

BEFORE THE STATE OF INDIANA  
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF DECEMBER 11, 2024

- - -

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, at the Indiana  
Government Center South, Conference Center,  
Room A, 402 West Washington Street, Indianapolis,  
Indiana, on Wednesday, December 11, 2024 at 1:30  
o'clock p.m.

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## 1 APPEARANCES:

## 2 BOARD MEMBERS:

3 Beverly Gard, Chairman  
4 William Etzler  
5 Carrie Kozyrski  
6 Dr. Ted Niemiec  
7 Dr. Joanne Alexandrovich  
8 Ken Rulon  
9 Chris Horn  
10 John Ketzenberger  
11 Calvin Davidson  
12 Ryan Mueller, Proxy, Indiana Department of  
13 Natural Resources  
14 Katherine Nelson, Proxy, Lieutenant  
15 Governor  
16 Brian Rockensuess, IDEM Commissioner  
17 (Nonvoting)

## 11 IDEM STAFF MEMBERS:

12 Billie Franklin  
13 Keelyn Walsh  
14 Phil Perry  
15 Dan Watts  
16 Lori Freeman  
17 Nancy King  
18 Gabby Ghreichi  
19 Jenny Acker  
20 Karla Kindrick

## 16 PUBLIC SPEAKERS:

17 Grace Tafolla  
18 Indra Frank  
19 Larry Jensen  
20 Stan Diamond  
21 Jessica Reiss  
22 Susan Thomas  
23 Terry Steagall  
Cheryl Chapman  
Ashley Williams  
Ashton Eller

- - -

1 1:30 o'clock p.m.  
2 December 11, 2024

3 - - -

4 CHAIRMAN GARD: If I can have  
5 everyone's attention -- if I can have everyone's  
6 attention, I would like to call the Indiana  
7 Environmental Rules Board to order, December  
8 the 11th, 2024. We do have a quorum between  
9 everyone here in present and everybody on-line.  
10 There hasn't been a change in the order of  
11 business, so we will call the agenda as written  
12 in your book.

13 I think I better call the roll.

14 Mr. Davidson?

15 (No response.)

16 CHAIRMAN GARD: And he's supposed to  
17 be here in present.

18 Mr. Etzler?

19 MR. ETZLER: Present.

20 CHAIRMAN GARD: Dr. Niemiec?

21 DR. NIEMIEC: Present.

22 CHAIRMAN GARD: Mr. Horn?

23 MR. HORN: Present.

CHAIRMAN GARD: Mr. Rulon?

1 MR. RULON: Present.

2 (Mr. Davidson arrived.)

3 CHAIRMAN GARD: Ms. Nelson?

4 MS. NELSON: Here.

5 CHAIRMAN GARD: Mr. Mueller?

6 MR. MUELLER: Present.

7 CHAIRMAN GARD: Dr. Alexandrovich?

8 DR. ALEXANDROVICH: I am here.

9 CHAIRMAN GARD: Ms. Kozyrski?

10 MS. KOZYRSKI: Here. Good afternoon.

11 CHAIRMAN GARD: Mr. Ketzenberger?

12 MR. KETZENBERGER: Here.

13 CHAIRMAN GARD: And the Chair is  
14 here. So, we do have a --

15 MR. RULON: He's here.

16 CHAIRMAN GARD: Who? Oh.

17 MR. RULON: All rise. No.

18 (Laughter.)

19 CHAIRMAN GARD: Okay. We do have --  
20 do we have a quorum? Eleven -- eleven members  
21 are present. Kevin Bump will cover the logistics  
22 of the in-person and remote participants.

23 MR. BUMP: Today we are presenting

1 the meeting of the ERB on Teams, and we will make  
2 sure that everybody stays on mute unless they are  
3 able to speak or wait until the comment time  
4 later in the meeting. If you have a comment  
5 during that time, make sure that you have raised  
6 your hand, and you will be called on if you are  
7 on-line.

8 With that, I will turn it back over to  
9 Chair Gard.

10 CHAIRMAN GARD: Okay. Anybody have  
11 any questions for Kevin?

12 (No response.)

13 CHAIRMAN GARD: Okay. Our first  
14 order of business today is the approval of the  
15 summary of the October 9th, 2024 Board meeting.  
16 Are there any additions or corrections to the  
17 summary as presented?

18 (No response.)

19 CHAIRMAN GARD: If not, I need a  
20 motion to approve.

21 MR. HORN: So moved.

22 MR. DAVIDSON: Second.

23 CHAIRMAN GARD: All in favor, say

1     aye.

2                     (Board members responded, "Aye.")

3                     CHAIRMAN GARD:  Opposed, nay.

4                     (No response.)

5                     CHAIRMAN GARD:  The summary of the  
6 minutes from October the 9th has been approved.

7                     Comm. Rockensuess, your report, please.

8                     COMM. ROCKENSUESS:  Good afternoon,  
9 Chair Gard, members of the Board.  Thanks for  
10 coming in on this cold and a little bit snowy  
11 day.

12                    So, the last, you know, couple of months  
13 have been all about transition.  We have a new  
14 Governor-Elect, and IDEM, like all agencies, are  
15 working towards putting together information for  
16 the transition team.  I've had a number of  
17 meetings with the IDEM, DNR, IURC, OUCC track of  
18 the transition team.

19                    And then Suzie Jaworowski was just named  
20 as the Energy Secretary, which she will be over  
21 that for the cabinet level position.  So, there  
22 will be some changes in the next -- in 2025.  We  
23 still don't know what all of that means yet, but

1     hope to soon.

2             A couple of quick updates from an agency  
3     perspective. You know, I mentioned last time, or  
4     the last time I was here, about cyber security,  
5     and that is something we are going to be trying  
6     to deal with this next legislative session. That  
7     has only been amplified again, since we've had  
8     another attack a week or two ago.

9             And so, the legislation, just as a  
10    reminder, one, requires any utilities that have  
11    an attack to report to the state, and we are  
12    working with IOT. They already have a reporting  
13    structure so that the utility only has to report  
14    one place, they don't have to report to multiple  
15    agencies, which is good.

16            The other thing is that utilities would  
17    have to start doing vulnerability assessments.  
18    You know, there was an attack in Tipton where the  
19    password was like "password." All of these  
20    attacks that are happening are people that are  
21    easily able to gain access, and they're taking  
22    over the plants to show that they are hurting  
23    America, not because they want money.

1           And that just sets up our utilities for a  
2 bunch of problems, and it sets up our citizens to  
3 potentially receive water that could hurt them,  
4 or our rivers, lakes and streams could be  
5 contaminated from discharges that are well above  
6 standards.

7           So, since the last time I was here, I've  
8 also joined forces with IOT. They have a grant  
9 program with Purdue University in which they are  
10 helping communities with cyber security. Water  
11 and wastewater was not part of that grant  
12 program. It was just the municipality, like the  
13 mayor's office and things like that.

14           We are adding water and wastewater  
15 utilities, and to that end, I've added an  
16 additional two million dollars to that grant  
17 program to help augment the costs of those  
18 facilities.

19           So, that announcement went out a week or  
20 two ago, and we're going to be sending out  
21 information to you all of the utilities in the  
22 state to make sure that they know that this is  
23 something they can get access to, which is good.



1 It's one way, while we're seeking regulation, to  
2 also offset the cost of anything that they would  
3 have to do to get in line with that potential  
4 legislation.

5 We are graduating our first class of our  
6 leadership program next week. So, I had  
7 mentioned in the past that we hired a leadership  
8 training director, and she has just done  
9 phenomenal work, not only getting policies and  
10 procedures and guides put together for all of our  
11 new staff, but one of the things I wanted was a  
12 leadership program similar to the Department of  
13 Correction and the Department of Health. It's  
14 building that next generation of leaders, as many  
15 of our leaders are retiring, and it's creating a  
16 vacuum, especially from the section chief, branch  
17 chief and so on levels.

18 And so, we thought that the leadership  
19 program might be a two-year-out kind of thing.  
20 Amanda was able to get it started within a year,  
21 and we're graduating our first class this year,  
22 which is phenomenal. And so, I'm really proud of  
23 those employees that did this. It was, you know,

1     above and beyond their work duties.

2             But it's going to set them up to be  
3     leaders in their programs, set them up for -- and  
4     it already has set up some of them for  
5     opportunities for the leadership positions in the  
6     agency. So, we're investing in our people to  
7     keep talent on, which I've heard from all of my  
8     stakeholders that that is something that is  
9     desperately needed. So, that is going really  
10    well.

11            We are about to start a major digital  
12    transformation. For years we have been utilizing  
13    databases, and the backbone of our work has been  
14    on programs and databases that -- it's like a 150  
15    separate things, all of which, then, are about to  
16    either not be supported anymore or they are  
17    breaking.

18            And the people that built those programs  
19    have long since retired, and so, we are having  
20    trouble and actually paying quite a bit of money  
21    to keep these systems updated.

22            And so, it came to a head about a year or  
23    so ago, and we got some money out of the last

1 biennium budget to augment some of this. We got  
2 five and a half million, and that project -- the  
3 contract process always takes way longer than  
4 what we want, but that project is going to start  
5 here in January.

6           And we will be seeking hopefully  
7 additional moneys to keep this program going so  
8 that we're all -- the majority of our work is in  
9 a single database and where all of that  
10 information is being housed and appropriately  
11 kept to move the agency forward, because we are  
12 in a position right now where there are some  
13 things we are doing that are just completely  
14 inefficient, but it's because it's the way we  
15 have to do it to get the work out the door.

16           So, that is a big topic that we are  
17 talking about, not only with the transition team,  
18 but with legislators, because we need -- we need  
19 to continue moving our agency forward in the most  
20 effective and efficient way possible.

21           And then finally, we've been talking about  
22 this rulemaking for a long time, but I am so glad  
23 that we're finally taking up CCR, the Coal

1 Combustion Residual Rule, today. It has been a  
2 long slog, not only for the agency, but also for  
3 the utilities that are involved. And so, I'm  
4 looking forward to the discussion there, and  
5 looking forward to hearing any comments or  
6 concerns that come from it.

7 So, with that, I'm happy to take any  
8 questions.

9 CHAIRMAN GARD: Well, I want to  
10 particularly thank you for getting the leadership  
11 class going. That has been needed for such a  
12 long time. You know, going back years and years  
13 and years, IDEM's lost talent because they just  
14 didn't invest in it at that time.

15 COMM. ROCKENSUESS: Yeah.

16 CHAIRMAN GARD: That's great.

17 COMM. ROCKENSUESS: Yeah. I'm  
18 extremely proud of the team that pulled off this  
19 leadership -- and the participants. And I got to  
20 present, or question and answer, in one of the  
21 sessions they had, and it was just -- is was a  
22 ton of fun. They were asking phenomenal  
23 questions.

1           And if you are one that -- like me -- that  
2   got to present, you're learning with them,  
3   because you're learning different perspectives of  
4   what they think leadership is, which can impact  
5   the way you then lead. So, it's been -- it's  
6   been a great opportunity all around.

7           CHAIRMAN GARD: Uh-huh. Very good.

8           Anyone else have questions or comments?

9           MR. DAVIDSON: How many were in that  
10   class, would you say?

11          COMM. ROCKENSUESS: Eighteen to 20,  
12   yeah.

13          MR. DAVIDSON: Cool.

14          COMM. ROCKENSUESS: Yep.

15          CHAIRMAN GARD: Any other -- any  
16   other questions, here or on-line?

17                    (No response.)

18          CHAIRMAN GARD: Okay. We'll move on.  
19   Thank you.

20          Billie Franklin will give a rulemaking  
21   report.

22          MS. FRANKLIN: Good afternoon. My  
23   name is Billie Franklin, in the Rules Development

1 Section of the Office of Legal Counsel.

2 Currently we have our next Board meeting  
3 tentatively scheduled for March 12th, 2025. At  
4 our next meeting, we anticipate presenting two  
5 rules for final adoption, Coal Combustion  
6 Residuals and Waste Tire Revisions. We are also  
7 looking to have a couple of rules ready for  
8 preliminary adoption. That is NO<sub>x</sub> RACT and Lead &  
9 Copper Amendments.

10 And that is all I have for you today. I'm  
11 happy to answer any questions.

12 CHAIRMAN GARD: Any questions?

13 (No response.)

14 CHAIRMAN GARD: Okay. Thank you.

15 Today we have hearings for the following  
16 regular rule Board actions: Final adoption of  
17 Kaiser Aluminum and Emergency Affirmative  
18 Defense; preliminary adoption of Waste Tires and  
19 Coal Combustion Residuals. It seems like we've  
20 done Waste Tires for the last 30 years.

21 (Laughter.)

22 (Discussion off the record.)

23 CHAIRMAN GARD: There will be a

1 presentation on the 2024 Water Quality Standards  
2 Review. There will also be a presentation on the  
3 Air Permitting Report.

4 As a reminder, if you wish to testify in  
5 today's hearings, please fill out a comment card  
6 and give it to Karla Kindrick at the sign-in  
7 table. I have one for someone on-line, but that  
8 is -- that is it.

9 The rules being considered at today's  
10 meeting were included in Board packets and are  
11 available for public inspection at the Office of  
12 Legal Counsel, 13th Floor, Indiana Government  
13 Center North. The entire Board packet is also  
14 available on IDEM's Web site at least one week  
15 prior to each Board meeting.

16 A written transcript of today's meeting  
17 will be made. The transcript and any legal  
18 written submissions will be open for public  
19 inspection at the Office of Legal Counsel. A  
20 copy of the transcript will be posted on the  
21 pages -- on the Rules Page of the agency Web site  
22 when it becomes available.

23 Will the official reporter of the cause

1 please stand, raise your right hand, and state  
2 your name?

3 (Reporter sworn.)

4 CHAIRMAN GARD: Thank you very much.

5 This is a public hearing on final adoption  
6 of the Kaiser Aluminum Rule. This is a public  
7 hearing before the Environmental Rules Board  
8 concerning final adoption of the Kaiser Aluminum  
9 Rule.

10 I will now introduce Exhibit A, the  
11 proposed rule, into the record of the hearing.

12 Keelyn Walsh will present this rule.

13 MS. WALSH: Good afternoon, members  
14 of the Board. I'm Keelyn Walsh, and I'm with the  
15 Rules Section of the Office of Legal Counsel, and  
16 I'm here to present Kaiser Aluminum Wastewater  
17 Treatment Facility rulemaking, it's LSA  
18 No. 24-213, for your consideration.

19 This rulemaking proposes to update the  
20 Warrick Operation facility in Newburgh, Indiana,  
21 from the Alcoa Corporation, or Alcoa, to Kaiser  
22 Aluminum Warrick LLC, known as Kaiser, after  
23 Kaiser purchased the wastewater treatment



1 operations facility in December of 2022. This  
2 facility generates wastewater treatment sludge,  
3 which was previously delisted under Alcoa, and  
4 Kaiser has requested that IDEM delist the  
5 wastewater treatment sludge under their name.

6 Additionally, Kaiser is upgrading its  
7 wastewater treatment equipment by adding an  
8 additional filter press, which will result in the  
9 delisted wastewater treatment sludge being  
10 generated at two locations rather than the single  
11 location at the approved delisting. The incoming  
12 waste and treatment processes will not change,  
13 and Kaiser is not requesting to increase the  
14 maximum amount of sludge generated in the current  
15 delisting.

16 This proposed rulemaking will also  
17 increase the sampling requirements to reflect the  
18 new point of sludge generation. Instead of two  
19 samples collected each quarter from one point of  
20 generation, the proposed rule requires that two  
21 samples be collected from each of the points of  
22 generation each quarter. The analysis parameters  
23 will remain the same.

1           And with that, IDEM requests that the  
2   Board final adopt this rule as presented, and  
3   program staff is available to answer any other  
4   questions.

5           Thank you.

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

8                           (No response.)

9           CHAIRMAN GARD:   Thank you.

10          MS. WALSH:   Uh-huh.

11          CHAIRMAN GARD:   I don't have any  
12   speaker cards.   Is there anyone that wants to  
13   testify on this that didn't fill out a card?

14                           (No response.)

15          CHAIRMAN GARD:   Okay.   The hearing is  
16   concluded.   The Board will now consider final  
17   adoption of the Kaiser Aluminum Rule.   Is there  
18   any Board discussion?

19                           (No response.)

20          CHAIRMAN GARD:   Is there a motion to  
21   final adopt the rules as presented?

22          MR. RULON:   So moved.

23          CHAIRMAN GARD:   Is there a second?

1 MR. DAVIDSON: Second.

2 CHAIRMAN GARD: Okay. I will call  
3 roll.

4 Mr. Davidson?

5 MR. DAVIDSON: Yes.

6 CHAIRMAN GARD: Mr. Etzler?

7 (No response.)

8 CHAIRMAN GARD: Mr. Etzler?

9 (No response.)

10 CHAIRMAN GARD: Mr. Etzler?

11 MR. ETZLER: Sorry; I was on mute.

12 Yes.

13 CHAIRMAN GARD: Dr. Niemiec?

14 DR. NIEMIEC: Yes.

15 CHAIRMAN GARD: Mr. Horn?

16 MR. HORN: I would abstain due to the  
17 fact that I do work for Kaiser.

18 CHAIRMAN GARD: Mr. Rulon?

19 MR. RULON: Yes.

20 CHAIRMAN GARD: Ms. Nelson?

21 MS. NELSON: Yes.

22 CHAIRMAN GARD: Mr. Mueller?

23 MR. MUELLER: Yes.

1 CHAIRMAN GARD: Dr. Alexandrovich?

2 DR. ALEXANDROVICH: Yes.

3 CHAIRMAN GARD: Ms. Kozyrski?

4 MS. KOZYRSKI: Yes.

5 CHAIRMAN GARD: Mr. Ketzenberger?

6 MR. KETZENBERGER: Yes.

7 CHAIRMAN GARD: The Chair votes aye.

8 Ten ayes, zero nays, one abstention. The rule  
9 has been finally adopted.

10 This is a public hearing before the  
11 Environmental Rules Board of the State of Indiana  
12 concerning final adoption of the Emergency  
13 Affirmative Defense Rule.

14 I will now introduce Exhibit B, the final  
15 rule, into the record of the hearing.

16 Keelyn Walsh will present this rule.

17 MS. WALSH: Hello again. I am Keelyn  
18 Walsh, with the Rules Section of the Office of  
19 Legal Counsel, and I am presenting the Emergency  
20 Affirmative Defense Provisions rulemaking, LSA  
21 No. 24-318, for your consideration.

