

1 INDIANA ENVIRONMENTAL RULES BOARD
2 INDIANA GOVERNMENT CENTER SOUTH
3 302 WEST WASHINGTON STREET
4 INDIANAPOLIS, INDIANA
5 MARCH 11, 2015 - 1:30 P.M.

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MEMBERS PRESENT:

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7 Chair Beverly Gard-General Public
8 Vice Chair William Etzler-Small Business
9 Ken Rulon-Agriculture
10 Gail Boydston-Manufacturing
11 Tom R. Anderson-Environmental Interests
12 Chris Horn-Labor
13 Gary Powdrill-General Public
14 Dr. Ted Niemiec-Medical
15 Kelly Carmichael-Public Utilities
16 Dr. Joanne Alexandrovich-Local Government
17 Calvin Davidson-Proxy ISDH
18 David Bausman, Proxy Lt. Governor for ISDA
19 Cameron Clark-Director of IDNR
20 Pam Fisher-Proxy IEDC
21 Carol Comer (nonvoting member)-IDEM

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 The meeting was held on the 11th day of
MARCH, 2015, at 1:30 p.m., at the Indiana Government
Center South, Conference Room A, Indianapolis,
Indiana, and reported by me, Marjorie A. Addington,
Notary Public in and for the County of Hamilton,
State of Indiana, CM, CSR: KS.

ACCURATE REPORTING OF INDIANA
William F. Daniels Prop. RPR/CP CM
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1 MADAM CHAIR GARD: It's 1:30, so I think
2 we'll go ahead and call the Environmental Rules Board
3 to order, it's March the 11th, 2015. It looks like
4 we have a quorum present. I'm going to go around, as
5 usual, and ask the Board members to give their name
6 and who they represent.

7 MS. COMER: Start with me?

8 MADAM CHAIR GARD: Yes.

9 MS. COMER: My name's Carol Comer, I'm Chief
10 of Staff and I'm here representing IDEM on behalf of
11 our Commissioner, Tom Easterly.

12 MADAM CHAIR GARD: And Carol has just
13 recently been named Chief of Staff. She was head of
14 the legal department before that, so welcome.

15 MS. COMER: Thank you.

16 DR. NIEMIEC: Ted Niemiec representing health
17 care providers.

18 MR. BAUSMAN: David Bausman, serve as proxy
19 for Lieutenant Governor.

20 MR. CLARK: Cam Clark here as the Director
21 for the Department of Natural Resources.

22 MR. CARMICHAEL: Kelly Carmichael
23 representing public utilities.

24 MS. FISHER: Pam Fisher, proxy for Secretary
25 of Commerce, Victor Smith.

1 MS. BOYDSTON: Gail Boydston representing
2 industry.

3 MADAM CHAIR GARD: Beverly Gard, general
4 public.

5 MR. ETZLER: Bill Etzler, small business.

6 MR. ANDERSON: Tom Anderson, environmental.

7 MR. POWDRILL: Gary Powdrill, general public.

8 MR. RULON: Ken Rulon, agriculture.

9 DR. ALEXANDROVICH: Joanne Alexandrovich,
10 local government.

11 MR. DAVIDSON: Calvin Davidson, solid waste.

12 MR. HORN: Chris Horn, labor.

13 MADAM CHAIR GARD: Thank you all very much.
14 First order of business today is the approval of the
15 summary of the January 14th, 2015 Board meeting. Are
16 there any additions or corrections to the summary as
17 it was presented to you?

18 (No response.)

19 MADAM CHAIR GARD: If not, is there a motion
20 to approve the minutes as distributed?

21 MR. RULON: So moved.

22 MADAM CHAIR GARD: Is there a second?

23 MR. ANDERSON: Second.

24 MADAM CHAIR GARD: All in favor say "aye."

25 (All respond "aye".)

1 MADAM CHAIR GARD: Opposed "nay".

2 (No response.)

3 MADAM CHAIR GARD: The minutes are approved.
4 IDEM reports. First order of business, Carol, you're
5 up.

6 MS. COMER: Thank you. I just wanted to
7 update the Board on some of the legislation that is
8 occurring at the present. Senate Bill 312 is now, of
9 course, in the House and it's the aboveground storage
10 tank bill. As you're probably aware, it's no longer
11 our bill, but what's happening now is it exempts
12 tanks that are already reported to another agency.
13 IDEM is tasked with compiling information from other
14 entities and streamlining that information, and also
15 it defines a critical zone of concern for water
16 planning purposes.

17 For the Board's perspective, under the bill
18 as it currently stands, the Board will have to expand
19 on what tanks should be included in the bill, what
20 areas should be included in the critical zone, and
21 also create categories of hazards related to those
22 tanks.

23 So 311 is our oversight cost bill and that's
24 moving forward, and also 350 is the omnibus bill and
25 there are several things related to IDEM in that

1 bill. It allows us to do the in-lieu fee program, it
2 addresses variances, extends the time to the length
3 of the permit so that the permittee doesn't have to
4 renew that variance every year. It allows us to ask
5 for information to be submitted electronically. It
6 allows a wastewater treatment test to be provided by
7 a third party provider and that was the Ivy Tech
8 agreement, so it made it more convenient for our
9 regulated public to get that certification that they
10 need, to have that test that they need. It related
11 to solid waste disposal fees, e-cycle report and
12 hazardous waste disposal fees, it changed the dates
13 on those fees so that there was more coordination in
14 the fee paying date.

15 The other bill that the Board might be
16 interested in is Liz Brown's bill that made it
17 optional for counties to be involved in a solid waste
18 management district and that bill is no longer moving
19 forward, so that's dead. And that's all we have on
20 our plate right now.

21 MADAM CHAIR GARD: I think Senator Niemeyer's
22 bill about the solid waste district board in Lake
23 County, that's probably still alive, I think, isn't
24 it?

25 MS. COMER: Yes, it's moving forward, that's

1 correct.

2 MADAM CHAIR GARD: Yeah. Any questions for
3 Carol on legislation?

4 (No response.)

5 MADAM CHAIR GARD: I just have a comment. If
6 the underground storage tank bill is approved by the
7 House and actually is signed into law as it is now, I
8 would anticipate that this board, an approach we
9 might want to consider, in the legislation
10 establishing this board there's a provision that
11 would allow for I don't think I called it a working
12 group in the law, it's some kind of an advisory
13 group, I think it may be an advisory group, I would
14 anticipate an advisory group being formed of diverse
15 interests with that issue to work through some of the
16 issues and then bring them to the Board and, you
17 know, we'll watch it. If you all have any other
18 ideas on that, you know, we can talk about that after
19 the legislative session.

20 MS. COMER: Thank you. Chris Pedersen.

21 MS. PEDERSEN: Hello, my name is Chris
22 Pedersen, I am in the Rules Development Branch.
23 Before I talk about specific rules that are coming I
24 wanted to give you a couple other updates. The first
25 is that we sent you an e-mail with a link to the

1 draft stage 2 vapor recovery demonstration that was
2 sent on Monday, and I wanted to let you know it is in
3 the comment period right now and after the comment
4 period has ended and we consider any comments that
5 are received that will be submitted to US EPA. In
6 with the e-mail there is information on how to
7 contact someone if you have any questions about that,
8 so feel free to do that.

9 Second, we are going to be posting the Board
10 meeting transcripts on our web page. They are not on
11 there yet but it's going to be a link that's going to
12 be on the very first of the Rules Page, it's going to
13 be directly beneath where the Board packets are
14 listed. We are starting with the September 2014
15 transcript and that's basically just to make it
16 easier for people to get that information rather than
17 having to call the office and ask us to provide them
18 copies.

19 As far as upcoming rules, I wanted to
20 mention that at this time we are anticipating that
21 the next Board meeting that we would recommend a time
22 for would be either June 10th or July 8th, it's a
23 little uncertain right now. We don't really know
24 exactly how some of these rules are going to be
25 proceed and so it's a little hard to predict.

1 The rules that we would anticipate coming up
2 before you at the next Board meeting, the first one
3 is the SO2 emission limits rule for final adoption,
4 that is actually one that is before you today for
5 preliminary adoption, so depending on if it's adopted
6 and whether comments are received here at the hearing
7 or another comment period that would generate a lot
8 more work, that will determine the schedule that
9 we're making.

10 In addition to that, there is the NPDES
11 general permit rule which the Agency has been working
12 on. That is one that there's going to be a
13 presentation here in a few minutes, but that is also
14 one that could come forth for preliminary adoption at
15 the next meeting.

16 In addition to that for preliminary adoption
17 we have three rulemakings on the Environmental
18 Stewardship Program and the Comprehensive Local
19 Environmental Action Network Community Challenge
20 Program, also known as CLEAN. These are performance
21 based incentive programs that were established in
22 2007 and they are for companies or communities that
23 are meeting their current requirements but that are
24 voluntarily going beyond those requirements and
25 taking on additional work that helps improve the

1 environment. The revisions to those rules are
2 basically to help enhance and update the rules since
3 it's come into existence in 2007. And that is all I
4 have for an update.

5 MADAM CHAIR GARD: Any questions for Chris?

6 MR. POWDRILL: The transcripts, how long
7 after a Board meeting will those transcripts be
8 posted?

9 MS. PEDERSEN: Well, we often get transcripts
10 within a couple of weeks. We usually look them over
11 just to see, you know, make sure that there's no
12 errors or anything like that. It's hard to say for
13 sure, but I would guess within a few weeks to a
14 month.

15 MR. POWDRILL: And those would be the
16 transcripts and not the summary that we get in our
17 Board packet?

18 MS. PEDERSEN: Correct, it's the transcript
19 that our court reporter is putting together.

20 MR. POWDRILL: Thank you.

21 MS. PEDERSEN: Any other questions?

22 MADAM CHAIR GARD: Any other questions?

23 (No response.)

24 MR. PIGOTT: Senator Gard, members of the
25 Board, my name's Bruno Pigott, I'm the Assistant

1 Commissioner in the Office of Water Quality. I'm
2 here today to talk about our NPDES general permits.
3 We've been working on general permits for the past
4 several years. Since the last time we brought the
5 general permits rulemaking to the Board was when the
6 Board we presented to was the Water Board.

7 We thought before this issue comes to you
8 for a vote it would be useful to give you a little
9 update about what we've been working on, how it all
10 works and, therefore, we would like to make a
11 presentation to the Board explaining how this all
12 works, and because my esteemed colleague, Martha
13 Clark Mettler, our Deputy Assistant Commissioner, is
14 a very articulate person and knows this issue like
15 the back of her hand, I would like to introduce her
16 to make the presentation on behalf of the Office of
17 Water Quality. Thank you, Martha.

18 MS. METTLER: Thanks, Bruno. My
19 understanding is you all have copies of the slides
20 that were handed out to you and you may see that I've
21 kind of violated one of the premises of PowerPoint,
22 PowerPointing as I call it, and so there's a lot of
23 words on the slides but that's so that you will have
24 information with you to take home and digest a little
25 bit after the Board meeting.

1 So Question No. 1, why are we even doing
2 this, why are we changing from permit by rule? A lot
3 of people are very comfortable with the fact that we
4 have permit by rule, the language is there, it's
5 steady, it never, ever changes, so let me go through
6 some of the history on that.

7 So under the Code of Federal Regulations a
8 person can submit a petition to the administrator of
9 US EPA requesting that they begin proceedings to
10 withdraw an NPDES program from a state for failure to
11 comply with the Clean Water Act.

12 In December of 2009 such a petition was
13 submitted by a group of environmental interest groups
14 alleging that IDEM had failed to comply with the
15 Clean Water Act for several reasons, but one of those
16 was that we do general permits by rule and EPA
17 reviewed that and on March 9th, 2010 the regional
18 administrator sent IDEM a letter indicating that the
19 issuance of general permits by rule did conflict with
20 US EPA regulations.

21 So the specifics to that was we have to
22 ensure that the Board that approves all portions of
23 the permits cannot include any person who holds an
24 NPDES permit, so one of the requirements of this
25 board is that one of the members be a permit holder,

1 so there is a clear conflict there. Also, all NPDES
2 permits are to be renewed on a five-year cycle, not
3 to say that we could not do that with permits by
4 rule, but you know that sometimes the rulemaking
5 takes a long time and committing to a five-year
6 renewal is difficult to do and, quite frankly, we
7 didn't do it. So we determined that we did need to
8 convert from the permits by rule to genuine
9 administratively issued permits that would be renewed
10 every five years.

11 So the process for converting permits by
12 rule to the administratively issued general permits
13 initially requires that we make revisions to our
14 rules. I'm actually going to turn this portion over
15 to Nancy because she knows more about this than I do.

16 So we've made some changes in the
17 overarching rules and then we would need to actually
18 pull out the specific general permit language for
19 each specific general permit out when we have the
20 administrative permits ready.

21 MS. KING: I'm going to talk loud, I don't
22 think this is actually working. If you can't hear me
23 just yell. I'm not very good at following Power
24 Points, so I'm just going to explain to you guys
25 where we have been and where we are with this

1 process. Basically our permits by rule, meaning all
2 the terms of the permits were actually in the rules,
3 so in order for us to switch over to an
4 administratively issued general permit, I think of it
5 as lifting those words off of the rule page and
6 putting them on a permit page and putting them out
7 for public comment just like any individual permit,
8 that's basically how it works.

9 And we didn't think that it would take quite
10 as long for EPA to review the draft general permits
11 and get back to us with the thumbs-up on those as it
12 did because we preliminarily adopted the rule in July
13 of 2012, before this board existed, when it was the
14 Water Board, as Bruno said. Therefore, it's been
15 close to three years since anybody has actually done
16 anything with this rule.

17 Our plan was that because the permit by rule
18 is people's permits right now, we didn't want to go
19 ahead and final adopt the rule which would
20 effectively eliminate the permits, thereby creating a
21 gap before we had the permits ready for people to be
22 able to submit their notices of intent, we wanted
23 people to maintain full coverage. We worked with
24 Senator Gard and others to do legislation to put this
25 process in law so that it allowed the terms of

1 people's existing general permits to remain in
2 effect. After the rule gets done, you know, it has
3 to go through the promulgation process and it's
4 effective 30 days after it gets to Legislative
5 Services. The terms of their existing permits remain
6 in effect until they submit the new Notice of Intent
7 under the plan that I believe we had provided for you
8 in the Board packet what we had responded back to EPA
9 about how we intended to go forth with this, so we
10 wanted you guys to see the existing rule as it was
11 preliminarily adopted and that's the part that we're
12 going to use to move forward with.

13 However, and Martha may explain a little bit
14 more about this, but for purposes of what I wanted to
15 explain about the rule, we had repealed pretty much
16 everything in the preliminary adoption because we
17 expected to have all of our general permits approved
18 by EPA first. Well, a slight hitch in the
19 proceedings with a few of them, those being coal
20 mines and stormwater, specifically, that have not
21 been approved, so we have several that have been
22 approved and we want to be able to move forward and
23 administratively issue those. So some of the
24 language that in the very last section of the rule
25 you'll see that it just says "following" or

1 "repealed," some of that language will be resurrected
2 for those permits that will remain in permit by rule
3 while we work through getting approval for those
4 other permits, so those permits that we already have
5 approved through EPA we will be able to
6 administratively issue because we'll get rid of those
7 specific permits by rule and so what you will see for
8 final adoption is going to look a little bit
9 different than what was preliminarily adopted.

10 So our initial plan, and it remains our
11 initial plan, is that this isn't a change in anything
12 other than how these are issued, we're not trying to
13 slip in a bunch of new things on people or anything
14 like that, we need to update them to updated federal
15 requirements because these rules have not been
16 updated in a long time, but that is still our plan,
17 so it's going to look different and we want to give
18 people the opportunity to see that and be able to
19 understand that.

20 So that's what we're working on in terms of
21 the rule so that we can bring that to you, we can get
22 that final adopted, and then we can move forward with
23 administratively issuing those permits that have
24 already been approved. So that's kind of the rule
25 plan. I can answer any questions you may have about

1 it. Martha has a few more things to talk about, so
2 you can wait until after that to ask questions or ask
3 me now.

4 MADAM CHAIR GARD: How long do you anticipate
5 it's going to take to work through those couple that
6 haven't been approved?

7 MS. KING: Oh, I can't speak to that. That's
8 for Bruno or Martha to talk about, I really don't
9 know. It might take awhile, I'll say that.

10 MADAM CHAIR GARD: Dr. Alexandrovich.

11 DR. ALEXANDROVICH: Approximately how many
12 permits are you having to issue because of this?

13 MS. KING: That's a Martha question.

14 MS. METTLER: Yeah, let me finish and then if
15 I don't answer --

16 MS. KING: I'll chime in from the audience.

17 MS. METTLER: Right. So our actual program
18 process for converting the specific general permits,
19 we need to translate the permit by rule or
20 requirements into an internal draft administrative
21 permit and we do have to incorporate any federal
22 requirements that have been added since the permit by
23 rule was adopted way back when. Then we send that
24 draft to EPA for review and then we revise as
25 appropriate to address any US EPA feedback. Then we

1 share that draft administrative permit with key
2 stakeholders. So the standard administrative permit
3 process, so if you have an individual NPDES permit,
4 it's the same thing for these general permits, we
5 have a minimum 30-day comment period which allows the
6 Agency to conduct a public hearing if requested. We
7 frequently have allowed longer comment periods when
8 it makes sense for whatever the content of the permit
9 is, and then we would renew these permits every five
10 years.

