Board,
Beverly Gard, Chairman, taken before me, Lindy L.
Meyer, Jr., a Notary Public in and for the State
of Indiana, County of Shelby, via Zoom Conference
on Wednesday, May 12, 2021 at 1:32 o'clock p.m.

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1 APPEARANCES:

2 BOARD MEMBERS:

- 3 Beverly Gard, Chairman
- 4 Angelique Collier
- 5 Paul Gilson
- 6 Dr. Ted Niemiec
- 7 Dr. Joanne Alexandrovich
- 8 William Etzler
- 9 Chris Horn
- 10 Michael Schuler
- 11 Calvin Davidson
- 12 R. T. Green
- 13 Dan Bortner
- 14 Mark A. Wasky, Proxy, Indiana Economic
- 15 Development Corporation
- 16 Jordan Seger, Proxy, Lieutenant Governor
- 17 Bruno Pigott, IDEM Commissioner
- 18 (Nonvoting)

12 IDEM STAFF MEMBERS:

- 13 Ryan Clem
- 14 Chris Pedersen
- 15 Nancy King
- 16 Keelyn Walsh
- 17 Krystal Hackney
- 18 Dan Watts
- 19 Don Stylz
- 20 Eileen Hack
- 21 Martha Clark Mettler
- 22 Paul Higginbotham

18 PUBLIC SPEAKERS:

- 19 Gary Gothay
- 20 Adrianna Hji-Avgoustis
- 21 Craig Williams

21 - - -

22

23

1 1:32 o'clock p.m.
2 May 12, 2021

3 - - -

4 CHAIRMAN GARD: Okay. I'm going to
5 call the Environmental Rules Board via Zoom to
6 order, May 12th, 2021, 1:30 p.m. We have a
7 quorum, so -- but we still have to call the roll.
8 This is the rules when you use -- use electronic
9 things.

10 Ryan, do you want to go ahead and refresh
11 everyone? I think most people know the rules of
12 this and how to navigate the system, but do you
13 want to update and refresh our memory?

14 MR. CLEM: Sure, yeah, happy to do
15 so. Thank you, Madam Chair.

16 And thanks, everyone, for joining us
17 today. My name's Ryan Clem, Director of Com --
18 so, we will be taking questions and comments from
19 the public at today's meeting. If you have a
20 question or have a technical issue during the
21 presentation, please use the raised hand or chat
22 feature on Zoom.

23 And to access those features, at the top
or bottom of your screen, depending on your

1 device -- a menu, and in that menu you'll see an
2 icon, which you can click on to -- box. You
3 should also see the raised hand option there as
4 well, so please utilize either of these, the
5 raised hand or the chat feature, if you have any
6 questions or comments, and you'll be called upon
7 at the appropriate time.

8 For those joining us by phone, if you have
9 a question or comment, you can also raise your
10 hand by pressing star nine, and we will call on
11 you at the appropriate time, and when called
12 upon, you'll need to unmute your phone by
13 pressing star six.

14 For everyone in today's meeting, please
15 identify yourself when speaking, and also please
16 remember to mute your line when you are not
17 speaking. If any members of the media have
18 joined us today, please utilize the chat feature
19 or e-mail media@idem.in.gov if you have any
20 questions. This meeting is being recorded and
21 will be posted on IDEM's Web site in the next day
22 or two.

23 And so, with that, I'll turn it back over

1 to you, Chairwoman Gard.

2 CHAIRMAN GARD: Okay. Thank you so
3 much, Ryan.

4 I'm going to call the roll.

5 Ms. Collier?

6 MS. COLLIER: Here.

7 CHAIRMAN GARD: Mr. Davidson?

8 MR. DAVIDSON: Here.

9 CHAIRMAN GARD: Mr. Horn?

10 MR. HORN: Present.

11 CHAIRMAN GARD: Mr. Bortner.

12 MR. BORTNER: Here.

13 CHAIRMAN GARD: Dr. Alexandrovich?

14 (No response.)

15 CHAIRMAN GARD: Joanne?

16 (No response.)

17 CHAIRMAN GARD: You're here. I can't
18 hear you. You're on mute.

19 DR. ALEXANDROVICH: Yeah; sorry about
20 that. Here, here, here.

21 CHAIRMAN GARD: Mr. Seger?

22 MR. SEGER: Here.

23 CHAIRMAN GARD: And he's proxy for

1 Katie Nelson.

2 Mr. Rulon?

3 (No response.)

4 CHAIRMAN GARD: He's probably
5 farming.

6 Mr. Wasky?

7 MR. WASKY: I'm here.

8 CHAIRMAN GARD: Mr. Schuler?

9 MR. SCHULER: Here.

10 CHAIRMAN GARD: Mr. Gilson?

11 MR. GILSON: Here.

12 CHAIRMAN GARD: Mr. Green?

13 MR. GREEN: Here.

14 CHAIRMAN GARD: Dr. Niemiec?

15 MR. NIEMIEC: Here.

16 CHAIRMAN GARD: Mr. Etzler?

17 MR. ETZLER: Here.

18 CHAIRMAN GARD: Comm. Pigott?

19 COMM. PIGOTT: Here.

20 CHAIRMAN GARD: And I'm Beverly Gard,
21 Board Chair. I think this is the most that we
22 have had at a meeting in a very long time, so
23 thank you all very much.

1 Our first order of business today is
2 approval of the summary of the minutes from the
3 February the 10th, 2021 Board meeting. Are there
4 any additions or corrections to the minutes as
5 distributed -- or as presented?

6 MR. ETZLER: Chairman Gard, I have a
7 correction to make.

8 CHAIRMAN GARD: Okay.

9 MR. ETZLER: Under no. 2, the
10 Hazardous Waste Financial Assurance, it says that
11 I both made the motion and seconded the motion to
12 adopt.

13 CHAIRMAN GARD: Okay.

14 MR. ETZLER: I don't think that's
15 allowed under Robert's Rules.

16 CHAIRMAN GARD: I don't either, so
17 which did you do?

18 MR. ETZLER: I think I moved, but I
19 have no idea who was the second.

20 CHAIRMAN GARD: Does anybody
21 remember?

22 MR. DAVIDSON: No, ma'am.

23 CHAIRMAN GARD: How do we deal with

1 that in the corrections; just say, "Nobody
2 remembers"?

3 MS. KING: I can speak to that,
4 partially. We've actually talked to the -- we've
5 tried to talk to the Attorney General's Office
6 about this, and we have yet to get sort of a
7 definitive answer for some reason, but here's my
8 take on it: Basically we've relistened to the
9 audio, and it is unclear who made the motion in
10 the audio.

11 So, you know, this is clearly an error,
12 but the fact remains that we are not required
13 under law to use Robert's Rules of Order. It's
14 what we've always used for this Board as a way to
15 get the business done that's required under the
16 law. So, it's very clear what the motion was for
17 adopting the rule as amended.

18 So, my point in discussion with the
19 Attorney General's Office is as far as your --
20 what you need to look at for us to have an
21 approvable rule, this really shouldn't matter.
22 But we have some new people over there who we
23 haven't really worked with. Unfortunately, my

1 old stalwart friend, Jim, Jim Schmidt, has
2 retired. So, this would have been right up his
3 alley.

4 But we -- so, we have to talk about it
5 with them. If they really want to push this, we
6 can always bring it back and redo for their
7 purposes, but it's not required under the law, so
8 hopefully we'll be able to just have a
9 conversation with them and move this through the
10 process.

11 So, unfortunately, Susanna tried again
12 this morning to get kind of a last-minute answer,
13 and we weren't able to get that, so we'll figure
14 it out. It's -- so, if you guys don't remember
15 who it was -- and, you know, who would remember
16 those kinds of motions? -- we'll just -- we'll
17 see if we can get it through the way it is.

18 Because it's very clear that the Board
19 voted to do what it ultimately wanted to do
20 within the transcript and everything else. So,
21 that should be sufficient, but if not, we'll
22 bring it back to the Board. So, I'll let you
23 know when I know something else.

1 CHAIRMAN GARD: How do we -- how do
2 we word it in the minutes, then; "Second unknown
3 or unclear"?

4 MS. KING: I mean basically we
5 could -- at this point, we can just -- we can
6 note that it's an error. We don't know what it
7 is at this point, so whether you want to amend
8 the minutes to reflect that, any wording you want
9 would be perfectly fine and we can do that. And
10 we can also again discuss it for the record at
11 the following meeting, so --

12 MR. NIEMIEC: Excuse me; this is Ted
13 Niemiec. I just have a quick question: Is it
14 necessary in our minutes or summary to say who
15 moved and seconded? Because I know in many
16 organizations it'll say that it was moved by
17 so-and-so and it was also seconded, and we
18 know --

19 MS. KING: In reality, it's not -- in
20 terms of what is required for us to put in
21 meeting summaries, there isn't -- you're right,
22 that's another aspect of it, wherein having
23 that -- we're required to provide them the

1 transcript of our meeting. It's required to be
2 recorded, so they could listen to it or read it.
3 I mean that's the thing: If you read it, it's
4 still not -- it's not clear from the recording.
5 We're fortunate to have the recording of these
6 meetings, but the audio doesn't clarify it.

7 So, it isn't -- additionally, it isn't --
8 it's just what they're used to getting from us
9 and how they review our things. So, I think it's
10 really more of just having a discussion with some
11 new folks over there and getting them acquainted
12 with our process, what's required under the law,
13 because we are -- you know, we're special, we're
14 different, so --

15 THE REPORTER: Nancy, this is Lindy.

16 MS. KING: -- I really think we'll be
17 able to get it through. I don't think it's a
18 problem.

19 THE REPORTER: Nancy?

20 MS. KING: Yes.

21 THE REPORTER: This is Lindy.

22 MS. KING: Yes, Lindy.

23 THE REPORTER: To that point, it

1 would be very helpful for me if people would
2 identify themselves when they move or second,
3 because otherwise, I just have to guess if I
4 can't tell their voice.

5 MS. KING: Right, right. Okay. A
6 point well taken, if we can all sort of remember
7 to try to do that.

8 CHAIRMAN GARD: Okay. Bill, would
9 you like to make a motion to strike your name as
10 the person that made the second and just say you
11 made the motion and it was seconded?

12 MR. ETZLER: I think that's a fine
13 way to put it in the revision to the minutes.

14 MR. NIEMIEC: This is Ted Niemiec. I
15 second that motion.

16 CHAIRMAN GARD: Okay. Do we have to
17 call the roll for this?

18 MS. KING: Yes, ma'am, you do.

19 CHAIRMAN GARD: Okay.

20 Ms. Collier?

21 MS. COLLIER: Yes.

22 CHAIRMAN GARD: Mr. Davidson?

23 MR. DAVIDSON: Yes.

1 CHAIRMAN GARD: Mr. Horn?

2 MR. HORN: Yes.

3 CHAIRMAN GARD: Mr. Bortner?

4 MR. BORTNER: Yes.

5 CHAIRMAN GARD: Dr. Alexandrovich?

6 DR. ALEXANDROVICH: Yes.

7 CHAIRMAN GARD: Mr. Seger?

8 MR. SEGER: Yes.

9 CHAIRMAN GARD: Mr. Wasky?

10 MR. WASKY: Yes.

11 CHAIRMAN GARD: Mr. Schuler?

12 MR. SCHULER: Yes.

13 CHAIRMAN GARD: Mr. Gilson?

14 MR. GILSON: Yes.

15 CHAIRMAN GARD: Mr. Green?

16 MR. GREEN: Yes.

17 CHAIRMAN GARD: Dr. Niemiec?

18 DR. NIEMIEC: Yes.

19 CHAIRMAN GARD: Mr. Etzler?

20 MR. ETZLER: Yes.

21 CHAIRMAN GARD: Comm. Pigott?

22 COMM. PIGOTT: I don't know if I get

23 a vote here, but if I did, it would be yes.

1 CHAIRMAN GARD: I guess you are
2 nonvoting, aren't you?

3 COMM. PIGOTT: Yeah, I think I'm
4 nonvoting.

5 CHAIRMAN GARD: Okay. Beverly Gard,
6 yes. Let me count. The motion passes 13 to 0.
7 Thank you.

8 Well, that was just the amendment, wasn't
9 it, Nancy?

10 MR. NIEMIEC: Yes.

11 CHAIRMAN GARD: Okay. All in
12 favor -- well, is there a motion to accept the
13 amended minutes as distributed?

14 MR. NIEMIEC: This is Ted Niemiec.
15 Yes, I make such a motion.

16 MR. ETZLER: Bill Etzler, I second.

17 CHAIRMAN GARD: Ms. Collier?

18 MS. COLLIER: Yes.

19 CHAIRMAN GARD: Mr. Davidson?

20 MR. DAVIDSON: Yes.

21 CHAIRMAN GARD: Mr. Horn?

22 MR. HORN: Yes.

23 CHAIRMAN GARD: Mr. Bortner?

1 MR. BORTNER: Yes.

2 CHAIRMAN GARD: Dr. Alexandrovich?

3 DR. ALEXANDROVICH: Yes.

4 CHAIRMAN GARD: Mr. Seger?

5 MR. SEGER: Yes.

6 CHAIRMAN GARD: Mr. Wasky?

7 MR. WASKY: Yes.

8 CHAIRMAN GARD: Mr. Schuler?

9 (No response.)