22 The Federal Emergency Affirmative Defense  
23 Provisions in 40 CFR 70.6(g) and 40 CFR 71.6(g)

1     establish an affirmative defense for sources to  
2     assert in enforcement cases brought for  
3     noncompliance with technology-based emission  
4     limit -- limitations in operating permits if the  
5     exceedences occurred during a -- due to  
6     qualifying emergency circumstances.

7             These provisions have never been required  
8     elements of state operating permit programs and  
9     were removed from federal regulations on  
10    July 24th, 2023, because they are inconsistent  
11    with the Clean Air Act and U.S. EPA's  
12    interpretation of the Act's enforcement  
13    structure.

14            Consequently, U.S. EPA requires each state  
15    with a Part 70 program to submit a program  
16    revision, or request a submission extension, by  
17    August 21st, 2024 to remove similar affirmative  
18    defense provisions from EPA-approved Title V  
19    programs. IDEM timely submitted a request for an  
20    extension to submit its program revision, which  
21    is now due on August 21st of 2025.

22            Although states may not retain Title V  
23    provisions establishing an affirmative defense to

1 noncompliance with federal requirements, U.S. EPA  
2 is allowing states to choose whether to retain  
3 certain aspects of their existing program  
4 regulations, such as the definition of emergency,  
5 associated reporting and recordkeeping  
6 requirements, and prompt reporting to support  
7 functions unrelated to an affirmative defense.

8           This rulemaking proposes to revise rule  
9 language at 326 IAC 2-7-16 and 326 IAC 2-8-12 to  
10 remove the emergency affirmative defense  
11 provisions from Indiana's EPA-approved Title V  
12 program consistent with U.S. EPA's removal of  
13 these provisions in 40 CFR 70.6(g) and  
14 40 CFR 71.6(g).

15           The proposed amendments will also remove  
16 the emergency provisions from its FESOP program,  
17 which is also federally approved and is part of  
18 Indiana's State Implementation Plan. Repealing  
19 these sections renders other rule language  
20 obsolete, including the definitions of  
21 "emergency," health-based emission limit," and  
22 technology-based emission limit" at 326 IAC 2-7-1  
23 and the requirement to specify permit conditions

1 to which the emergency provisions applies --  
2 apply -- at 326 IAC 2-7-5.

3 Accordingly, this rulemaking proposes to  
4 remove these provisions and clarifies that proper  
5 reporting under 326 IAC 1-6-2 satisfies the Title  
6 V deviation report requirement.

7 Additionally, this rule amends the  
8 malfunction rule at 326 IAC 1-6-1 to ensure  
9 regulatory continuity with the reporting and  
10 recordkeeping requirements being removed by the  
11 repeal of the emergency provisions. The proposed  
12 amendments revert to the applicability and  
13 notification requirements that were in place  
14 prior to the promulgation of the Title V and  
15 FESOP emergency provisions.

16 Prior to the creation of Indiana's Title V  
17 and FESOP programs, 326 IAC 1-6 applied to all  
18 permitted sources. The malfunction rule also  
19 once contained affirmative defense provisions,  
20 but they were required to be removed from  
21 326 IAC 1-16 in 2016 -- or I'm sorry -- 1-6  
22 in 2016.

23 This rulemaking brings Title V and FESOP

1 sources back under 326 IAC 1-6, which imposes  
2 reporting and recordkeeping requirements that are  
3 functionally equivalent to those found in the  
4 emergency provisions being repealed by this  
5 rulemaking. Because the malfunction rules  
6 requirements are functionally equivalent to those  
7 in the to-be-repealed emergency provisions,  
8 sources should experience relatively no  
9 regulatory burden by becoming subject to  
10 326 IAC 1-6 once again.

11 IDEM therefore requests that the Board  
12 final adopt this rule as presented, and program  
13 staff are available to answer any further  
14 questions.

15 Thank you.

16 CHAIRMAN GARD: Are there questions  
17 for Keelyn? Yes.

18 MR. DAVIDSON: Just one.

19 This doesn't change any fees, fines or  
20 penalties, none of that?

21 MS. WALSH: (Shook head no.)

22 MR. DAVIDSON: Okay.

23 CHAIRMAN GARD: Any other questions,



1 anybody on-line?

2 DR. ALEXANDROVICH: I just have a  
3 question, Madam Chair.

4 I asked last time about the source  
5 permits, and you said you were working on a way  
6 to amend those permits. I'm wondering what the  
7 status is and what the plans are on that.

8 MS. WALSH: Phil, do you --

9 MR. PERRY: Hi. I'm Phil Perry. I'm  
10 the Deputy Assistant Commissioner for the Office  
11 of Air Quality.

12 The status is we are awaiting final  
13 adoption of the rule before we can move forward  
14 with that. We've started preparing lists of  
15 affected permittees. We have about 1200 Title V  
16 and FESOP sources that we will be notifying of  
17 the change, and we are working on submitting  
18 paperwork and drafting letters to each of the  
19 companies and trying to get it where all's they  
20 have to do is an administrative permit, or if  
21 they have an existing permit that has to be  
22 renewed within this next year, we would make the  
23 changes at that time. So, we're still waiting on

1 final adoption before we can move forward with  
2 that, but we have generated the list and started  
3 generating templates for those changes.

4 DR. ALEXANDROVICH: Okay. Two  
5 follow-up questions. Let's start with the first  
6 one, on administrative change to the permit. Is  
7 that going to cause a fee to the source?

8 MR. PERRY: No, there will be no fees  
9 charged to the sources, and it does not even  
10 require a public notice for hearings on those.

11 DR. ALEXANDROVICH: Okay. Thanks.  
12 And the other question is: If the per -- they  
13 still have to go by the new rule -- once they are  
14 finalized, they still have to go through the new  
15 rules even though their permit allows them an  
16 affirmative defense?

17 MR. PERRY: Correct, they would have  
18 to follow the new rules, yes.

19 DR. ALEXANDROVICH: Okay. Thank you.

20 CHAIRMAN GARD: Any other questions?

21 MS. KOZYRSKI: Yeah, Chair Gard. I  
22 have a question. I just wanted to follow up with  
23 that timeline. So --

1                   CHAIRMAN GARD: Do you want to give  
2 your name?

3                   MS. KOZYRSKI: -- if the permit is to  
4 be renewed within a year, they can do it during  
5 that app's -- at scheduled renewal, or otherwise,  
6 they need to use the administrative amendment?

7                   MR. PERRY: Correct. And we will be  
8 mailing out information to each of the permittees  
9 instructing them how to do that. If a permit  
10 application is already in-house, we will be  
11 working with the permittees at that point to make  
12 the changes to the permit.

13                  MS. KOZYRSKI: Thank you.

14                  CHAIRMAN GARD: I think there was  
15 another question from someone.

16                  MR. BUMP: Yeah, we have one from --

17                  CHAIRMAN GARD: Yes; okay.

18                  Yes, go ahead.

19                  MS. TAFOLLA: I'm wondering if I  
20 heard correctly that you were going to be  
21 changing the emergency response for PFAS in the  
22 water. Is that what you were -- is that what  
23 this is amending in the EPA's --

1                   MR. PERRY: No, this does not have  
2 anything to do with PFAS. It's Title V and FESOP  
3 emergency reporting under the air program.

4                   MS. TAFOLLA: Okay. And then -- and  
5 so, you said that it wouldn't need any kind of  
6 public comment, so would you be -- I'm sorry; I'm  
7 just not seeing why this is being changed to  
8 like --

9                   COMM. ROCKENSUESS: Grace, this is  
10 Brian, the Commissioner of IDEM. So, EPA passed  
11 a rule eliminating affirmative defense. It's a  
12 defense that any permit holder could use if  
13 unforeseen circumstances impacted the ability to  
14 meet the criteria of their permit. Since they  
15 got rid of that provision, we have to get rid of  
16 the provision, because we're a delegated program.  
17 When we have to do things like that, it is no  
18 fault of the permittee that we have to change  
19 their permit.

20                   And so, these are just -- what Phil was  
21 describing was an administrative action that we  
22 are going to take on behalf of the permittees,  
23 and it doesn't change anything about their

1 permit. It just changes the way they have to  
2 report whether or not they have an extenuating  
3 circumstance.

4 MS. TAFOLLA: Okay. Thank you.

5 CHAIRMAN GARD: Any other questions?

6 MS. KOZYRSKI: Yes. I guess  
7 listening to Grace's question, I wondered if the  
8 confusion was the acronym. It's not PFAS but  
9 FESOP, which is a type of air operating permit.  
10 I think that might be --

11 MR. PERRY: Right. It --

12 MS. KOZYRSKI: -- where the confusion  
13 is.

14 MR. PERRY: Yeah, that's -- it's a  
15 federally enforceable state operating permit  
16 under the air program.

17 CHAIRMAN GARD: Anything else?

18 (No response.)

19 CHAIRMAN GARD: Okay. The -- any  
20 more speaker cards?

21 (No response.)

22 CHAIRMAN GARD: Okay. The hearing is  
23 concluded. The Board will now consider final

1 adoption of the Emergency Affirmative Defense  
2 Rule. Is there any Board discussion?

3 (No response.)

4 CHAIRMAN GARD: Is there a motion to  
5 final adopt the rules as presented?

6 MR. HORN: So moved.

7 CHAIRMAN GARD: Is there a second?

8 MR. DAVIDSON: Second.

9 CHAIRMAN GARD: Okay. I will call  
10 the roll.

11 Mr. Davidson?

12 MR. DAVIDSON: Yes.

13 CHAIRMAN GARD: Mr. Etzler?

14 MR. ETZLER: Yes.

15 CHAIRMAN GARD: Dr. Niemiec?

16 (No response.)

17 CHAIRMAN GARD: Dr. Niemiec?

18 (No response.)

19 CHAIRMAN GARD: Dr. Niemiec?

20 (No response.)

21 CHAIRMAN GARD: Well, we'll come back  
22 to him.

23 Mr. Horn?

1 MR. HORN: Yes.

2 CHAIRMAN GARD: Mr. Rulon?

3 MR. RULON: Yes.

4 CHAIRMAN GARD: Ms. Nelson?

5 MS. NELSON: Yes.

6 CHAIRMAN GARD: Mr. Mueller?

7 MR. MUELLER: Yes.

8 CHAIRMAN GARD: Dr. Alexandrovich?

9 DR. ALEXANDROVICH: Yes.

10 CHAIRMAN GARD: Ms. Kozyrski?

11 MS. KOZYRSKI: Yes.

12 CHAIRMAN GARD: Mr. Ketzenberger?

13 MR. KETZENBERGER: Yes.

14 CHAIRMAN GARD: The Chair votes aye.

15 Dr. Niemiec, are you there?

16 MR. BUMP: He says he's still

17 connected.

18 CHAIRMAN GARD: Well, I guess he's

19 not.

20 Okay. There are ten ayes, zero nays, so

21 the rule has been final adopted.

22 This is a public hearing before the

23 Environmental Rules Board of the State of Indiana

1 concerning preliminary adoption of the Waste Tire  
2 Financial Assurance Rule.

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

5 Is there someone to present this rule? I  
6 think it's Dan Watts.

7 MR. WATTS: Yes. Good afternoon,  
8 Chairwoman Gard, members of the Board. I'm Dan  
9 Watts of the Rules Development Section. I'm  
10 presenting LSA Document 24-322 for preliminary  
11 adoption.

12 IDEM is proposing updates to the Waste  
13 Tire Management Rules to be consistent with some  
14 recent statutory changes for waste tire  
15 definitions and financial assurance for waste  
16 tire facilities. The rulemaking is limited to  
17 rule amendments that are directly related to  
18 statutory changes.

19 The specific rule changes include an  
20 update to the definition of "used tire" to  
21 reference the amended statutory definition, and  
22 the addition of the corporate financial test as a  
23 financial assurance option for waste tire storage



1 sites.

2 The General Assembly enacted statutory  
3 authority for this financial assurance option,  
4 and IDEM has proposed detailed rule language for  
5 the financial test that is based on a federal  
6 financial test at 40 CFR 258.74(e) while also  
7 amending the rule language to conform with  
8 Indiana's rules drafting standards and making it  
9 applicable to waste tire storage sites, because  
10 that federal test was originally created for  
11 solid waste disposal facilities.

12 IDEM did not receive any comments during a  
13 30-day comment period from September 11th to  
14 October 11th, and representatives from IDEM are  
15 available to answer questions that you may have  
16 about this rulemaking. The Department requests  
17 that the Board preliminarily adopt this rule so  
18 Indiana's waste tire program can be consistent  
19 with recent statutory updates for waste tire  
20 management.

21 Thank you.

22 CHAIRMAN GARD: Are there any  
23 questions for Dan Watts?

1 (No response.)

2 CHAIRMAN GARD: Okay. I have no --

3 DR. ALEXANDROVICH: Madam --

4 CHAIRMAN GARD: -- speaker cards --

5 DR. ALEXANDROVICH: Madam Chair?

6 CHAIRMAN GARD: Yes.

7 DR. ALEXANDROVICH: I'm sorry; I did  
8 have one question, and you mentioned it earlier,  
9 that it seems like we've heard rulemaking on  
10 waste tires a number of times over the years, and  
11 I'm just wondering, when they opened this rule --  
12 or the regulations back up to write this rule, if  
13 they reviewed those sessions to see if there were  
14 additional changes that the Board may have  
15 recommended or issues that might have needed  
16 fixing.

17 MR. WATTS: Well, we only opened up  
18 about three sections, and I can't imagine there  
19 were too many changes related to the one major  
20 section, 15-5 -- well, it's -- I don't want to  
21 say "major," but it has the most existing rule  
22 language, 15-5-1, that there had been changes  
23 requested. The majority of this rule is just the

1 financial test. So, I guess the answer would  
2 be -- can you ask the exact question again? I'm  
3 sorry.

4 DR. ALEXANDROVICH: Did you go back  
5 and review the prior rulemakings related to this  
6 section of the Code?

7 MR. WATTS: Yes. I mean we look at  
8 each section that we open up and look for  
9 additional changes, but we opened up so few  
10 sections that there simply were not a great deal  
11 of changes in these sections that we opened up,  
12 and we wanted to focus this rulemaking  
13 specifically on these statutory changes and not  
14 open it up to other waste tire changes.

15 DR. ALEXANDROVICH: Okay. Thank you.

16 CHAIRMAN GARD: Any other questions?

17 (No response.)

18 CHAIRMAN GARD: If not, this hearing  
19 is concluded. The Board will now consider  
20 preliminary adoption of the Waste Tire Financial  
21 Assurance Rule. Is there any Board discussion?

22 (No response.)

23 CHAIRMAN GARD: Is there a motion to

1 preliminarily adopt the rules as presented?

2 MR. RULON: So moved.

3 CHAIRMAN GARD: Is there a second?

4 MR. HORN: Second.

5 CHAIRMAN GARD: Okay. I'll call the  
6 roll.

7 Mr. Davidson?

8 MR. DAVIDSON: Yes.

9 CHAIRMAN GARD: Mr. Etzler?

10 MR. ETZLER: Yes.

11 CHAIRMAN GARD: Dr. Niemiec?

12 DR. NIEMIEC: Yes.

13 CHAIRMAN GARD: Mr. Horn?

14 MR. HORN: Yes.

15 CHAIRMAN GARD: Ms. Nelson?

16 MS. NELSON: Yes.

17 CHAIRMAN GARD: Mr. Rulon?

18 MR. RULON: Yes.

19 CHAIRMAN GARD: Mr. Mueller?

20 MR. MUELLER: Yes.

21 CHAIRMAN GARD: Dr. Alexandrovich?

22 DR. ALEXANDROVICH: Yes.

23 CHAIRMAN GARD: Ms. Kozyrski?

1 (No response.)

2 CHAIRMAN GARD: Ms. Kozyrski?

3 MS. KOZYRSKI: Yes.

4 CHAIRMAN GARD: Mr. Ketzenberger?

5 MR. KETZENBERGER: Yes.

6 CHAIRMAN GARD: The Chair votes aye.

7 There are eleven ayes, zero nays. The rule has  
8 been preliminarily adopted.

9 This is a public hearing before the  
10 Environmental Rules Board of the State of Indiana  
11 concerning preliminary adoption of the Coal  
12 Combustion Residual Rule.

13 I will now introduce Exhibit D, the  
14 proposed rule, into the record of the hearing.

15 Keelyn Walsh will present the rule.

16 MS. WALSH: Hello. I'm back with the  
17 one everyone's been waiting for. I'm Keelyn  
18 Walsh, and I will be presenting the Coal  
19 Combustion Residuals rulemaking, LSA No. 21-458,  
20 for your consideration.

21 On April 17th, 2015 U.S. EPA published a  
22 final rule in the Federal Register at 80 FR 21302  
23 that established national minimum criteria for

1 the disposal of CCR as a solid waste, and the  
2 design, operation, and closure of new and  
3 existing CCR landfills and surface impoundments  
4 under Subtitle D of the Resource Conservation and  
5 Recovery Act the 1976. This final rule became  
6 effective on October 19th of 2015, and is  
7 codified in the Code of Federal Regulations at  
8 40 CFR 257, Subpart D.

9 This rulemaking is mandated by portions  
10 of Indiana Public Law 100-2021, codified at  
11 IC 13-19-3-1 and 13-19-3-3. The goal of this  
12 rulemaking is to comply with Section 2301 of the  
13 Water Infrastructure Improvements for the Nation  
14 Act, for the implementation in Indiana of the  
15 federal CCR rule; to incorporate by reference  
16 40 CFR 257, Subpart D, concerning minimum  
17 criteria and requirements for CCR units, and to  
18 create a state CCR permitting program for which  
19 IDEM will seek U.S. EPA approval.

20 The draft rule language replaces the  
21 current partial incorporation of the federal rule  
22 at 329 IAC 10-9-1 and is no more stringent than  
23 the federal standards at 40 CFR 257, Subpart D,

1 for CCR surface impoundments, CCR landfills, AND  
2 CCR management units.

3 The Second Notice of Comment Period for  
4 the CCR rulemaking, which was published on the  
5 Indiana Register Web site on December 21st, 2022,  
6 proposed amendments to rules at 329 IAC 10-3-1,  
7 10-3-4, and 10-9-1, as well as a new article at  
8 320 -- I'm sorry -- 329 IAC 14, concerning the  
9 establishment of the state permitting program  
10 for CCR. Subsequently, a Continuation of Second  
11 Notice of Comment Period was published on the  
12 Indiana Register Web site on January 18th of  
13 2023, to give interested parties additional time  
14 to submit comments on the rulemaking.

15 During this time, the General Assembly  
16 passed amendments to IC 13-19-3-3 under HEA 1623.  
17 The amendments became effective July 1st, 2023,  
18 and require that Indiana adopt rules concerning  
19 CCR that are no more stringent than the U.S. EPA  
20 regulations at 40 CFR 257, Subpart D.