11 For this initial conversion of permits by
12 rule to administrative permits we invite affected
13 stakeholders to meet with us and discuss the
14 provisions of the proposed permits before the end of
15 the public comment period.

16 So on January 30th of this year we had an
17 open meeting to discuss the five permits that were
18 public noticed on December 15th of 2014. These were
19 what we thought were a little more straightforward,
20 less complex rules to convert, but it still took us
21 awhile.

22 One thing, you know, the rule format and
23 what's practical and user-friendly in a permit were
24 not conducive to each other, so we did a lot of work
25 in trying to make it so that when you do claim to

1 have coverage under a general permit it makes sense,
2 it's logical, it's easier to follow, so we did a lot
3 of work like that, and then there were some things
4 that US EPA required that we include and adjust and
5 correct, and we checked all the references and all
6 that stuff, so it did take longer than we had hoped,
7 but these five, noncontact cooling water, which is
8 Rule 8, wastewater discharge associated with
9 petroleum products, Rule 9, wastewater discharge
10 associated with groundwater petroleum remediation
11 systems, Rule 10, wastewater discharge associated
12 with hydrostatic testing of commercial pipelines,
13 Rule 11, and facilities engaged in sand, gravel,
14 dimension stone, or crushed stone operations, Rule
15 12, these five administrative permits will be ready
16 for issuance by the effective date of the rulemaking
17 that we'll be bringing to you, and then those actual
18 permits by rules will be repealed when we get the
19 effective rule after you finally adopt it.

20 We do have five that are not ready for
21 issuance, as Nancy suggested. We have been working
22 on them. They are the much more complicated rules.
23 It's harder to get it into a user-friendly permit
24 because so many different types of coverage were
25 different because it's stormwater stuff. We've got

1 stormwater run-off associated with construction
2 activity, which is Rule 5, we're all having to break
3 the habit of calling it Rule 5 because that's how we
4 distinguished our stormwater permits. Stormwater
5 run-off associated with industrial activity, that
6 one, and currently Rule 6, is significantly out of
7 date, and so there will be a lot of work to bring
8 that up to federal requirements.

9 Facilities engaged in the mining of coal,
10 coal processing and reclamation activities,
11 sedimentation basin treatment and best management
12 practices for stormwater run-off, which is Rule 7, so
13 in my mind is kind of another stormwater rule, and
14 then stormwater run-off associated with municipal
15 separate storm sewer system conveyances which is
16 currently in Rule 13, and then there's the special --
17 Some of you may remember or been involved in the
18 on-site residential sewage discharging disposal
19 systems within Allen County on-site waste management
20 district, Rule 14, so they do have some coverage
21 under that general permit and we need to make sure
22 that we maintain that for those systems that qualify
23 in Allen County. So these will not be ready by the
24 time that we bring the rule back to you for final
25 adoption in June or July, so these will not be

1 repealed with that rulemaking, it will stay in
2 effect, so that's why the rule looks a lot different
3 from what you preliminarily adopted. So we're in the
4 process of translating the permits for these five by
5 rule requirements into the internal administrative
6 drafts.

7 We do have to update the stormwater permits
8 because there's been a lot of changes on those since
9 they were adopted by rule, and then we have to send
10 those to EPA for review and feedback and then we'll
11 revise them based on what we think is appropriate
12 based on the EPA feedback, and then we'll share these
13 with key stakeholders and we'll public notice the
14 draft permits and then we'll invite affected
15 stakeholders to meet with us to discuss provisions of
16 those proposed permits before the end of the public
17 comment period.

18 We know that we will likely get a lot more
19 feedback on these than we did the initial five. I
20 must say that that January open meeting went very
21 well. We had kind of an overarching presentation, we
22 talked about the process and then we broke into
23 individual groups with the different permitholders,
24 you know, the sand and gravel folks were over here
25 and the petroleum byproduct people were over there,

1 and worked with them to answer their questions.
2 These we probably will not do in a massive group
3 meeting because they are more complicated, so we'll
4 meet on Rule 5 and then separately on Rule 6 and 13.
5 So that's all my slides.

6 So the big question is how long is that
7 going to take. We still have to get to a place where
8 we can send it to EPA and we're getting closer. I
9 would think by summer we will be prepared to send at
10 least the three stormwater, Rule 5, 6 and 13, that's
11 construction, industrial and MS4s, to EPA. I don't
12 know how long it will take them to review those.

13 So we're really aiming for the end of the
14 year to kind of have something ready for public
15 viewing, but I'm not going to paint myself in a
16 corner and make any real concrete commitments because
17 there's too many wild cards in the process, but
18 that's what we're focused on trying to get there.

19 MADAM CHAIR GARD: Thank you, Martha. Any
20 questions for Martha or Nancy?

21 MR. POWDRILL: Martha, with all the massive
22 changes to the permits, will you have to go back
23 through preliminary adoption again?

24 MS. METTLER: No, because what will happen is
25 they will be repealed.

1 MS. KING: We'll have to start new
2 rulemaking.

3 MS. METTLER: Oh, okay, yeah.

4 MS. KING: So let me answer that because this
5 is something I should have told you before. We're
6 going to go ahead and ask this board to final adopt a
7 rule, like I said, that will repeal the language that
8 relates to the five that has been approved, so that
9 will be the end of that rulemaking.

10 We will have to start another rulemaking to
11 get rid of the rest of the rules that we had
12 originally intended to get rid of and so that will be
13 the stormwater rules, the coal mining rules and the
14 Fort Wayne rules.

15 It will take as long as our rulemakings
16 take, but we're going to work at the same time, so
17 what we'd like to do is try to do something like
18 we've tried to do with this process which is move
19 that forward at the same time to bring you something
20 to preliminarily adopt so that we will be ready to
21 final adopt when we're ready to have these available
22 for folks to use, so it will be a two-track process,
23 and I apologize, I should've mentioned that, this
24 will be a two-rulemaking game as opposed to the one-
25 rulemaking game that we had hoped. So I apologize

1 for that.

2 MS. METTLER: That's all right. So just to
3 clarify, though, the massive changes, those won't be
4 in the rule, that will be in the administratively
5 issued permit when we public notice it, so what the
6 rulemaking will do is get us set up to repeal those
7 when those are ready to be administratively issued.

8 MR. POWDRILL: Thank you.

9 MADAM CHAIR GARD: Yes, Dr. Alexandrovich.

10 DR. ALEXANDROVICH: Thank you. I just want
11 to make sure I understand this. So what you're
12 writing are basically permit templates and then a
13 source is going to have to have a permit issued for
14 their source, is that right?

15 MS. METTLER: For a general permit what we do
16 is outline what we think satisfies the Clean Water
17 Act and our water quality standards requirements, if
18 you meet these requirements under a general permit,
19 you can claim coverage by submitting a Notice of
20 Intent and then we'll review the Notice of Intent and
21 confirm that, yes, indeed you do meet those
22 parameters and then you would have coverage. So it's
23 not like we're issuing a bunch of different permits
24 to a bunch of sand and gravel operators. If they
25 meet the requirements to qualify, then what they do

1 is submit and say "Yes, I believe that I do qualify
2 my activities, I'm not discharging more or less or
3 anything like that," and then we would review and
4 make sure that we agree that that's true and then
5 they would have coverage.

6 DR. ALEXANDROVICH: So approximately how many
7 Notices of Intent are you expecting?

8 MS. METTLER: It depends on the rule.
9 There's a few hundred on these first five and then
10 there's up to thousands on the stormwater ones
11 because you have to maintain that coverage. So all
12 the construction activity, all of that, they would
13 need to request coverage.

14 DR. ALEXANDROVICH: Thank you.

15 MADAM CHAIR GARD: Any other questions?

16 (No response.)

17 MADAM CHAIR GARD: Thank you very much.

18 Today there will be public hearings prior to
19 consideration for final adoption, Walsh and Kelly SO2
20 limits, shipbuilding and ship repair, particulate
21 matter emission limits. We will have a public
22 hearing prior to preliminary adoption of sulfur
23 dioxide emission limits for the one-hour SO2
24 standards. There will also be a presentation of two
25 nonrule policy documents by IDEM's Office of Land

1 Quality. Additionally, the Board will be presented
2 with a citizen's petition for rulemaking on silica
3 dust, and then at our last meeting the Board asked
4 for additional information on specific issues related
5 to the hearing on amending the definition of
6 "interference" found at 327 IAC 5-17-11. Today the
7 Board will discuss those issues prior to determining
8 any next steps to be taken.

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 Center
13 North. The entire Board packet is also available on
14 IDEM's website at least one week prior to each Board
15 meeting.

16 A written transcript of today's meeting will
17 be made. The transcript and any written submissions
18 will be open to public inspection at the Office of
19 Legal Counsel. A copy of the transcript will be
20 posted on the Rules Page of the Agency website when
21 it becomes available.

22 Will the official reporter for the cause
23 please stand, raise your right hand and state your
24 name?

25 (At this time Marjorie A. Addington, Notary

1 Public, is sworn.)

2 MADAM CHAIR GARD: This is a public hearing
3 before the Environmental Rules Board for the State of
4 Indiana concerning final adoption of amendments to
5 rules at 326 IAC 7-4.1-21 concerning sulfur dioxide
6 limits at Walsh and Kelly. Now I introduce Exhibit
7 A, the rules as preliminarily adopted, into the
8 record of the hearing. Susan Bem is going to give
9 the rule.

10 MS. BEM: My name is Susan Bem, and there are
11 no changes to this rule since preliminary adoption.
12 As presented at the last Board meeting, this
13 rulemaking applies to Walsh and Kelly, a hot mix
14 asphalt plant located in Griffith in Lake County.

15 The emission limits of this rule are being
16 revised to apply to a new 115 million BTU per hour
17 size aggregate dryer burner that was installed to
18 replace a unit designated as 120 million BTU per
19 hour. The language will continue to allow the use of
20 re-refined waste oil. This rule is part of the SIP
21 and IDEM will submit to US EPA for SIP approval after
22 it's final and effective. The Department requests
23 that the Board final adopt the rule as presented.
24 Thank you. Any questions?

25 MADAM CHAIR GARD: Are there any questions

1 for Susan?

2 (No response.)

3 MADAM CHAIR GARD: Thank you very much. Dan
4 Weiss.

5 MR. WEISS: I have a comment on the other
6 SO2.

7 MADAM CHAIR GARD: Oh, the other one, okay.
8 Is there anybody that wants to make comments on this
9 particular rule?

10 (No response.)

11 MADAM CHAIR GARD: Okay, with that, this
12 hearing is concluded. Is there any Board discussion
13 on the rule?

14 (No response.)

15 MADAM CHAIR GARD: Is there a motion for
16 final adoption of the rule as presented?

17 DR. NIEMIEC: So moved.

18 MR. BAUSMAN: Second.

19 MADAM CHAIR GARD: Mr. Rulon.

20 MR. RULON: Yes.

21 MADAM CHAIR GARD: Dr. Alexandrovich.

22 DR. ALEXANDROVICH: Yes.

23 MADAM CHAIR GARD: Mr. Carmichael.

24 MR. CARMICHAEL: Yes.

25 MADAM CHAIR GARD: Mr. Powdrill.

1 MR. POWDRILL: Yes.

2 MADAM CHAIR GARD: Mr. Anderson.

3 MR. ANDERSON: Yes.

4 MADAM CHAIR GARD: Mr. Etzler.

5 MR. ETZLER: Yes.

6 MADAM CHAIR GARD: Ms. Boydston.

7 MS. BOYDSTON: Yes.

8 MADAM CHAIR GARD: Mr. Davidson.

9 MR. DAVIDSON: Yes.

10 MADAM CHAIR GARD: Mr. Horn.

11 MR. HORN: Yes.

12 MADAM CHAIR GARD: Ms. Fisher.

13 MS. FISHER: Yes.

14 MADAM CHAIR GARD: Mr. Bausman.

15 MR. BAUSMAN: Yes.

16 MADAM CHAIR GARD: Mr. Clark.

17 MR. CLARK: Yes.

18 MADAM CHAIR GARD: Dr. Niemiec.

19 DR. NIEMIEC: Yes.

20 MADAM CHAIR GARD: Did I forget anybody? The

21 Chair votes aye. The rule is adopted 14 to zero.

22 Okay, this is a public hearing before the

23 Environmental Rules Board of the State of Indiana

24 concerning final adoption of amendments to rules at

25 326 IAC 8-12-4 regarding shipbuilding and ship

1 repair. I now introduce Exhibit B, the preliminarily
2 adopted rules with IDEM's suggestive changes
3 incorporated into the record of the hearing. Susan,
4 do you want to present the rule?

5 MS. BEM: This rulemaking amends the volatile
6 organic compound limit for antifoulant coatings from
7 2.83 pounds per gallon to 3.3 pounds per gallon in
8 326 IAC 8-12, the shipbuilding and ship repair rule.
9 The amended limit is consistent with the limit in the
10 final NESHAP at 40 CFR 63, subpart double "i," Table
11 2, and the CTG, EPA's Control Technique Guidelines,
12 issued on August 27, 1996.

13 There is one set of changes to this rule
14 from preliminary adoption to what was proposed from
15 the proposed rule. The four obsolete date references
16 in subsections B and C are being proposed for
17 deletion. Once again, this is also part of our
18 Indiana State Implementation Plan and will be
19 submitted to EPA for SIP approval once it's final and
20 effective. The Department requests that the Board
21 final adopt the rule as presented. Thank you. Any
22 questions?

23 MADAM CHAIR GARD: Any questions for Susan?

24 (No response.)

25 MADAM CHAIR GARD: Thank you. There are no

1 speaker cards. Is there anyone in the audience that
2 wishes to comment on the rule?

3 (No response.)

4 MADAM CHAIR GARD: The hearing is concluded.
5 The Board will now consider final adoption of
6 amendments to the shipbuilding rules in 326 IAC
7 8-12-4. Is there further Board discussion?

8 (No response.)

9 MADAM CHAIR GARD: Is there a motion to adopt
10 IDEM's suggestive changes?

11 MR. POWDRILL: Madam Chair, I do believe we
12 need to adopt the changes as --

13 MADAM CHAIR GARD: That's what we're --

14 MR. POWDRILL: -- as a separate -- as a
15 separate --

16 MADAM CHAIR GARD: That's what we're doing.

17 MR. POWDRILL: Okay, I'm sorry.

18 MR. ETZLER: So moved.

19 MR. RULON: Second.

20 MADAM CHAIR GARD: All in favor say "aye".

21 (All respond "aye".)

22 MADAM CHAIR GARD: Opposed "nay".

23 (No response.)

24 MADAM CHAIR GARD: The changes are adopted.
25 Is there a motion to finally adopt the rule as

1 amended?

2 MR. ANDERSON: I move for final adoption.

3 MADAM CHAIR GARD: Is there a second?

4 MR. POWDRILL: Second.

5 MADAM CHAIR GARD: Mr. Rulon.

6 MR. RULON: Yes.

7 MADAM CHAIR GARD: Dr. Alexandrovich.

8 DR. ALEXANDROVICH: Yes.

9 MADAM CHAIR GARD: Mr. Carmichael.

10 MR. CARMICHAEL: Yes.

11 MADAM CHAIR GARD: Mr. Powdrill.

12 MR. POWDRILL: Yes.

13 MADAM CHAIR GARD: Mr. Anderson.

14 MR. ANDERSON: Yes.

15 MADAM CHAIR GARD: Mr. Etzler.

16 MR. ETZLER: Yes.

17 MADAM CHAIR GARD: Ms. Boydston.

18 MS. BOYDSTON: Yes.

19 MADAM CHAIR GARD: Mr. Davidson.

20 MR. DAVIDSON: Yes.

21 MADAM CHAIR GARD: Mr. Horn.

22 MR. HORN: Yes.

23 MADAM CHAIR GARD: Ms. Fisher.

24 MS. FISHER: Yes.

25 MADAM CHAIR GARD: Mr. Bausman.

1 MR. BAUSMAN: Yes.

2 MADAM CHAIR GARD: Mr. Clark.

3 MR. CLARK: Yes.

4 MADAM CHAIR GARD: Dr. Niemiec.

5 DR. NIEMIEC: Yes.

6 MADAM CHAIR GARD: The Chair votes aye. The
7 rule is adopted 14 to zero.

8 This is a public hearing before the
9 Environmental Rules Board of the State of Indiana
10 concerning final adoption of amendments to rules at
11 326 IAC 6.5 and 6.8, particulate matter emission
12 limits. I will now introduce Exhibit C, the
13 preliminarily adopted rules with IDEM's suggestive
14 changes incorporated, into the record of the hearing.