10 CHAIRMAN GARD: Mr. Schuler?

11 MR. SCHULER: Yes.

12 CHAIRMAN GARD: Mr. Gilson?

13 MR. GILSON: Yes.

14 CHAIRMAN GARD: Mr. Green?

15 MR. GREEN: Yes.

16 CHAIRMAN GARD: Dr. Niemiec?

17 MR. NIEMIEC: Yes.

18 CHAIRMAN GARD: Mr. Etzler? The
19 Chair votes aye. The minutes are approved as
20 amended, 13 to 0.

21 Commissioner, your report, please.

22 COMM. PIGOTT: Thank you, Sen. Gard.

23 Five different things I want to talk

1 about. I won't take too long on any of them, but
2 first of all, you may wonder how we're doing
3 during the COVID pandemic. I reported last time
4 we continue to issue our permits. We still do.
5 We're not behind on anything. We're still
6 conducting our inspections. We've ramped up
7 since the numbers of COVID cases have decreased.

8 It -- one area in particular I want to
9 highlight is our water assessment people. Our
10 water assessment people go out into rivers,
11 creeks and streams every year to get a sense of
12 what's going on in our waters, so that we can
13 report to you U.S. EPA which waters are impaired
14 and which ones are healthy.

15 And our people were particularly
16 challenged this year because of the
17 social-distancing requirements that are necessary
18 during this pandemic. We couldn't have a full
19 vehicle of people traveling throughout the state,
20 and we have teams of people that go out and go
21 into our rivers, creeks and streams to determine
22 what the water quality is, like by sampling fish
23 and taking water chemistry samples and analyzing

1 those back at a lab.

2 Because of the limitations, we could only
3 have two people to a car, which limited our
4 abilities in some ways. But nonetheless, we were
5 able to accomplish all of the requirements that
6 we have with U.S. EPA in terms of our monitoring
7 requirements of waters, and I'm really proud of
8 our staff for figuring out how to do that. And
9 so, I just wanted to give you an update on that,
10 and that's the COVID update.

11 The second area I want to talk about is
12 legislative session. We have just emerged from
13 what I think our agency would call a pretty tough
14 legislative session. There were two bills in
15 particular that we were tracking, Senate
16 Bill 389, which was introduced by Sen. Garten
17 concerning wetlands. The program -- the bill
18 would have eliminated all state protected
19 wetlands from any kind of regulatory impact.

20 And that bill went through the Senate. It
21 went over to the House, where it was amended. I
22 want to give a big thanks to our staff that
23 worked hard to provide information that we were

1 able to talk with legislators about. I want to
2 thank Sen. Gard for her editorial that talked
3 about the importance of wetlands, and believe
4 that all of those things made a big difference in
5 terms of what eventually got passed.

6 The agency was not pleased with the
7 legislation at the end of it. It eliminates
8 protections over all Class I wetlands; it
9 significantly reduces protections in Class II
10 wetlands; and reduces compensatory mitigation
11 ratios in different areas and in the Lufeed
12 program.

13 The legislation had new definitions for
14 cropland. It allowed for exemptions for certain
15 activities in farmland. It also establishes a
16 task force consisting of a chairperson, someone
17 from Ducks Unlimited, a Builders Association
18 representative, a representative of Accelerate
19 Indiana Municipalities, the Farm Bureau, the
20 White River Alliance, Indiana Society of Land
21 Surveyors, the Department of Environmental
22 Management, Purdue, the Kankakee River Basin
23 Commission, and the St. Joe River Basin

1 Commission.

2 While we were less than satisfied with the
3 outcome of the bill, we recognize that it was
4 different from the bill that was introduced
5 initially and are pleased that the protections
6 for Class III wetlands -- those are wetlands that
7 are forested wetlands -- continue at the same
8 rate that they were in the past.

9 We will participate in the task force. We
10 appreciate all of the work that's been done to
11 support our position and our ability to testify
12 and work with legislators to try to change the
13 legislation. As is the case for every law that
14 goes through, we are tasked with implementing the
15 law, and we will do so despite our positions
16 regarding the law. And so, I wanted to say a big
17 shout-out and thank you to Sen. Gard for her --
18 her work on this bill, and to our staff.

19 I also want to talk about Senate Bill 271.
20 That was a bill that the agency introduced, and
21 it contains several positions dif -- Senate
22 Bill 271 was what we might call an omnibus bill.
23 It's the bill that contains a variety of small

1 provisions that typically are not of major
2 consequence, but help the agency do its work more
3 effectively.

4 And I'll talk about some of the provision
5 necessary that bill. One is a provision
6 regarding tax credits or exemptions that
7 previously had to be filed with the Department of
8 Environmental Management for wastewater
9 equipment.

10 Those exemptions that -- the bill that we
11 asked to be introduced eliminated the provisions
12 under which a property owner must mail a copy of
13 the exemption to our Department, and have the
14 Department make a ruling on it. It eliminated
15 that partly because, in the past, the -- while
16 that was done, the law read that any submission,
17 if not reviewed within 120 days, was
18 automatically approved.

19 And for the most part, we had no issues
20 and didn't -- we ended up not renewing or
21 approving those and they automatically were
22 granted. And so, that provision is removed. The
23 Department does not have to have a copy of those

1 tax provisions. However, counties that are
2 interested in receiving our input regarding
3 what's submitted to them, we're happy to help
4 with. So, that's one of the provisions in the
5 law.

6 A second provision is one that we did not
7 introduce, but was added to the law, and that
8 provision was requiring the Department of
9 Environmental Management to establish a state
10 permit program for the implementation of federal
11 regulations for the disposal of coal combustion
12 residuals in landfills and surface impoundments.

13 Currently, the agency does review closure
14 plans for what we call CCR, or coal combustion
15 residuals, and we do review those, but it was
16 U.S. EPA that was set to issue permits to
17 facilities that would stay open. The -- an
18 amendment was added to the bill that would
19 require IDEM to apply to run that program, as
20 opposed to U.S. EPA. That's now a part of the
21 law, and we will be applying to U.S. EPA to
22 establish a permitting program for coal
23 combustion residuals.

1 One of the other provisions in Senate
2 Enrolled Act 271 was an extension of a
3 requirement that was in earlier legislation for
4 the Environmental Rules Board to -- and the
5 Department -- to put together fee increase
6 proposals and for the Depart -- the Rules Board
7 to vote on them by the end of 2022.

8 That requirement was in Senate -- Public
9 Law 250-2019. It was passed in 2019 by the
10 General Assembly to amend the process in IC 13-16
11 concerning adoption of environmental fees by the
12 Rules Board, and it said that the Rules Board
13 could consider and increase fees. It had a
14 one-time increase in fees that had to be
15 concluded by 2022.

16 We literally just public noticed
17 fee-increase-proposal rulemakings for both Water
18 and Land, and we recognize that the time frame
19 under the existing law is too short in order for
20 the Rules Board to effectively consider these
21 rules, and therefore, we asked for an extension
22 of that time frame to January 1, 2023, so that
23 the Rules Board can consider the fee increase

1 rules that are being proposed by the Department
2 of Environmental Management. So, that's --
3 that's a rundown on the big provisions during the
4 legislative session that -- that we've
5 participated in.

6 A third area I wanted to talk about
7 briefly was just to give you an update.
8 Sen. Gard is also not only the -- she's doing
9 double duty. She's not only serving as Chair of
10 the Environmental Rules Board, but she's also
11 Chair of the VW Committee.

12 And as you probably are aware, the VW
13 Committee was put together by the Governor to
14 consider proposals that could be funded for the
15 expenditures of money that was given to the state
16 as a result of a settlement with Volkswagen for
17 its emissions control device defeat mechanisms
18 that were in their vehicles, that the state was
19 given 41 million dollars, and Sen. Gard has led
20 the effort to consider proposals to spend that
21 money in areas that would help reduce NOx
22 emissions throughout the state.

23 I'm excited about the work that's going on

1 in that Committee. I want to say that I'm very
2 excited -- coming up, the Committee will be
3 reviewing proposals for fast charging stations to
4 be located throughout the State of Indiana to
5 help ensure that drivers of electric vehicles
6 don't have range anxiety and are able to travel
7 the state and have accessible electric charging
8 stations, and I think that's a really great
9 development. The agency will be putting forth a
10 recommendation to the VW Committee at the next
11 meeting on the 20th of May.

12 The fourth thing I want to talk about is a
13 fees rule. I know that Chris probably will --
14 talk about rules often, but there are two
15 rulemakings of note that have both been second
16 noticed that I just want you to be aware of and I
17 thought it was important to mention, and both are
18 regarding fee increases. One is for water fees,
19 and the other is for solid waste and hazardous
20 waste program permitting fees.

21 Now, both sets of fees -- and there are
22 fees that we charge for permit applications,
23 there are ongoing operational fees that we

1 charge, and there's just a wide variety of them.
2 Both of these rules deal with fee increases. In
3 solid waste and hazardous waste, we've not
4 increased fees since 1996. In the water area, we
5 haven't increased wastewater fees since 1994.
6 So, this proposal is the first proposal to
7 increase our fees in a way that would help fund
8 the activities that we have going on.

9 The Board should know that the rulemakings
10 that we are proposing that we've second noticed
11 are under the provision of Public Law 2050-2019
12 that requires the Board to adopt rules once
13 before January 1st, 2022, now it's 2023, to
14 increase the amount of fees, in total, 3.2
15 million dollars.

16 And so, our proposals that we've second
17 noticed are the best efforts we could come
18 forward with, after long consideration of how to
19 increase those fees. As I mentioned, there's a
20 wide variety of fees that we have -- have to
21 increase, and they go from construction
22 permitting fees to NPDES permitting fees to solid
23 and hazardous waste fees, and there's just a wide

1 variety of them.

2 We've talked extensively with stakeholders
3 at the -- before legislation was passed, that
4 would give the Board the authority to increase
5 fees. So, we have -- we've done our homework,
6 we've talked to our stakeholders, they agreed on
7 this amount of money overall, and we've second
8 noticed rulemakings that best -- seek to best
9 distribute the fund -- the fee increases.

10 And we look forward to robust discussion
11 about these, and I know that I need to thank
12 Nancy King and Grant Geiss and Brian Rockensuess
13 for all of the work they've done to put together
14 proposals. These are not final. This is second
15 notice, and there may be ways to improve the way
16 we distribute this money, and we're happy to talk
17 about it.

18 But I do think this is really important
19 for the continued operation, effective operation,
20 of our agency, and wanted to highlight that they
21 have been second noticed, and the Board will be
22 facing this -- these two rules in the future.

23 The final thing I wanted to mention has

1 nothing to do with any of those things, but does
2 have to do with one of the people in attendance
3 at our meeting today. His name is Gary Gothay,
4 and I've probably mispronounced his name. Gary
5 was in the news in March, because the same day
6 that he left his job in Princeton, or outside of
7 Princeton, he stopped along the road on the way
8 back to -- when he saw garbage on the side of the
9 road, and he spent time to pull out trash and
10 weeds and garbage and clean up his environment.

11 And I just want to say what a great job
12 that is to do that. I'm so -- I think the job of
13 cleaning our environment both has to happen at a
14 big level, at the level of state, but it also is
15 the job of each and every one of us as
16 individuals, and I just think Gary deserves some
17 thanks, and I want to thank him, as the head of
18 our environmental agency, for making an effort to
19 get out and improve his and our environment.
20 It's a great story.

21 MR. GOTHAY: Thank you.

22 COMM. PIGOTT: Yeah, I really --

23 MR. GOTHAY: Thank you so much.

1 COMM. PIGOTT: Yeah, I really
2 appreciate what you did. It was wonderful work,
3 and congratulations for --

4 MR. GOTHAY: I --

5 COMM. PIGOTT: -- appearing for that.

6 MR. GOTHAY: I live here, too, man.
7 I live on this planet, too, so I didn't just
8 clean it for everybody else. I cleaned it for
9 myself, too. I want to live --

10 COMM. PIGOTT: Well, thank you for
11 that. It's marvelous, and I can't tell you how
12 much I appreciate it, and --

13 MR. GOTHAY: Thank you.

14 COMM. PIGOTT: -- yeah, if every one
15 of us did what you do on a regular basis, the
16 difference we'd make would be ginormous.

17 MR. GOTHAY: You're right, a hundred
18 percent right. I think there's a lot -- I think
19 there's a lot of things we could do, and the
20 United States and -- well, Indiana, we'll just
21 talk about that right now. I think that you said
22 something about raising fees or whatever.

23 I'll be honest, I'm not super intelligent,

1 I don't really know all of these terms and stuff
2 you're using. I just know that, for one,
3 we're -- our water, we're on what, level four for
4 the fish regulation consumption levels, which
5 means that I can only have one meal of fish from
6 my river every two months.