21 Additionally, U.S. EPA published a final  
22 rule on the Federal Register Web site on May 8th,  
23 2024, that established regulatory requirements

1 for legacy CCR surface impoundments and  
2 management units under the Resource Conservation  
3 and Recovery Act.

4 U.S. EPA also plans to publish a  
5 subsequent final rule to correct several  
6 technical errors in the May 8th, 2024 final rule,  
7 but these corrections will not become effective  
8 until 90 days after they're published in the  
9 Federal Register, and there's no estimated time  
10 frame for those -- that publication of the  
11 corrections as of yet.

12 So, in response to the recent passage of  
13 HEA 1623, the comments received during the first  
14 and second Continuations of the Second Notice of  
15 Comment Period, and publication of the May 8th,  
16 2024 federal rule establishing regulatory  
17 requirements for legacy impoundments and  
18 management units, IDEM is proposing to revise the  
19 new article added at 329 IAC 14 of the draft rule  
20 to incorporate by reference the July 1st, 2024  
21 version of the CFR as amended by 89 FR 39099  
22 through 89 FR 39122, and to ensure that the state  
23 rule is no more stringent than existing federal



1 requirements, and also does not impose a  
2 restriction or requirement that is not imposed by  
3 the federal rule except for new permitting  
4 standards.

5 Accordingly, IDEM is also updating  
6 amendments at 329 IAC 10-3-1 and 10-9-1, removing  
7 amendments at 329 IAC 10-3-4, and repealing rule  
8 language at 329 IAC 10-9-1(b) and 10-9-1(c).

9 IDEM will also update the incorporation by  
10 reference of 40 CFR 257, Subpart D, to the  
11 July 1st, 2025 version of the CFR before this  
12 rule is promulgated, or through a separate  
13 rulemaking, to include the upcoming federal rule  
14 corrections.

15 And with all of that being said, IDEM  
16 requests that the Board preliminarily adopt this  
17 rule as presented, and program staff are  
18 available to answer any further questions.

19 Thank you.

20 CHAIRMAN GARD: Does the Board have  
21 any questions?

22 DR. ALEXANDROVICH: Guess what? I do  
23 again.

1 CHAIRMAN GARD: That's all right.

2 DR. ALEXANDROVICH: Joanna -- Joanne  
3 Alexandrovich. Can I go ahead?

4 CHAIRMAN GARD: Yes, go ahead.

5 DR. ALEXANDROVICH: I have actually  
6 two questions, and then just a comment on some  
7 wording and formatting. The first question  
8 concerns, under the very beginning, under the  
9 "Digest," about the rule being effective on final  
10 approval by the EPA, and so, I'm wondering what  
11 that final approval entails. Is there a Federal  
12 Register proposal and final, or is it a direct  
13 final, or is it just a nod from the EPA? So,  
14 what -- how are we -- how does it become  
15 approved?

16 MS. WALSH: Yeah, my understanding is  
17 that they are working on their own permitting  
18 program, and ours cannot be approved by them  
19 until that is submitted, and I assume that would  
20 be a final rule approval, but I know that that's  
21 still in the works and is a little bit of a way  
22 out.

23 And I don't know, Lori, if you might have

1 any other information with that.

2 MS. FREEMAN: IDEM will need to  
3 submit an application, once our rules are final,  
4 to the EPA for them to review to make sure that  
5 they are consistent with the federal rule, and it  
6 will go through an application process and a  
7 review period by the EPA before the EPA  
8 authorizes us to implement this rule, similarly  
9 to how we are authorized to implement the RCRA  
10 hazardous waste regulations.

11 DR. ALEXANDROVICH: So, that's not by  
12 a Federal Register notice, or it's --

13 MS. FREEMAN: Well, the federal rule  
14 allows states to become authorized states, and  
15 that is through an application process to the  
16 EPA, and we cannot begin the application process  
17 until we have a final rule adopted by the state.

18 DR. ALEXANDROVICH: Okay. Thank you.

19 My second question, on page 5 of 16,  
20 towards the bottom, (c), "For purposes of this  
21 article...municipal solid waste landfills...means  
22 a CCR unit." So, I'm wondering why that's there.  
23 Do most municipal solid waste landfills accept

1 CCR? Is that why that's in there -- or some of  
2 them do? I'm a little confused on that.

3 MS. WALSH: I'm sorry; can you repeat  
4 the page number on that?

5 COMM. ROCKENSUESS: 5.

6 DR. ALEXANDROVICH: 5 of 16.

7 MS. WALSH: "For [the] purposes of  
8 this article, any reference --" oh, no.

9 COMM. ROCKENSUESS: Yeah.

10 MS. WALSH: Yeah, is that it? Okay.

11 COMM. ROCKENSUESS: Yeah, (c).

12 MS. WALSH: Yes, I do believe --

13 Lori, is that correct, that they --

14 MS. FREEMAN: Yes, solid waste  
15 municipal landfills can also accept coal  
16 combustion residuals, and many in the state do,  
17 although a lot of utilities also have restricted  
18 waste monofills, instead of sending their ash to  
19 solid waste municipal landfills. But the federal  
20 rule does allow for it to go into a municipal  
21 solid waste landfill instead of complying with  
22 the federal CCR rules.

23 DR. ALEXANDROVICH: Okay. Thank you

1     for that, very much.

2             And then my last -- I'm sorry -- on page 7  
3     of 16, about no. (2), "Major modification," it's  
4     just the wording there, it means "any increase in  
5     a CCR unit...." Perhaps you might change  
6     "increase" to "modification, changes,  
7     alterations," or something, because it's not  
8     necessarily an increase.

9             And then just a little bit down from  
10    there, where you talk about "Minor  
11    modifications," then under (c) there's additional  
12    stuff, and I'm just not sure why that's there,  
13    about "ADC for fugitive dust" and "borrow pit."

14            MS. WALSH: Uh-huh.

15            DR. ALEXANDROVICH: So, it's a matter  
16    of wording and terminology and formatting.

17            MS. WALSH: I see, that maybe you  
18    feel like it doesn't flow as well as it could to  
19    make --

20            DR. ALEXANDROVICH: Right, yeah.

21            MS. WALSH: -- the most sense? Okay.

22            DR. ALEXANDROVICH: And then I'm just  
23    not sure I understand why that additional stuff

1 on "minor modification" is stuck in there.

2 (Discussion off the record.)

3 DR. ALEXANDROVICH: You guys can --  
4 you can think about it. I just wanted to bring  
5 that up. It didn't seem right, to --

6 MS. FREEMAN: It was -- the  
7 definitions were taken from the solid waste  
8 permitting requirements and then changed to fit  
9 the CCR regulations. The two additional ones, I  
10 believe, are things that are not thought of in  
11 the solid waste permitting definitions, and so,  
12 they were tacked on. They could probably be  
13 moved up, I would assume, but I would just defer  
14 to Keelyn on that.

15 MS. WALSH: Certainly, yeah, we  
16 can --

17 DR. ALEXANDROVICH: Okay.

18 MS. WALSH: -- we can play around  
19 with that.

20 DR. ALEXANDROVICH: Thank you.

21 MS. WALSH: -- with that structure,  
22 yeah.

23 DR. ALEXANDROVICH: There, I think

1 I'm done for the day, hopefully.

2 CHAIRMAN GARD: Say that again.

3 COMM. ROCKENSUESS: She's done.

4 (Laughter.)

5 MR. DAVIDSON: I just want to get  
6 that on the record.

7 MR. RULON: Madam Chair, I just have  
8 a quick question on page 3 of 16, where it says,  
9 "...or if the commissioner documents...." I  
10 presume that's other -- I mean is the IDEM's --  
11 it doesn't have to be the Commissioner of IDEM;  
12 right? It could be his delegates?

13 MS. WALSH: Correct.

14 MR. RULON: Thank you.

15 MS. WALSH: Uh-huh.

16 CHAIRMAN GARD: Any other questions  
17 from the Board?

18 MR. DAVIDSON: I just have a quick  
19 question on the comments, on page 5 of 5 of the  
20 comments. The folks from Ohio Valley asked about  
21 a timeline and making sure on those timelines,  
22 and the agency said, "We don't see it that way."  
23 Could that just be clarified? Is that just a

1     misunderstanding of reading the time?

2                   MS. WALSH:  Uh-huh.  I don't,  
3     unfortunately, have those specific comments with  
4     me at the moment, but they -- yeah, as I recall,  
5     they do mention clarifying timelines of when we  
6     would be publishing -- or doing final adoption  
7     and that kind of thing.

8                   MR. DAVIDSON:  Well, the response was  
9     that the commenter misstates the nature of the  
10    deadlines, so it sounded like maybe the agency  
11    was just disagreeing with how the commenter was  
12    reading the deadlines, and I also --

13                  MS. WALSH:  Oh, yeah, yeah.

14                  MR. DAVIDSON:  So, it -- that sounded  
15    like just a -- somebody was reading it  
16    incorrectly, it didn't sound like a dis --

17                  MS. WALSH:  Correct, it was -- it was  
18    probably an -- you know, an unintentional error  
19    on the part of the commenter making the comment  
20    that those, you know, didn't quite match up with  
21    the timelines that we had asserted, so --

22                  MR. DAVIDSON:  All good?

23                  MS. WALSH:  -- not substantive, yeah,



1 not substantive.

2 MR. DAVIDSON: Thank you.

3 CHAIRMAN GARD: Any more?

4 (No response.)

5 CHAIRMAN GARD: Okay. We have one  
6 speaker card. I'll call on Dr. Indra Frank  
7 on-line. Oh, we've got more.

8 (Laughter.)

9 CHAIRMAN GARD: But Dr. Frank is  
10 first.

11 DR. FRANK: Madam Chair and members  
12 of the Board, thank you for the opportunity to  
13 speak. Can I be heard all right?

14 COMM. ROCKENSUESS: Yeah, yes.

15 DR. FRANK: Great. Thank you.

16 My name is Indra Frank, and I'm here in my  
17 role as a staff member of the Hoosier  
18 Environmental Council. I've worked on the issues  
19 surrounding disposal of coal ash for the last 10  
20 years.

21 Coal cash, which is also known as CCR, is  
22 what's left after burning coal, and it contains  
23 toxic heavy metals, like arsenic, lead, mercury,

1 and many others, and coal ash is essentially a  
2 forever waste. It doesn't break down over time  
3 like some wastes do, and therefore, it's really  
4 critically important that we dispose of coal ash  
5 carefully.

6 Coal ash creates risk when it gets dry and  
7 it gets into the air as a breathing hazard, when  
8 it gets wet and contaminates water, or when  
9 collection disposal sites fail and it causes a  
10 spill. It is important to dispose of coal ash  
11 carefully, but we've not always done that. There  
12 were very few regulatory requirements for coal  
13 ash disposal prior to 2015. Since the utilities  
14 have always been under pressure to keep  
15 electricity rates low, and there weren't many  
16 requirements, they tended to dispose of coal as  
17 in the least expensive manner.

18 As a result, most of Indiana's coal ash  
19 wound up stored in the flood plains of our rivers  
20 and Lake Michigan in leaking units that were  
21 contaminating the underlying groundwater. At  
22 many sites, the coal-ash-contaminated groundwater  
23 that -- has been running into the adjacent lake

1 or river.

2 Indiana has been able to produce a lot of  
3 energy from coal over the last 100-plus years,  
4 but unfortunately, that also means that Indiana  
5 has been one of the nation's top producers of  
6 coal ash. According to data from the U.S. Energy  
7 Information Administration, Indiana is currently  
8 producing about five million tons of new coal ash  
9 every year.

10 The federal coal ash rule, which, as we've  
11 heard, went into effect in 2015, brought  
12 improvements, but it also had broad exemptions  
13 that left roughly half of the coal ash sites in  
14 Indiana unregulated. If coal ash was at a site  
15 that no longer produced electricity, it was  
16 exempted, or if a landfill or coal ash pond  
17 stopped receiving coal ash by October 19th  
18 of 2015, then it was exempted.

19 There were 51 coal ash landfills and ponds  
20 in Indiana that had to meet requirements under  
21 the 2015 federal rule, but there were at least 49  
22 that were exempted. These exemptions applied  
23 even if the ash was contaminating groundwater.

1 I'd like to give a couple of examples of these  
2 exemptions to the federal rule, just to  
3 illustrate the impact that the exemptions could  
4 have, and those exemptions are relevant to  
5 consideration of the draft Indiana rule that is  
6 before you.

7 At the Wabash River Generating Station,  
8 which is on the banks of the Wabash River near  
9 Terre Haute, the North Ash Pond is unlined, and  
10 it is deep enough that the bottom ten feet of ash  
11 are below the water table so that ash is soaking  
12 in the groundwater. And please remember that  
13 when coal ash is wet, it contaminates water.

14 Monitoring at the Wabash River site shows  
15 that the groundwater from the North Ash Pond has  
16 been contaminated by the coal ash with arsenic,  
17 boron, lithium and gliptinum. The monitoring  
18 also shows that the contaminated groundwater is  
19 flowing into the Wabash River. The North Ash  
20 Pond was exempted under the 2015 federal rule,  
21 and that meant that the ash from that pond was  
22 left in place and it was left in the groundwater.

23 Another example is at the Eagle Valley

1 Generating Station adjacent to the White River  
2 near Martinsville. Coal Ash Ponds D and E at  
3 Eagle Valley were considered exempt from the 2015  
4 federal rule. Both of these ash ponds are  
5 unlined, and the edges of these ponds lie just  
6 400 feet from the White River.

7 At a portion of Pond D, the coal ash has  
8 been documented to lie up to nine feet below the  
9 seasonal high groundwater level, but the contact  
10 between ash and groundwater has not been fully  
11 evaluated in Pond D, and it has not been  
12 evaluated at all in the adjacent Pond E. These  
13 ponds are unlined, and it's important to know  
14 where the coal ash is in contact with  
15 groundwater, because, as mentioned, where there's  
16 contact with water, the coal ash contaminates the  
17 water.

18 Also, it has been documented that the  
19 groundwater under the coal ash at Eagle Valley is  
20 going into the river, so both the groundwater and  
21 the river are risk at this site. Because the  
22 Eagle Valley unlined Ponds D and E were exempted  
23 under the 2015 federal rule, their contact with

1 water has not been fully evaluated, and there is  
2 still not a plan for the final disposal of their  
3 ash.

4 In 2018, the D.C. Court of Appeals  
5 overturned the exemptions in the federal coal ash  
6 rule in recognition of the fact that coal ash is  
7 coal ash regardless of the date it was placed or  
8 the date that electricity was generated. The  
9 Court recognized that the previous exemptions on  
10 coal ash were exemptions that exempted coal ash  
11 that could be just as much of a threat to human  
12 health and the environment.

13 The Court remanded the rule back to EPA  
14 for revision, and in May of this year, as  
15 Ms. Walsh mentioned, the EPA finalized the  
16 required update to the federal rule. The revised  
17 rule closes most of the exemptions that were in  
18 the 2015 rule, so that now, most coal ash sites  
19 will need to have adequate disposal practices  
20 that protect human health and the environment.

21 That brings us to the draft Indiana Coal  
22 Ash Rule that is on your agenda today. The draft  
23 rule incorporates the federal rule as of

1 July 1st, 2024 by reference, which means that  
2 Indiana's draft rule has all of the requirements  
3 that are in the most recent update of the federal  
4 rule. I would like to most sincerely commend the  
5 IDEM for incorporating the most recent update to  
6 the federal rule.

7 Because of this, the previously exempted  
8 sites will need to have adequate disposal  
9 practices, and Indiana will have much better  
10 protection of its water resources. Also, by  
11 incorporating the most recent federal rule, IDEM  
12 has made it much more likely that EPA will  
13 approve the Indiana rule.

14 Under the law passed by Congress, as was  
15 discussed a few minutes ago, the state coal ash  
16 rule must be at least as protective as the  
17 federal rule, and it has to be approved by EPA,  
18 so incorporating the most recent update to the  
19 federal rule helps ensure that Indiana's rule is  
20 at least as protective and more likely to be  
21 approved by EPA.

22 I would also like to commend IDEM for  
23 including provisions from existing Indiana solid

1 waste requirements. It's my understanding that  
2 these requirements from 329 IAC 10 have been in  
3 place for waste disposal in Indiana since  
4 the 1990's. These provisions include things like  
5 permit application and modification processes  
6 having detailed disposal plans and having  
7 financial responsibility for the waste.

8 The state's coal ash landfills have been  
9 following requirements in 329 IAC 10 for years,  
10 and the coal ash impoundments have been following  
11 these state requirements for closure so that the  
12 inclusion of provision from 329 IAC 10 makes  
13 sense in Indiana's permitting rule.

14 The draft Indiana Coal Ash Rule does a lot  
15 of good things but I do have concerns on a couple  
16 of the provisions, and here, I'm going to  
17 transition to referring to coal ash as CCR, since  
18 that is the term that's used in the draft rule.  
19 The draft rule, at 14-2-1, says, "One permit  
20 application may be submitted for multiple CCR  
21 [unit] -- units located at...[a] facility."

22 My concern with this is that one facility,  
23 which, in many cases, means one power plant



1 location, can have very different CCR units that  
2 have different disposal challenges. For example,  
3 many Indiana power plant sites have both a CCR  
4 landfill and CCR ponds. The landfill and ponds  
5 are different CCR units, but just because a CCR  
6 pond has met the requirements for a permit  
7 doesn't mean that the landfill qualifies, and  
8 vice-versa. So, putting them under the same  
9 permit raises concerns for me. However, as long  
10 as each of the CCR units still has to meet all of  
11 the requirements, then the single permit could  
12 still work; it might just take longer.

13 The next issue I want to raise is on the  
14 draft rule at 14-3-2(c). 14-3-2(c) is about  
15 liners under coal ash landfills. It says,  
16 "One...foot of clay and a geosynthetic clay liner  
17 that complies with 329 IAC 10-17-10 is an  
18 acceptable alternative under 40 CFR 257.70(c)."

19 So, to dissect this just a little bit,  
20 this provision references 329 IAC 10-17-10, which  
21 has standards for the geosynthetic component of  
22 the liner, but it has no standards for the one  
23 foot of clay that are mentioned in this provision

1 of the draft rule.

2 In contrast, this provision cites the  
3 federal rule at 40 CFR 257.70(c), and that  
4 federal provision stipulates in detail which  
5 alternative composite liners suffice, including  
6 requirements for their hydraulic conductivity.