15 MS. BEM: This rulemaking amends source
16 specific emission limits within Indiana's rules
17 concerning particulate matter at 326 IAC 6.5 and 326
18 IAC 6.8. There are two changes since preliminary
19 adoption.

20 The source name at 326 IAC 6.5-5-2 in Howard
21 County is now FCA US, formerly Chrysler Group, and
22 the language at 326 IAC 6.8-2-32 was amended to make
23 it clearer that the new limit is a total limit that
24 applies to all the pulp dryers listed in the rule.
25 Also the typo for the word "molded" was corrected,

1 and as with the other previous rules this is also
2 part of Indiana's SIP and will be submitted to EPA
3 for SIP approval after it's final and effective.
4 The Department requests that the Board preliminary
5 adopt the rule as presented. Any questions?

6 MADAM CHAIR GARD: Are there any questions
7 for Susan?

8 (No response.)

9 MADAM CHAIR GARD: Thank you very much.
10 There are no speaker cards. Is there anyone in the
11 audience that wishes to comment on the proposed rule?

12 (No response.)

13 MADAM CHAIR GARD: The hearing is concluded.
14 The Board will now consider final adoption of
15 amendments to the particulate matter emission limits
16 rules at 326 IAC 6.5 and 6.8. Any Board discussion?

17 DR. NIEMIEC: I just have a very brief
18 question. Just an overall summary of the change, if
19 any, in the emissions for each of these entities
20 itself, not the individual let's say furnaces or
21 dryers within each one but the net change for each of
22 the major entities, just a very brief summary. I
23 know we've got the details.

24 MS. BEM: Okay, and you're just talking about
25 the dryers for --

1 DR. NIEMIEC: Any difference in emissions
2 where they have been changed.

3 MS. BEM: -- or are you talking about the
4 whole -- the whole -- You're not just talking about
5 one source but all the sources listed in 6.5 and 6.8,
6 if there's any major changes?

7 DR. NIEMIEC: Those that are bolded here,
8 yes, major changes.

9 MS. BEM: Because -- And let me pull up.
10 Because as we discussed at preliminary adoption, the
11 two sources with actual limit changes are Jupiter,
12 and both of these are in 6.8, are Jupiter Aluminum
13 and Huhtamaki. The changes for Jupiter Aluminum, you
14 can see the bold and struck language, there was three
15 aluminum furnaces that are no longer at the facility
16 and no longer operating, so those are being taken out
17 of the rule.

18 DR. NIEMIEC: Right.

19 MS. BEM: And then there's two increases at
20 furnaces No. 6 and No. 2 and those increases are
21 increases that compensate for the decreases and they
22 were determined by using modeling, you know, for air
23 dispersion modeling. If you take -- you know, if you
24 have these three units that are gone and now you're
25 going to increase the PM limits coming out of those

1 other two units, how much can you increase those
2 limits so that the air quality impacts are a net
3 difference, and so those two changes were increased
4 in that to compensate for the three units that are
5 gone, so that's one source that's changing in the
6 rule where there's actually emission limit changes,
7 not just the name change.

8 And then the other one was Huhtamaki and
9 that's in 6.8-2-34, and overall there was no -- The
10 increase in emissions -- There's an increase in
11 emissions for each individual dryer but as a whole
12 they will have to watch what unit dryers are
13 operating on any one day so that the overall cap of
14 PM emissions is no greater than what it was
15 previously in the rule.

16 DR. NIEMIEC: Yes, thanks. That appeared to
17 be the case but I just wanted to have an overall
18 summary. Thanks.

19 MS. BEM: Okay, all right, thank you.

20 MR. POWDRILL: Madam Chair, before Susan sits
21 down, on Page 2, just so we can include it in the
22 acceptance of the changes, the very last line it says
23 "OFS Brands, Inc., Plant No. 8, No. 3." I think the
24 "No. 8" needs to be stricken.

25 DR. NIEMIEC: It is.

1 MS. BEM: Okay, on Page 2 at the bottom, and
2 it might be a little hard to see with the number sign
3 there, but there is a strikeout.

4 MR. POWDRILL: Okay.

5 MADAM CHAIR GARD: Any further questions for
6 Susan before she sits down?

7 (No response.)

8 MADAM CHAIR GARD: Any further Board
9 discussion?

10 (No response.)

11 MADAM CHAIR GARD: Is there a motion to adopt
12 IDEM's suggestive changes?

13 MR. ETZLER: So moved.

14 MR. DAVIDSON: Second.

15 MADAM CHAIR GARD: All in favor say "aye".

16 (All respond "aye".)

17 MADAM CHAIR GARD: Opposed "nay".

18 (No response.)

19 MADAM CHAIR GARD: The changes are adopted.
20 Is there a motion to adopt the rule as amended?

21 MR. POWDRILL: So moved.

22 MADAM CHAIR GARD: Is there a second?

23 MR. DAVIDSON: Second.

24 MADAM CHAIR GARD: Mr. Rulon.

25 MR. RULON: Yes.

1 MADAM CHAIR GARD: Dr. Alexandrovich.
2 DR. ALEXANDROVICH: Yes.
3 MADAM CHAIR GARD: Mr. Carmichael.
4 MR. CARMICHAEL: Yes.
5 MADAM CHAIR GARD: Mr. Powdrill.
6 MR. POWDRILL: Yes.
7 MADAM CHAIR GARD: Mr. Anderson.
8 MR. ANDERSON: Yes.
9 MADAM CHAIR GARD: Mr. Etzler.
10 MR. ETZLER: Yes.
11 MADAM CHAIR GARD: Ms. Boydston.
12 MS. BOYDSTON: Yes.
13 MADAM CHAIR GARD: Mr. Davidson.
14 MR. DAVIDSON: Yes.
15 MADAM CHAIR GARD: Mr. Horn.
16 MR. HORN: Yes.
17 MADAM CHAIR GARD: Ms. Fisher.
18 MS. FISHER: Yes.
19 MADAM CHAIR GARD: Mr. Bausman.
20 MR. BAUSMAN: Yes.
21 MADAM CHAIR GARD: Mr. Clark.
22 MR. CLARK: Yes.
23 MADAM CHAIR GARD: Dr. Niemiec.
24 DR. NIEMIEC: Yes.
25 MADAM CHAIR GARD: The Chair votes aye. The

1 rule is finally adopted 14 to zero.

2 This is a public hearing before the
3 Environmental Rules Board of the State of Indiana
4 concerning the preliminary adoption of amendments to
5 rules at 326 IAC 7, sulfur dioxide emission limits.
6 I will now introduce Exhibit D, the draft rules, into
7 the record of the hearing. Susan.

8 MS. BEM: Okay, this rulemaking adds new
9 requirements for sources located in affected counties
10 to address the new one-hour sulfur dioxide standard.
11 US EPA issued a revised primary National Ambient Air
12 Quality Standard for sulphur dioxide on June 22nd,
13 2010. The sulphur dioxide standard had not been
14 revised since the first standard set in 1971.

15 US EPA strengthened the standard for sulphur
16 dioxide by establishing a new one-hour standard at
17 the level of 75 parts per billion to reduce human
18 exposure to high, short-term concentrations of
19 sulphur dioxide. The form of the standard is a
20 three-year average of the 99th percentile of the
21 annual distribution of daily maximum one-hour average
22 concentrations. Final designations for the
23 nonattainment areas based on monitoring data through
24 2012 were published in the Federal Register on August
25 5th, 2013. The current ambient air quality

1 monitoring network addresses a limited portion of the
2 state. US EPA will determine designations for
3 additional areas of the state based on additional
4 monitoring and/or modeling in a separate action at a
5 later date this year.

6 The State Implementation Plan for areas
7 designated nonattainment in 2013 is due to US EPA on
8 April 6, 2015, next month. So once this rule is
9 final and effective IDEM will submit this rule and
10 the attainment planning documents to US EPA for SIP
11 approval later this summer.

12 The townships that were designated as
13 nonattainment are Wayne, Center and Perry in Marion
14 County, Clay and Washington in Morgan County, Veale
15 in Daviess County, Washington in Pike County and
16 Fayette and Harrison Townships in Vigo County.

17 This rulemaking is a key portion of the SIP
18 submittal because it puts in place permanent and
19 enforceable emissions reductions demonstrating how
20 each area will come into attainment with the
21 standard.

22 Federal law does not detail the exact
23 emission controls needed to address nonattainment
24 areas. Air quality modeling is used to determine
25 what emission limits are needed for an area to

1 demonstrate compliance with the new one-hour sulphur
2 dioxide standard. Modeling was done for individual
3 sources in the nonattainment area and for the area as
4 a whole. IDEM used AERMOD, the US EPA accepted model
5 for attainment planning.

6 Vigo, Marion and Morgan County already have
7 SIP based emission limits in the state rules at
8 Article 7 to address the old standard. These limits
9 will remain in place until the compliance date for
10 the new limits. The compliance date for the new
11 one-hour standard is January 1st, 2017. Under the
12 Clean Air Act areas are required to attain the
13 standard within five years of the effective date,
14 which would be October 2018. At a minimum, one
15 calendar year of monitoring data with values under
16 the standard is needed to show attainment, therefore
17 January 1st, 2017 is the compliance date.

18 IDEM has been working closely with the
19 sources affected by this rulemaking to develop
20 emission limits that model attainment and reflect the
21 compliance strategy that the sources will be using to
22 comply. Some of the larger sources, like the power
23 plants, are affected by other regulations that are
24 driving their control strategy, and in Marion and
25 Vigo Counties many of the small sources are able to

1 model attainment using low sulfur diesel fuel that
2 they are already using or will soon be using. For a
3 few sources that are operating CEMS an important
4 issue is calculating compliance using a 30-day
5 rolling average. Indianapolis Power & Light
6 requested a 30-day rolling average period for the
7 limits at the Petersburg plant in Pike County. All
8 four units could either comply with the limits on a
9 one-hour average basis or can comply with a lower
10 30-day rolling average limit.

11 sg Solutions in Vigo County also requested a
12 30-day rolling average limit for one of the units
13 located at the coal gasification combined cycle
14 plant. The 30-day rolling average limits were
15 developed using current CEMS operating data.

16 For demonstrated compliance with the new
17 one-hour limits for these sources that are using the
18 30-day rolling average limits only quality assured
19 CEMS data will be used to calculate compliance. IDEM
20 is not proposing to calculate compliance using Part
21 75 data substitution procedures that are more
22 important in trading program based rules.

23 There are a few issues that IDEM is still
24 working on and will be addressing between now and
25 final adoption, one of which I would like to mention

1 is Rolls-Royce located in Marion County. IDEM has
2 been working closely with Rolls-Royce to develop a
3 compliance strategy that models attainment with the
4 standard. The engine test cells and gas turbine
5 engines were first modeled using jet fuel with a
6 sulphur content of .1 pounds per million BTU, and for
7 one of the bigger test cells near the property line
8 this resulted in modeling with an air quality value
9 above the standard. Very recently Rolls-Royce has
10 proposed lowering the jet fuel sulphur limit for the
11 test cells at Plant 5 and the gas turbine engines
12 identified as D3, which is Clause J of the rule, and
13 D4, Clause L.

14 The gas turbine engines identified as D2 we
15 already have those at a lower .05 pounds per million
16 BTU limit in the rule and then only very recently
17 have we looked at lowering that limit for the gas
18 turbine engines and the other test cells and that's
19 something that we will be looking at changing between
20 prelim and final adoption. With this change the
21 source can operate the test cells without any
22 restriction in operating hours and still model
23 attainment. The sulfur content that is being
24 considered, as I think I've already mentioned, for
25 these test cells at Plant 5 and the other gas turbine

1 engines is .05 pounds per million BTU, and as all
2 Plant 5 test cells will be restricted to .05, the
3 rule language will change slightly between prelim and
4 final adoption because in the current rule for
5 preliminary adoption we have it as .1 for all the
6 test cells except for an N6 test cell at Plant 5 and
7 at final adoption we're looking at just changing it
8 for all the test cells to .05, and this would only be
9 for Plant 5. At Plant 8 we would still be looking at
10 keeping the jet fuel sulphur content limit at .1
11 pounds per million BTU, but with all of these changes
12 IDEM's been working on modeling that will show
13 attainment of the standard and as we work towards
14 final adoption that's the modeling we'll be sharing
15 with EPA to make sure all the changes that we're
16 looking at are still SIP approvable.

17 The other key issue that we're sort of just
18 refining some details in the rule language between
19 now and final adoption are for Hydraulic Press Brick.
20 Hydraulic Press Brick makes a light-weight aggregate
21 product using shale mined on site and then is fired
22 in kilns using coal. There are three kilns on site.
23 The draft rule proposes that Kiln 3 will not operate
24 after the compliance date and then puts in place a
25 new sulphur dioxide limit for the other two kilns.

1 The draft language proposes that there will be a
2 sulfur content analysis done monthly on both the
3 shale and the coal to get a better idea of the sulfur
4 content of the materials going into the process and
5 then to reduce sulfur levels so that the source can
6 comply with the emission limits being proposed in the
7 rule there is going to be an installation and
8 operation of a limestone injection system.

9 That's all the draft rule before you today
10 and there are currently some -- there's language in
11 there about the monthly sulfur testing and keeping
12 track of how much limestone is being fed into the
13 process each day, but we're still working on refining
14 if there's any additional calculations that need to
15 be clearly specified in the rule so that EPA and the
16 source and IDEM are all clear on exactly how
17 compliance is going to be demonstrated.

18 And I think maybe the only other item that I
19 didn't mention already is, as you see in the rule, we
20 already have current emission limits in the rule for
21 Vigo, Marion and Morgan County and many of those rule
22 sections we've had numerous emission units and
23 sources close, these rules haven't been open in a
24 long time, you know, there's been many emission unit
25 closures over the years and so there's a lot of

1 strike-outs in that existing rule language that we're
2 proposing to strike and clean up because these rules
3 will still be in place in the interim until the
4 compliance date of January 1st, 2017, and then once
5 January 1st, 2017 comes into play there's that last
6 section of the rule that proposes to repeal those
7 sections because we'll no longer need the existing
8 sections and we'll just have the new one-hour SO2
9 emission limits in the rule language.

10 We are looking at having a third comment
11 period for this rulemaking. Third comment periods
12 are 21 days because there was numerous changes
13 between what was out on second notice and what we're
14 presenting for preliminary adoption today. The 21-
15 day comment period should start approximately the
16 middle of April. After we get the transcript back
17 today and we review any comments received at the
18 hearing today, we'll put this rulemaking out as a
19 proposed rule and then notice the 21-day public
20 comment period, so approximately mid April to the
21 first week in May or so for that comment period, and
22 then any changes that we need to address before final
23 adoption we'll look at those and prepare the ruling
24 for final adoption. I don't know the exact date for
25 final adoption. As Chris mentioned earlier, we're

1 looking at whenever the next Board meeting is, either
2 June or July. And I think that's everything I wanted
3 to cover. And the Department recommends that the
4 Board adopt the rule, draft rule, as presented. Any
5 questions?

6 MADAM CHAIR GARD: Are there any questions
7 for Susan?

8 MS. BOYDSTON: Susan, I had a couple
9 questions.

10 MS. BEM: Okay.

11 MS. BOYDSTON: In the actual draft rule
12 language on Page 2 of Section (d) where you talk
13 about fuel sampling and analysis, could you consider
14 as you put together the final draft if an
15 organization follows the boiler GACT and MACT, if
16 they might be able to follow the coal and oil
17 sampling methods in those standards also?

18 MS. BEM: Okay, just to clarify, you're
19 looking at then the reporting requirements and
20 methods determining compliance in 7-2-1 and then the
21 fuel sampling analysis part in (d)?

22 MS. BOYDSTON: Yes. And then on the next
23 page where you talk about Part 75 and you don't
24 specify which parts, would you specify or consider
25 specifying which you're intending apply?

1 MS. BEM: Uh-huh, yeah, we could look at that
2 because I think there's only specific -- or a narrow
3 portion of Part 75 that deals with --

4 MS. BOYDSTON: I think that's the reason for
5 the question. And then the January 1st date's
6 rolling around quickly and so while people have known
7 this was coming, I imagine they have been hesitant to
8 spend capital until they know exactly what the final
9 rule would look like.

10 Have you considered any extension process
11 for entities that will have to comply possibly if
12 they have designed and ordered equipment but don't
13 have the capability to begin compliance on the 1st of
14 January, that might be a process that you put in
15 place or consider?

16 MS. BEM: Yeah, and as you see in the draft
17 rule language we haven't, you know, built anything
18 into the rule currently.

19 MS. BOYDSTON: Right.

20 MS. BEM: You know, many of the sources are
21 already -- can already comply with emission limits,
22 you know, it would only be sort of maybe one or two
23 sources where that would be a potential problem, the
24 compliance date, and, you know, we do have our
25 generic variance procedures that sort of apply to all

1 rules where if there was a situation, you know,
2 someone could potentially use that route.