7 Man, I'm broke, dang near. I go to work
8 every day just so I can keep the lights on and be
9 able to sleep in a bed and make sure my dog has
10 food. You know, all of this stuff going on in
11 the world right now and trying to figure out how
12 we're going to feed people and whatnot, and it'd
13 be a lot easier to feed people if I could just
14 step outside and throw a pole in the water and be
15 able to feed my family, but I can't do that
16 because it's poisoning me. It's poisoning all of
17 us.

18 And it's due to what? People want to make
19 some extra money, so they cut this, they cut
20 this, they cut this, so they can just dump stuff
21 in my water and kill us all. I don't know, man.
22 I know I'm not -- I don't sound that intelligent,
23 but it just -- I'm pretty angry about it. The

1 outdoors is my thing.

2 COMM. PIGOTT: Well, you know, I'm --
3 I just want to say thank you for putting your
4 anger into a productive use, and we really
5 appreciate it.

6 MR. GOTHAY: Thank you.

7 COMM. PIGOTT: Then Sen. Gard, that's
8 my report for today.

9 CHAIRMAN GARD: Okay. I do want to
10 make a comment. First of all, thank you so much,
11 Gary. It's people like you that are going to
12 really, really make a difference.

13 And it's people like the legislature --
14 this session was mostly new legislators, fairly
15 new legislators, that were really, really backing
16 this bill on the wetlands. They weren't around
17 when -- in 2003, when we spent a year studying
18 the Supreme Court decision and figuring out what
19 we needed to do and figuring out how to do it in
20 such a way that was a reasonable way.

21 And the statute was very reasonable, but
22 the Builders Association is very close to a
23 number of legislators, some of them long -- some

1 of the legislators are builders, and they really,
2 really pushed this bill. I think it's a
3 travesty, I really, really do.

4 And as -- it got a lot of publicity. As
5 I'm just out around the community and so forth, I
6 had a lot of people that were just ordinary
7 people, that weren't involved with the wetlands,
8 with building or anything, that expressed how
9 concerned they were about that.

10 So, I'm -- I really hate it that it
11 happened. My editorial was meant first of all to
12 count -- to call attention to it, the issue, and
13 then to correct a number of the statements that
14 had been made by legislators that were pushing
15 the bill. So, you know, with that, I won't
16 discuss that topic any more, but I was really
17 concerned about it.

18 Are there any questions for Comm. Pigott
19 about his report, any of the issues he talked
20 about?

21 MR. GOTHAY: No, ma'am.

22 CHAIRMAN GARD: Okay.

23 Thank you, Commissioner.

1 Chris Pedersen is going to give a
2 rulemaking report.

3 MS. PEDERSEN: Good afternoon. I'm
4 Chris Pedersen, in the Rules Development Branch
5 of the Office of Legal Counsel.

6 Our next Board meeting is tentatively
7 scheduled for August 11th, 2021. At that
8 meeting, we anticipate three rules being brought
9 to you for final adoption that are also being
10 presented to you today for preliminary adoption.
11 Those are the BP Temporary Alternative Opacity
12 Limits Rule, Solid Waste Financial Assurance, and
13 the Satellite Manure Storage Structure Reference
14 Updates Rule.

15 We're also hoping that the Metals Criteria
16 Rule will be ready for final adoption. This is a
17 rule that revises Indiana's aquatic life and
18 human health ambient water quality criteria for
19 certain metals. There will be a presentation on
20 this rule later today.

21 In addition, a few rules may be ready for
22 preliminary adoption. First is the Public Water
23 Supply Definition Rule. This rule was initiated

1 at the request of U.S. EPA to address
2 inconsistencies in a state rule that needed to be
3 corrected to maintain primacy for the drinking
4 water program.

5 In addition, we have the Water and Waste
6 Fee Rules that Bruno discussed in his report.
7 These are in response to legislation in 2019 that
8 allows IDEM to raise water and waste fees for
9 permitting programs by a combined total of 3.2
10 million dollars.

11 These rules are currently under review at
12 the Office of Management and Budget, and as soon
13 as they approve them, they will be published for
14 a comment period, the second comment period. I
15 have already had one discussion with the Office
16 of Management and Budget and answered their
17 questions, so we're hoping that those will be
18 approved soon.

19 There's also two other rules that may be
20 ready that are part of expedited rulemaking
21 processes. The first is the Daviess and Pike
22 Counties SO2 Redesignation. This is the adoption
23 of a federal rule that uses the Section 8 process

1 with a single hearing. It's for certain
2 townships within Daviess and Pike Counties that
3 have been redesignated to attainment for sulfur
4 dioxide, and the rule will reflect the change in
5 the state rule.

6 In addition, the Fort Wayne Combined Sewer
7 Overflow Wet Weather Limited Use Subcategory
8 Rule. This rulemaking uses the same expedited
9 process with a single hearing as the equivalent
10 rule that was adopted for Indianapolis in January
11 of 2020 used. Fort Wayne has met the
12 requirements for establishing a combined sewer
13 overflow wet weather limited use subcategory of
14 the recreational use designation. As part of the
15 process, a rulemaking is required to identify the
16 waters receiving the wet weather discharges from
17 the affected combined sewer overflows.

18 And then lastly, for August we have the
19 annual hearings for the review of nonexpiring
20 rules. This year it will be for certain air and
21 water rules.

22 And that is my report. I'll be happy to
23 answer any questions.

1 CHAIRMAN GARD: Are there any
2 questions for Chris?

3 (No response.)

4 CHAIRMAN GARD: Thank you, Chris.

5 Today we have a hearing and Board
6 adoption, a final adoption, of one rule, NOx
7 Emissions Monitoring. We also have hearings and
8 board action on preliminary adoption of Satellite
9 Manure Storage Structures, Solid Waste Financial
10 Assurance, and BP Temporary Alternative Opacity
11 Limitations.

12 After Board action on the rules, there
13 will be a presentation of the Nonrule Policy
14 Document, discussion and potential action on a
15 remote meeting policy for this Board, a Water
16 Quality Standards Review presentation and
17 hearing, a presentation on selenium related to
18 the Metals Criteria Rule, and an update on the
19 Citizen's Petitions.

20 The rules being considered at today's
21 meeting were included in the Board packet and are
22 available for public inspection on the IDEM Web
23 site at least one week prior to each Board

1 meeting.

2 A written transcript of today's meeting
3 will be made. A transcript and written
4 submissions will be open for public inspection at
5 the Office of Legal Counsel. A copy of the
6 transcript will be posted on the rules page of
7 the agency Web site when it becomes available.

8 This is a public hearing before the
9 Environmental Rules Board of the State of Indiana
10 concerning final adoption of minutes -- of
11 amendments to 326 IAC 10-2, NOx Emissions
12 Monitoring Rule. The proposed rule as
13 preliminarily adopted found in today's Board
14 packet is entered into the record of the hearing.

15 Keelyn Welsh -- or Walsh -- will present
16 the rules to the Board. Keelyn? Keelyn?

17 MS. WALSH: Good afternoon, members
18 of the Board. I'm Keelyn Walsh, and I'm
19 presenting Rule No. 19-589, Nitrogen Oxides
20 Emission Monitoring, for your consideration.

21 In 1998, U.S. EPA issued the nitrogen
22 oxides, or NOx, SIP Call, which identifies a "good
23 neighbor" provision that prohibits states from

1 emitting pollutants that contribute significantly
2 to nonattainment or interfere with maintenance of
3 the NAAQS in neighboring states. This rule also
4 required SIP revisions from states to address
5 these obligations, but did not mandate any
6 specific approach for how to achieve the required
7 emission reductions.

8 While this provided general compliance
9 flexibility for states, the rule contained two
10 additional provisions that were mandatory for
11 electric -- large electric generating units, or
12 EGU's, and large non-EGU boilers and turbines,
13 which are also referred to as large affected
14 units.

15 The first provision of the NOx SIP call
16 was that any control measures imposed on these
17 types of sources were required to include
18 enforceable limits on the sources' seasonal NOx
19 mass emissions, which could include either limits
20 on individual sources or collective limits on the
21 group of all sources in a state.

22 The second provision required these
23 sources to monitor and report their seasonal NOx

1 mass emissions according to the requirements in
2 the Code of Federal Regulations at 40 CFR 75.

3 Indiana adopted U.S. EPA's NOx Budget
4 Training Program at 326 IAC 10-4 -- I think I
5 said "Training Program." I meant to say "Trading
6 Program"; I'm sorry -- and this was to implement
7 the requirements of the NOx SIP Call. The Trading
8 Program was discontinued in 2008, but the control
9 measures remained in effect.

10 IDEM adopted rules at 326 IAC 10-2 in 2018
11 to enforce the remaining NOx SIP Call requirements
12 that applied to large affected units no longer
13 regulated under a trading program. Large EGU's
14 were addressed in a separate rulemaking and are
15 regulated by the Cross-State Air Pollution
16 Control Rules at 326 IAC 24-5, 24-6 and 24-7.

17 On March 8th, 2019, U.S. EPA published a
18 final rule in the Federal Register that removes
19 the requirement for large fossil fuel boilers
20 that are still regulated by the NOx SIP Call to
21 monitor NOx emissions using the continuous
22 emission monitoring requirements in 40 CFR 75.

23 This rulemaking will revise the

1 requirement for large affected units to monitor
2 emissions as specified in 40 CFR 75, and instead
3 allow these sources to report emissions to IDEM
4 at the end of the ozone season based on emission
5 factors or continuous emission monitoring system
6 data.

7 Several updates have been made to the
8 draft rule language to address the comments
9 received after publication of notice in the
10 Indiana Register. Increased flexibility will be
11 provided to sources that wish to utilize their
12 current data systems to monitor emissions under
13 40 CFR 75.

14 These sources will not be required to
15 submit electronic reporting to U.S. EPA under
16 40 CFR 75, Subpart G, which will allow the
17 sources to avoid additional costs and duplicative
18 reporting. Instead, sources will be subject to
19 the ozone season reporting requirements of NOx
20 emissions at 326 IAC 10-2-8.5(e).

21 Other updates include allowing any
22 combination of monitoring strategies for fuel
23 flow meters, allowing a 45-day time frame for

1 CHAIRMAN GARD: Okay. Do we have
2 anyone signed up to speak?

3 MR. CLEM: We do not.

4 CHAIRMAN GARD: Okay. Is there
5 anyone that wants to raise their hand to speak on
6 this iss -- on this rule?

7 (No response.)

8 CHAIRMAN GARD: I guess not. The
9 hearing is concluded. The Board will now
10 consider final adoption of amendments to
11 326 IAC 10-2, NOx Emissions Monitoring Rule. Is
12 there any Board discussion concerning the rule?

13 (No response.)

14 CHAIRMAN GARD: Is there a motion to
15 final adopt IDEM's proposed rules as presented?

16 MR. DAVIDSON: Calvin Davidson, so
17 moved.

18 CHAIRMAN GARD: Is there a second?

19 DR. ALEXANDROVICH: Joanne
20 Alexandrovich, second.

21 CHAIRMAN GARD: I'll call the roll.

22 Ms. Collier?

23 MS. COLLIER: Yes.

1 CHAIRMAN GARD: Mr. Davidson?

2 MR. DAVIDSON: Yes.

3 CHAIRMAN GARD: Mr. Horn?

4 MR. HORN: Yes.

5 CHAIRMAN GARD: Mr. Bortner?

6 MR. BORTNER: Yes.

7 CHAIRMAN GARD: Dr. Alexandrovich?

8 DR. ALEXANDROVICH: Yes.

9 CHAIRMAN GARD: Mr. Seger?

10 MR. SEGER: Yes.

11 CHAIRMAN GARD: Mr. Rulon?

12 (No response.)

13 CHAIRMAN GARD: Mr. Wasky?

14 MR. WASKY: Yes.

15 CHAIRMAN GARD: Mr. Schuler?

16 (No response.)

17 CHAIRMAN GARD: Mr. -- Mr. Schuler?

18 (No response.)

19 CHAIRMAN GARD: Did he leave?

20 (No response.)

21 CHAIRMAN GARD: Mr. Gilson?

22 MR. GILSON: Yes.

23 CHAIRMAN GARD: Mr. Green?

1 MR. GREEN: Yes.

2 CHAIRMAN GARD: Dr. Niemiec?

3 MR. NIEMIEC: Yes.

4 CHAIRMAN GARD: Mr. Etzler?

5 MR. ETZLER: Yes.

6 CHAIRMAN GARD: The Chair votes aye.

7 MR. SCHULER: Can you hear me?

8 CHAIRMAN GARD: Pardon me?

9 MR. SCHULER: Chairman Gard, Michael
10 Schuler. Did I cut out on you? I could hear
11 you.

12 CHAIRMAN GARD: Yes, you -- yes, you
13 did.

14 MR. SCHULER: Okay. Sorry.

15 CHAIRMAN GARD: How did you vote?

16 MR. SCHULER: Yes.

17 CHAIRMAN GARD: Okay.

18 The rule passes, final adoption, 13 to 0.

19 This is a public hearing before the
20 Environmental Rules Board of the State of Indiana
21 concerning preliminary adoption of amendments to
22 rules at 327 IAC 20, Satellite Manure Storage
23 Structure Rule. The draft rule found in today's

1 Board package is entered into the record of the
2 hearing.

3 Krystal Hackney will present the rule to
4 the Board.

5 Krystal?

6 MS. HACKNEY: Good afternoon, members
7 of the Board. My name is Krystal Hackney, and I
8 am a rule writer in the Rules Development Section
9 within the Office of Legal Counsel.