7 By having the hydraulic conductivity  
8 requirement, the federal rule stipulates  
9 essentially just how leakproof the liner has to  
10 be, but that provision about hydraulic  
11 conductivity and being leakproof is not present  
12 in the draft Indiana rule at 13-3-2(c), and so,  
13 that's my concern with that provision. It  
14 doesn't stipulate hydraulic conductivity.

15 I consulted a geologist who has many years  
16 of experience with coal ash disposal, and he said  
17 that the alternative liner that's suggested in  
18 this provision of the Indiana draft rule, with  
19 one foot of clay and a geosynthetic liner might  
20 be sufficient even without the hydraulic  
21 conductivity requirement if that liner is at  
22 least five feet above the local water table year  
23 round.

1           So, if that were the case, if the liner is  
2   at least five feet above the water table, and  
3   it's above -- at least five feet above it year  
4   round, then one foot of clay and the geosynthetic  
5   liner could be sufficient. However, even if this  
6   is the case, this provision, I think, prevent --  
7   excuse me -- potentially leaves the Indiana rule  
8   less protective than the federal rule and could  
9   interfere with EPA's approval.

10           I want to raise another point about liners  
11   under coal ash. Many coal ash ponds in Indiana  
12   are deep enough to have ash below the water table  
13   for some or all of the year. If ash disposal  
14   continues to be allowed at these depths, the  
15   draft rule should include requirements for liners  
16   under the ash that will resist uplift from the  
17   water below the ash.

18           So, going on to another point, in the  
19   draft Indiana rule at 14-3-5(c)(3), the rule adds  
20   to a federal provision at 257.102(f). 257.102 is  
21   about closure of CCR units, and it refers both to  
22   closure by removal and closure in place. The  
23   provision in the draft Indiana rule says that

1 "The owner or operator must meet the performance  
2 standards, and submit a clean closure  
3 [certificate] -- certification report described  
4 under 40 CFR 257.102(c)."

5 This requirement to add a clean closure  
6 certification report sounds like it would apply  
7 just to removal -- or closure by removal, so my  
8 concern is that in the federal rule, this section  
9 is about closure activities for both closure by  
10 removal and closure in place, so inclusion of  
11 this clean closure certification report might not  
12 make sense for a unit that is closing in place.

13 I wanted to also mention something I  
14 note -- something I noted in the draft rule that  
15 might be a typographical error. At  
16 329 IAC 14-1-3 -- or excuse me -- 14-1-4(a)(3),  
17 it's in the "Definitions" section, it includes a  
18 citation for the federal rule at 40 CFR 257.02.  
19 I have not been able to find 257.02, and I wonder  
20 if it was supposed to be 257.2 instead of 257.02.  
21 So, I just wanted to raise that as -- it looks  
22 like it might be a typo.

23 Finally, I'd like to make a request. The

1 version of the Indiana Coal Ash Rule that is  
2 before the Board today is significantly different  
3 from the version that was released back in the  
4 summer. The version released back in the summer  
5 had a 30-day comment -- public comment period,  
6 and IDEM has worked hard responding to those  
7 comments. Because of the rulemaking process, the  
8 current version you're seeing today does not have  
9 a public comment period, even though it has  
10 significant differences.

11 There are some individuals who have not  
12 been able to attend today's hearing but who would  
13 like to provide input on this version of the  
14 rule, and so, I'd like to request that IDEM take  
15 into consideration any written comments submitted  
16 by December 20th, even though there isn't a  
17 formal public comment period.

18 Though I have the concerns I've described  
19 for you above, in particular about the provisions  
20 on alternative liners and single permits,  
21 overall, I believe that the draft Indiana Coal  
22 Ash Rule, if enforced as written, will provide  
23 improved coal ash disposal and beneficial

1 protection for Indiana's communities and water  
2 resources.

3 Thank you again for the opportunity to  
4 speak.

5 CHAIRMAN GARD: Thank you, Dr. Frank.

6 Does the Board have any questions for  
7 Dr. Frank?

8 (No response.)

9 CHAIRMAN GARD: Okay. We will move  
10 on, and I am going to make a request. We have --  
11 we have quite a few people that have signed up to  
12 speak. The weather's getting not very great, so  
13 be concise, and if you have new information for  
14 us, we certainly want to hear it, but just keep  
15 in mind that we are under time constraints, so  
16 please be concise in your testimony.

17 Larry Jensen.

18 MR. JENSEN: Yes. My name is Larry  
19 Jensen. As a background, I was -- when I retired  
20 from EPA, I was the regional radiation expert for  
21 Superfund. I was also a -- well, whatever.

22 My concern with the coal ash is that this  
23 is a radioactive material. In 2009, a group in

1 the Town of Pines called P I N E S, People In  
2 Need of Environmental Safety, talked to me and  
3 said, "We'd like to know where our coal ash is."  
4 And I said, "Well, you know, it's radioactive,  
5 and we take a meter, we'll go out and we'll find  
6 it."

7 So, we did that. We spent three years  
8 walking through Pines, through residential  
9 properties, down streets, down roads that even  
10 went through the Indiana Dunes National  
11 Lakeshore. And it was everywhere, and one place  
12 that I took a sample, the radium level was above  
13 the Superfund cleanup level for radiation sites.

14 Now, other things that concern me about  
15 the coal ash is that in Michigan City, the coal  
16 plant is adjacent to the prison, so the emissions  
17 out of the stacks from the coal plant end up in  
18 the prison, amongst the prisoners, and I think  
19 that that's a tragic situation.

20 The other thing, there seems to be an  
21 attempt to recycle coal ash into building blocks.  
22 Well, since building -- since the coal ash has  
23 radium in it, then the building blocks will

1 produce radon, and if used in homes, then you end  
2 up with a tremendous radium -- radon addition to  
3 the home, and radon is viewed very strongly by  
4 EPA as a very, very high-level air pollutant.  
5 So, I think recycling the coal ash into blocks is  
6 not good.

7 Another way that it's used is as a -- an  
8 abrasive agent for like cleaning up old  
9 buildings, so the bottom ash is used because it's  
10 hard and gritty, and sandblasted onto the bricks  
11 to clean it. When you're done, then you have all  
12 of this bottom ash with the radium in it laying  
13 all over the ground.

14 Perhaps the people doing the work were not  
15 adequately protected with masks and things of  
16 that sort. I don't know, but that's something  
17 that ought to be required if bottom ash is used  
18 as an abrasive agent.

19 Those are the things that I would like to  
20 say. Oh, one about Pines. When I was at EPA, I  
21 spent 25 years working on the cleanup of a  
22 suburban site, and what the situation in Pines  
23 is, is almost identical, that the residential



1 properties are filled with the ash, that the  
2 roads have been used as underlayment ash.

3 Roads have been created in Pines through  
4 marsh with the ash, and so, it's spread all over  
5 the place. And it's a radioactive material, so  
6 you're spreading radioactive -- that has spread  
7 radioactive material all through Pines.

8 That's very like the 25-year job I had  
9 when I was at EPA cleaning up this town, because  
10 that was a different radioactive material, but it  
11 was the same thing. And we spent 25 years  
12 working on that, covering about 600 homes,  
13 rivers, parks, things of that sort.

14 So, if you have questions, I'm willing to  
15 answer them.

16 CHAIRMAN GARD: Are there questions  
17 for Mr. Jensen?

18 (No response.)

19 CHAIRMAN GARD: Thank you.

20 The next person to testify is Stan  
21 Diamond.

22 MR. DIAMOND: Madam Chair, Board  
23 members and Commissioner, thank you for the

1 opportunity to speak to you today. I'm here as a  
2 resident of Morgan County, Indiana, and I am also  
3 a Board Supervisor on the Morgan County Soil and  
4 Water Conservation District, and I'm here on  
5 their behalf as well.

6 I'd like to also, like Dr. Frank, express  
7 our appreciation for the adoption of the new rule  
8 that incorporates and will require compliance and  
9 the proper management and this enclosure of the  
10 legacy ponds.

11 The Eagle Valley Power Plant that  
12 Dr. Frank talked about is three miles up the  
13 White River from Martinsville. We've got 2.9  
14 million yards -- an estimated 2.9 million yards  
15 of ash in the five ponds that are there. They're  
16 unlined. There's ash below the water table.

17 There's a closure plan for Ponds A, B  
18 and C that's almost been approved, but -- that  
19 we're waiting on, that we have been involved in,  
20 in monitoring and working with IDEM on as we move  
21 forward. And again, we're looking very -- we're  
22 very happy to hear that we're at some point here  
23 soon hopefully going to get the owner and

1 operator to also include the closure of Ponds D  
2 and E on that same site.

3 What we do need, and what we would like to  
4 request IDEM's full support on, and both the  
5 drinking water or the Office of Water Quality,  
6 working with the Office of Land quality, to close  
7 a loophole that is currently being used by the  
8 owner/operator on the site and would -- and they  
9 plan to continue to use the loophole, to  
10 essentially get around the very minimum  
11 requirements that are incorporated into these  
12 rules, and that is the release or the containment  
13 of the contaminants, to the extent feasible, of  
14 these contaminants to the off-site -- either  
15 through the groundwater, the surface water, or  
16 the air.

17 Currently, the way that the plant is  
18 operated, the gas-fired power plant that's on the  
19 site, they're pulling the contaminated  
20 groundwater into the plant using the three  
21 production wells there, and on average, about a  
22 million gallons a day, or up to a million gallons  
23 a day, of water is used in the power plant

1 generation process, primarily in cooling.

2 The contaminants that are in that  
3 production well water are in fact concentrated, a  
4 factor of five, generally, and are being released  
5 through the permit -- permitted outfall through  
6 the NPDES permit. That permitted outfall  
7 discharges into a canal on the north side of the  
8 plant that then flows slowly to the west and then  
9 discharges into the White River.

10 So, while the overall objective of the --  
11 of these rules are to minimize the release of  
12 these contaminants to, as I said, the groundwater  
13 and the surface water and the air, the way this  
14 plan is currently set up and is currently being  
15 operated is we're allowing the discharge of those  
16 contaminants, concentrated contaminants, to the  
17 White River.

18 We believe that -- or we're very concerned  
19 when the closure plan work begins -- and their  
20 plan includes moving all of the ash in Ponds A, B  
21 and C around within those impoundments to the  
22 extent needed to raise the ash out of the  
23 groundwater, and to fill that space and then

1     replace the ash.

2             And we really have no idea of what's going  
3     to happen to the concentration of those  
4     contaminants in the groundwater below the ponds  
5     that are just being drawn into the plant during  
6     that process. They may very well come up, and  
7     they're going to be concentrated further in the  
8     process in the plant, and they could get to  
9     levels that may be dangerous to the -- too  
10    dangerous to discharge to the White River.

11            So, there is monthly monitoring of these  
12    contaminants and the discharges through the  
13    NPDES, and we ask that careful monitoring and  
14    more frequent monitoring of those concentrations  
15    be -- occur as the work begins so that we know  
16    and have some idea in advance as to where  
17    those -- what's happening with those contaminant  
18    levels.

19            And we would very much like to encourage  
20    both branches of the IDEM to work together to  
21    close this loophole. We believe that by  
22    providing advanced water treatment, that these  
23    contaminants may be able to be -- will be able to

1 be removed from the process water, and that with  
2 additional heat that's readily available on the  
3 site, that the volume of that -- reject streams  
4 from those water treatment processes can be  
5 further reduced to manageable quantities that can  
6 then be properly disposed of in a permanent  
7 landfill that's lined, or in some other  
8 responsible way that -- in a way that doesn't  
9 contribute to the -- to the contaminants that are  
10 being discharged, or that will reduce the  
11 contaminants that are being discharged to the  
12 White River.

13 So, again, I'm very thankful for the  
14 opportunity to bring this to your attention, and  
15 we would like to continue to work with IDEM in --  
16 on the regulations and see that these things are  
17 managed properly and closed properly, and that we  
18 don't end up with these contaminants continuing  
19 to be discharged to the river for the next 25  
20 years, 25 or 30 years.

21 So, with that, I'll answer any questions.

22 CHAIRMAN GARD: Thank you very much.

23 Are there any questions for Mr. Diamond?

1 MR. KETZENBERGER: I have a question.

2 CHAIRMAN GARD: Yes.

3 MR. KETZENBERGER: Mr. Diamond, the  
4 proposed rule, under the scenario you just  
5 described, would the rule affect the process that  
6 you're talking about? Do you need changes or  
7 additions to the rule to reach the outcome that  
8 you just described?

9 MR. DIAMOND: Not to the rule, but we  
10 need the recognition that the discharge through  
11 the NPDES is in fact, in essence, getting around  
12 the actual requirement of the rule, that --

13 MR. KETZENBERGER: So, that would  
14 require convincing the IDEM that "You need to do  
15 that additional work"? It's not really affect --  
16 the rule -- this rule does not really affect what  
17 it is that you're trying to do?

18 MR. DIAMOND: What we'd like to do is  
19 to ensure that the rule -- that compliance with  
20 the rule is in fact going to occur, that we're  
21 not allowing the discharge from the power plant  
22 to continue to release these contaminants, while  
23 the overall objective of the closure plan and the

1 management of these wastes is to minimize that  
2 discharge to the extent feasible.

3 So, it's -- it is -- it is a loophole, and  
4 we -- personally, we don't -- we are struggling  
5 to understand how the plan can be approvable and  
6 approved, given the fact that they are getting  
7 around the requirement of the rule to minimize  
8 the release.

9 MR. KETZENBERGER: I understand.

10 MR. DIAMOND: It's very -- it's very  
11 challenging.

12 MR. KETZENBERGER: Thank you.

13 CHAIRMAN GARD: Well, IDEM's assured  
14 me they'll comply with the rule once it's  
15 officially adopted and approved by EPA.

16 MR. DIAMOND: Excuse me?

17 CHAIRMAN GARD: I said IDEM has  
18 assured me they will comply with the rule once  
19 it's adopted and approved by EPA.

20 MR. DIAMOND: And we are very  
21 grateful for that.

22 Any other questions?

23 CHAIRMAN GARD: Anybody else?



1 (No response.)

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

4 MR. DIAMOND: Thank you.

5 CHAIRMAN GARD: Jessica Reiss.

6 MS. REISS: Chairman Gard and members  
7 of the Board, thank you for the time. My name is  
8 Jessica Reiss. I'm a partner with Barnes &  
9 Thornburg law firm. I am here today to present  
10 comments on behalf of two clients. I have  
11 written comments from both clients that I'll  
12 submit into the record, and I'd also like to  
13 provide oral comments, just a few if those. You  
14 guys don't need to hear all of this. I'm only  
15 presenting the ones that I'd like Board action on  
16 today.

17 I am presenting my first comment on behalf  
18 of two clients. This is on behalf of Hoosier  
19 Energy Rural Electric Cooperative, Inc., and  
20 Indiana Kentucky Electric Corporation, or IKEC.  
21 The first comment relates to IDEM's authority  
22 with respect to this rulemaking. As you know,  
23 the Indiana General Assembly amended Indiana

1 Code 13-19-3-3 in 2023 and provided some very  
2 specific guidelines for IDEM's state CCR permit  
3 program.

4 Specifically, Subsection (c) provides  
5 three rules that IDEM has to follow in creating  
6 this rulemaking. Those rules are that it has to  
7 be consistent with the CCR rule; it may not  
8 impose any restrictions or requirements that are  
9 more stringent than the CCR rule; and it must not  
10 impose any restrictions or requirements that are  
11 not imposed by the CCR rule. That's straight  
12 from the statutory language that was passed  
13 in 2023.

14 When the draft rule was published with a  
15 continuation of second notice, it included a lot  
16 of requirements that did not meet these  
17 standards. We are really grateful that IDEM  
18 changed the rule in this draft rule and got rid  
19 of almost every single one of the technical  
20 requirements that were previously imposed.  
21 Unfortunately there are still three small  
22 requirements that are in the draft rule for  
23 preliminary adoption today that exceed the

1 requirements of Indiana Code 13-19-3-3(c).

2 One of those is on page 15 of the draft  
3 rule, about a third of the way down the page.  
4 It's 329 IAC 14-3-5(f)(8)(B). So, you will only  
5 see the (8) and the (B) on that page, and it is  
6 the only (8) and the only (B), so you should be  
7 able to find it. It says that "Erosion and  
8 sediment control measures must be instituted to  
9 comply with 329 IAC 10-20-12 and this rule."

10 Erosion and sediment control requirements  
11 are not imposed by the federal CCR rule, and they  
12 are not permitting requirements. Some of those  
13 measures include such things as emergency  
14 spillways must be able to discharge a 25-year,  
15 24-hour precipitation event. That's not a  
16 permitting requirement, that's a technical  
17 requirement.

18 Sediment must be removed from the  
19 sedimentation basins when the volume accumulates  
20 to 50 percent. Again, a technical requirement,  
21 not a permitting requirement. These are clearly  
22 technical requirements, and as such -- and they  
23 are not imposed by the federal CCR rule, and as a

1 result, they exceed IDEM's statutory authority  
2 based on the 2023 amendment.

3 The next is on --

4 MR. RULON: Excuse me a second.

5 MS. REISS: Yeah.

6 MR. RULON: I think that most of us  
7 would think that they make an awful lot of common  
8 sense. I didn't think that we had to write rules  
9 that didn't have common sense included in them.  
10 I mean if you're going to fill up a retention  
11 pond with mud and not clean it out, you're  
12 guaranteed to put the sediment in the river when  
13 it rains.

14 I mean I'm just -- and I understand you  
15 guys wrote the law, so I get you want your law  
16 enforced, but it seems to me like it's pretty  
17 much common sense that you should maintain  
18 sediment and erosion control around retention  
19 ponds. I'm pretty sure my CAFO has to. I'm just  
20 pointing that out to you. I don't understand how  
21 this is a terrible restriction on a power plant,  
22 to maintain the sediment control basis, whether  
23 it's technical or in the statute. So --

1 MS. REISS: Your point is well  
2 received, and unfortunately, the question should  
3 not be directed to me, but toward the  
4 legislature. The legislature wrote a statute  
5 that said that the state CCR permit program may  
6 not impose requirements beyond those in the  
7 federal CCR rule, and this, as you've pointed  
8 out, is a requirement on how a CCR surface  
9 impoundment is managed, not a requirement on how  
10 it's permitted, and as a result, it exceeds the  
11 statutory authority of the rulemaking.

12 The next provision is on page 16. It's  
13 329 IAC 14-4-1. The draft rule imposes financial  
14 assurance requirements on CCR units. EPA  
15 considered whether to include financial assurance  
16 in the federal CCR rule, and they declined to do  
17 so. The Obama Administration declined to do so  
18 in 2015 when it passed the original rule, and the  
19 Biden Administration declined to add it earlier  
20 this year when it passed amendments to the CCR  
21 rule.