3 MS. BOYDSTON: So it sounds like you've
4 considered that, but I wanted to make sure you
5 thought about that.

6 MS. BEM: Yeah, I mean we have gotten -- As
7 you can see the response to comments, we have -- we
8 did receive some concern, you know, from a limited
9 number of sources on the compliance date.

10 MS. BOYDSTON: I anticipated that. I think
11 those are the most significant questions I have.
12 Thank you.

13 MADAM CHAIR GARD: Any other questions or
14 comments for Susan?

15 (No response.)

16 MADAM CHAIR GARD: Thank you.

17 MS. BEM: Thank you.

18 MADAM CHAIR GARD: I have a fair number of
19 people that have signed up to speak on the issue.
20 Dan Weiss.

21 MR. WEISS: Sorry for the confusion on the
22 prior rulemaking.

23 MADAM CHAIR GARD: That was my fault.

24 MR. WEISS: Good afternoon, Madam Chair and
25 fellow Board members. My name is Dan Weiss, I work

1 at Duke Energy Indiana. I'm the Director of State
2 Environmental and Energy Affairs. Duke Energy
3 Indiana generates and transmits electricity to over
4 700,000 customers in 69 counties and has a coal-fired
5 power plant that is impacted by this rule. My
6 comments today will be very short and directed at the
7 January 1st, 2017 compliance date in the rule.

8 Section 192(a) of the Clean Air Act requires
9 that the State Implementation Plan provide for
10 attainment as expeditiously as possible but no later
11 than five years from the effective date of the
12 nonattainment designation. Since the effective date
13 of nonattainment is October 4th, 2013, if necessary
14 that compliance date could be as late as October 4th,
15 2018.

16 Duke Energy Indiana understands the need to
17 bring areas into attainment as expeditiously as
18 possible. However, in the case of our Wabash River
19 power plant, the company is actively pursuing various
20 alternatives to bring the site into SO2 attainment
21 while also balancing the need for reliable, safe and
22 low cost energy. However, the company, as it
23 transitions to compliance, unexpected delays can
24 occur which could be beyond the control of the
25 source. Therefore, Duke Energy Indiana urges IDEM

1 and the Board to keep the statutory compliance
2 deadline of October 4th, 2018 and work with sources
3 individually to comply as expeditiously as possible
4 but no later than October 4th, 2018. Thank you for
5 this opportunity to comment on the rule.

6 MADAM CHAIR GARD: Are there any questions
7 for Mr. Weiss?

8 (No response.)

9 MADAM CHAIR GARD: Thank you.

10 MR. RULON: You seem to think you won't be
11 able to be in compliance by 2017, is that why you're
12 making this comment or --

13 MR. WEISS: There are some potential
14 scenarios, although they are very remote, yes, that
15 could create a problem with the 2017 deadline, and as
16 I said in my comments, we won't have control over
17 those and they could involve litigation that we're
18 involved in with the power plant and other things, so
19 yes, we don't know how those things will play out,
20 but they are remote possibilities and we will do
21 everything we can to comply by 2017, but we may be in
22 a situation where the issue comes up.

23 DR. NIEMIEC: I have one quick minor
24 question. At the present time what do you anticipate
25 for that particular plant is the one-hour that you're

1 meeting as far as parts per billion, what is your
2 attainment at this time in parts per billion with the
3 new one coming to be 75 for the one-hour standard?

4 MR. WEISS: Our present SO2 limit I believe
5 it's specified in the Vigo County existing permit at
6 that facility and I'm sorry, I don't remember the
7 exact number, but I think it's specified in the rule
8 right now.

9 DR. NIEMIEC: Okay, thanks. I'll just take a
10 look at that section.

11 MADAM CHAIR GARD: Any other questions for
12 Mr. Weiss?

13 (No response.)

14 MADAM CHAIR GARD: Thank you. Justin
15 Barrett.

16 MR. BARRETT: Hello. May it please the
17 Board. My name is Justin Barrett and I'm here today
18 on behalf of Indianapolis Power & Light Company and
19 I'll refer to it as "IPL" throughout my talk today.

20 IPL appreciates the opportunity to provide
21 comments today to the Board on issues related to the
22 preliminary adoption of limits designed to meet the
23 new one-hour SO2 standard. First let me commend IDEM
24 staff for hard work and progress they've made in
25 crafting a very complex rule in an environment of

1 developing and changing guidance from the EPA, as I
2 brought with me here today is the hundred to 200
3 pages of guidance for this particular rule. These
4 proposed SO2 SIP rules impact all three of IPL's
5 generating stations, including the Harding Street
6 generating station right here in Indianapolis in
7 Marion County, the Eagle Valley generating station in
8 Martinsville, Morgan County, Indiana, as well as the
9 Petersburg generating station located in Petersburg,
10 which is Pike County, Indiana.

11 IPL's compliance plan for these facilities
12 includes the following: Ceasing the use of coal at
13 the Harding Street plant and converting Units 5, 6
14 and 7 to natural gas and retiring two of our oil-
15 fired units. For Eagle Valley our compliance plan
16 includes retiring all of the oil and coal-fired units
17 and replacing them with two combined cycle gas
18 turbines in our new Eagle Valley power plant, and
19 finally for our Petersburg plant, this rule in order
20 to comply would include potential improvements to our
21 FGD, which is flue gas desulfurization units, also
22 known as scrubbers, at the plant.

23 The comments we wish to offer relate to two
24 issues where we believe the guidance provided by the
25 US EPA is either inconsistent with the requirements

1 of the Clean Air Act or appears to be somewhat
2 arbitrary in interpreting the SO2 implementation
3 guidance that the EPA published in April of 2014.

4 Our first issue relates to the required
5 compliance deadline of January 1st, 2017. As Ms.
6 Susan Bem just stated, the deadline for meeting the
7 one-hour standard under the Clean Air Act is October
8 4th, 2018. IDEM has responded to this issue and to
9 several comments that we have made along with other
10 companies such as you just heard Dan Weiss at Duke
11 make and I believe it's part of the packet for today,
12 but in IDEM's response they indicated that EPA's
13 April 2014 guidance identified January 1st, 2017 as
14 the date sources are to begin complying with the
15 attainment strategy in this SIP and that unless US
16 EPA indicates otherwise IDEM will continue to follow
17 this interpretation.

18 IPL does not believe that there is any legal
19 requirement to the source compliance date in advance
20 of the statutory attainment date, so we believe
21 there's no legal requirement that this date be set
22 for January 1st, 2017 in advance of the October 4th,
23 2018 date. Specifically taken from the EPA guidance
24 cover page to their guidance document which IDEM
25 refers to in their response to comments, I'm quoting

1 directly from the cover page for the guidance
2 document, "The attached document contains nonbinding
3 recommendations on a wide range of issues that are
4 likely to arise at state development of nonattainment
5 SIPs for the one-hour SO₂ NAAQS." So from the actual
6 SO₂ guidance document it states that it's nonbinding
7 and it's only a recommendation.

8 In fact, requiring sources to comply 21
9 months in advance of the statutory attainment date is
10 contrary to the actual plain language of the Clean
11 Air Act. For example, under the Clean Air Act
12 specifically it states that although the EPA is
13 responsible for promulgating air quality standards,
14 the primary responsibility for meeting these
15 standards rests with the state, therefore it's up to
16 the state as to how they comply with these standards,
17 therefore I'm stating that IDEM does have the power
18 to interpret this deadline as being the October 4th,
19 2018 effective date.

20 Given the short timeframe that states have
21 had to develop SIPs for the one-hour SO₂ standard
22 following the release of this guidance and the need
23 for regulated utilities such as IPL and many other
24 utilities, we require a certain amount of time to
25 perform engineering and cost analyses and obtain

1 approvals through the Indiana Utility Regulatory
2 Commission, therefore the January 1st, 2017 deadline
3 may be problematic. We recognize that setting a
4 final compliance date of October 4th, 2018 could
5 result in needing data as showing compliance in 2019,
6 2020, and 2021 for some areas to support an area
7 being redesignated to attainment; however, the
8 alternative of requiring a compliance date of January
9 1st, 2017 may result in the inability to comply
10 without ceasing operations for facilities that cannot
11 complete the required modifications to be in
12 compliance.

13 Therefore, IPL requests that the source
14 compliance date be specified as October 4th, 2018.
15 If the Board agrees with this recommendation, it
16 would require changing the dates specified in the
17 following: 326 IAC 7-1.1-3, 7-4-2, 7-4-2.1, 7-4-3,
18 7-4-3.1, I'm almost done, 7-4-11, 7-4-11.1, 7-4-15,
19 and in Section 11 from January 1st, 2017 to October
20 4th, 2018.

21 And briefly I'll summarize our second main
22 issue and that's how startup and shutdown timeframes
23 are handled in the proposed rule. During startup and
24 shutdown of the four units at the IPL Petersburg
25 plant the scrubbers would not achieve full control

1 until the startup of the units and associated
2 scrubber is complete. This takes some time, upwards
3 of a few hours. As such, where the scrubber is
4 relied on for compliance we cannot ensure compliance
5 during startup or shutdown conditions. We have
6 requested the rule allow for the exclusion of a small
7 number of hours per year to accommodate this reality.
8 Our comments were made that are part of the packet
9 here today that IDEM has responded to.

10 We believe that excluding this number of
11 hours is consistent with, again, the April 2014 EPA
12 guidance which specifically address the exclusion of
13 startup and shutdown periods since these periods of
14 time are intermittent and of a limited amount of time
15 during the year. Emissions during these brief
16 periods would not contribute significantly to the
17 annual distribution of emissions. EPA has, however,
18 now advised IDEM that excluded hours for startup and
19 shutdown emissions is not acceptable.

20 We propose limiting startup and shutdown and
21 continuous emission monitoring, otherwise known as
22 CEM, testing conditions to 500 hours per year.
23 Specifically, we would request that 326 IAC 7-4-15
24 include a limit of 500 hours per calendar year due to
25 startup, shutdown and CEM testing conditions and

1 these should not be included in determining
2 compliance with the emission limitations in either
3 7-4-15(a) or (d).

4 In conclusion, if the Board agrees that our
5 proposed changes are warranted, we would encourage
6 you to make these changes now. We believe that the
7 positions taken by EPA Region 5 staff in its advice
8 to IDEM is contrary to the language of the Clean Air
9 Act and/or inconsistent with its own April 2014
10 guidance.

11 Our disagreement on these two matters is
12 with the EPA and this is our opportunity to have the
13 matters resolved. If the rules are adopted as
14 written, we do not have any recourse once the rules
15 are submitted to the EPA. Thus, this is our last
16 chance to comment. Thank you for your time and
17 consideration. Any questions?

18 MADAM CHAIR GARD: Are there any questions?

19 MR. CARMICHAEL: Mr. Barrett, thank you for
20 your testimony. On your first issue in terms of the
21 timing, the October 4th, 2018 seems to be a hardwired
22 date, but in IDEM's rule information sheet they state
23 that one full calendar year of clean monitoring data
24 is needed to show attainment, that's how they arrived
25 at the January 1st date. Is your reading of the

1 Clean Air Act that, in fact, one full calendar year
2 of clean monitoring data is needed?

3 MR. BARRETT: That's only recommended
4 guidance.

5 MR. CARMICHAEL: But it's not actually
6 contained in the Clean Air Act statute?

7 MR. BARRETT: Correct, correct. And, in
8 fact, as you pointed out, 12 months before the
9 October 4th, 2018 would actually be October 4th,
10 2017.

11 MR. CARMICHAEL: Right, and that would be on
12 a 12-month period versus a calendar year period.

13 MR. BARRETT: Correct.

14 MR. CARMICHAEL: Okay.

15 MR. BARRETT: And that goes kind of in line
16 with when I was saying this 21-month period seemed
17 arbitrary, I mean why not 22 months, why not 23
18 months, you know, that's kind of our issue is reading
19 the letter of the actual rule, the compliance date is
20 October 4th, 2018.

21 MR. CARMICHAEL: Right. I would like to hear
22 IDEM's response as well because I know they've had
23 some interaction on this with EPA.

24 MADAM CHAIR GARD: Who from IDEM would like
25 to address this issue?

1 MS. BEM: I'm sorry, I was talking to Chris
2 at the moment. I just want to make sure, you were
3 talking about just the compliance date issue?

4 MR. CARMICHAEL: Right, in the information
5 sheet it said one calendar year of clean data.

6 MS. BEM: All right. Yeah. Well, you know,
7 as Justin said, we're sort of already clear on, you
8 know, the Clean Air Act gives five years for those
9 nonattainment counties to show attainment and that
10 date is the October 4th, 2018 date, and then as sort
11 of the guidance alluded to, you know, you show
12 attainment by having three years of clean monitoring
13 data or data that is used to show that there's a --
14 you know, the design value for the area is below the
15 standard.

16 Well, having three years of clean data
17 there's just no time to do that, that's impossible,
18 but as the guidance talks about, at a minimum EPA
19 expected one year of clean data and then that's where
20 the one year -- one cal -- calendar year in advance
21 of the date to show attainment comes into play, you
22 have one year, January 1st through the end of the
23 year of 2017, and then when you're looking at showing
24 attainment by October 4th, 2018, you're looking at
25 dates from a calendar year basis and so that's where

1 that date comes from.

2 MR. CARMICHAEL: Yeah, which leads to two
3 questions, has EPA said in fact it's a calendar year
4 versus a 12-month period?

5 MS. BEM: I mean, well, the guidance and the
6 guidance that they refer back to when we asked these
7 questions refers to it as a calendar year, not just a
8 year, you know, you just can't backtrack to October
9 of 2017, it does specify a calendar year.

10 MR. CARMICHAEL: My second I guess is a
11 comment and that is the guidance is not statute, it's
12 simply guidance, and I would encourage IDEM to go
13 back to the statute and have further discussions with
14 EPA on this, especially since we've got some very
15 serious expressed concerns about being able to comply
16 by the State.

17 I think what we heard is that the sources
18 are committed to bringing the areas into attainment
19 but it could create real issues due to the short
20 timeframe and I think that warrants further
21 discussion with EPA including on what the statute in
22 fact says.

23 MS. BEM: Uh-huh, yes, and I think the
24 Department understands that and between preliminary
25 and final adoption, you know, we can have additional

1 discussions with EPA again on the compliance date and
2 then I think, you know, the more information we know
3 on specific situations where there is a problem, you
4 know, it sort of helps foster that discussion with
5 EPA to, you know, have them do a further look at is
6 there an alternative that still complies with the
7 Clean Air Act.

8 MR. CARMICHAEL: Do you think preliminarily
9 adopting according to the commenters would give more
10 force of that discussion with EPA?

11 MS. BEM: I think, you know, they're going to
12 be concerned about what they feel, you know, they're
13 allowed to, you know, recommend to us on what they
14 can SIP approve. Maybe Nancy has something to add to
15 that, but I think whether or not it gets preliminary
16 adopted, the date in there would in effect (audience
17 cough) response to what they would SIP approve.

18 MR. CARMICHAEL: Right, and we're all working
19 towards --

20 MS. BEM: Yeah.

21 MR. CARMICHAEL: -- approvability, I mean we
22 have to get there, but it being put in front of EPA
23 as a preliminary adoption seems to give more
24 opportunity for comment on that SIP approvability by
25 the sources for that process versus us preliminarily

1 adopting what we have in front of us, then final
2 adoption, and then really the commenters don't have a
3 lot of recourse to come back and challenge the EPA,
4 if you will, on the approvability because there's a
5 final rule in front of EPA, if that makes sense.

6 MS. BEM: Yeah, I mean, because we could
7 still have those discussions with EPA, you know,
8 between now and final adoption, and, you know, the
9 third comment period, you know, is another
10 opportunity for sources to go out on the record,
11 which EPA's going to see the issues brought up at
12 this hearing and any additional issues or the same
13 issues that are brought up during the third comment
14 period, you know, we can have those discussions in
15 the interim.

16 MR. CARMICHAEL: Okay. If you can bring Mr.
17 Barrett back up, if that's okay.

18 MADAM CHAIR GARD: Thank you, Susan.

19 MR. CARMICHAEL: Thank you, Susan.

20 MS. BEM: Thank you.

21 MR. CARMICHAEL: Another question on your
22 view of both the guidance and the Clean Air Act, you
23 had mentioned for startup and shutdown 500 hours for
24 both startup, shutdown and CEM maintenance, right?

25 MR. BARRETT: Yes.

1 MR. CARMICHAEL: In your view in reading of
2 the Clean Air Act and/or guidance is the 500 hours
3 SIP approvable?

4 MR. BARRETT: Yes, I believe so. I can't
5 remember exactly where this guidance comes from from
6 the EPA, but 500 hours is determined to be a small
7 amount of time.

8 MR. CARMICHAEL: Okay. I would like to see
9 some further information on that because, again, we
10 have to get to approvability on this rule, but some
11 further justification that, in fact, the startup,
12 shutdown, the 500 hours would be approvable would be
13 helpful. Thank you.