10 This rulemaking updates certain references
11 throughout the Satellite Manure Storage Structure
12 Rule at 327 IAC 20 for the United States
13 Department of Agriculture Natural Resources
14 Conservation Services Conservation Practice
15 Standards for consistency with the requirements
16 found in the Confined Feeding Operations Rule at
17 327 IAC 19.

18 The alignment of these two rules will
19 eliminate confusion for interested parties and
20 provide consistency in the design and
21 construction of future manure storage structures.
22 Aligning the satellite manure storage structure
23 rule with the confined feeding operations rule by

1 updating these references will ensure that future
2 regulated sources are held to the same standards
3 for the same activities across state rules.

4 IDEM staff have implemented the updated
5 standards for sources permitted under the
6 Confined Feeding Operations Rule at 327 IAC 19.
7 The update to the Natural Resources Conservation
8 Service Conservation Practice Standard 313
9 requires additional engineering considerations
10 and adds a minor expense to the permitted source.

11 There have not been any complaints
12 regarding these expenses from current confined
13 feeding operations permit holders. The minor
14 costs are from the soil strength standards and
15 soil suitability standards for backfill. IDEM
16 expects that the costs to be -- excuse me. IDEM
17 expects the added cost to be negligible, and all
18 of the other updates made in this rulemaking do
19 not impose any additional requirements.

20 IDEM requests that the Board preliminarily
21 adopt this rule as presented, and I am available
22 to answer any further questions that you guys may
23 have.

1 Thank you.

2 CHAIRMAN GARD: Does the Board have
3 any questions for Krystal?

4 (No response.)

5 CHAIRMAN GARD: Thank you, Krystal.
6 Are there any people that signed up to
7 speak, Ryan?

8 MR. CLEM: No, I don't -- no, there
9 are not.

10 CHAIRMAN GARD: Okay.
11 Is there anyone watching that wants to
12 testify?

13 (No response.)

14 CHAIRMAN GARD: Apparently not. The
15 hearing is concluded. The Board will now
16 consider preliminary adoption of amendments to
17 327 IAC 20, Manure -- Satellite Manure Storage
18 Structure Rule. Is there any Board discussion?

19 (No response.)

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

22 MS. COLLIER: So moved, Angelique
23 Collier.

1 CHAIRMAN GARD: Is there a second?

2 MR. GREEN: Second, R. T. Green.

3 CHAIRMAN GARD: I'm going to call the
4 roll, and I'm going to go fast.

5 Ms. Collier?

6 MS. COLLIER: Yes.

7 CHAIRMAN GARD: Mr. Davidson?

8 MR. DAVIDSON: Yes.

9 CHAIRMAN GARD: Mr. Horn?

10 MR. HORN: Yes.

11 CHAIRMAN GARD: Mr. Bortner?

12 MR. BORTNER: Yes.

13 CHAIRMAN GARD: Dr. Alexandrovich?

14 DR. ALEXANDROVICH: Yes.

15 CHAIRMAN GARD: Mr. Seger?

16 MR. SEGER: Yes.

17 CHAIRMAN GARD: Mr. Wasky?

18 MR. WASKY: Yes.

19 CHAIRMAN GARD: Mr. Schuler?

20 MR. SCHULER: Yes.

21 CHAIRMAN GARD: Mr. Gilson?

22 MR. GILSON: Yes.

23 CHAIRMAN GARD: Mr. Green?

1 MR. GREEN: Yes.

2 CHAIRMAN GARD: Dr. Niemiec?

3 MR. NIEMIEC: Yes.

4 CHAIRMAN GARD: Mr. Etzler?

5 MR. ETZLER: Yes.

6 CHAIRMAN GARD: The Chair votes aye.

7 The rule is preliminarily adopted, 13 to 0.

8 Now, this is a public hearing before the
9 Environmental Rules Board of the State of Indiana
10 concerning preliminary adoption of amendments to
11 rules at 329 IAC 10, 329 IAC is 11.5,
12 329 IAC 11.6, and 329 IAC 11.7, Solid Waste
13 Financial Assurance Rule. The draft rule found
14 in today's board packet is entered into the
15 record of the hearing.

16 Dan Watts will present the rule to the
17 Board.

18 Dan?

19 MR. WATTS: Hello?

20 CHAIRMAN GARD: Yes.

21 MR. WATTS: Good afternoon,
22 Chairwoman Gard and members of the Board. I'm
23 Dan Watts of the Rules Development Branch, and

1 I'm presenting LSA Document No. 20-20 for
2 preliminary adoption. The rulemaking makes
3 updates and corrections to address issues in the
4 solid waste facility financial assurance rules
5 across different articles in Title 329.

6 The main amendments in this rulemaking
7 include resolving inconsistencies between the
8 various financial assurance rules, correcting
9 errors in the rule language, revising outdated
10 requirements, providing additional compliance
11 flexibility, and improving IDEM's administration
12 of the financial assurance requirements.

13 Since the draft rule was published in the
14 second notice of comment period, IDEM has made a
15 few changes to the draft rule language, including
16 the addition of more specific requirements for
17 updating closure, post-closure, and corrective
18 action cost estimates and the amount of financial
19 assurance;

20 The removal of the option for doing
21 inflation adjustment in current dollars for
22 closure and corrective action cost estimates due
23 to concerns with making an accurate adjustment

1 for active facilities; and access to current
2 dollars information. This was proposed in the
3 second notice, and we have decided to remove it
4 after some consideration from our program staff;

5 And then allowing notarization by a notary
6 public commissioned in another state, rather than
7 only a notary public commissioned in Indiana.
8 These changes were at IDEM's discretion and not
9 based on any comments received during the comment
10 periods.

11 Representatives from IDEM are available to
12 answer any questions that you may have for this
13 rulemaking.

14 Thank you.

15 CHAIRMAN GARD: Thank you.

16 Are there any questions for Dan or anyone
17 else on the staff?

18 (No response.)

19 CHAIRMAN GARD: Cal, do you have a
20 question?

21 MR. DAVIDSON: No, sorry; I was
22 taking a bite of an apple, and I didn't want to
23 do that on camera.

1 (Laughter.)

2 MR. DAVIDSON: Thanks for asking,
3 though; that was good timing.

4 CHAIRMAN GARD: I saw your thumb up,
5 and I didn't know. Okay.

6 MR. DAVIDSON: No, so far so good.
7 We're still reading through some of it, but
8 getting comments.

9 CHAIRMAN GARD: Okay.
10 Is anyone signed up to speak?

11 MR. CLEM: No.

12 CHAIRMAN GARD: Is there anyone in
13 the audience who wishes to testify on the rule?

14 (No response.)

15 CHAIRMAN GARD: I guess not. The
16 hearing is concluded. The Board will now
17 consider preliminary adoption of amendments to
18 329 IAC 10, 329 IAC 11.5, 329 IAC 11.6, and
19 329 IAC 11.7, Solid Waste Financial Assurance
20 Rule. Is there any Board discussion?

21 (No response.)

22 CHAIRMAN GARD: Is there a motion to
23 preliminarily adopt the rules?

1 (No response.)

2 CHAIRMAN GARD: Is there a motion?

3 MR. HORN: So moved.

4 MR. BORTNER: So moved.

5 CHAIRMAN GARD: Okay. Who -- which
6 one? You spoke at once.

7 MR. BORTNER: I'll defer.

8 MR. HORN: Sen. Gard, Chris Horn --

9 CHAIRMAN GARD: Okay.

10 MR. HORN: -- will move to adopt.

11 CHAIRMAN GARD: Is there a second?

12 MR. BORTNER: Dan Bortner, so moved.

13 CHAIRMAN GARD: Is there any
14 additional Board discussion?

15 (No response.)

16 CHAIRMAN GARD: I'll call the roll.

17 Ms. Collier?

18 MS. COLLIER: Yes.

19 CHAIRMAN GARD: Mr. Davidson?

20 MR. DAVIDSON: Yes.

21 CHAIRMAN GARD: Mr. Horn?

22 MR. HORN: Yes.

23 CHAIRMAN GARD: Mr. Bortner?

1 MR. BORTNER: Yes.

2 CHAIRMAN GARD: Dr. Alexandrovich?

3 DR. ALEXANDROVICH: Yes.

4 CHAIRMAN GARD: Mr. Seger?

5 MR. SEGER: Yes.

6 CHAIRMAN GARD: Mr. Wasky?

7 MR. WASKY: Yes.

8 CHAIRMAN GARD: Mr. Schuler?

9 MR. SCHULER: Yes.

10 CHAIRMAN GARD: Mr. Gilson?

11 MR. GILSON: Yes.

12 CHAIRMAN GARD: Mr. Green?

13 MR. GREEN: Yes.

14 CHAIRMAN GARD: Dr. Niemiec?

15 MR. NIEMIEC: Yes.

16 CHAIRMAN GARD: Mr. Etzler?

17 MR. ETZLER: Yes.

18 CHAIRMAN GARD: The Chair votes aye.

19 The rule is preliminarily adopted, 13 to 0.

20 This is a public hearing before the
21 Environmental Rules Board of the State of Indiana
22 concerning preliminary adoption of amendments to
23 rules at 326 IAC 5-1-8, BP Temporary Alternative

1 Opacity Limitations. The draft rule found in
2 today's Board packet is entered into the record
3 of the hearing.

4 Krystal Hackney will present the rule to
5 the Board.

6 Krystal?

7 MS. HACKNEY: Good afternoon, members
8 of the Board. Again, my name is Krystal Hackney,
9 and I am a rule writer in the Rules Development
10 Section within the Office of Legal Counsel.

11 This rulemaking amends 326 IAC 5
12 concerning temporary alternative opacity
13 limitations for BP Products North America,
14 Incorporated Whiting Refinery located in Lake
15 County, Indiana Source ID 089-00453. The
16 amendments of the opacity limitations during
17 startup, shutdown, and hot standby events will
18 only positively impact the source. BP Whiting
19 Refinery benefits by reducing the risk of fire or
20 explosion from operation of the electrostatic
21 precipitator control device during these unique
22 operating scenarios.

23 BP Whiting Refinery's fluidized catalytic

1 cracking units are subject to temporary
2 alternative opacity limitations under
3 326 IAC 5-1-3 that generally apply to boilers
4 when building a new fire or shutting down, as
5 identified in the current Title V operating
6 permit. This rulemaking increases worker safety
7 by allowing the two fluidized catalytic cracking
8 units to have a temporary alternative opacity
9 limitation during these nonroutine events.

10 IDEM has reviewed available information to
11 establish a temporary alternative opacity
12 limitation that will ensure that the temporary
13 alternative opacity limitation will not impact
14 maintenance of the National Ambient Air Quality
15 Standards. To remain compliant during this
16 rulemaking, BP Whiting Refinery requested a
17 variance from 326 IAC 5-1-3 during startup,
18 shutdown, and hot standby events.

19 IDEM requests that the Board preliminarily
20 adopt this rule as presented. I am available to
21 answer any further questions that you may have.

22 Thank you.

23 CHAIRMAN GARD: Does the Board have

1 any questions for Krystal?

2 (No response.)

3 CHAIRMAN GARD: Is anyone signed up
4 to speak?

5 MR. CLEM: There are none.

6 CHAIRMAN GARD: Does anyone wish to
7 testify on the rule that's with us today?

8 (No response.)

9 CHAIRMAN GARD: The hearing is
10 concluded. The Board will now consider
11 preliminary adoption of amendments to
12 326 IAC 5-1-8, BP Temporary Alternative Opacity
13 Limitations. Is there Board discussion?

14 (No response.)

15 CHAIRMAN GARD: Is there a motion to
16 preliminarily adopt the rules?

17 MR. GREEN: This is R. T. Green. I
18 so move.

19 CHAIRMAN GARD: Is there a second?

20 MS. COLLIER: Angelique Collier --

21 MR. DAVIDSON: Calvin Davidson.

22 MS. COLLIER: -- second.

23 CHAIRMAN GARD: Ms. Collier -- I'm

1 calling the roll. Ms. Collier?