22 In fact, the preamble to the 2015 CCR rule  
23 stated, quote, EPA recognizes that some states

1 have adopted requirements that go beyond the  
2 minimum federal requirements. For example, some  
3 states currently impose financial assurance on  
4 CCR units. The federal criteria promulgated  
5 today are minimum requirements that do not  
6 preclude states from adopting more stringent  
7 requirements where they deem to be appropriate,  
8 end of quote.

9 That's from the Obama Administration's CCR  
10 rule in 2015. In other words, EPA recognized  
11 that financial assurance is more stringent than  
12 the federal CCR rule and goes beyond the federal  
13 CCR rule. And as a result, again, the  
14 legislature has prohibited IDEM from adding that  
15 to this rule.

16 The last one I want to bring to your  
17 attention today is on page 8. It's in  
18 329 IAC 14-2-1(b), which would subject the units  
19 to 329 IAC 10-11 through 10-13. Now, rules 10,  
20 11 -- I'm sorry -- rules 11, 12 and 13 are  
21 permitting requirements, and those are absolutely  
22 appropriate for this rulemaking, and we  
23 appreciate IDEM creating a permitting system for

1 CCR units.

2           However, within that is  
3 329 IAC 10-11-2.1(b)(5), which would impose good  
4 character requirements on CCR units, from the  
5 statutory good character requirements. There are  
6 no good character requirements in the federal CCR  
7 rule, and the Indiana Office of Environmental  
8 Adjudication decided a case in 2019 in which IDEM  
9 attempted to impose good character requirements  
10 on waste tire storage facilities.

11           OEA said that IDEM could not apply good  
12 character requirements to facilities without  
13 specific legislative direction to do so. There's  
14 been no legislative direction in this case for  
15 IDEM to apply good character requirements to CCR  
16 units. In fact, the legislature said not to  
17 apply anything beyond the federal CCR rule.

18           To resolve these three issues, we ask the  
19 Board to take three actions prior to preliminary  
20 adoption of the draft rule. We ask the Board to  
21 strike 329 IAC 14-3-5(f)(8)(B), which would get  
22 rid of the erosion and sediment control  
23 requirements.

1           We ask the Board to strike 329 IAC 14-4-1,  
2       which would impose financial assurance on the CCR  
3       units.

4           And to resolve the good character issue,  
5       if you go back to page 8, there is a Section  
6       329 IAC 14-2-1(d), which says these requirements  
7       within Article 10 do not apply to CCR units, so  
8       we would propose to add a new subdivision no. 5  
9       there that says the requirement's related to good  
10      character information in 329 IAC 10.

11          I'll pause there for any questions on this  
12      topic before moving on to my additional comments.

13           CHAIRMAN GARD:   The only ques -- one  
14      question I have:   Are you the new John Kyle?

15           MS. REISS:   Oh, that is -- if that  
16      were the case, that would be the best compliment  
17      I've ever received in my whole life.

18           CHAIRMAN GARD:   He was -- he did --  
19      he did a nice job, but I'm concerned with the  
20      request, because I think that what you're asking  
21      us to remove would -- it could create some  
22      problems and put people at risk in the future,  
23      and I know when, in the years that I chaired the



1 Environmental Committee for the Senate, we  
2 imposed financial assurance on various operations  
3 that were -- had the potential to put the public  
4 at risk, so I'm concerned about those three items  
5 that you mentioned.

6 Anybody else want to make a comment, ask a  
7 question?

8 (No response.)

9 MS. REISS: The next comment that I'm  
10 submitting today is on behalf of Hoosier Energy  
11 only, not on behalf of IKEC.

12 On page 8 of the draft rule,  
13 329 IAC 14-2-1(a), it says that "The owner,  
14 operator, or permittee...that has not received a  
15 closure certification approval from the  
16 commissioner and, if applicable, post-closure  
17 certification, is required to obtain a permit  
18 under this article." That's fine, and that makes  
19 sense.

20 However, there's a lot of facilities that  
21 don't receive approval, as it says in the current  
22 rule text, because under state solid waste rules  
23 for all types of solid waste facilities, the

1     certifications are, quote, deemed appropriate --  
2     sorry -- deemed adequate, end quote, if IDEM does  
3     not respond within 90 or 150 days, the length of  
4     time depending on the type of facility. The  
5     rules that I'm referring to are all included in  
6     the table in our written comments.

7             So, we think IDEM should clarify that CCR  
8     units are not required to obtain a permit if  
9     their closure or post-closure certification has  
10    been deemed adequate through the expiration of  
11    the review periods in the rule. To facilitate  
12    this, we would ask the Board to add a sentence at  
13    the end of 329 IAC 14-2-1(a) that states,  
14    "Expiration of the time for the Commissioner to  
15    respond to the closure certification or  
16    post-closure certification is considered  
17    approval."

18            And I'll pause there to answer any  
19    questions about that comment.

20                   CHAIRMAN GARD: Any questions?

21                               (No response.)

22                   MS. REISS: I have two more comments,  
23    and these are submitted on behalf of IKEC only.

1           In several places, the draft rule would  
2   add IDEM approval of plans, demonstrations, and  
3   reports that in the federal CCR rule are  
4   certified by qualified professional engineers.  
5   In fact, the draft rule would give IDEM the  
6   authority to override the qualified professional  
7   engineer in several instances.

8           QPE's are professional engineers, licensed  
9   by the Indiana Professional Licensing Agency. In  
10   addition, the CCR requires that -- the CCR rule  
11   requires that they possess education, technical  
12   knowledge, and site-specific experience related  
13   to the federal CCR rule.

14           If IDEM has an issue with something a QPE  
15   has certified, then IDEM should be willing to  
16   file a complaint with the Professional Licensing  
17   Agency. If IDEM does not believe their issue  
18   rises to the level of a complaint, then IDEM  
19   should not be overriding the QPE. They have made  
20   that certification based on their professional  
21   license.

22           In the written comments to the  
23   continuation of second notice, we recommended a

1     dispute resolution process as a solution to this  
2     problem, housed within the Professional Licensing  
3     Agency. In their response to comments, IDEM  
4     responded that they do not have the authority to  
5     modify the processes of the public Licensing  
6     Agency.

7             We continue to believe that a dispute  
8     resolution process is the correct solution, but  
9     if IDEM cannot make that happen, IDEM should not  
10    have the authority to override a QPE's  
11    certification unless IDEM is willing to also  
12    bring the issue up with the Professional  
13    Licensing Agency.

14            My final comment is on page 2, at -- and  
15    this is for IKEC only -- at 329 IAC 10-3-1-9,  
16    which would become subdivision 10, and would be  
17    amended to apply to, quote, non-CCR surface  
18    impoundments.

19            This is problematic for three reasons.  
20    One, it's not clear what a non-CCR surface  
21    impoundment even is. This term is not defined in  
22    the state statute, it's not defined in the state  
23    rules, it's not defined in the federal CCR rule.

1 If IDEM is going to apply requirements to these  
2 facilities, IDEM should define what they are.

3 Two, the draft rule exceeds the stated  
4 purpose of the first notice. Nothing in the  
5 first notice indicated that this rulemaking was  
6 intended to add to or change the requirements for  
7 non-CCR surface impoundments, whatever those  
8 units are.

9 And third, and most importantly,  
10 subdivision 10 would require that final disposal  
11 of solid waste in non-CCR surface impoundments at  
12 the end of their operation would be subject to  
13 IDEM approval, quote, based on management  
14 practices that are protective of human health and  
15 the environment, end quote.

16 We submit that this is not an  
17 ascertainable standard. Case law requires that  
18 IDEM's rules provide ascertainable standards.  
19 Rules must be written with sufficient precision  
20 to give fair warning as to what the agency will  
21 consider in making its decision.

22 The rest of the rules in Article 10 for  
23 land disposal facilities are divided into

1 sections applicable to the type of facility, so a  
2 municipal solid waste landfill, for example, can  
3 flip through Article 10 and see exactly what  
4 applies to it.

5 A non-CCR surface impoundment does not  
6 have rules dedicated to their closure in  
7 Article 10 or Article 15. Instead, IDEM could  
8 pick from Articles 10 and 14 and apply whichever  
9 rules that they deem are protective of human  
10 health and the environment. As a result, non-CCR  
11 surface impoundments do not have fair warning of  
12 the rules that IDEM will consider in deciding  
13 upon their final disposal of waste.

14 That's the end of my ques -- comments, if  
15 anyone has any questions for me.

16 CHAIRMAN GARD: Does anyone have any  
17 questions?

18 (No response.)

19 CHAIRMAN GARD: Well, thank you.

20 DR. ALEXANDROVICH: I do.

21 CHAIRMAN GARD: And I particularly  
22 want to thank you for referencing in your  
23 testimony specific pages and -- it's so much

1 easier for us to find what you're talking about,  
2 and I appreciate you referencing things like you  
3 did.

4 Yes.

5 MR. DAVIDSON: I appreciate the  
6 specificity as well. I may disagree on some of  
7 your points, and I echo Mr. Rulon's comments. I  
8 think a lot of us in the regulated community  
9 have -- just because you're compliant with land  
10 doesn't mean you're not going to be subject to  
11 permitting with air, and while it might seem  
12 redundant, some of those are hard to avoid  
13 overlaps, and it's not -- I don't think it's the  
14 agency's intention to have you duplicate work,  
15 but I appreciate the comments.

16 MS. REISS: I want to -- I'm sorry.  
17 Go ahead.

18 MR. HORN: I -- just a question.

19 MS. REISS: Yeah.

20 MR. HORN: Okay. All of the stuff  
21 that you've brought up and pointed out, have you  
22 brought that to IDEM's attention, and what kind  
23 of response did you get --

1 MS. REISS: So --

2 MR. HORN: -- back from them?

3 MS. REISS: -- yes. The three  
4 initial items that I mentioned that we say exceed  
5 the statutory authority were listed in our  
6 comments to the continuation of second notice,  
7 along with several others that were removed.  
8 These were the three that were not removed from  
9 that list in those comments.

10 I believe the other comments -- the QPE  
11 comment was included in our comments as well.  
12 The protective of human health and the  
13 environment comment is new, because that language  
14 in the draft rule changed from the prior version  
15 to this version, and I don't -- I think the  
16 deemed adequate comment might be new as well.

17 MR. HORN: Okay.

18 MS. REISS: Quickly, on behalf of  
19 myself only, I wanted to answer  
20 Dr. Alexandrovich's question from earlier. The  
21 approval by EPA will be published in the federal  
22 notice. All of the prior approvals of other  
23 state programs have been published in the Federal



1 Register, and that will start the applicability  
2 of the rule.

3 And also, Keelyn mentioned the technical  
4 amendments that were forthcoming. I'm pretty  
5 sure those were published earlier this month, or  
6 at the end of last month, so you might consider  
7 revising the rule to include those technical  
8 amendments as well.

9 And as I mentioned before, we submitted  
10 written comments today, and my understanding is  
11 that the Board -- that IDEM is required to  
12 consider oral and written comments submitted at a  
13 public hearing. If that's not the case, I'm  
14 happy to read them, but I assumed you didn't want  
15 me to.

16 CHAIRMAN GARD: Any other questions,  
17 comments from --

18 DR. ALEXANDROVICH: Oh, yes.

19 Thank you for answering my question. Is  
20 that a direct final rule, or a proposed and  
21 final?

22 MS. REISS: It is proposed, and then  
23 there's a comment period, and then there will be

1 a final rule.

2 DR. ALEXANDROVICH: Thank you.

3 MS. REISS: At least that's what  
4 they've done with the other states.

5 CHAIRMAN GARD: Yes.

6 THE REPORTER: I need a break.

7 CHAIRMAN GARD: You need a break?

8 THE REPORTER: Yes.

9 CHAIRMAN GARD: Okay. That means we  
10 take a break.

11 (Laughter.)

12 MR. DAVIDSON: Unless you can do  
13 his --

14 CHAIRMAN GARD: Oh, yes. I'm  
15 kidding.

16 COMM. ROCKENSUESS: We know who's in  
17 charge of this thing.

18 CHAIRMAN GARD: Okay. Five minutes?

19 THE REPORTER: Five or ten.

20 CHAIRMAN GARD: Okay. Go ahead.

21 (Recess taken.)

22 CHAIRMAN GARD: Okay. We're going to  
23 continue testimony. I'm going to request that

1 all people testifying, keep your comments to five  
2 minutes. We have quite a stack here, and it is  
3 getting bad outside, so if you could do that,  
4 we'll appreciate it. If you go longer than five  
5 minutes, I'm probably going to stop you.

6 Okay. Susan Thomas, on-line.

7 MS. THOMAS: Thank you. I apologize;  
8 my camera is nonfunctioning today. I will be  
9 reading my testimony first, followed by a request  
10 by State Representative Pat Boy, to read her  
11 testimony as well, and I will differentiate the  
12 two verbally.

13 I'm Susan Thomas, Director of Legislative  
14 and Policy for Just Transition Northwest Indiana.  
15 What we are moving today is the second round of  
16 this rule. The first version was so incomplete  
17 that even IDEM went back for a redo, based on the  
18 expert commentary and analysis from folks whose  
19 work focuses on this issue.

20 We are grateful to those who went over  
21 this with a fine-toothed comb, and that IDEM took  
22 the time to review and amend this to include that  
23 input. I agree a hundred percent with comments

1 given by Dr. Indra Frank of the Hoosier  
2 Environmental Council and the later testimony of  
3 Ashley Williams, Executive Director of the  
4 organization I work for.

5 I wish to use this time to underscore the  
6 potential catastrophe of the coke plant remaining  
7 on the shore of Lake Michigan, at the NIPSCO Dean  
8 Mitchell Generating Station, two tons, literally  
9 on the Lake, held back from poisoning our  
10 drinking water by an aging, corroded seawall  
11 close to 100 years old, 30 years past its prime,  
12 and recently downgraded.

13 I urge IDEM, EPA, federal and state and  
14 local legislators to demand this and the  
15 abandoned NIPSCO Dean Mitchell coal ash site,  
16 also on Lake Michigan, be cleaned up immediately,  
17 before we have to wait and worry through another  
18 season of waves already cresting 18 feet as of  
19 last year.

20 Additionally, we work with residents of  
21 the county, their entire town and wells decimated  
22 by NIPSCO's toxic coal ash, and now going on  
23 their third decade of runaround with EPA and IDEM

1 to get their town cleaned up. Their wells should  
2 be tested every year, but the last time they were  
3 tested was in 2015. My main point being  
4 widespread noncompliance by industry and lack of  
5 oversight and enforcement by state and federal  
6 agencies has led to this situation, with a need  
7 to pass a rule revised.

8 Back to the wall. When we sounded the  
9 alarm to IDEM and EPA about the high-risk levels  
10 and waste at the shorelines in Illinois and  
11 Indiana in recent years, IDEM and EPA didn't  
12 believe us until we provided drone footage of  
13 what we say, documenting that even during  
14 relative calm, waves were cresting and impacting  
15 the deteriorating wall and its contents and  
16 structure.

17 Without oversight and enforcement,  
18 allowing historical industry to self-report  
19 leaves the fox guarding the henhouse, rendering  
20 laws into useless words on paper. What necessary  
21 provisions will IDEM make to ensure it's staffed  
22 and equipped to faithfully follow the law so that  
23 people in the Town of Pines and the ten million

1 people relying on Lake Michigan for drinking  
2 water, and all Hoosiers, are finally protected  
3 from the toxic menace of coal ash inundating our  
4 state?

5 Thank you.

6 And I will now read the testimony from the  
7 Honorable State Representative --

8 CHAIRMAN GARD: Now, wait.

9 Ms. Thomas, how long is that? How long is that?

10 MS. THOMAS: I just have one page in  
11 front of me.

12 CHAIRMAN GARD: Okay. Because you  
13 have one minute left.

14 MS. THOMAS: Well, this is separate  
15 testimony from a State Representative, so I would  
16 beg the Committee to allow me to read this  
17 one-page statement in front of the Board.

18 CHAIRMAN GARD: And I suggest you  
19 submit the written testimony to IDEM.

20 MS. THOMAS: I will do so, and I will  
21 begin.

22 Members of the Board, thank you for this  
23 opportunity to have my voice heard. My name is

1 Pat Boy. I am currently State Representative for  
2 Indiana District 9. I have lived in my home in  
3 Michigan City since 1979. I previously served on  
4 the Michigan City Common Council for 15 years.

5 The people from the Town of Pines came to  
6 tell us about their wells. The Town of Pines is  
7 in Porter County. Michigan City is in La Porte  
8 County. We have no jurisdiction to do anything  
9 for them.

10 The Town of Pines is now in my District.  
11 It is now a Superfund site due to coal ash  
12 contamination of not only their groundwater and  
13 their wells from the partially lined coal ash  
14 landfill, but also of their parks, their roads,  
15 their gardens, and their playgrounds from the  
16 coal ash that was used as structural fill.

17 In the consent agreement, the power  
18 company NIPSCO was required to supply bottled  
19 water to all of the homes. All but 38 homes in  
20 the town now have Michigan City municipal water.  
21 I have seen the water from the wells in all of  
22 those 38 homes. They still receive bottled  
23 water, but no one should have to wash their

1 clothes or shower with that tap water.

2 No one in this town knew anything about  
3 this when they bought their homes and started  
4 raising their families, but the toxic coal ash  
5 has affected their health and that of their  
6 children. I have tried to bring this to the  
7 public eye through bills that were never heard in  
8 committee.

9 After four unsuccessful attempts, four  
10 years, a bill passed that said the state could  
11 not enact any law that was more stringent than  
12 EPA rules. I believe this is poorly worded. We  
13 should not pass any law that is less stringent  
14 than EPA rules.

15 There is a Web site called Ashtracker that  
16 reports on monitoring wells and coal plants  
17 around the country. The reports are the actual  
18 reports from power plants from 2016 to 2019.  
19 Based on reports from 17 Indiana plants, over 70  
20 percent of their own monitoring wells were well  
21 above state levels from pollutants like arsenic,  
22 boron, cadmium, cobalt, lead, mercury, radium,  
23 selenium and valium. Some were far above state



1 levels.

2 CHAIRMAN GARD: Ms. Thomas, you've  
3 gone -- you've exceeded five minutes. This  
4 testimony is interesting, but it -- we want  
5 testimony directly related to the rule before us.  
6 If you could submit that written testimony to us,  
7 we would appreciate it.

8 MS. THOMAS: I will do so. Thank  
9 you.

10 CHAIRMAN GARD: Any questions for  
11 Ms. Thomas?

12 (No response.)