14 MR. BARRETT: No problem.

15 MADAM CHAIR GARD: Any other questions before
16 we move to the next presenter? Yes.

17 MR. DAVIDSON: Just had a question for Susan,
18 sorry to make you run around the room. You mentioned
19 that the three-year is simply not reasonable. How
20 did we determine that the one-year is, and is that
21 something that the guidance has indicated must be
22 done within that five-year period or can part of that
23 be done outside the five-year period?

24 MS. BEM: Yeah, well, in the first part of
25 your comment with how did -- how did -- you know,

1 since we don't have time for three years, why one
2 year, and that's just from the -- you know, it's from
3 the guidance, but EPA's -- the guidance they talk
4 about at a minimum one year would be expected because
5 if you didn't have one year you wouldn't have any
6 data to start showing that you have attainment of the
7 standard, and so, you know, that's why they say at a
8 minimum one year because then you at least have one
9 dataset to show that the county is in attainment by
10 the deadline, which is October 4th, 2018, because
11 that part, I think we're probably all clear on the
12 October 4th, 2018 because that's five years after the
13 effective date for when these counties were -- their
14 nonattainment status was effective October of 2013
15 and then in the Clean Air Act part, you know, five
16 years we don't -- you know, that part we know and
17 then it's sort of this discussion about, well, you
18 know, what do you -- what do you need to show that
19 there's attainment by that deadline and then that's
20 where at a minimum the one year comes into play.

21 MR. DAVIDSON: I understand how it can be
22 interpreted that way. I guess what -- you know, it
23 couldn't have been January of '18 and you'd have 10
24 months, and I'm not saying that that's -- I
25 understand that's not a full year, I'm not that

1 naive, but as to fuel the discussion back with EPA
2 what is reasonable. I understand they would like to
3 see a minimum of one year but that may be a question
4 or clarification if the deadline had not been October
5 there might be a different discussion.

6 MS. BEM: Uh-huh, yeah. You know, in terms
7 of, you know, I was just going to say, you know,
8 there's other states that are going through this same
9 process at the same time. You know, it's a long
10 rulemaking process for every state and there's not a
11 lot of official documents out there in many of the
12 states on what they are doing, but there are -- there
13 are a few states and those states are using the same
14 date of January 1st, 2017 as their compliance date.
15 They do not have the same issues as Indiana as, you
16 know, showing -- you know, getting scrubbers up or,
17 you know, redone and working in time, but that date
18 is a date that other states are using also, we're not
19 the only state.

20 MR. DAVIDSON: Thanks.

21 MADAM CHAIR GARD: Susan, do you know if
22 there's discussion in other states about that January
23 date?

24 MS. BEM: No. We've had discussions with
25 Region 5 EPA because they're aware of the comments

1 that we've received already that it's been an issue
2 here, but I'm not aware of any other discussions
3 where it's been a problem or a discrepancy or, you
4 know, point of discussion in other states.

5 MADAM CHAIR GARD: Any other questions for
6 Susan?

7 MS. BEM: And I guess, you know, since I'm up
8 here I just want -- I thought maybe I'd take the
9 opportunity on the other issue, the startup and
10 shutdown, since there will be a lot of discussions
11 that take place in the next few months, just one of
12 the other points about the 500 hours that EPA talks
13 about is that that comes from their intermittent use
14 policy. These are emissions that they consider that
15 are random and cannot be planned throughout the year,
16 and so if a source was going to be looking at
17 considering something intermittent, that's where that
18 500 hours comes from.

19 You know, any type of, you know, startup or
20 shutdown that's on a regular frequency EPA's not
21 going to consider that as intermittent in allowing an
22 exemption, so that that 500 hours is used in very
23 limited circumstances, but, you know, it's something
24 we can, you know, can discuss before final adoption
25 with EPA and the affected sources.

1 MR. CARMICHAEL: Yeah, and one comment on
2 that, I mean this is a one-hour standard, correct?

3 MS. BEM: Correct.

4 MR. CARMICHAEL: So in a one-hour period
5 what's the difference between intermittent and
6 nonintermittent?

7 MS. BEM: Well, yeah, and, you know, with the
8 intermittent, you know, they're looking at very
9 infrequent and, you know, for a limited amount of
10 time throughout the year, and then in the -- in the
11 other -- you know, we also have the 30-day rolling
12 average that instead of -- you know, since for some
13 of these sources where this is an issue, even though
14 it's a one-hour standard, you know, you could have,
15 you know, trouble complying on a one-hour basis, the
16 30-day rolling average helps compensate or, you know,
17 provides a little bit more flexibility in having a
18 few one-hour readings on the CEMS that you can't --
19 that are, you know, over the limit but then on a
20 30-day rolling average basis you can comply and
21 that's sort of what's part of EPA's response to, you
22 know, how to deal with startup/shutdown.

23 MR. CARMICHAEL: All right. One request I'd
24 have is that if the Board does preliminarily adopt
25 that these issues get fully resolved with EPA before

1 IDEM brings this back to us for final adoption, I
2 want to make sure that the sources have the
3 opportunity to state their case, along with IDEM or
4 not, but have the opportunity to make their case in
5 front of EPA.

6 MS. BEM: Okay.

7 MADAM CHAIR GARD: Thank you. Vicki Wright.

8 MS. WRIGHT: Good afternoon, Board, thank you
9 for letting me speak. I'm Vicki Wright, I'm counsel
10 for Hydraulic Press Brick, one of the sources that
11 Susan pointed out earlier. I first want to thank
12 IDEM. This has been a very difficult process to get
13 to even this point for this particular source, it's
14 got some unique issues, it's a smaller business in
15 Morgan County, and so I appreciate what IDEM has done
16 to date as well as the interfacing with EPA.

17 As Susan mentioned, Hydraulic Press Brick is
18 still trying to work out the recordkeeping, testing
19 information requirements for it as a source. EPA I
20 do not believe has approved that and it's imperative
21 for this particular source to have EPA's buy-in in
22 terms of what that looks like.

23 Other than that particular point, however,
24 unlike the other speakers, who I appreciate their
25 position on timing, this particular source is anxious

1 to get this resolved and otherwise supports the
2 proposed rule as it only applies to it and so I
3 wanted to make sure that that was clear to everyone
4 here. Those are my comments.

5 MADAM CHAIR GARD: Any questions for Ms.
6 Wright?

7 (No response.)

8 MADAM CHAIR GARD: Thank you. Jodi Perras.

9 MS. PERRAS: Thank you, members of the Board.
10 I'm Jodi Perras representing the Sierra Club, state
11 and national environmental advocacy organization with
12 7500 members in Indiana.

13 Before I get into my prepared remarks I
14 wanted to raise a couple of issues that I don't think
15 Mr. Weiss and Mr. Barrett shared with you. One is
16 that Duke Energy signed a settlement agreement with
17 Sierra Club and other parties in 2013 that requires
18 them to retire Units 2 through 5 at their Wabash
19 River plant by the deadline for the mercury rule
20 which would be, as I understand it, April 2016 and at
21 Unit 6 to stop burning coal there by June of 2018.

22 They are also selling Unit 1 there to Wabash
23 Valley Power, so I'm not sure -- They certainly would
24 have enough time I would think to address that
25 remaining unit that's burning coal there if they

1 decide to -- or actually the unit that might burn
2 coal into 2018, I think they would have time to do
3 something with that unit to convert to a natural gas
4 or decide what they're going to do there.

5 And in terms of IPL's quandary, I would just
6 point out that it's highly likely that the three
7 counties that are in nonattainment that are affected
8 by IPL facilities would not be in that state had IPL
9 run their facilities, their scrubbers, efficiently
10 and as they were designed to do. The big reason why
11 Marion County, Morgan County, and Pike County are in
12 nonattainment is because those plants have not
13 effectively controlled SO₂ with the facilities that
14 they have.

15 Sierra Club definitely appreciates the hard
16 work that IDEM has put into this proposed rule and in
17 particular I'd like to thank Susan Bem for her hard
18 work. Indiana appears to be on track to propose this
19 rule by the April deadline that EPA has proposed and
20 that's definitely a good thing, but we would suggest
21 that the rule in some places isn't strong enough and
22 there's some work that yet needs to be done.

23 There's no doubt that this proposed rule
24 when fully implemented by 2017 will improve air
25 quality in some parts of Indiana, it will improve the

1 health of people and I think we shouldn't lose track
2 of the fact of the health impacts of SO₂, especially
3 on children and the elderly who live near the sources
4 that IDEM is requiring these SO₂ emission reductions.

5 The proposed rule, though, unless it's
6 revised, is missing a big opportunity, in particular
7 we believe that IDEM should mandate emission
8 reductions in Gibson County for Duke's Gibson
9 generating facility which is a huge source of SO₂ and
10 other harmful air pollutants.

11 IDEM's own modeling shows that this plant
12 impacts the 2010 SO₂ NAAQS standards in Gibson
13 County. Our modeling confirms that fact and further
14 shows that the plant on its own violates the SO₂
15 standard over a broad swath of southwest Indiana.

16 I'm going to pass around a diagram from
17 modeling that we did, that Sierra Club hired an
18 engineer to do, and I'll talk about this a little bit
19 more in a minute. Let's not forget that people right
20 now living near the Gibson County plant are exposed
21 to SO₂ levels that EPA has determined are dangerous.
22 Exposure to SO₂ causes serious health problems and
23 exposure in even very short time limits, as short as
24 five minutes, can have significant impacts, cause
25 impacts to lung function, aggravation of asthma,

1 respiratory and cardiovascular morbidity. In terms
2 of the Duke Gibson plant and the diagram that I just
3 sent around, there are two fundamental problems with
4 IDEM's approach to the facility. First, the Gibson
5 Coal Road monitor that's shown there as a red square
6 in the middle of kind of a donut hole, that is placed
7 in an inappropriate place to measure the SO2 levels
8 coming out of the Gibson facility which you see there
9 in another kind of hole down below.

10 Initially IDEM designated Gibson County as
11 unclassifiable and then correctly designated part of
12 the county as nonattainment, so initially IDEM
13 classified part of the county as nonattainment but
14 later changed it to unclassifiable based on this
15 monitor.

16 The monitor does not appear to be source
17 oriented to best capture SO2 impacts, which is
18 required. The modeling of actual hourly emissions
19 shows the Gibson Coal Road monitor is not located
20 where Duke Gibson has its highest impacts, and you
21 see the colors in red and orange. Anywhere that
22 there's that orange or red color on this model output
23 indicates levels of SO2 that exceed the standard. So
24 what we have, what we would posit is that this
25 monitor is placed in a location where you wouldn't

1 find, a model wouldn't find, our model wouldn't find,
2 that there are exceedances and had it been placed
3 elsewhere it might have clearly showed exceedances.
4 Our modeling shows serious violations of the National
5 Ambient Air Quality Standards over a broad area in
6 Gibson County when you use either allowable or actual
7 emissions in the model.

8 Because the monitor does not appear to
9 properly capture the emissions, then we think that
10 IDEM should reconsider its decision to rely on this
11 monitor to classify the entire county and that's
12 particularly important because here the monitor
13 itself shows that air quality is on the cusp of
14 nonattainment, so the numbers that IDEM shows is that
15 the data for the last three months of 2014 that the
16 Gibson Coal Road monitor may actually show a
17 violation of the standard for the most recent design
18 value. So there's really no safety margin in Gibson
19 County and I suspect that you're going to have to
20 come back and revisit this later. It would be better
21 to include some controls on the Gibson County plant
22 in this rule.

23 Second, if you put aside the Gibson County
24 issue and whether that should be attainment or
25 nonattainment, we believe that this Gibson County

1 plant affects the downwind Pike and Daviess County
2 nonattainment. Our modeling shows emissions from the
3 Gibson plant itself would significantly contribute to
4 the NAAQS nonattainment in Daviess and Pike
5 Counties.

6 In response to comments that IDEM gave to
7 our comments they say that the Gibson County SO2
8 emissions and monitored SO2 levels have trended
9 downward over the last 10 years, but there's no doubt
10 that there has been no downward trend over the last
11 five years and, in fact, since 2009 the SO2 design
12 value and monitored value levels have actually
13 trended upward in Gibson County and we believe that
14 the refusal to regulate Gibson is, therefore,
15 premised on a downward trend in SO2 emissions that
16 halted approximately five years ago and since then
17 there is no downward trend at all.

18 Absent regulation SO2 levels should be
19 expected to remain where they have been at levels
20 that violate the National Ambient Air Quality
21 Standards in Gibson County and that also
22 significantly contribute downwind to Pike and Daviess
23 Counties. With regard to Petersburg and the IPL
24 plant, we support IDEM's decision to require IPL to
25 give notice regarding whether it will comply with the

1 hourly or 30-day limits in the SO2 rule. Rules that
2 allow a source to switch between compliance
3 alternatives without notice to IDEM or the public
4 make it difficult for the regulators and the public
5 to track that compliance, so we're glad that that is
6 in there and it is important for enforceability
7 purposes to ensure that it's always clear which
8 limits apply to a plant at any one time.

9 We believe that IDEM should revise downward
10 its emission limits for Petersburg. Sierra Club's
11 modeling shows that IDEM's proposed emission limits
12 for the Petersburg facility are not adequate to
13 assure compliance with the NAAQS throughout southwest
14 Indiana. We modeled the proposed Petersburg emission
15 limits with the lowest measured background
16 concentration anywhere in the state and our analysis
17 showed total maximum impact based on the proposed
18 one-hour limitations that exceed the standard.

19 IDEM's proposed one-hour limitation for the
20 Petersburg facility should be made more stringent
21 with a 30-day limitation tightened as well. So we
22 would oppose any effort to extend the deadline for
23 these facilities because we think that they can
24 comply with the rule as written.

25 MADAM CHAIR GARD: Are there any questions

1 for Jodi?

2 (No response.)

3 MADAM CHAIR GARD: Thank you. That is all of
4 the people that signed up to speak, I think. Is
5 there anyone in the audience that didn't sign up that
6 wants to speak?

7 (No response.)

8 MADAM CHAIR GARD: Okay, thank you very much.
9 Seeing no one else, this hearing is concluded. The
10 Board will now consider preliminary adoption to
11 amendments to sulfur dioxide rules at 326 IAC 7 to
12 address the federal one-hour SO₂ standards. Board
13 discussion.

14 DR. ALEXANDROVICH: I've got some issues.
15 Let me start with the compliance date. I might
16 recommend this board recommend that we change it to
17 December 4th, 2017. That will give us time for a
18 full year of clean data. The clean data policy that
19 EPA has as I understand it is not in any rule, it's
20 not in any law, it's policy, it's precedented, and as
21 far as I know it hasn't been contested, so, you know,
22 you won't have a full year January through December,
23 instead you could have October to October. So I
24 would recommend that we change that. And I guess my
25 other question is to IDEM, how far away are the

1 monitors from design value?

2 MADAM CHAIR GARD: Anybody know? Can you all
3 find out --

4 MS. BEM: Yes.

5 MADAM CHAIR GARD: -- and let Dr.
6 Alexandrovich know?

7 MS. BEM: Yeah, we'll find out and get back.

8 MADAM CHAIR GARD: Okay.

9 DR. ALEXANDROVICH: And then I guess one
10 other thing would just be a comment is that, yeah,
11 everybody has been working on this for many, many,
12 many years and lots of hard work on behalf of IDEM
13 and the sources and Sierra Club and so that should be
14 recognized that this is not a trivial issue.

15 MADAM CHAIR GARD: No, it certainly is not.
16 Any other questions or Board discussion?

17 MR. POWDRILL: Madam Chair, I'd like to
18 follow-up on Kelly's discussion. What is the most
19 beneficial route for the Board to take? If we
20 preliminarily adopt, does that give the commenters
21 more or less chance of getting their voice heard and,
22 you know, it seems like that -- or that seems kind of
23 crucial to me.

24 MR. CARMICHAEL: My sense is that if the
25 Board preliminarily adopted it sends a signal to EPA

1 that the Board accepts the rule as preliminarily
2 adopted. If we delay, and this is my sense, adopting
3 it now, that it sends a signal to EPA that the Board
4 is not necessarily comfortable with the guidance and
5 that a closer look at the statute needs to be made.

6 If we did the October to October, that sends
7 a signal to EPA that it's not a calendar year, that
8 it's a 12- month period. If we adopted a date in
9 December, the actual -- I forget the actual --
10 December 2018, that sends a signal to the EPA that
11 the Board's view is that the statute does require one
12 year of clean data, if that makes sense.

13 MR. POWDRILL: I think you gave me two
14 "yes's" and a "no."

15 MR. CARMICHAEL: I think that's where we're
16 at, what signal do we want to send to EPA. At this
17 point, personally, I'm uncomfortable sending them a
18 signal that we're comfortable with the guidance
19 document because it potentially conflicts with the
20 actual statute itself.