2 MS. COLLIER: Yes.

3 CHAIRMAN GARD: Mr. Davidson?

4 MR. DAVIDSON: Yes.

5 CHAIRMAN GARD: Mr. Horn?

6 MR. HORN: Yes.

7 CHAIRMAN GARD: Mr. Bortner?

8 MR. BORTNER: Yes.

9 CHAIRMAN GARD: Dr. Alexandrovich?

10 DR. ALEXANDROVICH: Yes.

11 CHAIRMAN GARD: Mr. Seger?

12 MR. SEGER: Yes.

13 CHAIRMAN GARD: Mr. Wasky?

14 MR. WASKY: Yes.

15 CHAIRMAN GARD: Mr. Schuler?

16 MR. SCHULER: Yes.

17 CHAIRMAN GARD: Mr. Gilson?

18 MR. GILSON: Yes.

19 CHAIRMAN GARD: Mr. Green?

20 MR. GREEN: Yes.

21 CHAIRMAN GARD: Dr. Niemiec?

22 MR. NIEMIEC: Yes.

23 CHAIRMAN GARD: Mr. Etzler?

1 MR. ETZLER: Yes. I was on mute.

2 CHAIRMAN GARD: The Chair votes aye.
3 The rule is preliminarily adopted, 13 to 0.

4 Today we have a presentation of a nonrule
5 policy applicability of RCRA Corrective Action
6 Laws to Current owners of Hazardous Waste Sites.
7 Mr. Don Syltz [sic] will present the policy to
8 the Board.

9 How do you pronounce your last name?

10 MR. STYLZ: It is pronounced Stylz,
11 Madam Chair.

12 CHAIRMAN GARD: Stylz; okay. Thank
13 you.

14 MR. STYLZ: Good afternoon, members
15 of the Board. My name is Don Stylz. I am the
16 Section Chief of the Hazardous Waste Permits
17 Section in the Office of land quality.

18 I am here today to present the Nonrule
19 Policy Document MP-008-NPD-R, which pertains to
20 the applicability of RCRA Corrective Action Laws
21 to Current Owners of Hazardous Waste Sites. The
22 NPD outlines factors that may be considered when
23 determining who is responsible for addressing

1 cleanups at former hazardous waste facilities
2 where operations have ceased.

3 The NPD was put out for public comment.
4 We did not receive any comments, and the NPD has
5 not been changed since. I am available for any
6 comments, and beyond that, thank you for your
7 time.

8 CHAIRMAN GARD: Okay. Thank you.
9 Are there any questions for Mr. Stylz?

10 (No response.)

11 CHAIRMAN GARD: Okay. The Board
12 packet contains a draft policy for partially
13 remote Environmental Rules Board meetings as
14 allowed by IC 5-14-1.5-3.6 if this Board adopts
15 an inappropriate policy. Nancy King will explain
16 the statute and options for Board action.

17 MS. KING: Thank you, Chair Gard.

18 Members of the Board, we have provided for
19 you the statute that allows us to discuss whether
20 we want to adopt such a policy. Based on the
21 past year, where we have learned to be able to
22 work remotely through Zoom and other aspects of
23 things, we -- this statute has been in place for

1 some time.

2 We have actually adopted a similar policy
3 for our Recycling and Marketing Development Board
4 shortly before COVID hit, if I recall correctly,
5 but we wanted to provide you with the option and
6 opportunity to be able to discuss whether you, as
7 a Board, would like to put in place such a
8 policy.

9 So -- because right now, as many of you
10 know, the public health emergency can only be
11 reup'd every 30 days. So, we don't know how long
12 we'll remain in a public health emergency.
13 That's what allows this Board to be able to meet
14 completely remotely, and it's allowed us to do
15 the business of the agency, which is great. But
16 with that in mind, and knowing that at some point
17 that's going to end, we thought we should try to
18 plan ahead for that.

19 And so, what we have provided for you is
20 basically a draft of what the statute allows and
21 what the statute requires for such a policy. And
22 as I spoke with Chair Gard about this, it's
23 certainly up to you as to what you would like

1 your policy to look like and the timing within
2 which you would like to consider it. We didn't
3 want to just sort of throw it into the Board
4 packet and say, "Let's hurry up and get something
5 in place," without giving you the opportunity to
6 really look at it and decide what makes sense.

7 There are a couple of options that you
8 might want to consider for today. If you felt
9 like you wanted to have something in place, you
10 could consider just adopting sort of the bare
11 bones, what the statute requires to be in there,
12 and use this as sort of a template to decide what
13 you'd like to do with that. That could always be
14 amended at a future meeting, or you could, you
15 know, talk amongst yourselves as to what you
16 think makes sense.

17 I wanted to give you the opportunity to
18 view what it would look like, as well as the
19 statute, before our meeting today, but then give
20 you the opportunity to talk about it today and
21 make a determination of what you'd like to do.

22 So, that's -- I'm happy to answer any
23 questions you have about it, but that's kind

1 of -- the impetus for this is sort of planning
2 ahead for the future, now that we know that we
3 have the capability of having successful remote
4 meetings. Clearly we wouldn't be completely
5 remote under this, that's not allowed under the
6 current law.

7 And to my knowledge, there wasn't any real
8 review of Open Door Law under this particular
9 legislative session. I would guess that that --
10 based on what we're going through right now, that
11 might be something that happens in the future,
12 but as of right now, this is our ability to plan
13 to be a bit more flexible in the future if we
14 would like to.

15 CHAIRMAN GARD: Nancy?

16 MS. KING: Yeah.

17 CHAIRMAN GARD: Have -- during this
18 whole pandemic, has it always been a requirement
19 that this cannot -- every 30 days you have to
20 renew the emergency, or is that new in this new
21 statute --

22 MS. KING: Now --

23 CHAIRMAN GARD: -- that this

1 legislature passed?

2 MS. KING: -- can only reup a public
3 health emergency in 30-day increments. That's
4 been the law, so --

5 CHAIRMAN GARD: That's been the law?

6 MS. KING: Yeah.

7 CHAIRMAN GARD: So, they didn't --

8 MS. KING: And I honestly don't know
9 what the new law -- I have not looked at all of
10 that yet to determine how his powers may change,
11 and I have not reviewed that. This is just based
12 on the existing structure that we currently have.

13 CHAIRMAN GARD: Okay. So, at this
14 point, until we read the new law, we really don't
15 know if it's the legislature or the Governor that
16 has to declare an emergency?

17 MS. KING: Right. I do know that
18 this particular aspect of the Open Door Law has
19 not changed in this legislative session, so
20 this -- what we have right now is what we would
21 be working with, at least in the foreseeable
22 future.

23 CHAIRMAN GARD: Okay.

1 Are there -- are there -- is there
2 discussion of this, how much you would like to
3 adopt today, if you want to adopt anything? How
4 do some of you feel about it?

5 MR. ETZLER: Nancy, I have a
6 question. Currently we are not allowed to attend
7 meetings remotely; is that correct?

8 MS. KING: Right. I mean you can --
9 this policy allows for partial remote attendance.

10 MR. ETZLER: Okay. But currently,
11 absent the emergency order, we don't have the
12 ability --

13 MS. KING: That is correct, yes.

14 MR. ETZLER: -- to attend remotely?
15 Okay.

16 MS. KING: Uh-huh.

17 CHAIRMAN GARD: I can see a real
18 value to this, particularly during the winter
19 months, since we have people coming from
20 different directions in the state, and weather --
21 weather emergencies and things like that. I can
22 really see this being of value during that. I
23 doubt it would be used as much during the summer,

1 unless somebody wanted to come to the meeting
2 remotely on their vacation.

3 MR. ETZLER: And Nancy, the way we've
4 been operating, typically we've had four meetings
5 per year, I believe.

6 MS. KING: That's been the standard
7 for the last couple of years now, yeah.

8 MR. ETZLER: Yeah. Okay. Well, I
9 guess the only thing that I would propose is that
10 under item 2, that instead of one meeting
11 annually, that that be changed to two. I am in
12 favor of allowing for members to attend remotely,
13 but I think we are all better served if we can
14 attend as many meetings in person when they are
15 allowed as we possibly can.

16 CHAIRMAN GARD: Any other thoughts on
17 that?

18 MR. GREEN: This is R. T. Green. The
19 question I have: There has to be six -- at least
20 six folks at the meeting for the remaining
21 Commission members to attend remotely; is that
22 correct?

23 MS. KING: That's correct.

1 MR. GREEN: So, what happens if only
2 five show up and everybody else is -- wants to
3 attend remotely?

4 MS. KING: That wouldn't -- the
5 meeting wouldn't be valid, presumably. It would
6 violate Open Door, essentially, so I would
7 imagine, based on how I know the Attorney General
8 reviews our rules, that any action the Board
9 would take would be invalidated eventually.

10 MR. GREEN: So -- and six is the
11 magic number. We couldn't --

12 MS. KING: That's -- yeah, that's
13 what the -- I'm looking at the draft instead of
14 the statute, but yes, currently that is the
15 number in the statute. Where is it? Well,
16 it's --

17 MR. ETZLER: It is a third, Nancy.

18 MS. KING: Yeah, it's actually --
19 yeah, it's a percentage. That's what I was
20 trying to pull out of this.

21 MR. GREEN: Oh, okay.

22 MS. KING: So, it's a percentage --

23 MR. GREEN: So, to make it work --

1 MS. KING: -- of our total of the
2 Board.

3 MR. GREEN: Okay. All right. That's
4 the only question I have. That's fine.

5 CHAIRMAN GARD: So, what Bill said
6 about -- he preferred two.

7 And Bill, you're saying that each
8 individual would be allowed two times, or do you
9 mean something else?

10 MR. ETZLER: No, what I was saying is
11 that I believe that we should require members to
12 attend at least two meetings in person.

13 CHAIRMAN GARD: Okay. Okay. Yeah,
14 I -- I don't think that's too much to ask,
15 really.

16 MS. KING: Well, and I also should
17 point out that, you know, this is -- would just
18 be a policy that this Board could amend at any
19 time, if any Board members had -- again, based
20 on -- within the limits of the law, amend at any
21 time to -- if we had to, for example, start
22 having more frequent Board meetings, that might
23 make a difference as far as how something --

1 again, this might -- you might want it to look.
2 So, this really is about you as a Board deciding
3 what makes sense for you, and just having that
4 option by merely having this policy adopted.

5 MR. ETZLER: Yeah. My -- well, my
6 other suggestion was going to be 50 percent of
7 the meetings, but considering that we don't
8 really know how many meetings we will have
9 annually, I would opt for two as the minimum.

10 MS. KING: Well, and I think that
11 covers the Board for -- certainly in the near
12 future. We don't have plans to start, you know,
13 back to having meetings every month or anything.
14 That's just based on the timing it takes us to
15 get things through the process. So, that -- at
16 this point in time, we just don't have enough
17 rules for that to be, you know, an issue.

18 There may be times when we have something
19 that is coming up quickly that we want to get
20 done, and may -- and that may change our timing
21 of our Board meetings, but I think that we've
22 been fairly consistent for the last few years.
23 So, again, it could -- you could change it at any

1 time that you wanted as well.

2 CHAIRMAN GARD: I don't think there
3 are any provisions in here, that I recall
4 reading, about how far in advance you need to
5 give notice that you're going to do it remotely.
6 I realize if it's a snowstorm, you don't know too
7 far in advance, but, you know, I'm talking hours,
8 not days.

9 MS. KING: Well, I think that that's
10 something, too, that, you know, based -- for
11 example, based on the fact that we have our --
12 our process is we get our Board packets out two
13 weeks before the Board meeting.

14 I'm not quite sure when Karla calls to
15 sort of check to see what the quorum's going to
16 be. We could, you know, just set an informal
17 deadline, sort of the guidelines of the Board,
18 that if you -- after you receive your Board
19 packet, within, you know, a week, like a week
20 before the Board meeting or something like that,
21 if you have a request to meet remotely, you know,
22 then that would give us time to make sure that we
23 would be able to meet the requirements of this

1 and get something in place. I don't know.
2 That's just -- just a thought in terms of how you
3 could handle the timing of that.

4 But -- and you could put that within --
5 you know, you can put that within your policy, or
6 we can just have it as sort of the part of the
7 communication that we have with you Board Members
8 that, you know, when we're checking on the
9 quorum, if someone would -- you know, has an
10 issue where they would like to be able to attend
11 remotely, after the public emergency's over,
12 then, you know, we just make sure that we don't
13 have seven instead of six asking to not attend in
14 person.

15 CHAIRMAN GARD: Uh-huh. You know,
16 that's probably not a bad idea. You know, and I
17 think in a situation -- say someone has a hip
18 replacement, and, you know, they feel -- they're
19 up and around their house and they feel fine,
20 except they can't -- they're not mobile --

21 MS. KING: Right.

22 CHAIRMAN GARD: -- enough to come
23 downtown. That's a great example. And a couple

1 of people are -- have their hands raised.

2 Ryan?

3 MR. CLEM: Yeah. Ted, Ted Niemiec.

4 CHAIRMAN GARD: Okay.

5 MR. NIEMIEC: Okay. I just have a
6 quick comment, which is: I would be in agreement
7 with either one or two meetings per year, as far
8 as the number goes, that they be required to
9 physically attend; otherwise, I'm personally good
10 with everything on that first side of this draft
11 policy.

12 Thank you.

13 CHAIRMAN GARD: Okay.

14 Dr. Alexandrovich?

15 DR. ALEXANDROVICH: Thanks.

16 There are pluses and minuses to having
17 these remote meetings. Given the fact that it
18 takes me three-plus hours to get to Indy, I've
19 kind of appreciated not having the rubber hit the
20 road, but I also -- I kind of disagree with Bill
21 about the two meetings, because I don't think
22 we've actually had necessarily a meeting every
23 quarter over the last couple of years.