13 CHAIRMAN GARD: Okay. Terry  
14 Steagall. And again, I want to emphasize five  
15 minutes, and keep your comments directly to the  
16 rule and the contents of the rule. That's what  
17 we are considering today.

18 Terry?

19 MR. STEAGALL: Madam Chair --

20 CHAIRMAN GARD: Yes.

21 MR. STEAGALL: -- the Board,  
22 Commissioners, my name is Terry Steagall. That's  
23 T e r r y, S t e a g a l l. I grew up in

1 Hammond, Indiana, I currently live in Highland,  
2 Indiana, and I am here today to testify about the  
3 State Line Generating Plant.

4 The State Line Generating Plant was made  
5 back in the 1920's, a man-made plant. It was  
6 built on 77 acres, and --

7 CHAIRMAN GARD: Mr. Steagall, is  
8 this -- this is not directly related to the  
9 specific language in the rule.

10 MR. STEAGALL: Yes, it is, because  
11 what I'm getting to, Madam Chair, is this should  
12 be land that should have -- it was given in the  
13 public interest, and it should have been given  
14 back with a clean closure in a public trust,  
15 where it was going back to either the city, the  
16 state, or the Federal Government, because they  
17 filled in Lake Michigan.

18 But you need to take high consideration of  
19 properties like this so they're treated  
20 appropriately. This was land that was given in  
21 the public interest, and it's not being used that  
22 way, and it hasn't been clean -- a clean closure.  
23 That's the problem.

1           And another thing we need to identify is:  
2   Who are the responsible parties? This land has  
3   been jockeyed from owner to owner, and it's hard  
4   to even establish who was going to be the  
5   responsible parties for the clean closure.

6           Back when it was closed in 2012, it was  
7   sold immediately off. Mr. Beemsterboer bought  
8   half of the property, BTU bought another half of  
9   the property, and Mr. Beemsterboer acquired the  
10   rest of the property in 2013 after BTU Texas dug  
11   out 202 truckloads of coal ash out of the coal  
12   ash pile over there. He acquired the rest of the  
13   property.

14          So, now we need to know who should be  
15   responsible for the clean closure of the  
16   property. Mr. Beemsterboer had made statements  
17   in the newspaper back in 2013 all of the way up  
18   to 2018 for a clean closure, and some of the  
19   things -- the inspections are hard to find from  
20   IDEM as far as getting information of what has  
21   exactly happened over there.

22          That's been a real fault in legacy pond  
23   closures prior to 2015, and IDEM has made it very

1     difficult to find this information. And I even  
2     went through one of the coal ash experts of  
3     Indiana, Dr. Andrew Hegzak [phonetic], in 2019,  
4     trying to get information on that site, and he  
5     had trouble also.

6             CHAIRMAN GARD: Dr. Steagall -- or  
7     Mr. Steagall, please keep your comments directly  
8     to the rule before us.

9             MS. THOMAS: Well, that is to the  
10    rule, Madam Chair. I mean we want to know who  
11    the responsible parties are to clean this  
12    waste -- the property up with a clean closure.  
13    That's important to our community, because this  
14    property sits right on Lake Michigan and is  
15    leaching into Lake Michigan, which is our  
16    greatest asset in Northwest Indiana.

17            And the other problem you have here is  
18    this property was -- is run by -- originally was  
19    done by Commonwealth Edison, was an Illinois  
20    utility, and built in Indiana, which is another  
21    issue that the Board needs to consider, how those  
22    things should be handled as far as the rules.

23            So, we need to make sure that we can do

1     what we need to do on these properties to get  
2     them properly cleaned up so that we know what's  
3     going on, and the City of Hammond doesn't really  
4     want to do anything except build on the property,  
5     because they already have a data center there,  
6     and they want to put more data centers.

7             And it looks like they've subdivided the  
8     property into more -- platted it into more  
9     subdivisions, like an attitude of where they're  
10    going to sell off the lots. And Commonwealth  
11    Edison still has a substation on the property.

12            So, as citizens, we want to make sure the  
13    rules apply such that there's clean closure and  
14    proper information, and Hammond has an  
15    Environmental Management Department that should  
16    be a repository for all of the information on  
17    that site, along with IDEM.

18            Thank you.

19                   CHAIRMAN GARD: Thank you.

20                   Any questions for Mr. Steagall?

21                               (No response.)

22                   CHAIRMAN GARD: Next is Sherry [sic]  
23    Chapman, on-line, and please keep your comments

1 related directly to the rule. You have five  
2 minutes.

3 MS. CHAPMAN: Thank you for this  
4 opportunity. I'm speaking on behalf of the  
5 League of Women Voters of Indiana, and would like  
6 to thank the Indiana Environmental Rules Board  
7 for all of your hard work on this latest draft.

8 We, too, have been studying the coal ash  
9 problem throughout this state for about ten  
10 years, and inasmuch as these newly crafted rules  
11 include all of the revisions that the EPA  
12 approved in May of 2024, and we had people who  
13 were testifying there as well, we applaud your  
14 work, and we are pleased that these changes will  
15 go far in the restoration and preservation of our  
16 local ecosystem, and improving and in protecting  
17 public health.

18 We very much appreciate the waste  
19 management aspects of this draft in terms of  
20 requiring the industry to meet state guidelines  
21 for permitting, planning, and taking re --  
22 financial responsibility for the cleanups and  
23 making sure the public health is never

1 threatened. Our networking partner, the Hoosier  
2 Environmental Council, has presented the specific  
3 directions for your final draft, and we do  
4 support those.

5 So, overall, we wish to congratulate and  
6 thank you for your diligence in doing your part  
7 to protect both public and environmental health  
8 in Indiana, and our Indiana waters.

9 Thank you.

10 CHAIRMAN GARD: Thank you.

11 Any questions for Ms. Chapman?

12 (No response.)

13 CHAIRMAN GARD: Okay. Ashley  
14 Williams, on-line.

15 MS. WILLIAMS: Hello. Thank you,  
16 Honorable members of the Rules Board.

17 I want to please start off by commending  
18 IDEM for its strong state rule. My comments are  
19 not as technical in nature, but instead I'll tell  
20 a story building off what many have already  
21 shared around the urgency of finalizing this  
22 draft rule for Hoosier coal-ash impacted  
23 communities up here like my own. So, I do hope

1     you'll let me fully speak, and without  
2     interruption.

3             It's my honor to be here and testimony for  
4     the strongest state rule possible. Again, my  
5     name is Ashley Williams, and I'm the Executive  
6     Director of Just Transition Northwest Indiana.  
7     We are a local environmental justice nonprofit  
8     based in the Northwest Indiana Region.

9             I call Michigan City, Indiana my home, and  
10    I live just over a mile from the coal plant.  
11    Some 53 percent of our residents cannot afford to  
12    meet their basic needs, and cancer, infant, and  
13    death rates are well above the state average, an  
14    inequity that is further perpetuated by not  
15    having access to a safe and healthy quality of  
16    life.

17            Our community, like other communities, are  
18    in dire need of protection from the ills of  
19    coal-ash pollution. Coal ash is a menace, and  
20    you can find it in our parks, our roads, our  
21    yards, our homes, and the air we breathe every  
22    single day here in Michigan City.

23            As previously mentioned, NIPSCO has dumped



1   tens of thousands, millions of tons of coal ash  
2   in and around the Michigan City Generating  
3   Station, permanently poisoning the groundwater in  
4   the Town of Pines, and sickening residents and  
5   families there with carcinogens.

6           When I moved to Michigan City, I had hoped  
7   that through my organizing work, I could help  
8   community members to compel our utility to move  
9   out coal and transition to renewable energy. We  
10   did receive this announcement in 2019, and now  
11   seven years later we have made great progress,  
12   including with this state rule, receiving mass  
13   local and state momentum, all of the way to the  
14   national front, joining and winning a lawsuit  
15   against the EPA's failure to regulate legacy  
16   coal-ash sites like Michigan City. They have  
17   since corrected that failure through the  
18   publication of the new legacy rule, and thus  
19   incorporated in the state rule.

20           But despite the power of our actions and  
21   many strides we've made, we are still counting  
22   the days here until cleanup happens in Michigan  
23   City, and to be able to better commute across

1 NWI.

2 As mentioned before, we have a ticking  
3 time bomb in our back yards, and it isn't waning,  
4 and we fear that the two million tons behind a  
5 deteriorating wall may fail at any moment, and it  
6 will be dumped into Lake Michigan, and thus  
7 contaminating our groundwater as well as our  
8 beloved Lake Michigan that we depend on.

9 This ash, as mentioned, is now subject to  
10 federal monitoring and cleanup requirements, and  
11 will hence be captured under this draft rule,  
12 which is a significant relief to us in Michigan  
13 City and across the NWI region. But I must  
14 underscore that time is of the essence to publish  
15 this rule, because it is not a matter of if, but  
16 when this wall will fail, because it will  
17 ultimately blow.

18 Therefore, I just want to underscore and  
19 make sure that IDEM does not waver in its  
20 enforcement of this rule, not once. In 2028, the  
21 Michigan City Generating Station is due to  
22 shutter and will come off-line permanently. This  
23 closure does provide a beacon of hope for us in

1 Michigan City for a transition, a just energy  
2 transition, for our community. But if we can't  
3 get this cleanup right, that hope will be  
4 completely extinguished.

5 So, members of the Board, I want to just  
6 under -- I'm sorry -- underscore that. Please do  
7 make the strongest Indiana Coal Ash Rule  
8 possible. I wanted to make sure that IDEM is  
9 held accountable to fully and steadfastly enforce  
10 it without delay, and lastly, to make it more  
11 specific to the rule.

12 I have three comments that I've heard in  
13 previous testimony, but I just want to make it  
14 loud and clear as well for consideration. Within  
15 the rule specifically, I want to underscore that  
16 each coal ash unit be regulated under separate  
17 permits, not combined per facility, or at least  
18 not diminished requirements for any individual  
19 units.

20 Coal ash disposal at depths below the  
21 water table should be prohibited. If ash  
22 disposal continues to be allowed at these depths,  
23 the draft rule should include requirements for

1 liners under the ash that will resist uplift from  
2 the water above -- or I'm sorry -- below the ash.  
3 Lastly, coal ash liners should be protective as  
4 the federal new rule.

5 So, I just want to conclude with that.  
6 Thank you so much for the time.

7 CHAIRMAN GARD: Thank you.

8 Any questions for Ms. Williams?

9 (No response.)

10 CHAIRMAN GARD: Okay. Grace Tafolla,  
11 on-line.

12 MS. TAFOLLA: Hi. My name is Grace  
13 Tafolla. I am a resident of Gary, Indiana, and I  
14 am here to represent the citizens of Gary,  
15 Indiana who do not have time in their schedules  
16 to be out this early in the morning, and I am  
17 representing a lot of the teenagers that live in  
18 Gary, Indiana, who want to have a future in  
19 Northwest Indiana, but they are surrounded by  
20 three coal ash sites.

21 We are a sacrifice zone that already  
22 experiences water issues from BP putting benzine  
23 in our water, we experience issues from steel

1 mills putting high iron contents in our water,  
2 and now we have to deal with coal ash as well.  
3 And citizens of Northwest Indiana want a future,  
4 and we can't see a future where we have cancer,  
5 where our children have cancer, and where we  
6 can't have a healthy life. Drinking water and  
7 clean air to breathe should be a human right, and  
8 for some reason in the United States of America,  
9 it is not, and it is your job to protect us.

10 And I love that IDEM is including its  
11 higher standard, and I just want to briefly  
12 remind you that this coal ash has an intense  
13 impact on the water table, and that we want this  
14 to be lined properly so that it doesn't go into  
15 Lake Michigan and poison our aquatic creatures  
16 that help us just as much, and poison our  
17 drinking water.

18 And we also want to encourage the highest  
19 federal rule possible, and that this be regulated  
20 under separate permits rather than combined  
21 per -- combining facilities.

22 And I just want you to take the impact of  
23 this coal ash very seriously, because it's

1 something that's going to affect me for the rest  
2 of my life and affect everybody else who can't  
3 afford to leave Northwest Indiana for the rest of  
4 our lives. Our water table is already very, very  
5 polluted. Please protect us.

6 CHAIRMAN GARD: Okay. Any questions  
7 for Ms. Tafolla?

8 (No response.)

9 CHAIRMAN GARD: Okay. That is the  
10 end of the people that have signed up to testify.  
11 Is there anyone else that didn't?

12 (No response.)

13 CHAIRMAN GARD: Okay. I -- to start  
14 Committee discussion, I have a question for IDEM  
15 about how you are going to proceed from here. If  
16 this is passed today, will you be looking at some  
17 of the comments made today, and are there likely  
18 to be some amendments or a few changes before  
19 final adoption?

20 COMM. ROCKENSUESS: Yeah, we will --  
21 we will definitely take the comments,  
22 specifically the ones on the actual rule, and we  
23 will go through those and see the validity of

1 those comments, and if we need to make changes to  
2 make it compensatory with the statute, then we  
3 will.

4 CHAIRMAN GARD: Okay.

5 Yes, Nancy.

6 MS. KING: I'll also point out for --  
7 you had a couple of questions about this -- and  
8 you folks that have been on the Board know  
9 this -- after a rule is preliminarily adopted,  
10 when it's published in the Register, there is a  
11 comment period on that, a written comment period,  
12 as well. So, whatever is adopted, then comments  
13 can be received on that specific language, and  
14 that applies for all of our rules except  
15 emergency rules.

16 CHAIRMAN GARD: So, assuming that  
17 this moves forward like that, what would be the  
18 time frame for final adoption?

19 MS. KING: Well, it's a minimum of a  
20 30-day comment period whenever we do that, so I  
21 believe -- we have it scheduled for March;  
22 correct?

23 MS. FRANKLIN: We are scheduled for

1 March.

2 MS. KING: Technic -- as of right  
3 now, as Billie pointed out earlier, we have it  
4 scheduled -- the earliest it would be, from a --  
5 for final -- final adopted is March. That would  
6 be the next Board meeting. If in fact there  
7 comes a point where we don't believe that it's  
8 ready based on comments received, or we want to  
9 have some discussions with people, work groups or  
10 whatever, we can push the final adoption back.

11 There's -- we've -- as much as we want to  
12 get this done, we also want -- we've put years  
13 into this thing, so we also want it to be  
14 something that is adoptable. So, that's  
15 basically -- it's scheduled currently for March,  
16 but that's -- we can always change that if it's  
17 necessary.

18 MR. RULON: Well --

19 CHAIRMAN GARD: Just for our  
20 information, when did you start this?

21 COMM. ROCKENSUESS: The first --

22 MS. KING: When I was --

23 COMM. ROCKENSUESS: The first --



1 MS. KING: -- about 12, I think. I'm  
2 not sure.

3 COMM. ROCKENSUESS: The first statute  
4 that was passed on this was in 2021. It was the  
5 COVID session, because we were -- it was being  
6 debated in the House, which was holding the  
7 committees here in this building.

8 CHAIRMAN GARD: Yes. I was here.

9 MS. KING: Discussions pertaining to  
10 this, though, go back years, when this was  
11 first -- before EPA had any program whatsoever,  
12 IDEM -- and then so previous folks who were  
13 involved in this -- had meetings with the  
14 utilities to discuss what we were going to do,  
15 because they knew this was on the horizon. And  
16 so, there were certain aspects of that that began  
17 many years ago, much before it was fully  
18 developed in the --

19 COMM. ROCKENSUESS: Yeah, the  
20 first -- the first statute to actually give us  
21 any kind of authority for a program was in 2017.

22 CHAIRMAN GARD: Okay.

23 COMM. ROCKENSUESS: It was

1 Gov. Holcomb's first session.

2 CHAIRMAN GARD: Uh-huh. Okay.

3 Any que -- yeah, John.

4 MR. KETZENBERGER: A clarifying  
5 question on the schedule. So, that -- the  
6 proposed rule that would go on to comment,  
7 assuming it's approved today, would that include  
8 anything that the IDEM does with the comments  
9 they've received today? So --

10 MS. KING: Oh, like the response --

11 MR. KETZENBERGER: So, if there are  
12 any of those incorporated, the public would have  
13 an opportunity to comment on those changes before  
14 we reach a final approval?

15 COMM. ROCKENSUESS: That's what  
16 the 30-day comment period is for.

17 MR. KETZENBERGER: I just wanted to  
18 make sure I understood that.

19 COMM. ROCKENSUESS: Yeah.

20 MS. KING: Yes.

21 MR. KETZENBERGER: So, any amendments  
22 that are made to what's before us today will go  
23 into a comment period before we receive it back

1 for final approval. Thank you.

2 COMM. ROCKENSUESS: And any kind of  
3 changes --

4 MS. KING: Yes, whatever gets adopted  
5 today is what gets published in the Register, and  
6 that language is subject to a 30-day comment  
7 period.

8 MR. KETZENBERGER: Okay. That --  
9 that's not what I'm understanding of what you're  
10 saying.

11 You've mentioned, Brian, that you are  
12 going to take into account the comments that were  
13 made today.

14 COMM. ROCKENSUESS: Yes.

15 MR. KETZENBERGER: If we approve this  
16 as it is, that's what would go into the  
17 comments --

18 COMM. ROCKENSUESS: Or any --

19 MR. KETZENBERGER: -- for the comment  
20 period. It would not include any amendments that  
21 might be made by the IDEM in the meantime.

22 COMM. ROCKENSUESS: Any changes would  
23 go into that Register as well.

1 MR. KETZENBERGER: Okay. I just -- I  
2 just -- I wanted to make sure I understood. I'm  
3 sorry --

4 COMM. ROCKENSUESS: Yeah.

5 MR. KETZENBERGER: -- to be --

6 COMM. ROCKENSUESS: No.

7 MR. KETZENBERGER: -- thick on that,  
8 but I wanted to understand.

9 COMM. ROCKENSUESS: Yeah, we want  
10 people commenting on the rule that is going to be  
11 going before the Board for final adoption.

12 MR. KETZENBERGER: For final, right.

13 CHAIRMAN GARD: And when it goes  
14 before the Board for final adoption, there is --  
15 to my recollection, there's -- it points out the  
16 changes in there, what's different.

17 MS. KING: Yes.

18 MR. KETZENBERGER: Thank you.

19 CHAIRMAN GARD: Anybody else?

20 MR. RULON: But to move the process  
21 forward, not adopting this pushes this back to  
22 March, three more months before anything could  
23 happen?