21 MR. POWDRILL: Which preliminary adoption
22 would do, it would send them that positive signal.

23 MR. CARMICHAEL: Send them the signal that
24 that's the direction that the Board is headed.

25 MR. POWDRILL: That's the sense I got from

1 your comments.

2 MR. CARMICHAEL: Right.

3 MR. POWDRILL: Thank you.

4 MADAM CHAIR GARD: Nancy, let me ask you a
5 question now. Are we able to amend the submitted
6 preliminary rules today?

7 MS. KING: Yes, this board can change the
8 language that it wants to preliminarily adopt. You
9 need to specifically read that into the record at the
10 hearing so that we get it correct and so that when we
11 publish it people know what they're commenting on.

12 The Board also has the ability, as has been
13 suggested, to not preliminarily adopt today. I
14 believe that would require us to then re-notice
15 another public hearing and hold that as just another
16 preliminary adoption hearing and Board action in the
17 future as well.

18 MR. CARMICHAEL: Would that in any way
19 jeopardize the approvability schedule?

20 MS. KING: I have no idea about that. The
21 Air Program has worked with EPA in terms of the
22 timing on that, so, you know, I don't know if putting
23 it off is problematic or not. That might be
24 something the program could address, I don't know.

25 MADAM CHAIR GARD: Susan looks like she wants

1 to comment on this.

2 DR. ALEXANDROVICH: Can you talk about the
3 schedule?

4 MS. BEM: Yeah, the schedule is important,
5 April 6th is the deadline for getting our SIP to the
6 EPA. You know, given the extensive amount of time we
7 needed to work with sources to come up with control
8 strategies for each of the sources, we're already in
9 March for preliminary adoption and then, you know,
10 early summer for final adoption.

11 If we delay preliminary adoption, you know,
12 we're, you know, pushing things off another three
13 months and then we're even further behind schedule
14 and then, you know, we're closer to the timeframe
15 where EPA would say "Hey, State," you know, to us
16 that we failed to meet our SIP deadline and then
17 they're going to start the process for a failure to
18 submit and start putting emission limits in place,
19 you know, to get these areas into attainment, so, you
20 know, preliminary adoption, you know, the sooner we
21 can do that the better.

22 MADAM CHAIR GARD: So it sounds like the best
23 way to send a signal to EPA that we do have concerns
24 but to not affect the schedule significantly would be
25 to make some changes today.

1 MR. CARMICHAEL: And I would recommend the
2 October 4th, 2018 date, and again I'm open, I mean I
3 think this deserves more discussion, but it clearly
4 puts the signal to EPA that we're still looking at
5 it, that we're getting back to the statute, and that
6 there's some questions on the guidance that need to
7 be resolved.

8 DR. ALEXANDROVICH: The schedule of EPA, can
9 we get a copy of the schedule so we know kind of what
10 you guys are looking at, and is that established by
11 an implementation rule or by the promulgation of the
12 designations?

13 MS. BEM: Yeah, I mean there is a -- the key
14 date is April 6th of this year --

15 DR. ALEXANDROVICH: And that was --

16 MS. BEM: -- and that's -- and that's
17 established because it's 18 months after attainment
18 designations are made, the SIPs are due, and that's a
19 standard, you know, clear deadline.

20 DR. NIEMIEC: It sounds like the main issue
21 is the date. Would some of the other Board members
22 that haven't commented want to talk about maybe the
23 two dates that have been suggested the most, which
24 are either October of 2017 or October of 2018?
25 Anybody have any comments about those dates? And

1 then following that discussion maybe then someone
2 will make a motion to propose a change to either of
3 those dates, for example.

4 MS. FISHER: Before we talk about the date, I
5 have a question for you, Susan. Can you maybe talk
6 to us about what will be the impact to the State if
7 we're unable to achieve attainment in SO2 in these
8 areas? So I understand that it will be an impact to
9 the sources that would exceed the SO2 limits that
10 puts them in as a major source, but can we expect
11 other industries other than primarily our utility
12 industries to be negatively impacted if we're unable
13 to meet the attainment standard by that 2018 date?

14 MS. BEM: I can only comment on that in a
15 limited way. If we do not show attainment by the
16 October 4th, 2018 date, then there's Clean Air Act
17 provisions that -- well, for one, as already stated,
18 those counties would stay in nonattainment status
19 longer.

20 You know, at some point in time, once these
21 emission limits in the rule are in effect and
22 emissions go down and we have monitoring data that
23 show attainment, we can ask the EPA for
24 redesignation -- or submit a redesignation petition
25 to EPA and have those counties' status changed to

1 attainment and, you know, that's the ultimate goal is
2 to get those counties into attainment and then the
3 air quality is shown that it's good and then sources
4 that come in for new source review are no longer
5 following the nonattainment area rules, so, you know,
6 that's the ultimate goal, so the long -- you know,
7 the longer that timeframe is, you know, the longer
8 that process is going to take.

9 I don't know what changes in the timeframe
10 if we do not meet the October 4th, 2018 date, if
11 there's any other additional provisions that kick in
12 underneath the Clean Air Act. You know, the main
13 concern is that there would be a longer timeframe
14 before we have data to show -- you know, to have
15 clean data to show the EPA and to petition them for a
16 better status.

17 MS. FISHER: I'm just curious if we're not
18 able to show attainment by the deadline, with the
19 exception of our utility industries, would there be
20 other industries that are significant emitters of SO2
21 that would be negatively impacted if they attempted
22 to get a permit in a nonattainment area? I guess
23 that my question is that can we maybe think about
24 what other industries are significant SO2 emitters
25 that would be in an opportunity to apply for a

1 brand-new permit that would be negatively impacted if
2 they're trying to get a permit in a nonattainment
3 county?

4 MS. BEM: Yeah, and, you know, a couple of
5 these counties are key counties. You know, I don't
6 know the details of all the different industries and
7 stuff, but, you know, this is Marion County, Vigo
8 County, and they are locations where it's heavy
9 industry where there's the potential for new large
10 sources coming in.

11 You know, as there's better controls and
12 there's not as many power plants out there, you know,
13 using coal, there might not be as many sources that
14 are over the threshold for, you know, PSD or, you
15 know, major new source review, but they are heavy
16 industrial areas and so, you know, there could be
17 industry types that do exceed those thresholds.

18 MS. FISHER: I'm always concerned about any
19 time that we have a county that is in nonattainment,
20 and only thinking out loud as we're talking about
21 this schedule issue, it's always a concern for us if
22 we have a business that wants to go someplace and
23 they are forced to choose between a nonattainment
24 county or an attainment county, obviously that is a
25 consideration for them on their model on where

1 they're going to locate, so if they're considering a
2 county in Indiana that's nonattainment versus a
3 county in Illinois that's in attainment, obviously
4 that puts Indiana at a disadvantage for competitive
5 opportunities if this would be specific to a major
6 source for SO2 emissions and that's just a comment.

7 MS. BEM: Yeah, and it's true, you know, the
8 sooner those counties reduce their emissions, the
9 sooner they have clean data to show attainment, the
10 sooner the state can get those counties redesignated,
11 you know, as either unclassifiable or attainment
12 status.

13 MR. CARMICHAEL: And just to be clear, the
14 counties wouldn't be designated attainment October
15 2018, is that correct, you need three years of clean
16 data, is that right?

17 MS. BEM: Yeah, and I guess I'm not clear
18 enough on everything that's needed for a
19 redesignation petition, but since the guidance does
20 talk about at a minimum one year of clean data I
21 don't know if we're able to -- how soon we'd be able
22 to submit one.

23 MS. FISHER: I think I saw Scott Deloney here
24 in the audience, I know that he was, I don't know if
25 he still is, but if Scott is here, do you think that

1 Scott could maybe comment on this?

2 MR. DELONEY: Thanks for recognizing me.

3 Scott Deloney, I'm with the Air Programs Branch
4 within IDEM's Office of Air Quality. I think that to
5 get at answering your question, there's really two
6 components of it. One is the approvability of the
7 initial SIP. If we develop a SIP that doesn't comply
8 with both the timeline and limits necessary to
9 support attainment, then that SIP doesn't get
10 approved and then we risk the federal government
11 coming in and implementing a federal implementation
12 plan.

13 The second aspect is that if the limits
14 aren't successful in achieving attainment, then we
15 wouldn't be eligible for a one-year extension to that
16 attainment deadline and the issue with that is that
17 without an extension you also run the risk, again, of
18 the federal government coming in and bumping the area
19 up for its failure to attain the standard, so either
20 way there are repercussions, and not having an
21 approvable SIP puts every source that's within those
22 nonattainment areas at risk, so it's not just, you
23 know, the sources that contribute to our failure to
24 attain by those deadlines. And one thing I would
25 point to as far as the issue on timing is there was a

1 critical decision on December 23rd, I believe it was
2 the Washington, DC Circuit Court pertaining to how
3 EPA proceeded to implement the 2008 ozone standard.
4 Implementation rule same issues with regard to your
5 attainment date lands in the middle of the year. The
6 form of the standard is based on three complete years
7 of data. You know, can you attain at the close of
8 the year that that attainment deadline ends in or do
9 you have to have one year of clean data for the year
10 prior?

11 The court's ruling on that issue, this was
12 just in December of 2014, was that with the ozone
13 standard designations occurred in 2012. The
14 effective date of those designations was July 20th of
15 2012. Areas that had three years to attain or five
16 years to attain, that applied to July 20th, 2015 or
17 2017.

18 The court's ruling was that if your deadline
19 to attain for the ozone standard was July 20th of
20 2015, you would have to attain by the close of
21 calendar year 2014, that's because the form of the
22 standard is based on three-year average of the fourth
23 high. The SO2 standard is the same way, you're
24 looking at a three-year period that's based on a
25 calendar year. EPA's interpretation and where they

1 came up with that January 1, 2017 deadline was
2 looking at having one year of clean data prior to the
3 date that the area would be required to attain. So
4 that's one of those issues that if we don't have
5 limits that would support at least having one year of
6 clean data by the effective date that EPA is looking
7 at, we would risk having the SIP that would be
8 considered unapprovable and that puts all of the
9 sources that are affected by this rule in the same
10 boat.

11 MR. CARMICHAEL: So, Scott, if I could
12 summarize, the court decision said it's a calendar
13 year, it's not a 12-month period?

14 MR. DELONEY: That is correct, that's
15 correct, they look at the form of the standard, which
16 is based on calendar years, and then they look at if
17 you don't attain by that year you either get bumped
18 up and additional Clean Air Act requirements affect
19 that entire area. In this case it's not just the
20 area since it's the state that's responsible. Those
21 implications can apply to the entire state, not just
22 those areas designated nonattainment, so it gets even
23 broader at that point in time.

24 MR. CARMICHAEL: And I wouldn't recommend to
25 the Board that we not say in June or July or when it

1 comes up for final adoption that we don't adopt a
2 rule that we don't feel is approvable. The question
3 becomes is with serious concerns about actually
4 meeting that January 1st, 2017 deadline how do we
5 best position IDEM and the sources themselves to
6 state their case to EPA.

7 MR. DELONEY: Right.

8 MR. CARMICHAEL: Ultimately as we come into
9 final adoption, at least from my perspective, it
10 needs to be an approvable rule.

11 MR. DELONEY: Right, yeah. Well, you know,
12 the first thing for us is that we strongly desire
13 having an approvable SIP, that prevents the federal
14 government taking over our responsibility and
15 authority here in Indiana.

16 The second thing is we want to continue
17 working with the sources to make sure that we have as
18 flexible of a plan as possible. As Susan indicated,
19 if we have one source for one nonattainment area that
20 we need to work with that isn't going to be in a
21 position to comply by that date, then we're limiting
22 it in terms of scope and we could continue working
23 with them on looking at things like, you know, a
24 variance or otherwise if we need to go that route.
25 But the first step for us is having an approvable SIP

1 so that we maintain control of this process, then the
2 second step is working with each area to make sure
3 that they comply, we achieve redesignation as soon as
4 possible. If we run into a situation where a source
5 is unable to comply by the assigned deadline, we
6 would work with them on a case-by-case basis.

7 MADAM CHAIR GARD: And I totally agree with
8 you about the potential implications of nonattainment
9 designations to the state, but I also have a concern
10 that if we just continue when EPA, you know, gets on
11 the bully pulpit and threatens this that we just roll
12 over and never challenge them on these things that
13 obviously have no basis in law.

14 MR. DELONEY: Right. This isn't the first
15 time we've run into --

16 MADAM CHAIR GARD: I know, Scott.

17 MR. DELONEY: Every time there's an air
18 quality standard you would expect there to be an
19 implementation rule to support it, not implementation
20 guidance. This standard was issued in 2010 and areas
21 were designated with an effective date of designation
22 before we even got anything from EPA in the form of
23 guidance, not implementation rule, but guidance in
24 terms of how we can move forward. Without that we
25 didn't want to initiate a rule because we knew that

1 it would be subject to challenges and it would be a
2 moving target, but this is happening with every time
3 that the NAAQS are revised and since EPA got on this
4 five-year schedule for revising the NAAQS, these air
5 quality standards were being revised before the
6 implementation rules were even being initiated. And
7 I brought notice to the 2008 ozone standard. The
8 guidance for that standard which was issued in 2008,
9 designations were issued and effective in 2012, that
10 guidance just published in the Federal Register last
11 week.

12 MR. CARMICHAEL: So they put us in this spot.

13 MR. DELONEY: Right. And we do have one
14 area, Lake and Porter Counties, that are affected by
15 this very scenario, they were designated with an
16 effective date being part of the Chicago
17 nonattainment area July 20th of 2012, we're required
18 to attain by July 20th of this year, monitoring data
19 elsewhere within that nonattainment area did not
20 support attainment at the close of 2014, EPA is on a
21 clock where they're required to act on bump-up by
22 January 20th of 2015. If that happens, additional
23 Clean Air Act requirements kick in, even though there
24 isn't anything that we can do to actually solve the
25 problem, and if we fail to comply with those

1 requirements, the sanctions would apply to the entire
2 state, not just Lake and Porter Counties, so that's
3 why we've been taking the dates and the guidance very
4 serious.

5 MADAM CHAIR GARD: Dr. Alexandrovich.

6 DR. ALEXANDROVICH: Yeah. So the SIP
7 approval that we're talking about is the rule. Is
8 that going in with your attainment demonstration?

9 MR. DELONEY: That is correct. The rule is
10 providing the permanent and enforceable emission
11 limits. Those emission limits then are the heart and
12 soul to the modeling which provides the technical
13 demonstration that we would attain the standard by
14 the assigned deadline.

15 DR. ALEXANDROVICH: Okay, that gets me to my
16 next question, the modeling, because at this point
17 we're talking about a modeled future, not a measured
18 future, so they have to approve a modeled future.
19 Can your modelers -- and I see Mark sitting out
20 there.

21 MR. DELONEY: Two "Marks."

22 DR. ALEXANDROVICH: -- change the start date
23 of the run time or the end time of the model to
24 compare what you get with a compliance date of 1-1-17
25 to a compliance date of 10-4-17?

1 MR. DELONEY: Well, yes. If you're modeling
2 the same limits and you're using the same
3 meteorological data, you know, the only thing that
4 may change is your background value, but Mark, Keith,
5 Mark Neyman, would you expect to see anything
6 different if you were to change the future year back
7 one?

8 IDEM STAFF NOT IDENTIFIED: No, we wouldn't
9 expect it.

10 DR. ALEXANDROVICH: So in my mind that says
11 that we can demonstrate attainment by January 1st --
12 no, October 4th, 2018 based on modeling and at that
13 time we would be expected to measure, but that, you
14 know, with a full year I guess then again ending in
15 December of '17, so --

16 MR. DELONEY: The monitoring --

17 DR. ALEXANDROVICH: I'm getting a little bit
18 confused.

19 MR. DELONEY: But the monitors located within
20 the nonattainment area are what EPA's going to rely
21 on to determine whether we met the standard or not,
22 and without additional sanctions kicking in at that
23 point in time you'd have to have a minimum of one
24 year, complete calendar year, data to demonstrate
25 that you are on target to meet the standard, then a

1 separate federal action has to be requested by the
2 State, we would have to certify that monitoring data
3 and request for a one-year extension for all of those
4 areas each of the next two years in order to protect
5 the State from potential federal action for those
6 areas not coming into compliance with the standard
7 which is based on three years of clean data.

8 MR. CARMICHAEL: But based on the model, on
9 October 4th, 2018, with the limits that we may adopt,
10 on that date the air quality would be attained, the
11 air quality standard would be attained?

12 MR. DELONEY: Based on what the model's
13 telling us?

14 MR. CARMICHAEL: Yeah, and --

15 MR. DELONEY: Right.

16 MR. CARMICHAEL: Yeah.

17 MR. DELONEY: Yeah.

18 MR. CARMICHAEL: Right.

19 MR. DELONEY: But the modeling's, it seems
20 crazy, the modeling is exactly what we're relying on
21 to seek federal approval of our SIP. You know, the
22 monitors are already saying we're not meeting the
23 standard, that's how the designations occur. What
24 we're seeking federal approval on our state
25 implementation plan for is solely based on the

1 modeling, but then come October of 2018 the monitors
2 are what take over with regard to compliance with
3 that SIP.