1 So, things can come up and, you know, it's
2 like, "Oops, I'm missing -- you know, I've got to
3 be there for two meetings," and something
4 happens. So, I was thinking when it was just one
5 is like, "What if something happens?" And so,
6 say we put that in place, either one or two. So,
7 does the Board member get booted off if they mess
8 up this electronic meeting policy?

9 MS. KING: I would sincerely doubt
10 it.

11 COMM. PIGOTT: Yeah, I don't think
12 that's a good idea.

13 MS. KING: I don't think that's in
14 the statute for the ways you can get booted off
15 the Board.

16 DR. ALEXANDROVICH: So -- yeah. So,
17 that requirement, then, is a little bit just
18 wishy-washy.

19 (Laughter.)

20 MS. KING: And it's a reason to have
21 the legislature take a look at the way it's
22 written.

23 CHAIRMAN GARD: Any thoughts from the

1 rest of you on whether or not we should limit the
2 number of meetings someone can be remote during
3 the course of one year?

4 MR. GILSON: This is Paul Gilson.
5 I'm supportive of it as written, including just
6 the requirement for one -- one meeting per year.

7 CHAIRMAN GARD: Okay.

8 MR. GILSON: I can get -- it
9 encourages inclusive, you know, participation.

10 CHAIRMAN GARD: Yes, it does.

11 Anyone else?

12 MR. DAVIDSON: This is Calvin. I
13 would only ask, under paragraph (g), looks like
14 about down around (5), it talks about the remote
15 voter not being the deciding vote. Does that
16 have any impact, or am I overreading something
17 into that? Can somebody maybe help me out with
18 why -- why does that read the way that reads?
19 And does that have any impact about our desire to
20 gather or not?

21 CHAIRMAN GARD: Nancy?

22 MS. KING: I'm looking at it.

23 MR. DAVIDSON: You know, we have so

1 many hotly contested --

2 MS. KING: Right.

3 MR. DAVIDSON: -- votes.

4 COMM. PIGOTT: Yeah, that's what I
5 was going to say, Cal. It's often not --

6 MR. DAVIDSON: Hey, I'm thinking --
7 I'm thinking about becoming that guy. See, you
8 never know. If I start voting no a lot, you
9 never -- I don't want to be the deciding vote.

10 MS. KING: I certainly don't want to
11 thwart your ability to be the contrarian, Cal.

12 DR. ALEXANDROVICH: He's already been
13 one.

14 MR. DAVIDSON: Yeah.

15 COMM. PIGOTT: That's right.

16 MS. KING: You know, I honestly -- I
17 mean all kidding aside, I don't -- I don't think,
18 based on our issues with our votes generally, you
19 know, it would be an issue for us, but I do think
20 that it points out that it's something that we
21 need to be aware of whenever we vote. And it's
22 sort of, you know, tedious, and certainly with
23 remotes, I know this becomes tedious for all of

1 us, that everything -- and with Roberts Rules of
2 Order -- requires the roll-call vote. So,
3 tedious though it is, it also allows us to
4 pinpoint that if it were to happen. So, there is
5 that benefit to it.

6 CHAIRMAN GARD: Anyone else?

7 MR. NIEMIEC: This is Ted Niemiec.
8 Just to be clear, I know that it was discussed as
9 an option, which is on side two, and I don't know
10 if the -- I think the Board should discuss
11 whether they even want any of those options a
12 through e.

13 MS. KING: Yeah, none --

14 DR. NIEMIEC: From my viewpoint --

15 MS. KING: -- of those are required.

16 MR. NIEMIEC: Right. From my
17 viewpoint, the front page as written, which is
18 items 1 through 9, are sufficient. The only
19 thing I would recommend is to just check it in
20 advance, what would be the consequences if there
21 was one member that was planning to go to the
22 final meeting of the year and doesn't make it
23 there, is it that they cannot vote, or -- you

1 know, basically you just want to check that in
2 advance. But otherwise, from my viewpoint, I'm
3 good with just the items on the front page, 1
4 through 9, as written.

5 Thank you.

6 CHAIRMAN GARD: Any --

7 MS. KING: And I'd also sort of like
8 to point out that this language in the statute is
9 pretty old, relatively speaking, sort of before
10 the ability to have Internet meetings and
11 actually see people. It was when you were
12 basically going to be on a phone line. And in
13 fact, that issue, years and years ago, did come
14 up with one of our boards when we had individual
15 boards for the media, someone who I believe was
16 sort of, as you mentioned, kind of incapacitated
17 at home wanted to be able to attend by phone, and
18 it wasn't allowed. So, yeah, that -- I think
19 that also makes a bit of a difference.

20 CHAIRMAN GARD: Any other -- any
21 other thoughts on this?

22 (No response.)

23 CHAIRMAN GARD: Then, you know, I'm

1 really fine with 1 through 9.

2 MR. NIEMIEC: If there's no further
3 discussion -- this is Ted Niemiec -- I make a
4 motion to approve, in whatever way we can, these
5 items 1 through 9 on the front page. And Nancy,
6 you can let us know if that's -- that we adopt it
7 as it is, and whether we have to say that this is
8 a final adoption subject to further change or
9 whatever it is, but I move that we adopt that
10 page one that's the front of that page, which is
11 items 1 through 9.

12 MS. KING: Thank you, Ted. I think
13 based on the statute, your motion and a Board
14 vote is really all we need, and we can prepare
15 the document as you have stated here to provide
16 to you for the next Board meeting, to show what
17 the policy is.

18 And as noted in here, we will also have it
19 published, put up on our Web site as well. So,
20 we will make sure that it -- we'll allow you to
21 see it to make sure that it correctly reflects
22 what the Board is voting on, and then we'll put
23 it on our Web site as your policy.

1 CHAIRMAN GARD: Okay. Well, there's
2 a motion on the floor. Is there a second?

3 MR. WASKY: This is Mark Wasky,
4 second.

5 CHAIRMAN GARD: Okay. I think -- I
6 think this is a good idea to get this in place.
7 You know, hopefully this emergency isn't going to
8 be in place too much longer, and so it'll be nice
9 to have this in place when that is finally --
10 finally lifted. So, we'll call the roll.

11 Ms. Collier?

12 MS. COLLIER: Yes.

13 CHAIRMAN GARD: Mr. Davidson?

14 MR. DAVIDSON: Yes.

15 CHAIRMAN GARD: Mr. Horn?

16 MR. HORN: Yes.

17 CHAIRMAN GARD: Mr. Bortner?

18 MR. BORTNER: Yes.

19 CHAIRMAN GARD: Dr. Alexandrovich?

20 DR. ALEXANDROVICH: Yes.

21 CHAIRMAN GARD: Dr. Seger -- or

22 Mr. Seger?

23 MR. SEGER: Yes.

1 CHAIRMAN GARD: Mr. Wasky?

2 MR. WASKY: Yes.

3 CHAIRMAN GARD: Mr. Schuler?

4 MR. SCHULER: Yes.

5 CHAIRMAN GARD: Mr. Gilson?

6 MR. GILSON: Yes.

7 CHAIRMAN GARD: Mr. Green?

8 MR. GREEN: Yes.

9 CHAIRMAN GARD: Dr. Niemiec?

10 MR. NIEMIEC: Yes.

11 CHAIRMAN GARD: Mr. Etzler? The

12 Chair --

13 MR. ETZLER: Yes.

14 CHAIRMAN GARD: -- votes aye. So,
15 the motion is adopted, 13 to 0.

16 Okay. Now we need to have the Water
17 Quality Standards presentation. We have a
18 presentation by Eileen Hack from IDEM's Office of
19 Water Quality on current and planned activities
20 that will affect Indiana's Water Quality
21 Standards. And so, let's go ahead with that.

22 Eileen?

23 MS. HACK: Good afternoon. I'll go

1 ahead and bring up the presentation. So, good
2 afternoon, members of the Board and member [sic]
3 of the public that are here for this meeting.
4 This is an overview of Indiana's Water Quality
5 Standards Review for 2021.

6 So, what is a Water Quality Standards
7 Review? The Clean Water Act requires that
8 states, every three years at least, review their
9 Water Quality Standards, and it's an opportunity
10 for the state agency and the public to comment on
11 the need for revisions, additions, or other
12 changes to Indiana's Water Quality Standards, and
13 the public comment period for this extends
14 through May 23rd of this year.

15 So, what are Water Quality Standards that
16 we are considering? There are three parts of
17 Water Quality Standards, like three legs of a
18 stool, and that includes designated uses, those
19 are things like protection of aquatic life,
20 recreation, drinking water uses, agricultural
21 uses, industrial uses, among other uses.

22 And then there are criteria to protect
23 those designated uses, and those include

1 narrative criteria, such as the free form that
2 are in our rule, and also numeric criteria, so
3 numbers.

4 And finally there's an antidegradation
5 requirement that we have in rule that's there to
6 help maintain the level of water quality to
7 protect those designated uses.

8 So, in our surface water quality standards
9 in Indiana, we actually have two sets of rules.
10 We have one set for waters outside of the Great
11 Lakes System. These were adopted and approved by
12 EPA in 1990. We call these -- refer to these as
13 the downstate rules. And then we have waters --
14 a rule for waters that are within the Great Lakes
15 System, and these were adopted in 1997, and this
16 was part of a binational agreement with EPA and
17 Canada to protect the Great Lakes waters.

18 And these -- the states that have
19 watersheds in the Great Lakes waters all adopted
20 these rules, and there are differences between
21 these two sets of rules. The criteria are
22 different in some cases. The methodology to
23 describe criteria that are not in rule are

1 different, and there are, again, specific
2 requirements for Great Lakes states and provinces
3 that apply to those waters that don't really
4 apply to downstate waters.

5 So, the surface water quality standards
6 are really the foundation of regulatory actions
7 that IDEM has for permitting, compliance,
8 enforcement, and also for monitoring and
9 assessing the water quality of our state waters.

10 When we think about proceeding with
11 rulemakings for our waters, one of our
12 overarching priorities is, whenever possible, to
13 try to have consistent rules between these two
14 sets of rules, and that is not always going to be
15 possible, because the Great Lakes System rules
16 includes procedures and requirements and criteria
17 specific to the Great Lakes Basin. But when it
18 is possible, that is something that we consider
19 and try to work through.

20 The last Water Quality Standard Review
21 that we held was in 2018, and I'm going to
22 discuss two -- the two major sets of comments
23 from that and what IDEM is doing about that.

1 So, the first set of comments was to adopt
2 the 2013 EPA recommended National Water Quality
3 Criteria for Ammonia, for the protection of
4 aquatic life, and IDEM is researching how to
5 implement those criteria that -- which is an
6 update of our current criteria, across a
7 wide-ranging variety of wastewater treatment
8 systems in the state, and we're working with
9 other Region V states and other states on
10 developing some possible solutions so that we can
11 move forth with these rules.

12 The other set of suggestions was to adopt
13 these cri -- that criteria for nutrients,
14 especially for total phosphorous. So, the Water
15 Quality Standards for -- the National Recommended
16 Water Quality standards for nutrients date from
17 the early 2000's, and they're based on an
18 ecoregion approach.

19 Recently EPA proposed lake numeric
20 nutrient criteria, and we are currently working
21 with headquarters and with Region V states on
22 exploring these criteria and whether they could
23 be applied to a -- subsets or -- it's a very

1 different option kind of to protect different
2 designated uses. So, we're currently exploring
3 those, but those rules are not final -- or that
4 criteria is not finalized yet.

5 Regarding rivers and streams, IDEM has
6 been continuing to collect data and reviewing
7 data for adopting criteria in rivers and streams.

8 The other area in water quality standards
9 that we're working on, which will be discussed
10 later, is the combined sewer overflow community
11 petition to adopt the 2012 recreational criteria,
12 and we will discuss more on that topic later, but
13 IDEM has been working with those communities for
14 additional post-long-term control plan solutions
15 for their communities.

16 One thing IDEM did do was, back in 2007,
17 we implemented a wet-weather limited-use
18 designation for communities that had fully
19 implemented their long-term control plan, and so
20 we are exploring with these communities ways that
21 they can implement that in their communities, in
22 addition to some other options.

23 So, I'll briefly go over what -- IDEM has

1 developed a list of potential criteria updates
2 that we are considering, and looking for comments
3 from the public on any priorities that they may
4 have, and from the Board as well.

5 But one of the topics is to update the
6 downstate procedures, our methodology for
7 calculating aquatic life criteria for substances
8 where EPA hasn't published national recommended
9 water quality criteria. And we would like -- we
10 would -- it would be good to update the
11 methodology to reflect the current U.S. EPA
12 guidance, which dates from 1985, so our
13 guidance -- our methodology is outdated.

14 We use these methodologies to derive water
15 quality criteria for substance that aren't rule
16 that could adversely impact aquatic life for
17 instance, in permitting situations, when there
18 are chemicals that there are not water quality
19 criteria for in rule.