1 CHAIRMAN GARD: Right.

2 MR. RULON: So, it seems like we  
3 should get this in the process. I mean just like  
4 some of the comments, which we can agree or  
5 disagree with --

6 CHAIRMAN GARD: Right.

7 MR. RULON: -- most of those are so  
8 technical as -- I need IDEM's reasoned review of  
9 them, and then put that in the change in the  
10 final rule, which we'll see --

11 CHAIRMAN GARD: Right.

12 MR. RULON: -- in March, but we --  
13 but for this to all work, we need to approve this  
14 today to get this started, basically; right?

15 COMM. ROCKENSUESS: Yes.

16 MR. KETZENBERGER: Okay.

17 CHAIRMAN GARD: Okay. Any -- any  
18 other questions from Board members?

19 (No response.)

20 CHAIRMAN GARD: Okay. The hearing is  
21 concluded. The Board will now consider  
22 preliminary adoption of the Coal Combustion  
23 Residual Rule. Is there any Board -- further

1 Board discussion?

2 (No response.)

3 CHAIRMAN GARD: Okay. Do I hear a  
4 motion to preliminarily adopt the rules as  
5 presented?

6 MR. RULON: So moved.

7 CHAIRMAN GARD: Is there a second?

8 MR. HORN: Second.

9 CHAIRMAN GARD: Okay. This will be a  
10 roll-call vote.

11 Mr. Davidson?

12 MR. DAVIDSON: Yes.

13 CHAIRMAN GARD: Mr. Etzler?

14 (No response.)

15 CHAIRMAN GARD: Mr. Etzler?

16 COMM. ROCKENSUESS: Is he still on,  
17 Kevin?

18 MR. BUMP: He's still on.

19 CHAIRMAN GARD: Well, we'll come back  
20 and see if he comes.

21 Dr. Niemiec?

22 DR. NIEMIEC: Yes.

23 CHAIRMAN GARD: Mr. Horn?

1 MR. HORN: Yes.

2 CHAIRMAN GARD: Mr. Rulon?

3 MR. RULON: Yes.

4 CHAIRMAN GARD: Ms. Nelson?

5 MS. NELSON: Yes.

6 CHAIRMAN GARD: Mr. Mueller?

7 MR. MUELLER: Yes.

8 CHAIRMAN GARD: Dr. Alexandrovich?

9 DR. ALEXANDROVICH: Yes.

10 CHAIRMAN GARD: Ms. Kozyrski?

11 MS. KOZYRSKI: Yes.

12 CHAIRMAN GARD: Mr. Ketzenberger?

13 MR. KETZENBERGER: Yes.

14 CHAIRMAN GARD: The Chair votes aye.

15 Mr. Etzler?

16 MR. BUMP: He's not on-line anymore.

17 CHAIRMAN GARD: He must be gone.

18 Okay. It is, ten ayes, zero nays, so the rule

19 has been preliminarily adopted. Thank you,

20 Board.

21 MR. RULON: I'd like to ask the staff  
22 that once you make the final rule that you're  
23 going to publish, can you just e-mail that to us

1     so we can review it before the meeting? Or just  
2     e-mail us the link to where it's going to be,  
3     please.

4                 MS. KING: Oh, yeah. We can get you  
5     anything that you want to see. As soon as we  
6     have something together, we'd be happy to do  
7     that.

8                 MR. RULON: Thank you.

9                 CHAIRMAN GARD: Yeah, that'd be good.  
10                Okay. Now we'll consider the 2024 Water  
11     Quality Standards Review presentation and public  
12     hearing.

13                MS. GHREICHI: Hi. Good afternoon.  
14     Thank you. I'll try to keep this relatively  
15     brief, but for those of you who don't know me,  
16     and while the slides are coming out above, my  
17     name is Gabby Ghreichi, and I'm the Surface Water  
18     Quality Standards Coordinator in the Office of  
19     Water Quality here at IDEM. So, I'm here to give  
20     a brief overview of our 2024 Water Quality  
21     Standards Review, sometimes called Triennial  
22     Review.

23                Next slide, please.



1           So, what is a Water Quality Standards  
2   Review? As some of you probably know, under the  
3   Clean Water Act, we have to review our Water  
4   Quality Standards from time to time, at least  
5   once every three years, and give the public an  
6   opportunity to comment on the need for revisions,  
7   changes, additions to our standards.

8           So, we initiated this on November 20th of  
9   this year by publishing in the Indiana Register,  
10   so we're in a public comment period right now, so  
11   there's still plenty of time, even after today,  
12   for folks to submit comments.

13          Next slide, please.

14          And so, really briefly, for those who  
15   may -- are not aware -- it's been a little bit  
16   since you've thought about this -- in Indiana our  
17   water quality standards, we have designated uses,  
18   and you can think of those as the goals for the  
19   water -- our water bodies. Our big ones are  
20   protecting aquatic life, recreation, drinking  
21   water, and then sometimes agricultural and  
22   industrial uses.

23          And we also have in our rules criteria to

1 protect those designated uses. We have narrative  
2 and numeric criteria, so narrative are things  
3 like "free from oil scum" on the water, other  
4 "free from" statements, and then we also have a  
5 lot of numeric criteria, so numbers or  
6 concentrations in rule specifically laid out.

7 And then finally, the third required  
8 component in our standards is an antidegradation  
9 sort of standard, and that's really there to  
10 prevent significant lowering of water quality  
11 unless there is a real socioeconomic need to do  
12 so.

13 Next slide, please.

14 So, in Indiana we're a little bit unique  
15 because our water -- we have two sets of Water  
16 Quality Standards Rules, essentially, so we have  
17 a set of rules that pertain to waters outside the  
18 Great Lakes, and we say "Downstate," when we  
19 refer to those, and then we also have rules that  
20 apply just to water within the Great Lakes Basin,  
21 so Lake Michigan and Lake Erie Drainage Basin.

22 And there are some differences right now  
23 in our rules. There's different criteria. We

1 have some differences in the methodology that are  
2 listed in rules to derive criteria for pollutants  
3 where we don't have a number yet, rule. And  
4 there are some other specific requirements that  
5 pertain just to the Great Lakes, and that goes  
6 all of the way back to a financial agreement with  
7 Canada and the United States. We have some  
8 things that we're required to put in for the  
9 Great Lakes.

10 But one of our overarching goals right now  
11 in our standards program is to streamline our  
12 rules for the whole state when it makes sense to  
13 do so. It's not always possible. You know,  
14 there are things that make sense just for like  
15 Michigan, you know, cold water fisheries. You --  
16 those have oxygen requirements and things like  
17 that. But we are trying to make things  
18 consistent when we can for the whole state.

19 Next slide.

20 So, our Water Quality Standards really are  
21 the foundation for most of our regulatory actions  
22 in the Office of Water Quality, from our  
23 permitting program, the limits that go into those

1 permits, to compliance, enforcement, as well as  
2 our monitoring program and how we assess our  
3 water bodies. So, it makes sense -- it's  
4 important that we look at our standards and see  
5 what kind of changes we need to make in updates.

6 Next slide, please.

7 And so, before listing out some of the  
8 rulemaking, kind of where it is we're thinking  
9 about in the future, over the next three years, I  
10 do want to mention that one of our current  
11 projects is our Aquatic Life Methodology  
12 Rulemaking. So, we are currently trying to  
13 update our downstate, outside of the Great Lakes,  
14 procedures for calculating aquatic life criteria.

15 So, we use these methodologies to  
16 calculate a number when we don't have a  
17 concentration in rule or EPA has not even  
18 developed yet a nationally recommended number,  
19 but they can really impact aquatic life. So, we  
20 do have situations that come up in priority where  
21 we need a methodology in place to calculate a  
22 number. So, that's underway.

23 Next slide, please.

1           And so, here are a few priorities we're  
2     thinking about. This is -- these are the items  
3     we would like to hear from the public or the  
4     Board, thoughts on these, and if there are things  
5     that you feel are missing from this list, what --  
6     our first priority is to adopt EPA's 2018  
7     Aluminum Criteria, and so, this criteria are a  
8     function of pH, hardness, and dissolved organic  
9     carbon.

10           And before I move forward, in trying to  
11    adopt this criteria, we're working through a  
12    couple of implementation issues related to this.  
13    We need more dissolved organic carbon monitoring  
14    across the state, since that's a key input to  
15    calculating criteria so we have a better idea of  
16    the spread across the state and what kind of  
17    impact it will have on our discharges in Indiana.

18           And we're also working on how we will  
19    accurately assess our surface water bodies for  
20    aluminum. There's actually still a need for an  
21    updated analytical method for the bioavailable  
22    component for aluminum so we don't overestimate,  
23    you know, an issue there.

1           Next slide.

2           And another item we're thinking about is  
3   adopting EPA's nationally recommended criteria  
4   for acrolein, carbaryl, diazinon, nonylphenol,  
5   and tributyltin, and these are kind of a mix of  
6   pesticides, biocides and antiproliferative agents.

7           Next slide.

8           And then similar to what I just mentioned  
9   about aquatic life, we would like to eventually  
10   turn to our human life methodology. In both  
11   parts of the rule, they haven't been updated in  
12   some time, so it's the same idea, where we would  
13   use these to calculate a number if there was a  
14   pollutant where we have not adopted anything into  
15   rule, but it would really impact human health.

16          Well, this would also require us to update  
17   some of the toxicity factors or assumptions that  
18   go into these calculations, like drinking water  
19   intake, a bioaccumulation factor for fish, and  
20   cancer slopes, things like that.

21          The next slide.

22          And related to the updating our human  
23   health methodology, EPA, in 2015, made a lot of

1 updates to about 94 chemical pollutants, and  
2 they've made these updates to these criteria  
3 based on those updated exposure factors, you  
4 know, drinking water intake, fish consumption  
5 rate was a big one.

6 And this was actually something we  
7 received a comment on during the 2021 Water  
8 Quality Standards Review, kind of asking if we  
9 were going to consider this rulemaking to up --  
10 you know, include what EPA published in 2015.

11 So, we are still really interested in  
12 pursuing this. It's just taken some time, you  
13 know, to focus on it, and it would change quite a  
14 few -- or it would require a lot -- updating a  
15 lot of our downstate human health criteria, so it  
16 takes some time to develop the materials for  
17 this.

18 And then we also would like to remove the  
19 limited use waters classification and the waters  
20 listed under that category for both the downstate  
21 and Great Lakes portion of the rule. We feel  
22 it's necessary, and the language we have related  
23 to this specific category is a little bit out of

1 date, so that is still a priority for us.

2 Next slide.

3 And then lastly, another item we are  
4 considering is updating our Water Quality  
5 Standards variance rules to include a 2015  
6 U.S. EPA federal rule that just included a very  
7 specific regulatory framework for implementing,  
8 you know, variances. And this is a tool for  
9 dischargers to, over time, kind of make progress  
10 towards meeting a water quality based effluent  
11 limit that is difficult, you know, to achieve or  
12 is kind of a new pollutant, but it will take some  
13 time to comply with.

14 And so, these are the priorities we're  
15 thinking about right now, and this is not to be  
16 the only things, you know, in our issue with  
17 water quality, and so, we're open to comments on  
18 these, but again, if there are other topics that  
19 the public would like us to consider, I think --

20 The next slide -- I'm sorry -- one more.

21 My e-mail is on this slide, and our Water  
22 Quality Standards Web site has information also  
23 on this review period, and anyone can submit



1     comments directly via e-mail, you know, today,  
2     and then all of the way through January 5th,  
3     2025.

4             So, I think with that, if there are any  
5     quick questions, I can try to answer those, but  
6     we welcome the public hearing portion.

7             Thank you.

8             CHAIRMAN GARD: Does the Board have  
9     any questions?

10             (No response.)

11             CHAIRMAN GARD: Well, this is a  
12     public hearing before the --

13             MS. KOZYRSKI: Well, I do have a  
14     question, Chair Gard; excuse me. This is Carrie  
15     Kozyrski.

16             You talked about the methodology updates.  
17     Are those spelled out in what's out for public  
18     comment now, or would you be looking for input on  
19     your drafts of those methodologies at some point?

20             MS. GHREICHI: Yeah, I think we're  
21     getting there. I think there'll be a separate  
22     like rulemaking on this, with aquatic life  
23     methodology, where you'll see the actual language

1 changes and details and how it compares to  
2 probably EPA's guidance, so there'll definitely  
3 be another like almost separate opportunity to  
4 comment fully on that, just as a little bit more  
5 about it and just what we should be thinking  
6 about overall, to kind of broaden those projects  
7 for standards. I hope that helps a little bit.

8 MS. KOZYRSKI: Yes.

9 MS. GHREICHI: Okay.

10 MS. KOZYRSKI: Very good. Thank you.  
11 I appreciate that.

12 CHAIRMAN GARD: Okay.

13 Well, this is a public hearing before the  
14 Environmental Rules Board of the State of Indiana  
15 concerning Indiana's Water Quality Standards.  
16 The notice of review of water quality standards  
17 and the public hearing was published in the  
18 Indiana Register on November 20th, 2024, seeking  
19 public comment on the Water Quality Standards.

20 I have one speaker card sent to make  
21 comments. Ashton Eller. This is on -- is this  
22 on-line?

23 MR. ELLER: No, ma'am.

1                   CHAIRMAN GARD: I need to turn  
2 around -- my head around.

3                   MR. ELLER: So, I'm trying to keep  
4 these to three minutes, so I'm going to try to  
5 overachieve a little bit, so thank you for your  
6 patience this afternoon, and I appreciate your  
7 time.

8                   Thank you, Madam Chair, members of the  
9 Board, for allowing me to testify today. I have  
10 submitted my comments in -- pretty much verbatim  
11 to you in writing, but we do intend on giving  
12 more in-depth written comments by the January 5th  
13 deadline, at that time, so we can incorporate  
14 member feedback.

15                  Once again, my name is Ashton Eller. I'm  
16 the Vice-President of Governmental Affairs at the  
17 Indiana Manufacturers Association, or the IMA, as  
18 many people call us. It's a voluntarily --  
19 voluntary nonprofit trade association  
20 representing 2,000 companies and 600,000  
21 manufacturing jobs.

22                  IMA members have facilities in Indiana  
23 that could be considerably impacted by the

1 adoption of these rules concerning the use of  
2 aquatic life criteria methodologies for waters  
3 outside the Great Lakes System, and by the use of  
4 the new water quality recommended by the  
5 U.S. EPA. I am providing a following brief  
6 summary of the comments particularly important to  
7 the IMA and its members.

8 This notice significantly -- no. 1, this  
9 notice significantly expands the scope of the  
10 first notice of this rule. This notice now  
11 includes the use of 2015 U.S. EPA recommended  
12 water quality criteria for the protection of  
13 human health, which have several technical and  
14 scientific issues as identified by our members.

15 IDEM is not required to adopt either the  
16 guidelines or other nationally recommended  
17 criteria. EPA stated that -- has stated that it  
18 had amended 40 CFR 131.20(a) to clarify that if a  
19 state or tribe chooses not to adopt new or  
20 revised criteria for any parameters for which the  
21 EPA has published new or updated criteria  
22 recommendations under the Clean Water Act  
23 Section 304(a), they must explain their decision

1 when reporting the results to their -- of their  
2 triennial review to the EPA.

3 The IMA continues to be concerned about  
4 the use of Tier II values to derive enforceable  
5 permit limits. Our major concerns with the  
6 proposed Tier II approach include: The  
7 development of Tier II values on the basis of  
8 inadequate scientific data; the potential  
9 impracticality and inequity of requiring  
10 individual dischargers to develop Tier I  
11 criteria; and the inability for permit issue --  
12 limits based on Tier II values to be revised due  
13 to the anti-backsliding policy.

14 The U.S. EPA Science Advisory Board  
15 expressed reservations about the use of minimal  
16 data to calculate Tier II values. The SAB  
17 advised against using Tier II values as permit  
18 limites. IDEM has not articulated a  
19 scientifically valid basis for replacing the  
20 downstate aquatic life calculation methods with  
21 the Great Lakes System methods.

22 I'm looking at my pages, and I'm like,  
23 "This is going to be a tight three minutes."

1           In the first notice, IDEM stated that the  
2 methodology for deriving the Acute Aquatic  
3 Criteria and Chronic Aquatic Criteria for  
4 downstate waters needed to reflect the more  
5 scientifically sound and up-to-date methods that  
6 are already in the rules for waters within the  
7 Great Lakes System. The IMA believes IDEM needs  
8 to clearly explain in detail why the Great Lakes  
9 System methods are more scientifically sound.

10           The IMA does not support this rulemaking  
11 as an exercise for consistency at the expense of  
12 appropriately protective criteria in varied  
13 geographies. IDEM has been managing under the  
14 existing rules, including differences between  
15 Great Lakes and downstate systems, for more than  
16 20 years. Wisconsin and Ohio are two states that  
17 have successfully adopted more than two sets of  
18 aquatic life criteria, because not all surface  
19 waters are the same.

20           Existing discharges with limits for  
21 substances based on existing calculated aquatic  
22 life water quality criteria will mostly not be  
23 eligible for using any new, less stringent

1     calculated values because of anti-backsliding.  
2     This would require facilities to incur operating  
3     costs that might not be necessary.

4             IDEM needs to make publicly available the  
5     fact sheet for each of the Tier II values it has  
6     calculated. IDEM has stated that it has prepared  
7     a fact sheet, available for public review, for  
8     each derived criteria, which documents the  
9     aquatic species toxicity endpoints, reference  
10    studies, and methodologies used for the  
11    calculation. IMA members have accessed the IDEM  
12    Web site and IDEM Virtual File Cabinet and have  
13    not been successful at finding these fact sheets.

14            Developing the data required to establish  
15    Tier I criteria for substances with Tier II  
16    values may be impractical and economically  
17    prohibitive. Tier II values are intended to be  
18    very conservative, and would lead to much more  
19    stringent downstate permit limits if used for  
20    that purpose. The only way for a discharger to  
21    avoid that result would be to develop a complete  
22    Tier I database for the substance at issue.

23            For small businesses, the cost of

1 obtaining such data would likely be prohibitive.  
2 The estimated cost of developing a complete  
3 database for Tier I aquatic life criteria for a  
4 single commercial chemical is now more than  
5 \$100,000. Based on the analysis by the U.S. EPA  
6 Scientific Advisory Board, it would also be  
7 difficult for dischargers to develop the data for  
8 additional pollutants in the amount of time that  
9 compliance schedules are allowed in the rules.

10 The proposed rule should not replace the  
11 downstate criteria for metals in 327 IAC 2-1-6  
12 Table 6-3 with the metals criteria for the Great  
13 Lakes System in 327 IAC 2-1.5-8 Table 8-2.