4 MR. CARMICHAEL: And if the modeling's
5 perfect, it should show clean --

6 MR. DELONEY: No model's perfect, nor is the
7 inventory that the model relies on for being perfect,
8 but, yeah, there are a lot of assumptions.

9 DR. ALEXANDROVICH: I have one last question.
10 What is the overall emissions reductions expected by
11 the proposed rule?

12 MR. DELONEY: Well, in terms of tons of SO₂
13 emissions?

14 DR. ALEXANDROVICH: Yeah, yeah, yeah.

15 MR. DELONEY: We can quantify that, we can
16 quantify that. Each area is different because we
17 look at the, you know, micrograms per cubic meter and
18 then convert to parts per million and billion in
19 order to determine what level of reduction is
20 necessary, but it's very source specific based on
21 who's contributing, but we can quantify the
22 difference between the existing limits and the
23 revised limits in terms of a tons per year, we'd be
24 happy to do that.

25 MADAM CHAIR GARD: Okay, any other questions?

1 What's your name again?

2 MR. DELONEY: Scott Deloney, D-E-L-O-N-E-Y.

3 MADAM CHAIR GARD: Okay, thank you.

4 MR. DELONEY: Okay.

5 MADAM CHAIR GARD: Any other questions for
6 Scott?

7 (No response.)

8 MADAM CHAIR GARD: Further Board discussion?
9 Decision time. Yes.

10 MR. DAVIDSON: Kelly, I think it was in
11 response to Ms. Boydston's question earlier about
12 variances, but variances, that kind of went away
13 quietly. Variances are out there, certain companies
14 could seek a variance. Is that even an option? I
15 didn't really hear a response on that question.

16 MR. CARMICHAEL: Yeah, I think that needed to
17 be researched exactly how much protection that
18 variance provides, and to be honest, I know there's
19 some variance language in the Legislature right now
20 and I don't know if that impacts us or not. That
21 should not. I don't know the answer to that. I
22 don't know if it provides full protection. I don't
23 know if IDEM has a view of that.

24 MR. DAVIDSON: Well, and I was reminded of
25 that when he said, well, the State would have to go

1 to the EPA and ask for an extension or ask
2 essentially for a variance, seemed very quick to hand
3 it back to industry, but it seems like it would be a
4 big headache maybe for the State to ask for that. At
5 the same time it needs to be approvable I think it
6 needs to be attainable. We can just as easily say
7 "October of this year, there they had three years to
8 get there, sorry about your luck, but it needs to be
9 attainable."

10 MADAM CHAIR GARD: Okay, Board decision.

11 MR. RULON: Just one quick point I'd like to
12 make, though, that this whole SO2 standard is just
13 pretty much just heavy-handed bureaucracy down from
14 the top in the first place. Most of Indiana's soils
15 are becoming deficient in sulphur. We're going to
16 have to start importing sulphur. From our
17 perspective it's kind of ironic we're having this
18 discussion.

19 And the Sierra Club modeling, everyone has a
20 model and it's just amazing that they have an open
21 spot where the monitor has to be placed and I looked
22 up on Google Maps, there's no ridge there, there's no
23 reason why that pocket should be like it is. I guess
24 I would just like to, if possible, make a motion that
25 we at least in the preliminary adoption change the

1 effective date to October 1st, 2017.

2 MADAM CHAIR GARD: You said "2017" or "2018"?

3 MR. CARMICHAEL: Is it October 4th, 2018?

4 MR. RULON: I thought that the monitoring
5 would have to go into place October 4th, 2017 so that
6 we have 12 months of data, so instead of using
7 January 1st, 2017, do October 4th of 2017. We can
8 always change that back with the final adoption if it
9 won't be approved by EPA. That's my motion.

10 MR. CARMICHAEL: Yeah, and so there's
11 potentially two signals to the EPA, the one you've
12 proposed would mean that the Board tends to read the
13 guidance that it's not a calendar year, that it's a
14 12-month period, which I think from what we've heard
15 from Scott would be contrary to the lower court
16 decision in the DC courts.

17 The other signal is the October 4th, 2018,
18 which means that with limits in place and with all
19 the available information we have that we believe
20 that the actual air quality would meet the standard
21 on the compliance date that EPA has specified.

22 It doesn't give that either 12-month or
23 calendar year advance, which feels a little arbitrary
24 to me but I want to hear more, why is it one year,
25 not three year, you know, why. But the signal is

1 that on that date, given the best available
2 information, we believe that the air quality will
3 meet the standard.

4 MR. RULON: Well, it seems like as many coal
5 plants as we're closing most of these areas will be
6 in attainment.

7 MR. CARMICHAEL: Yeah, and that's what is
8 occurring in some of these areas, these closure of
9 coal plants, and what I've heard from the commenters
10 is that that needs to be done in conjunction with
11 another state regulatory agency, the Indiana Utility
12 Regulatory Commission, in conjunction with some
13 previous consent decrees or discussions that occurred
14 with the EPA and I'm guessing it's to assure that
15 reliability of the electric system is maintained.

16 MADAM CHAIR GARD: So did you make a motion
17 or are you just talking about making a motion?

18 MR. RULON: No, I move that we select the
19 October 4th, 2017 date.

20 MR. CARMICHAEL: '17 or '18?

21 DR. ALEXANDROVICH: Is it the one in between
22 the one that IDEM has and --

23 MR. RULON: IDEM is saying January 1st, 2017,
24 I'm suggesting October 4th, 2017 as the date that we
25 start the 12-month calendar, so we're not doing a

1 calendar year, we're doing 12 months in succession,
2 which puts us in attainment on October 4th, 2018,
3 which is what the law requires.

4 DR. NIEMIEC: So it's a compromised kind of
5 date.

6 MADAM CHAIR GARD: So that is a motion?

7 MR. RULON: Yes, it is, ma'am, or Madam
8 Chair.

9 MADAM CHAIR GARD: Is there a second?

10 DR. ALEXANDROVICH: I'll second it.

11 MADAM CHAIR GARD: Board discussion?

12 MR. ANDERSON: I guess I'm having a hard time
13 figuring out that there'd be one calendar year before
14 the standard would have to be attained and based on
15 monitoring data that would have to simultaneously be
16 certified, so that's not really realistic, in my
17 opinion it wouldn't be realistic.

18 DR. ALEXANDROVICH: But it's the modeling
19 data that has to --

20 MR. ANDERSON: No, what would be --

21 DR. ALEXANDROVICH: Well, that's what's
22 threatened, though, is our attainment demonstration
23 as a SIP, so all the monitoring data comes
24 afterwards. The models could be wrong and, you know,
25 either our air will still be dirty or it'll be clean.

1 MR. ANDERSON: But it would be the monitoring
2 data for the one year, calendar year, not a -- I mean
3 a running year.

4 DR. NIEMIEC: It sounds like it would give a
5 running year by that time and then a few months later
6 we'd have a full calendar year of attainment
7 demonstrated by monitoring if we chose that date.

8 MR. CARMICHAEL: My preference is in the
9 preliminary adoption set it at the October 4th, 2018
10 date to send a signal that we as a board are not
11 necessarily buying into the EPA guidance of one
12 calendar year, understanding, though, that when we
13 come back for final adoption I believe it's in all of
14 our best interests that it is EPA approvable, but it
15 sends a strong message that the guidance is just
16 that, it's guidance, it's not the statutory language
17 itself, it's that the compliance date is October 4th,
18 2018 and our air quality will meet that given the
19 best available information we have.

20 MADAM CHAIR GARD: Well, we have a motion on
21 the floor that's been moved and seconded, so we're
22 going to need to deal with that unless the author
23 withdraws its motion.

24 MS. FISHER: I just have a comment on this.
25 As we're thinking about this I'm definitely

1 supportive of providing our permitted sources with
2 the flexibility that they need and want to move
3 forward with this, but again I just want to reiterate
4 that if we're not in attainment by that 2018 deadline
5 it has significant impact on other industries that
6 are looking to locate in Indiana and I know that this
7 modeling question that permitted sources are required
8 to go through as part of applying for the permit,
9 this one-hour SO2 issue has been a very difficult
10 issue for new sources in Indiana to deal with and,
11 again, I just want to make sure that we understand
12 the impact to businesses overall if we are not in
13 attainment by that deadline required in the SIP.

14 MADAM CHAIR GARD: And I think it's
15 everyone's intent that we will be in attainment by
16 then, I think that we just have a question about the
17 legal validity of their guidance --

18 MS. FISHER: Right.

19 MADAM CHAIR GARD: -- with these dates.

20 MR. CLARK: Maybe I'm confused, but I'm
21 supportive of the October 2018 attainment date, but
22 we still have to provide data over a period of time
23 that seems to be the other part of our debate and if
24 we are going to consider something less than 12
25 months, are we jeopardizing approvability and are we

1 jeopardizing approvability if we don't use a calendar
2 year based upon a recent court ruling on the ozone
3 standards. Thus, my concern is if we put 2018 as our
4 attainment date, that's great, but we still have to
5 provide data that's acceptable to achieve attainment,
6 and I'm all for sending the EPA messages but are we
7 cutting our nose off to spite our face by doing so?

8 MR. RULON: Well, I was trying to make a
9 motion that would send a message but we still have
10 the 12 months of data. Yes, it would be a real time,
11 that last month, but by the time they could get
12 around to measuring it anyway or suing us, because it
13 took three years for that case to get to court, we'd
14 have three years of data, so it seems to me like it's
15 just a nice way to not cut off our nose and keep us
16 on a compliance deadline.

17 MR. CARMICHAEL: Well, we are monitoring, so
18 we're getting data every day, so the actual air
19 quality is being monitored --

20 MR. RULON: No, I understand that, but in
21 terms of this discussion we have to have 12 months of
22 data.

23 MR. CARMICHAEL: We have to have a calendar
24 year per EPA, and so if you want to send a signal
25 that it's not a calendar year, it's 12 months --

1 MR. RULON: And that was the intent of the
2 motion was to split that middle, still keep us on the
3 schedule and not have to change it again, and if
4 that's not possible, then we should --

5 DR. NIEMIEC: Right, that was the date that
6 you proposed that people would begin to meet what the
7 criteria are measurably --

8 MR. RULON: Yes.

9 DR. NIEMIEC: -- at that moment, not having
10 back data for it, but as of that date, October of
11 2017.

12 MR. RULON: Yeah, and so I'm not giving Duke
13 and IPL the extra 12 months that your 12-20-18 date
14 would suggest, I'm not giving them that 12 months,
15 I'm giving them nine.

16 DR. NIEMIEC: Compromise, and then in the
17 meantime perhaps before we look to final adopt and
18 have further hearings IDEM perhaps could talk with
19 EPA about our basically preliminarily adopted
20 amendments and see what their feedback is,
21 potentially.

22 MADAM CHAIR GARD: Nancy, do we have to have
23 a roll call on amendments?

24 MS. KING: Madam Chair, if I may ask, if you
25 are going to vote on this specific amendment, it

1 would be very beneficial for us to know exactly what
2 the wording of the amendment is and exactly where in
3 this rule you want that to be. There is one section
4 called "Compliance Dates," however there are dates
5 throughout this rule.

6 MADAM CHAIR GARD: Well, there were nine
7 dates that were listed.

8 MS. KING: Correct. So if that's what you
9 want, it needs to be clear in the motion so we know
10 what the Board has preliminarily adopted.

11 MADAM CHAIR GARD: Well, someone had the list
12 of those nine dates.

13 MR. BARRETT: Do you want me to read them
14 again?

15 MADAM CHAIR GARD: I think you need to give
16 them to Mr. Rulon.

17 MS. KING: I would also suggest that a roll
18 call vote might be beneficial.

19 MADAM CHAIR GARD: Yeah, we do need those
20 dates for the motion.

21 MS. KING: And the exact language that you
22 want the rule to be.

23 MADAM CHAIR GARD: Exactly.

24 MS. KING: I'm a little confused between '17
25 and '18 myself right now.

1 MR. BARRETT: I'm going to jot them down for
2 you. Do you want me to just read them?

3 MADAM CHAIR GARD: It's his motion, so he
4 will need those.

5 MR. RULON: I wrote all of them down except
6 for one, so I'd better read the official list so I
7 get it correct. Yes, so, Madam Chairwoman, the
8 motion would read that the dates as mentioned in 326
9 IAC 7-1.1-3, 326 IAC 7-4-2, 7-4-2.1, 7-4-3, 7-4-3.1,
10 7-4-11, 7-4-11.1, and 7-4-15 would be changed from
11 January 1st, 2017 to October 4th, 2017.

12 DR. ALEXANDROVICH: Are all those the ones
13 that apply for all of the sources or just --

14 MR. RULON: Yeah.

15 DR. ALEXANDROVICH: -- IPL's sources? So it
16 should be all sources, not --

17 MS. BEM: I didn't hear Section 11, the date
18 changed for that one, there was one more.

19 MADAM CHAIR GARD: Okay.

20 MR. RULON: Add Section 11 at Susan's
21 request.

22 MADAM CHAIR GARD: Okay. The motion is that
23 with all of those citations that were given the date
24 be changed from January the 1st, 2017 to October the
25 4th, 2017 and the motion was seconded. I would call

1 the roll. Mr. Horn.

2 MR. HORN: Aye.

3 MADAM CHAIR GARD: Mr. Davidson.

4 MR. DAVIDSON: Yes.

5 MADAM CHAIR GARD: Dr. Alexandrovich.

6 DR. ALEXANDROVICH: Yes.

7 MADAM CHAIR GARD: Mr. Rulon.

8 MR. RULON: Yes.

9 MADAM CHAIR GARD: Mr. Powdrill.

10 MR. POWDRILL: Yes.

11 MADAM CHAIR GARD: Mr. Anderson.

12 MR. ANDERSON: No.

13 MADAM CHAIR GARD: Mr. Etzler.

14 MR. ETZLER: Yes.

15 MADAM CHAIR GARD: Ms. Boydston.

16 MS. BOYDSTON: Yes.

17 MADAM CHAIR GARD: Ms. Fisher.

18 MS. FISHER: Yes.

19 MADAM CHAIR GARD: Mr. Carmichael.

20 MR. CARMICHAEL: Yes.

21 MADAM CHAIR GARD: Mr. Clark.

22 MR. CLARK: Yes.

23 MADAM CHAIR GARD: Mr. Bausman.

24 MR. BAUSMAN: Yes.

25 MADAM CHAIR GARD: Dr. Niemiec.

1 DR. NIEMIEC: Yes.

2 MADAM CHAIR GARD: And the Chair votes aye,
3 so the preliminary rule is amended 13 to 1. Now, is
4 there a motion to preliminarily adopt the amended
5 rule?

6 MR. POWDRILL: So moved.

7 MR. HORN: I'll second.

8 MADAM CHAIR GARD: Any further discussion?

9 (No response.)

10 MADAM CHAIR GARD: This is a voice vote. All
11 in favor say "aye".

12 (All respond "aye".)

13 MADAM CHAIR GARD: Opposed "nay".

14 (No response.)

15 MADAM CHAIR GARD: The rules are
16 preliminarily adopted with an amendment.

17 Okay, nonrule policy document presentation.
18 Now, we have two nonrule policy documents presented
19 by the Office of Land Quality.

20 MR. KIZER: Good afternoon, Madam Chair and
21 members of the Board. I'm Bruce Kizer, the Branch
22 Chief of the Compliance and Response Branch of the
23 Office of Land Quality. I'll be presenting two
24 nonrule policy documents. Both NPDs were posted on
25 the IDEM web page for the required 45-day comment

1 period which ended February 16th. No comments were
2 received on either NPD during the comment period.

3 In addition to posting on the IDEM web page
4 both NPDs were sent via e-mail to consulting
5 companies and remediation contractors that
6 participate in the Office of Land Quality's
7 Consultant Day meetings.

8 The first nonrule policy document I will be
9 presenting is titled "Contained-in Determination
10 Policy." This is a revision to an existing nonrule
11 policy document originally effective in 2002. IDEM
12 is proposing to revise the original policy by
13 updating the risk-based closure levels used to make
14 the contained-in determination.

15 This policy is intended to allow the
16 regulated community to remediate contaminated sites
17 in a more economical manner. This policy encourages
18 the cleanup and redevelopment of sites. The
19 contained-in determination policy allows for
20 environmental media, soil and groundwater minimally
21 impacted with listed hazardous wastes to be disposed
22 of as less regulated and less expensive solid waste.

23 Indiana is authorized by US EPA to implement
24 the hazardous waste program and adopts the federal
25 hazardous waste regulations at 329 IAC 3.1. US EPA's

1 determined that authorized states may use site
2 specific, media specific and contaminant specific
3 health based criteria to determine when listed
4 hazardous waste is not contained in soil or
5 groundwater. This policy sets the constituent level
6 to determine when soil or groundwater does not
7 contain listed hazardous waste.