20 EPA has adopted a number of -- or
21 recommended, I should say -- a number of aquatic
22 life criteria for substances that we have not
23 adopted since the Year 2000, and they include

1 Aquiline, the pesticides Carbonyl and Diazinon,
2 the estrogenic compound Nonylphenol, and
3 Tributyltin, which is a toxic used for descaling.
4 And this is water -- for water -- and we were --
5 these could be adopted for waters within and
6 outside the Great Lakes System.

7 We also have on our list updating the
8 current Indiana water quality standard variance
9 rules to reflect U.S. EPA's updated variance
10 rule, and variances are a regulatory mechanism
11 that allows progress towards attaining a
12 designated use or a criterion that currently
13 isn't attainable by a permittee or a community.

14 And it's a legal bridge between a water
15 quality standard and a permit limit, and it
16 allows for things like longer terms or applying
17 this variance to multiple discharges, for
18 instance. And it would allow flexibility for us
19 in implementing some of the rules criteria.

20 You know, EPA, in 2015, updated their
21 procedures for calculating human health criteria.
22 Specifically, they updated not the formulas, but
23 they updated the exposure assumptions that are

1 used for that, such as the body weight drinking
2 water consumption rate and some of the other
3 exposure assumptions that are used in calculating
4 criteria. They also updated reference doses for
5 some of the chemicals that have criteria, so this
6 would be something else we could consider
7 adopting.

8 And at the same time, they adopted using
9 these new exposure assumptions, new and updated
10 human health national recommended water quality
11 criteria, for 94 chemical pollutants.
12 Forty-seven of those are in our downstate rules,
13 and these -- so, these would -- this would impact
14 those criteria, and then we could consider
15 adopting the other 47 in the downstate, and we
16 would have to consider whether these were
17 appropriate for the Great Lakes.

18 We also have on our list removing the
19 limited use waters classification in waters
20 designated -- or waters classified for limited
21 use in both the downstate and the Great Lakes
22 rules.

23 And finally, we're considering adopting

1 the 2018 national recommended water quality
2 criteria for aluminum, for the protection of
3 aquatic life. We had proposed adopting an
4 aluminum criteria as part of our metals
5 rulemaking, but it was not consistent or -- with
6 the 2018 -- what EPA ended up adopting -- the
7 proposal to adopt the aluminum criteria, and
8 instead are proposing to adopt EPA's 2018 at a
9 later time.

10 And that's what our presentation is, and
11 if anyone has any questions, we'd be happy to
12 answer them, or if they have any comments, we'd
13 be eager to hear them as well.

14 CHAIRMAN GARD: Does anybody have any
15 questions concerning this?

16 (No response.)

17 CHAIRMAN GARD: Well, I have -- I
18 have one question. With the new wetlands
19 legislation, since Categories 1 and 2 will not be
20 protected anymore, and we know that wetlands
21 filter -- filter water, is that going to make a
22 difference in some of the water bodies in the
23 state, whether it be a lake or a stream?

1 MS. HACK: Well, it would be hard --
2 I would say it would, because they do -- that is
3 one of the functions that's very important for
4 wetlands in that they do filter and sometimes
5 biotransform pollutants so that they don't reach
6 surface water, and they're often used as
7 treatment systems for surface waters, actually.
8 They'll put them along surface waters as a
9 treatment to -- as a filter -- as a potential
10 filter for that surface water.

11 So, yes, I do think that there could be
12 impacts to that, although I couldn't exactly say
13 what those would be, but they definitely do help
14 with water quality, and they also help with --
15 may not necessarily with -- well, also drinking
16 water. They protect groundwater supplies as
17 well. So, I do think there could potentially be
18 an impact, yes.

19 CHAIRMAN GARD: Well, that -- you
20 know, they never discussed that, to my knowledge,
21 and it just occurred to me during your
22 presentation that that could have -- over time,
23 and it won't happen initially with just a few,

1 but over time, as more and more are destroyed,
2 why, it looked like it could have an impact on
3 what you do.

4 Any other questions or comments?

5 (No response.)

6 CHAIRMAN GARD: Okay.

7 Thank you so much, Eileen.

8 MS. HACK: Thank you.

9 CHAIRMAN GARD: This is a public
10 hearing before the Environmental Rules Board of
11 the State of Indiana concerning Indiana's water
12 quality standards. A notice of review of water
13 quality standards and public hearing was
14 published in the March 24th, 2021 Indiana
15 Register seeking public comment on any aspect of
16 current water quality standards.

17 Are there any commenters? Anyone fill out
18 a card to speak on this?

19 MR. CLEM: No, I don't see any.

20 CHAIRMAN GARD: Anybody else wish to
21 testify?

22 (No response.)

23 CHAIRMAN GARD: Well, then the

1 hearing is concluded, and there is no Board
2 action required related to this hearing.

3 Martha Clark Mettler will present
4 information on Selenium Criterion related to the
5 Metals Criteria rulemaking that will come before
6 the Board for final adoption at an upcoming
7 meeting.

8 Martha?

9 MS. METTLER: Yes. Thank you. Thank
10 you, Chair Gard and all of the members of the
11 Board for giving me this opportunity to kind of
12 give you a little more information about the
13 proposed changes to our selenium criteria. The
14 agency recognizes the complexity of this
15 particular criteria change, and if you even
16 slightly perused the comments that we've received
17 on second notice and the preliminary rule, you
18 will see that many of them focus on selenium.

19 So, we were kind of brainstorming and
20 trying to figure out a way to help you all
21 understand a little better, so we created that
22 information sheet, which we shared with you
23 before the meeting, and I'm just going to kind of

1 hit some highlights of that and see if we can
2 answer any questions or help in that way.

3 But before I launch into that, I just want
4 to thank Eileen for doing an excellent job of
5 presenting our Water Quality Standards Review. I
6 very much appreciate that from her.

7 So, one question you might have is, you
8 know, why did EPA even change their
9 recommendations on selenium? And so, they
10 constantly are reviewing their water quality
11 standards recommendations, reviewing the science
12 that they use for that. They are shifting way
13 more to a focus of looking at kind of susceptible
14 species, areas of concern that -- where exposure
15 to the chemicals that they're reviewing could
16 cause problems.

17 And so, in this case, they focused on the
18 fish eggs particularly of certain species that
19 were particularly susceptible, which are the
20 sturgeon lake fishes, and then to translate that
21 into something we could use for dischargers and
22 permits and other evaluations.

23 We want to be able to look at a

1 concentration in water that would be appropriate,
2 so they translated the -- they provided not only
3 an egg criterion, but also one for fish tissue,
4 and then translated that and provided criterion
5 for what metals are appropriate in water.

6 All of it is particularly relevant to
7 selenium as well as other parameters, but because
8 it's bioaccumulative, so it collects in the eggs,
9 which can then be eaten and bioaccumulate in not
10 only fish, but in wildlife and birds, and then
11 eventually, as we, as humans, eat the fish, it
12 could bioaccumulate in us as well.

13 So, they established these revised
14 criteria to be protective of all of those things,
15 so it creates for a complicated criterion that
16 we -- when we reviewed our water quality criteria
17 for metals in developing this rulemaking, we
18 realized that our downstate number in particular
19 was not even close to being protective. It was
20 orders of magnitude different, and so, it needed
21 to be changed.

22 Initially we thought we could just do a
23 water quality number consistent with what was in

1 the Great Lakes, because it was a more
2 reasonable, appropriate number for water quality
3 at five, and we got feedback from stakeholders
4 that wanted the opportunity to use those other
5 end points, because once you translate from eggs
6 to fish, you add a layer of conservatism, and
7 then from fish to water there's another.

8 So, that -- as dischargers and those that
9 may be impacting selenium levels in water, they
10 wanted the opportunity to demonstrate that, "Oh,
11 well, it is really still safe when we look at
12 fish or even eggs." But people aren't really
13 thinking about doing that, because collecting and
14 verifying using fish eggs is a very complicated
15 process. But we wanted, based on their request,
16 to provide them with that opportunity, so that is
17 why we have moved forward with the change of
18 adopting the recommended criteria by EPA.

19 One of the other options that we wanted to
20 provide is -- because they were established to be
21 protective, as I said, the sensitive sturgeon
22 species, we want to provide an opportunity if you
23 could demonstrate that you were discharging in an

1 area where there aren't any sturgeon, that you
2 could kind of skip some steps and use a non -- a
3 sturgeon-absent type of criteria, and we hoped
4 that we could maybe establish clear locations of
5 where that would be, so it would be obvious.

6 I'm going to share my screen here to show
7 you -- at least attempt to show you -- can you
8 all see that? Not yet. There we go. This map
9 that we put together to kind of show, based on
10 the research that we did, mostly using DNR's
11 experts on fish locations and where they like to
12 be and breed, identified where sturgeon-like fish
13 would be in Indiana. And so, these colored
14 streams throughout the downstate waters are where
15 selenium has been found.

16 Then as we worked through that with EPA,
17 because they're concerned about the fact that
18 fish move around, the juvenile fish will swim
19 into smaller tributaries, and the larger fish
20 will move around to breed and that kind of thing.
21 They insisted upon a buffer based on the
22 hydrologic unit codes around these streams.

23 So, once you put that in there, you can

1 see here that almost the whole state could be
2 deemed as having sturgeon at this kind of scale,
3 so we didn't feel that this map approach was
4 useful as we had hoped.

5 And so, we still included the
6 sturgeon-absent numbers in our proposed rule so
7 that it could be useful, because you could show
8 at a smaller scale, a finer scale, "On my --
9 where I discharge is a small stream. There's no
10 sturgeon anywhere around here. We never had
11 sturgeon or --" and still have to the opportunity
12 to utilize that number.

13 Once it's confirmed that the information
14 you provided is legit, it really does demonstrate
15 that there are no sturgeon, then you would be
16 able to use those numbers that were calculated
17 for sturgeon-absent waters. Wouldn't have to go
18 through a whole rulemaking to do it; you would
19 just be able to do it immediately. And then
20 whenever we update criteria, we could identify
21 those locations in some subsequent rulemaking,
22 but you would be able to utilize those numbers
23 right away.

1 And so, we thought that was one helpful
2 type of approach that we wanted to include,
3 because we do know that there aren't sturgeon
4 everywhere, even though the map kind of made it
5 look that way.

6 The other thing that I wanted to kind of
7 quickly go over is: There's not a lot of types
8 of industries that are really discharging
9 selenium in Indiana. There's a couple of key
10 industries, the electric power industry and coal
11 mining do, but beyond that, there's not a lot of
12 dischargers that have to worry about the
13 reasonable potential to exceed these criteria.

14 And we reviewed our data from our 165
15 fixed station sites and our problemistic sampling
16 sites for -- I don't know how far back we went,
17 and didn't find selenium as a particularly
18 invasive, problematic criterion, but there are
19 instances where we do need to ensure the
20 protection and that our criteria is up to date.

21 A lot of the comments received were from
22 the coal industry, and we have included the
23 opportunity provided by the recommended criteria

1 for utilizing an intermittent discharge criteria,
2 which is essentially what they do. The
3 discharges they have are stormwater related,
4 based on, you know, runoff through the coal
5 mining processes that they're using, and that
6 will allow a higher type of water quality number
7 to be utilized by the coal industry if they have
8 reasonable potential to exceed.

9 And we think that's a good idea, and kind
10 of the thinking about that is that the criteria
11 are set to be protective of sturgeon, you know,
12 kind of big lumbersome fish, a kind of chronic
13 criteria of them just kind of sitting in the same
14 water, constantly being exposed if there is a
15 constant discharge.

16 That's one thing, but these intermittent
17 discharges that quickly pass by the fish will
18 allow a higher criterion and still be protective.
19 So, we wanted to recognize -- wanted you all to
20 be aware that that was part of what is in the
21 proposed criteria.

22 So, with that, I'll turn it over to
23 questions or --

1 CHAIRMAN GARD: I do have one
2 question, Martha.

3 MS. METTLER: Sure.

4 CHAIRMAN GARD: Do you have a
5 background level for naturally occurring
6 selenium? Is it naturally occurring in the
7 environment at all?

8 MS. METTLER: Yeah, I think it would
9 be. Until you disturb soil and do some things
10 like that, I don't know what that would be for
11 Indiana. We are starting to head down that way,
12 because that is something we'll need to utilize
13 for this intermittent criteria, so we're talking
14 to the coal industry people and trying to get
15 what information they have on what are typical
16 background criteria numbers, but I don't have
17 that off the top of my head today.

18 CHAIRMAN GARD: Okay. And then you
19 just --

20 MS. METTLER: Oh, Eileen wants to
21 assist. She knows more about that stuff than I
22 do.

23 MS. HACK: I raised my hand; I'm

1 sorry.

2 We -- back when this criterion was
3 adopted, so it was around early 2017 -- this was
4 adopted in 2016 -- we did a search of data that
5 we had collected up until that point, and it went
6 back -- I don't know how many years, but we had
7 over 15,000 entries, and for a lot of the state,
8 a lot of the entries were below the detection
9 limits at that time. And even more recent data,
10 we see they're really -- a lot of them are at or
11 below the detection limit or they're at the
12 detection limit --

13 CHAIRMAN GARD: Okay.

14 MS. HACK: -- which can be as low as
15 half a microgram per litre. But in some areas of
16 the state we do see -- like the Grand Cal had --
17 has high levels of selenium, and there are areas
18 in coal-mining regions where they're higher.