14 Although IDEM indicated in the first  
15 notice that it used the calculation methodologies  
16 in 327 2IAC 2-1 and 327 IAC 2-1.5 to calculate  
17 the acute or aquatic life criteria for many  
18 chemicals that do not have criteria in the rules,  
19 it is unclear whether IDEM would also be  
20 replacing the metals criteria outside the Great  
21 Lakes System with the metals criteria applicable  
22 to the Great Lakes System.

23 If IDEM intends to do this, it could be



1 problematic for many discharges, because their  
2 chronic aquatic life criteria at the hardness of  
3 300 milligrams per litre of  $\text{CaCO}_3$  for arsenic,  
4 chromium III, copper and nickel would decrease by  
5 21, 59, 21, and 67 percent respectively.

6 A couple more points here. I promise to  
7 try to go fast, Madam Chair.

8 IDEM should evaluate the impact of the  
9 Great Lakes System methodologies on the hundreds  
10 of water treatment additive approvals that it has  
11 conducted for downstate discharges. IDEM should  
12 clearly explain how those proposed methodologies  
13 would impact the use of water treatment  
14 additives.

15 Like discharges of other substances, only  
16 new discharges of water treatment additives after  
17 this rulemaking would be eligible to use any less  
18 stringent values. IDEM should clarify whether  
19 existing discharges of water treatment additives  
20 would be subject to the anti-backsliding  
21 provisions.

22 IDEM should not make Clean Water Act  
23 Section 303(d) impairment determinations based

1     upon Tier II values. IMA believes IDEM should  
2     evaluate the impact of this proposed rulemaking  
3     on waters that have been included in the Indiana  
4     303(d) list of impaired waters, and how this rule  
5     would impact listings already approved by the  
6     U.S. EPA.

7             If the Tier II methodology is adopted  
8     statewide, IMA recommends additional  
9     modifications. IMA encourages IDEM to consider  
10    the following modifications to the Tier II  
11    approach: No Tier II values should be developed  
12    using only one data point; and two tier -- or  
13    Tier II methodology should be modified to allow  
14    flexibility if strict application of its  
15    requirements does not yield scientifically sound  
16    values.

17            That felt like longer than three minutes,  
18    I apologize, but that concludes my comments, and  
19    I appreciate your time, Madam Chair and members.

20            CHAIRMAN GARD: Thank you. If you  
21    have your comments in written form, you might  
22    submit them to IDEM.

23            MR. ELLER: Yes. So, we are -- that,

1 believe it or not, was a brief summary of our  
2 written -- of our letter. More in-depth, written  
3 comments will be -- and those will be submitted  
4 by January 5th, but that was actually the high  
5 points of the water quality that we were -- that  
6 I was trying to get in in three or five minutes.  
7 But we will definitely submit written comments  
8 before the January 5th deadline that expounds  
9 upon what I said today.

10 CHAIRMAN GARD: Okay. Thank you.

11 MR. ELLER: Thank you.

12 MR. RULON: Brian, do you want to say  
13 something?

14 COMM. ROCKENSUESS: Yeah.

15 Welcome, Ashton.

16 MR. ELLER: Thank you, Commissioner.

17 COMM. ROCKENSUESS: Quickly, though,  
18 I just want you to know that all of the things  
19 Gabby talked about --

20 MR. ELLER: Uh-huh.

21 COMM. ROCKENSUESS: -- is just a  
22 review of part of our triennial agreement that we  
23 have to do.

1 MR. ELLER: Yes.

2 COMM. ROCKENSUESS: So, while we are  
3 considering these rules --

4 MR. ELLER: Uh-huh.

5 COMM. ROCKENSUESS: -- we are not  
6 current -- we're not debating those today.

7 MR. ELLER: Sure. And I was just --  
8 we had several members look at them, and they  
9 just asked me to bring up these issues.

10 COMM. ROCKENSUESS: And we're happy  
11 to work with those members and we're happy to  
12 work with IMA, and on some of these -- some of  
13 these I agree with; right? Don't -- you don't  
14 set Tier II values on one data point.

15 MR. ELLER: Uh-huh.

16 COMM. ROCKENSUESS: And in fact, we  
17 have pulled criteria for that purpose in other  
18 rulemakings. So, you know, I'm -- we're happy to  
19 work with you, I know Gabby's happy to work with  
20 you, but I just -- I didn't want you to leave  
21 here thinking we were passing rules today.

22 MR. ELLER: No, and I know you're  
23 not.

1                   COMM. ROCKENSUESS:   Okay.

2                   CHAIRMAN GARD:   Okay.   Thank you.

3                   Yes.

4                   MS. GHREICHI:   And just a really  
5   quick clarification.   I think we have -- this has  
6   just taken some time, and new people had similar  
7   comments after the first notice and they are  
8   looking through, and as we are working on the  
9   rule, once we get to that point.   So, we'll look  
10   at all of the written comments, and the human  
11   health will be separate, so just -- the scope is  
12   the same for the aquatic life one.

13                  MR. ELLER:   Thank you.

14                  CHAIRMAN GARD:   Okay.   Thank you so  
15   much.

16                  MR. ELLER:   Thank you, Madam Chair  
17   and members of the Board.

18                  CHAIRMAN GARD:   Okay.   No one else  
19   has submitted a card, so is there anyone else to  
20   testify?

21                               (No response.)

22                  CHAIRMAN GARD:   If not, the hearing  
23   is concluded.   There's no Board action related to

1 this hearing.

2 The next we have is the Air Permitting  
3 Report, Jenny Acker.

4 MS. ACKER: Good afternoon, and I'm  
5 here to answer any questions you have on the Air  
6 Permitting Report that's in your package.

7 (Laughter.)

8 MS. ACKER: Okay.

9 MR. RULON: That was succinct.

10 MS. ACKER: I'm going to try to keep  
11 this brief, to help.

12 Notable differences from the last couple  
13 years. Obviously we did a fee increase. Our  
14 FY '24 budget is up by three million, so it's  
15 at 5.1, 5.2 million right now. As you're aware,  
16 for over three million we have to refund the  
17 difference back, but we also get to subtract off  
18 obligations against that 5.2, and when we submit  
19 obligations off of that, we're still under three  
20 million, so we will not be returning fees.

21 I know I was asked last year to do some  
22 trending. It did not make it in here, so I'm  
23 going to give you some informal trending. We

1 have about 830, and I've looked back about 10, 15  
2 years -- there's some other little projects I've  
3 done -- of Title V sources. Those are sources  
4 that have an ability to emit over a hundred tons  
5 per year.

6 If your permit allows you to emit over a  
7 hundred tons a year, you get a Title V permit.  
8 If you want to take limits so that you have to  
9 stay under a hundred tons a year, you get a  
10 FESOP, Federally Enforceable State Operating  
11 Permit. The trend that we have consistently seen  
12 is a trend towards the FESOP.

13 So, while the number is really staying  
14 very, very stable between the combination, we are  
15 seeing a downward trend out of the Title V into  
16 companies taking limits to stay below a hundred,  
17 which is really great for the environment.

18 Overall, permitting actions have remained  
19 very consistent. Sometimes they drop down to  
20 around 1050 a year, other times they drop --  
21 bounce back up near 1200, but it's going to go up  
22 and down. I've looked at how many source mods  
23 we've issued, how many PSD's we've issued.

1           It -- it varies, but there's not a trend  
2   any direction. It's just some years the  
3   economy's doing good, a lot of companies want a  
4   source mod so they can increase their production.  
5   Other years the economy's not so good, they come  
6   in to get a source mod to take stuff out of their  
7   permit. So, we do see that.

8           We did have, FY '23, zero appeals. We had  
9   five this year. Three of them were the same  
10   company. It was for -- they appealed the  
11   construction permit. The construction permit is  
12   incorporated into the Title V. That  
13   incorporation was appealed. They came back and  
14   did a small administrative amendment, because it  
15   pulls that information forward. They appealed  
16   that one also.

17           We did have one company that appealed.  
18   They did not like the testing cycle. They have  
19   to test every two and a half years, and then  
20   after -- after three tests that are compliant,  
21   they can apply to have it moved out to five.  
22   They did not like that, so they have appealed  
23   that.



1           And I've got to look at my notes and see  
2   what the last one was real quick. Oh, we had a  
3   company that we put a HAP limit in, a hazardous  
4   air pollutant limit in their permit. They didn't  
5   agree with it, so they appealed that. We are  
6   firmly convinced that they need the limit, and  
7   they need to test to convince us that they don't  
8   need the limit.

9           Those are really the highlights of the  
10   changes. I do want to point out there is one  
11   mistake in the package, and that is under "Public  
12   Hearings," and I'm not sure how this was made,  
13   but it does say we conducted six public hearings  
14   and two meetings this year, 2024. In reality, we  
15   conducted two public meetings and we had ten  
16   public hearings -- I'm sorry; I did that  
17   backward -- two public hearings, ten public  
18   meetings. And that's definitely an uptick from  
19   last year.

20           Any questions?

21           CHAIRMAN GARD: Any questions from  
22   Board members?

23                           (No response.)

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

3                   MS. ACKER:   Thank you.

4                   CHAIRMAN GARD:   Now we have an open  
5 forum.   Is there anyone who wishes to address the  
6 Board today?

7                                   (No response.)

8                   CHAIRMAN GARD:   Okay.   Well, the next  
9 meeting of the Environmental Rules Board is  
10 tentatively set for March 12th, 2025 at 1:30,  
11 Conference Room A, Indiana Government Center  
12 South.   As you know, it's subject to change, and  
13 IDEM will keep everyone updated when it's  
14 confirmed or another day is chosen.

15                   So, is there a motion to adjourn?

16                   MR. DAVIDSON:   So moved.

17                   CHAIRMAN GARD:   Is there a second?

18                   MR. HORN:   Second the motion.

19                   CHAIRMAN GARD:   Okay.   We're  
20 adjourned.

21                                   -   -   -  
22                   Thereupon, the proceedings of  
23                   December 11, 2024 were concluded  
                                 at 4:13 o'clock p.m.  
                                 -   -   -

## 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, December 11, 2024 in this matter  
8 and transcribed by me.

9  
10 Lindy L. Meyer Jr.

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

14  
15 My Commission expires August 26, 2032.

16 Commission No. NP0690003  
17  
18  
19  
20  
21  
22  
23

<p><b>\$</b></p> <p><b>\$100,000</b> [1] - 136:5</p> <p><b>'</b></p> <p><b>'23</b> [1] - 144:8</p> <p><b>'24</b> [1] - 142:14</p> <p><b>1</b></p> <p><b>1</b> [1] - 132:8</p> <p><b>1-16</b> [1] - 23:21</p> <p><b>1-6</b> [4] - 23:17, 23:21, 24:1, 24:10</p> <p><b>1-6-1</b> [1] - 23:8</p> <p><b>1-6-2</b> [1] - 23:5</p> <p><b>10</b> [14] - 49:19, 56:2, 56:9, 56:12, 78:19, 80:7, 80:10, 84:16, 85:10, 85:22, 86:3, 86:7, 86:8, 143:1</p> <p><b>10-11</b> [1] - 78:19</p> <p><b>10-11-2.1(b)(5)</b> [1] - 79:3</p> <p><b>10-13</b> [1] - 78:19</p> <p><b>10-17-10</b> [2] - 57:17, 57:20</p> <p><b>10-20-12</b> [1] - 75:9</p> <p><b>10-3-1</b> [2] - 39:6, 41:6</p> <p><b>10-3-1-9</b> [1] - 84:15</p> <p><b>10-3-4</b> [2] - 39:7, 41:7</p> <p><b>10-9-1</b> [3] - 38:22, 39:7, 41:6</p> <p><b>10-9-1(b)</b> [1] - 41:8</p> <p><b>10-9-1(c)</b> [1] - 41:8</p> <p><b>100</b> [1] - 92:11</p> <p><b>100-2021</b> [1] - 38:10</p> <p><b>100-plus</b> [1] - 51:3</p> <p><b>1050</b> [1] - 143:20</p> <p><b>11</b> [7] - 1:5, 1:16, 3:1, 78:20, 146:22, 147:7</p> <p><b>11th</b> [3] - 3:7, 33:13, 33:14</p> <p><b>12</b> [2] - 78:20, 113:1</p> <p><b>1200</b> [2] - 25:15, 143:21</p> <p><b>12th</b> [2] - 14:3, 146:10</p> <p><b>13</b> [1] - 78:20</p> <p><b>13-19-3-1</b> [1] - 38:11</p> <p><b>13-19-3-3</b> [3] - 38:11, 39:16, 74:1</p> <p><b>13-19-3-3(c)</b> [1] - 75:1</p> <p><b>13-3-2(c)</b> [1] - 58:12</p> <p><b>131.20(a)</b> [1] - 132:18</p> <p><b>13th</b> [1] - 15:12</p> <p><b>14</b> [3] - 39:8, 40:19, 86:8</p> <p><b>14-1-3</b> [1] - 60:16</p> <p><b>14-1-4(a)(3)</b> [1] - 60:16</p>	<p><b>14-2-1</b> [1] - 56:19</p> <p><b>14-2-1(a)</b> [2] - 81:13, 82:13</p> <p><b>14-2-1(b)</b> [1] - 78:18</p> <p><b>14-2-1(d)</b> [1] - 80:6</p> <p><b>14-3-2(c)</b> [1] - 57:14</p> <p><b>14-3-2(c)</b> [1] - 57:14</p> <p><b>14-3-5(c)(3)</b> [1] - 59:19</p> <p><b>14-3-5(f)(8)(b)</b> [1] - 79:21</p> <p><b>14-3-5(f)(8)(B)</b> [1] - 75:4</p> <p><b>14-4-1</b> [2] - 77:13, 80:1</p> <p><b>15</b> [4] - 75:2, 86:7, 95:4, 143:1</p> <p><b>15-5</b> [1] - 34:20</p> <p><b>15-5-1</b> [1] - 34:22</p> <p><b>150</b> [2] - 10:14, 82:3</p> <p><b>16</b> [5] - 43:19, 44:6, 45:3, 47:8, 77:12</p> <p><b>1623</b> [2] - 39:16, 40:13</p> <p><b>17</b> [1] - 96:19</p> <p><b>17th</b> [1] - 37:21</p> <p><b>18</b> [1] - 92:18</p> <p><b>18th</b> [1] - 39:12</p> <p><b>1920's</b> [1] - 98:5</p> <p><b>1976</b> [1] - 38:5</p> <p><b>1979</b> [1] - 95:3</p> <p><b>1990's</b> [1] - 56:4</p> <p><b>19th</b> [2] - 38:6, 51:17</p> <p><b>1:30</b> [3] - 1:16, 3:1, 146:10</p> <p><b>1st</b> [4] - 39:17, 40:20, 41:11, 55:1</p>	<p><b>2016</b> [3] - 23:21, 23:22, 96:18</p> <p><b>2017</b> [1] - 113:21</p> <p><b>2018</b> [3] - 54:4, 99:18, 125:6</p> <p><b>2019</b> [4] - 79:8, 96:18, 100:3, 105:10</p> <p><b>202</b> [1] - 99:11</p> <p><b>2021</b> [2] - 113:4, 127:7</p> <p><b>2022</b> [2] - 17:1, 39:5</p> <p><b>2023</b> [6] - 21:10, 39:13, 39:17, 74:1, 74:13, 76:2</p> <p><b>2024</b> [19] - 1:5, 1:16, 3:1, 3:7, 5:15, 15:1, 21:17, 39:23, 40:6, 40:16, 40:20, 55:1, 102:12, 120:10, 120:20, 130:18, 145:14, 146:22, 147:7</p> <p><b>2025</b> [6] - 6:22, 14:3, 21:21, 41:11, 129:3, 146:10</p> <p><b>2028</b> [1] - 106:20</p> <p><b>2032</b> [1] - 147:15</p> <p><b>20th</b> [3] - 61:16, 121:8, 130:18</p> <p><b>21</b> [2] - 137:5</p> <p><b>21-458</b> [1] - 37:19</p> <p><b>21302</b> [1] - 37:22</p> <p><b>21st</b> [3] - 21:17, 21:21, 39:5</p> <p><b>2301</b> [1] - 38:12</p> <p><b>24-213</b> [1] - 16:18</p> <p><b>24-318</b> [1] - 20:21</p> <p><b>24-322</b> [1] - 32:10</p> <p><b>24-hour</b> [1] - 75:15</p> <p><b>24th</b> [1] - 21:10</p> <p><b>25</b> [4] - 64:21, 65:11, 70:19, 70:20</p> <p><b>25-year</b> [2] - 65:8, 75:14</p> <p><b>257</b> [5] - 38:8, 38:16, 38:23, 39:20, 41:10</p> <p><b>257.02</b> [3] - 60:18, 60:19, 60:20</p> <p><b>257.102</b> [1] - 59:20</p> <p><b>257.102(c)</b> [1] - 60:4</p> <p><b>257.102(f)</b> [1] - 59:20</p> <p><b>257.2</b> [1] - 60:20</p> <p><b>257.70(c)</b> [1] - 58:3</p> <p><b>257.70(c)</b> [1] - 57:18</p> <p><b>258.74(e)</b> [1] - 33:6</p> <p><b>26</b> [1] - 147:15</p> <p><b>21AC</b> [1] - 136:16</p>	<p><b>30</b> [3] - 14:20, 70:20, 92:11</p> <p><b>30-day</b> [5] - 33:13, 61:5, 111:20, 114:16, 115:6</p> <p><b>300</b> [1] - 137:3</p> <p><b>303(d)</b> [2] - 137:23, 138:4</p> <p><b>304(a)</b> [1] - 132:23</p> <p><b>317</b> [1] - 1:22</p> <p><b>320</b> [1] - 39:8</p> <p><b>326</b> [10] - 22:9, 22:22, 23:2, 23:5, 23:8, 23:17, 23:21, 24:1, 24:10</p> <p><b>327</b> [4] - 136:11, 136:13, 136:16</p> <p><b>329</b> [26] - 38:22, 39:6, 39:8, 40:19, 41:6, 41:7, 41:8, 56:2, 56:9, 56:12, 57:17, 57:20, 60:16, 75:4, 75:9, 77:13, 78:18, 78:19, 79:3, 79:21, 80:1, 80:6, 80:10, 81:13, 82:13, 84:15</p> <p><b>38</b> [2] - 95:19, 95:22</p> <p><b>39099</b> [1] - 40:21</p> <p><b>39122</b> [1] - 40:22</p>	<p><b>6</b></p> <p><b>6-3</b> [1] - 136:12</p> <p><b>600</b> [1] - 65:12</p> <p><b>600,000</b> [1] - 131:20</p> <p><b>67</b> [1] - 137:5</p>
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