19 But we're not seeing the kind of numbers
20 that they were seeing in Idaho. We're not seeing
21 things in the hundreds, for instance, that they
22 see out on the West Coast. They see higher
23 numbers because of their -- the swales they have

1 out there.

2 CHAIRMAN GARD: Okay. Well, thank
3 you.

4 Are there any other questions?

5 (No response.)

6 CHAIRMAN GARD: Well, that doesn't
7 take any action at this point.

8 We now have an update on the Citizen's
9 Petition from representatives of the Petitioners
10 and the agency. Is there anyone from the
11 Petitioners here to give an update on the
12 Citizen's Petition from their perspective?

13 MR. CLEM: Yes, Craig Williams is on.
14 Also, I apologize; there was one person that had
15 a question, Adrianna, for -- as to the metals
16 criteria.

17 CHAIRMAN GARD: Okay. Let's go back
18 to that.

19 MR. CLEM: I apologize. Adrianna,
20 you should be able to unmute your microphone.

21 MS. HJI-AVGOUSTIS: Thanks,
22 Chairwoman Gard.

23 Good afternoon, members of the Board. I'm

1 Adrianna Hji-Avgoustis. I'm the new Director of
2 Governmental Affairs with the IMA, Indiana
3 Manufacturers association. This is my second
4 week on the job, but the Manufacturers had a
5 couple of comments on the issue. I know they've
6 been -- we've been really engaged in this process
7 regarding the new selenium criteria, so I
8 appreciate getting the time to speak with you
9 guys today.

10 All along, the Manufacturers have wanted
11 to make sure that new guidance is given on the
12 new standards so that our members can make sure
13 that they're in compliance. Our overall primary
14 concern is how IDEM's proposing the nonsturgeon
15 waters standard for selenium to very few parts of
16 the state, and we also want to thank IDEM, and
17 Martha specifically, in her presentation, for
18 kind of already thinking this way as well.

19 As written, the rule requires all water in
20 Indiana to meet the selenium criteria for
21 sturgeon and paddlefish. We don't believe
22 there's a need for the site-specific
23 calculations, and the current proposed rule by

1 IDEM would require two different approval
2 processes: One through IDEM, one through EPA.

3 And so, we fear that this could lead to
4 lengthy, costly, and time-consuming
5 administrative issues in getting the selenium
6 criteria approved for waters that we know don't
7 support the sturgeon and paddlefish. We're also
8 concerned that by making these requests, we'd
9 also be subject to the U.S. Fish and Wildlife
10 Service Consultation, which obviously adds more
11 delays to the process.

12 So, we understand that IDEM's been working
13 on this issue for a long time, and we're getting
14 close to the implementation strategies portion of
15 the process, so we did review the draft guidance
16 on the collection of fish tissue and water column
17 data for implementing the new criteria, and there
18 are a couple of specific parts in which we need
19 some more clarification, so I will go through
20 those quickly.

21 On page two, it states that to use fish
22 tissue concentrations to conduct a reasonable
23 potential to exceed determination, one, the

1 sources of selenium must have been present and
2 are not expected to increase. What does "are not
3 expected to increase" mean? We would appreciate
4 a little bit of guidance in that -- on that.

5 And then two, on that same paragraph, the
6 population of fish sample has been exposed to the
7 existing levels of selenium, and the system is
8 determined to be in steady state. Similar thing,
9 what does "steady state" mean? We would
10 appreciate an example of guidance on that as
11 well.

12 On page three, it states generally when
13 any major changes to water column selenium
14 concentrations occur for new discharges, IDEM
15 will require a minimum duration of 12 months
16 before fish tissue may be sampled to assess
17 bioaccumulation in the resident fish population.

18 On that front, we would really appreciate
19 the draft guidance to clarify what it means by
20 "any major change to water column selenium
21 concentrations." You know, would a fish tissue
22 be impacted if there was a 50-percent decrease in
23 water concentrations from reduced selenium

1 discharge? So, again, some guidance or examples
2 on that would be helpful.

3 And then on page six, it states begin
4 collecting fish from the subreach closest to the
5 outfall for a reasonable potential to exceed
6 determination. Collect fish only from the
7 subreach closest to the outfall. When collecting
8 fish tissue for a site-specific VAF, if the
9 target fish tissue samples are not collected in
10 the first subreach, proceed to the next
11 downstream subreach.

12 So, on that, we understand collecting fish
13 closest to the outfall is highly desirable for
14 determining reasonable potential, but we're
15 concerned that sampling data for a VAF factor
16 that includes samples in the next downstream
17 subreach can't be used for determining that
18 reasonable potential. So, we would ask that IDEM
19 consider some flexibility for determining
20 reasonable potential in these situations. Again,
21 guidance or an example would be helpful.

22 And then just lastly, we want to say we
23 support IDEM's strategy for evaluating the

1 intermittent discharges. We appreciate the
2 science that went behind that.

3 And that's -- that's everything, so thank
4 you.

5 CHAIRMAN GARD: I don't have a page
6 six.

7 MS. METTLER: Yeah. So, she's
8 referring to a different document.

9 CHAIRMAN GARD: Okay.

10 MS. METTLER: We -- I should have
11 mentioned that we have developed an
12 implementation guidance document to be -- have it
13 ready when you all are able to finally adopt
14 these criteria, so we've been working through.
15 And so, we're absolutely open to that feedback.

16 So, Adrianna, if you want to e-mail me
17 something, then we can take those comments into
18 consideration and make any appropriate
19 adjustments to our guidance, because we
20 appreciate the feedback on that. So, that's
21 posted on our Web site, so we didn't necessarily
22 share -- prepared to go over all of that with the
23 Board.

1 But it's important to know that we do have
2 that ready to go, both for guidance for
3 establishing reasonable potential to exceed
4 selenium if you actually are a discharger of
5 that, which, like I said, there aren't a whole
6 lot of dischargers in the state that have
7 selenium concerns.

8 And then also, if you were to try to use
9 fish tissue to demonstrate compliance or to set
10 up your own site-specific criteria number as
11 appropriate based on fish tissue studies, we've
12 put out guidance for that, how to collect the
13 right fish at the right time and that kind of
14 thing.

15 CHAIRMAN GARD: Okay. Thank you.

16 Now we'll move on to the Citizen's
17 Petition. You said the Petitioners have someone
18 here to give us an update on where they are?
19 Would you -- Ryan, can you bring them up?

20 MR. CLEM: Yeah. Craig Williams is
21 here, and he should be able to unmute.

22 CHAIRMAN GARD: Okay.

23 Please unmute and go ahead with your

1 presentation.

2 MR. WILLIAMS: Thank you, Chair Gard.
3 Can everybody hear me okay?

4 MR. CLEM: Yep.

5 MR. WILLIAMS: Okay. Thank you.

6 I am Craig Williams, representing the
7 Petitioners, who include a number of Indiana CSO
8 communities.

9 Just as a quick refresher for the Board,
10 this has been a longstanding item, and for
11 everybody participating. Our petition has two
12 primary requests. First was to ask the Board to
13 direct the assembly of a work group to develop
14 rule language that provided regulatory certainty
15 for CSO communities who had completed CSO
16 long-term control plans under the framework of
17 the 2012 EPA Recreational Water Quality Criteria.
18 The Board directed this through a voice vote at
19 the February 2021 Rules Board meeting.

20 The second element was to set a specific
21 deadline for IDEM to provide recommended rule
22 language to the Board. Since February,
23 representatives for the Petitioners and agency

1 staff have met on a number of occasions and are
2 actively discussing not only the 2012 EPA
3 Recreational Water Quality Criteria, but a number
4 of other options that may provide pathways for
5 the regulatory certainty that work for both the
6 agency and affected communities.

7 While we have worked on providing
8 responses to the questions asked by the Board,
9 our focus since the February meeting has been on
10 efforts related to the work group, and so, those
11 are not available yet, I'm afraid.

12 We believe that the discussions between
13 the agency and Petitioners have been very
14 productive, and we are confident that we can
15 return to the Board with language that satisfies
16 both agency and Petitioner concerns.

17 At this time, we -- the Petitioners are
18 asking the Board to table our request to set a
19 specific deadline for the agency to return with
20 recommended rule language, as we continue working
21 with agency officials.

22 And I'm happy to answer any questions you
23 might have.

1 CHAIRMAN GARD: Okay. Thank you very
2 much.

3 Questions from the Board?

4 (No response.)

5 CHAIRMAN GARD: So, you're asking the
6 Petition to be -- to be tabled at this time while
7 you continue to work on this. Were you asking
8 IDEM -- asking us to set a specific time for IDEM
9 to get suggestions to the Board?

10 MR. WILLIAMS: No, at this point
11 we're just asking to table the remaining portion
12 of our --

13 CHAIRMAN GARD: Okay.

14 MR. WILLIAMS: -- Petition as we
15 continue working with IDEM. We've had some
16 really productive discussions, some really good
17 work group meetings, and I think I -- it seems
18 like we have a pathway to have a -- be able to
19 accomplish the goals of our Petition, but we just
20 want to sort of keep that, I guess, on the back
21 burner, that second item.

22 CHAIRMAN GARD: Okay. Thank you.
23 And thank you for continuing these talks and

1 working to an equitable solution.

2 IDEM, do you have a presentation or
3 comments on this?

4 MR. HIGGINBOTHAM: Madam Chair, this
5 is Paul Higginbotham, with IDEM's Office of Water
6 Quality. Can everybody hear me okay?

7 CHAIRMAN GARD: Yes.

8 MR. HIGGINBOTHAM: Yeah. I would
9 just say that, going along with Craig, that we
10 have had three meetings so far. We have a fourth
11 meeting scheduled in June, and we're starting
12 again -- this is a pretty complex topic, as you
13 well know, with all of the work that you did with
14 the legislature back in the day.

15 So, we are going through a lot of the
16 different aspects of the regulatory certainty
17 that is beyond the 2012 criteria, and we would
18 just like to continue to have some more
19 discussions with the work group and the
20 Petitioners themselves to see if we can work
21 through something that is agreeable for everyone.

22 COMM. PIGOTT: Yeah. Sen. Gard, it's
23 Bruno, and I'd just echo Paul's comments and say

1 I myself met with some representatives of the
2 group as well, so we've all been working well
3 together, and we're just wanting to continue
4 those discussions.

5 CHAIRMAN GARD: Well, thank you. And
6 I think I can speak for the Board saying keep
7 continuing those discussions, and I appreciate
8 you working for a solution.

9 Are there any other questions or comments
10 from the Board concerning this?

11 MR. ETZLER: Chairman Gard, Bill
12 Etzler.

13 CHAIRMAN GARD: Yes.

14 MR. ETZLER: I've been attending
15 those meetings as well, and I can say from my
16 perspective that the discussions have been very
17 meaningful, and I think, as Craig and Paul
18 indicated, there's a path to a solution, and it's
19 just going to take a little bit of time with all
20 of us working together to make that happen.

21 And I commend both groups, because it's --
22 it has many facets and many complicated pieces
23 that we have to work through, but it's possible,

1 and I appreciate everybody's work.

2 CHAIRMAN GARD: Well, thank you for
3 attending some of those meetings. That -- I
4 think that is good for the Board to have that
5 input.

6 Any -- any other comments or questions
7 concerning this?

8 (No response.)

9 CHAIRMAN GARD: Okay. Thank you all.
10 This is an open forum. Is there anyone
11 that cares to address the Board today?

12 MR. CLEM: I don't see it on my end,
13 Chairwoman.

14 CHAIRMAN GARD: Yeah, I don't see
15 anybody either.

16 The next meeting of the Environmental
17 Rules Board is tentatively set for Wednesday,
18 August the 11th, 2021 at 1:30 p.m. It will be a
19 remote meeting like today's, or may be held in
20 accordance with the remote policy adopted by the
21 Board, depending on the emergency status of
22 COVID. The date is tentative and subject to
23 change. We will keep everyone updated while this

1 is confirmed and -- or another date is chosen.

2 So, thank you all for attending today.

3 Is there a motion to adjourn?

4 MR. NIEMIEC: So moved, this is Ted

5 Niemiec.

6 CHAIRMAN GARD: Is there a second?

7 MR. DAVIDSON: Second, this is

8 Calvin.

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

11 (Board members responded, "Aye.")

12 CHAIRMAN GARD: Opposed, nay.

13 (No response.)

14 CHAIRMAN GARD: Thank you all. We
15 are adjourned.

16 COMM. PIGOTT: Thanks so much.

17 Appreciate it, everyone.

18

- - -
Thereupon, the proceedings of
19 May 12, 2021 were concluded
at 3:38 o'clock p.m.

20

21

22

23

1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Wednesday, May 12, 2021 in this matter and
8 transcribed by me.

9
10 _____
11 Lindy L. Meyer, Jr.,
12 Notary Public in and
13 for the State of Indiana.

14
15 My Commission expires August 26, 2024.

16 Commission No. NP0690003
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