8 Listed hazardous wastes are wastes that are
9 designated in 329 IAC 3.1 as hazardous wastes based
10 on what the wastes are comprised of, the processes
11 generating the waste and the use of the materials
12 resulting in the waste. Listed hazardous wastes are
13 considered to be hazardous wastes regardless of the
14 concentrations of the hazardous waste constituents.

15 Listed hazardous wastes impacting soil or
16 groundwater result in the environmental media being
17 managed as a listed hazardous waste when generated
18 for disposal. The environmental media is not
19 considered a waste but to contain a listed hazardous
20 waste.

21 The contained-in determination policy is a
22 case-by-case review by IDEM where a determination to
23 removing the environmental media from being a
24 hazardous waste may be granted. The determination is
25 based on the concentrations of hazardous waste

1 constituents being lower than the risk-based
2 screening levels and the soil being managed in a
3 municipal solid waste landfill or groundwater being
4 managed at a facility regulated under the Clean Water
5 Act.

6 The risk-based closure screening levels in
7 this revised policy are the US EPA site screening
8 levels adopted by IDEM in the Remediation Closure
9 Guidance document. Specifically soil may be approved
10 for disposal at a municipal solid waste landfill if
11 it meets the direct contact commercial/industrial
12 screening levels.

13 The Remediation Closure Guide does not
14 contain commercial/industrial screening levels for
15 groundwater. IDEM has determined for the purpose of
16 this policy that residential groundwater closure
17 level increased by a factor of 10 is appropriate for
18 use as the exit level for groundwater managed in a
19 unit regulated under the Clean Water Act.

20 If the soil or groundwater exhibits a
21 characteristic of hazardous waste it must continue to
22 be managed and disposed of as a hazardous waste. A
23 written contained-in determination must be obtained
24 from IDEM. IDEM believes this policy will provide a
25 consistent approach to determine when soil or

1 groundwater can safely be considered to not contain
2 listed hazardous waste and allow for more economical
3 disposal.

4 I can stop at this point and take questions
5 on this policy or I can go ahead and present the
6 other one, however you would like.

7 MADAM CHAIR GARD: So let's go ahead and take
8 questions on this one first if there are any. Any
9 questions?

10 (No response.)

11 MADAM CHAIR GARD: No, go ahead with your
12 next one.

13 MR. KIZER: All right. The second nonrule
14 policy I will be presenting is titled "Uncontaminated
15 Soil Policy." IDEM is proposing in this policy an
16 exit standard that will allow the regulated community
17 to operate more efficiently within rules and statutes
18 related to the management and disposal of soil
19 containing low levels of human-introduced
20 constituents while still being protective of human
21 health and the environment.

22 This policy is intended to define when soil
23 contains constituents at low enough levels to be
24 considered uncontaminated. Indiana solid waste rules
25 exempt the disposal and processing of uncontaminated

1 dirt from being a solid waste management activity.
2 However, "uncontaminated" is not defined in the solid
3 waste rules. For clarification, the NPD uses the
4 term "soil" to be synonymous with "dirt."

5 With the advent of the risk approach using
6 health-based standards to determine cleanup levels,
7 the term "uncontaminated" can have a different
8 meaning depending on the rule or the activity being
9 conducted.

10 Currently soil at remediation sites could be
11 considered clean enough to remain on site unaddressed
12 but if excavated the soil would be subject to solid
13 waste regulations requiring disposal. This policy
14 sets a constituent level for soil to be
15 uncontaminated based on the US EPA site screening
16 levels adopted by IDEM in the Remediation Closure
17 Guidance document. Specifically, the residential
18 screening levels or migration to groundwater levels,
19 whichever is lower, will be used to determine if the
20 soil is uncontaminated.

21 This policy applies only to soil. It does
22 not apply to naturally occurring elements in soil
23 such as arsenic or other materials such as bricks,
24 concrete or industrial waste like foundry sand. In
25 addition, this policy does not allow placement in

1 environmentally sensitive areas for soil with any
2 detectible levels of contamination. This policy is
3 intended to be self-implementing and, therefore, does
4 not require IDEM approval for the excavation and
5 subsequent management of soil determined to be
6 uncontaminated. It provides any person excavating
7 soil with guidance for conducting a reasonable
8 investigation to determine if the soil may be
9 contaminated and establish that the contamination is
10 under the risk-based levels before managing the soil
11 in a way other than disposal in a landfill. It also
12 makes them aware of the need for maintaining records
13 of their investigation.

14 IDEM believes this policy will provide a
15 consistent approach to determine when soil can safely
16 be considered uncontaminated and will allow the use
17 of minimally impacted soil instead of disposing the
18 soil at a landfill. So that concludes my
19 presentation. If there's any questions on that
20 policy.

21 MADAM CHAIR GARD: Are there any questions?

22 (No response.)

23 MADAM CHAIR GARD: None. Thank you. The
24 next item on the agenda are citizen petitions. Today
25 the Board is being presented with a citizen petition

1 related to the regulation of silica dust.
2 Ms. Prudence Tokarz will be providing a brief
3 presentation to the Board regarding the petition.
4 The Board will then take the petition under
5 advisement and provide a determination of the merit
6 of the petition at the next regularly scheduled board
7 meeting. Did I pronounce your name right or wrong?

8 MS. TOKARZ: "Tow cars." Instead of a tow
9 truck, it's "tow cars."

10 MADAM CHAIR GARD: "Tow cars," okay.

11 MS. TOKARZ: Good afternoon. I feel like I'm
12 in kindergarten in front of a bunch of high school or
13 college graduates, so I hope I don't make too big of
14 an idiot out of myself.

15 This petition really isn't asking you for a
16 new study, a new invention and new idea. My only
17 request today is that you add a known, a studied and
18 a tested material to Indiana's list of hazardous
19 materials. Most of the work done on this material
20 came from the CDC, the other entities get their
21 information from them.

22 I was at an IDEM meeting in our area that
23 are trying to get permitted a stone quarry and I had
24 some questions about what blows off of the property
25 and the answers just didn't seem complete, they

1 didn't seem satisfying, so I went home and started to
2 do some work on it. I was surprised silica dust
3 isn't even on Indiana's List of Hazardous Materials,
4 they don't consider it.

5 Now, silica and silicosis, which is the
6 disease that develops in your lungs, is deadly. The
7 list of the agencies that do recognize silica is very
8 long and it's very impressive, some of them is OSHA,
9 the CDC, NIOSH, and I hope I said that one right, the
10 American Cancer Society and the American Lung Society
11 all consider silica not only dangerous, it will kill
12 you, but it also will cause cancer of the lungs.

13 And I was wondering, well, why don't we just
14 rely on these other agencies to do our work for us,
15 why bother with having Indiana add it, and the most
16 famous of these groups I guess would be OSHA. You
17 think of OSHA when you think of a workplace problem.
18 They list it, they have all the protective gear, they
19 have the rules for handling and the procedures to
20 clean it up, but there's really more to the story
21 than that.

22 If you've got a manufacturing plant of any
23 kind that isn't under cover, what happens to the
24 people around this area? Dust blows. Living in a
25 city I see the buildings, I see the trees. I can see

1 where a 25-mile an hour wind to you would be gusty.
2 Out where I live it's flat, there's nothing. 25 mile
3 an hour dust travels and it travels far and it
4 travels constantly, almost. I went to the newspapers
5 and I added up -- Each day in the newspaper on the
6 back page it tells you the temperature, it tells you
7 the miles per hour of the wind. I added them all up,
8 averaged them out. Out where I live the average wind
9 speed is almost 25 miles an hour from January 1st to
10 July 30th of 2014. Nothing to break that wind up,
11 nothing.

12 I guess I am asking that they list silica
13 for not only the protection of the people working in
14 these open areas but for us, the residents, also, and
15 I think Indiana needs to update their list of what is
16 a hazardous material. Recognizing it certainly would
17 be a start.

18 Do I have all the answers on how do we stop
19 it and stuff like that? Some just by checking
20 around. All of them probably not, but the first step
21 is you have to recognize the fact that it is deadly.
22 If right now in this room I reached in my purse and I
23 pulled out a cigarette and lit it up, everybody in
24 this room would have the right to tell me to put it
25 out, "I don't want to breathe your smoke." Same goes

1 for people living around an area that they can't walk
2 outside, they can't even be safe in their house,
3 can't open a window that deadly materials isn't going
4 to be coming in on then, and now this is a material
5 that we don't even recognize in the state as being
6 dangerous, it's not on the list.

7 If I'm a landlord and I find lead paint that
8 is chipping, if I had been living in a house that you
9 find lead paint that is chipping, you have to remove
10 it and you have to remove it safely. If I have
11 asbestos in an old building, as long as it's sitting
12 there and you're not touching it it's fine, but if I
13 tried to remove it, I have to do it by strict rules
14 and regulations, I have to put it in a safe place.
15 Not true with silica dust as it stands right now.

16 If I am the owner of a business, a plant, a
17 construction company, a mine, and it's undercover, we
18 have OSHA in there to help protect the workers, but
19 in a place that's not under cover, there's no help
20 for us, and like I said, the very first step might be
21 just to recognize the fact that it is dangerous and
22 then start working with it.

23 OSHA thinks it's so deadly that last year,
24 in 2013, so a little bit more than a year ago, they
25 cut down their allowable amount that goes into the

1 air by one-half. So my petition is if this committee
2 could just help me, help everybody in the state, by
3 recognizing that silica can cause your death.

4 Thanks.

5 MADAM CHAIR GARD: Thank you. Are there any
6 questions?

7 MR. CARMICHAEL: Ms. Tokarz, thank you for
8 your courage, you did a great job. Have you talked
9 with IDEM about the Fugitive Dust Rule?

10 MS. TOKARZ: I believe the gentleman's name
11 was Wagner that conducted that meeting that night and
12 it came real close to a dare that I would not make it
13 this far. He said no, that silica dust is not.

14 MR. CARMICHAEL: I would encourage you maybe
15 to talk with IDEM more about this and if I could give
16 you a reference and then I'll explain this in a
17 little bit. It's in Title 326 of the Indiana
18 Administrative Code, 6-4-2, and under this rule a
19 source cannot -- Well, let me just read it to you.
20 "A source or sources generating fugitive dust shall
21 be in violation of this rule if any of the following
22 criteria are violated," and the two I'd point you to
23 are 3 and 4. 4 is "If fugitive dust is visible
24 crossing the boundary or property line of a source,"
25 so if silica dust is crossing the property line of a

1 source, the source is in violation of the rule. And
2 the second, coincidentally, says "The ground level
3 ambient air concentration exceeds 50 micrograms per
4 cubic meter above the background concentrations,"
5 which is the exact same number that OSHA determined
6 in the 2013 rule, which is 50 micrograms per cubic
7 meter as well, so my recommendation is have further
8 discussions with IDEM on this and see if you feel
9 it's protective. If you don't, bring it back to the
10 Board.

11 MS. TOKARZ: Oh, thank you very much for
12 asking that question because I did have a follow-up
13 in the public comment, now I won't have to use it.
14 IDEM does not have any monitoring equipment on open
15 mining, be it coal, be it rock, and you say it has to
16 leave. I've spoken to people that have videos, have
17 films, have called and called and called and called,
18 and because there is not an IDEM person there to
19 witness the blowing, there's no harm done, there's
20 nothing done.

21 They can see dust on the road an inch thick,
22 they can see backyards covered with this stuff,
23 trees, houses, vegetable gardens. They can see
24 swings, kids' swings covered. "I didn't see it blow
25 over there. I don't know where it came from." Our

1 court system allows circumstantial evidence but
2 there's no circumstantial evidence allowed here. My
3 question to this gentleman that night was "Where are
4 the monitors? There's cameras you can put up there.
5 There are monitors on smokestacks in the steel mills
6 to see what's coming off of there. You can't measure
7 what's in the dust? If nothing else a filter, an air
8 filter up there and measure what's in there." It's
9 not allowed.

10 I can't imagine the frustration of not being
11 able to have my grandchildren play in my yard because
12 it's blowing that day or it was blowing yesterday,
13 they might stir some more of it up, and be told "Oh,
14 no, there's nothing there, I didn't see it," and this
15 is what bothers me.

16 First of all, they have to realize that
17 silica's dangerous and especially for children, if
18 you've got smaller lungs that work faster, if you're
19 an elderly person that has some breathing problems,
20 if you've already got asthma, if you have chronic
21 bronchitis, the dust itself with nothing in it is
22 going to bother you, but you start getting deadly
23 stuff in there and you're in a real big mess and some
24 of these people have been here decades before
25 anything else was there. Don't get me wrong, I

1 certainly don't want to see the coal mines shut down,
2 that's the reason these people don't complain
3 anymore, they work for them, they're grateful for
4 them, it's their livelihood, but yet in a way, too,
5 it's also their bane in life because their health is
6 suffering from it and they feel there's no recourse.

7 We have one that hopefully -- it's not a
8 coal mine that's coming in. I don't want my kids out
9 there playing in that kind of stuff. There's a
10 trailer park less than a mile away with a lot of
11 elderly citizens. How can they go outside and walk,
12 how can they be in their own backyard on their own
13 back porch, and as I said before, we have a very
14 windy area.

15 I'm not here just for me, I guess is what
16 I'm saying, I'm here because it's wrong that it's not
17 listed, it's wrong that we can't call the agency that
18 we want to depend on and be told "I didn't see it
19 with my own eyes, I don't believe that picture, I
20 don't believe that video." I'm going to go out there
21 on the whole road and put two or three inches of dust
22 down and then call you out for nothing to try and
23 complain about something that didn't happen? I'm
24 sorry, that would be the feeling I would have, and
25 I'm sure it's what you would have. Yes, I have

1 talked to some people in IDEM, a couple of them have
2 been very helpful, a couple of them have helped me
3 very much today, but the problem is there and it's
4 very real and it's very dangerous, and the thing that
5 I'm asking -- I believe, too, isn't statute, code,
6 whatever, the company, whatever it be, the
7 manufacturing company, a mine, whatever it is,
8 construction company, must contain their dust, that
9 dust is their responsibility to contain it?

10 MR. CARMICHAEL: Yes, it's a violation if it
11 crosses the plant boundary.

12 MS. TOKARZ: But how do you get somebody to
13 recognize that violation?

14 DR. NIEMIEC: Can we get feedback from
15 someone at IDEM about this process and how someone
16 can get assistance with such situations?

17 MS. TOKARZ: It's two different areas that
18 I've spoken to and both of them the first words out
19 of their mouth is they are told "I'm sorry, we didn't
20 see it, it didn't happen."

21 MADAM CHAIR GARD: Is there anyone from IDEM
22 that wants to address this?

23 MR. RULON: The Chief of Staff wants to,
24 right?

25 MS. COMER: Of course, every action that we

1 take has to be legally supportable, so you're talking
2 the difference between what is perceived is a
3 violation by a neighbor and what we can legally
4 prove.

5 MS. TOKARZ: It doesn't even have to be that.
6 If they put up monitors it wouldn't be you versus me,
7 it would be what is on a mechanical device.

8 MADAM CHAIR GARD: Did I see someone from
9 IDEM stand up? Tell us who you are.

10 MR. PERRY: My name is Phil Perry, I'm the
11 Compliance and Enforcement Branch Chief. In this
12 particular instance I don't believe the mine's even
13 been constructed yet. They're still seeking a permit
14 and such.

15 We get approximately about 120 fugitive dust
16 complaints per year and I believe mining activities
17 alone in Indiana, there's about 188 different mining
18 activities and gravel type operations throughout the
19 state. We respond to all of those complaints. If we
20 identify fugitive dust crossing a property line we do
21 take appropriate actions.

22 We are not there 24 hours a day. We don't
23 have capabilities to monitor every manufacturing site
24 in Indiana. Many of the complaints we get, and she
25 mentioned silica, I mean that was her primary

1 concern, silica's everywhere and some of the
2 complaints we get are on road dust, county roads. We
3 have to work with counties to try and address those
4 type of complaints, so it's not limited to just
5 mining operations, we get sand and gravel, we get
6 portable concrete crushing plants, sand and gravel,
7 coal mines, we have grain elevators, we get
8 complaints on farmers tilling fields. Anything that
9 creates dust we respond to those complaints and such.
10 Obviously, if we do observe fugitive dust crossing a
11 property line, then we do take appropriate action, as
12 Carol mentioned.

13 MADAM CHAIR GARD: Are there such things as
14 portable monitors that you could set up?

15 MR. PERRY: What Mr. Carmichael was
16 referencing, we have set up monitors before. It's
17 actually very difficult because you have to have an
18 upwind and a downwind monitor. You have to be able
19 to measure for an hour, it has to be going directly
20 across the property so that you can identify that, if
21 the wind's blowing not directly across, you have to
22 be able to locate the monitors on a mobile basis, we
23 have to be able to get stuff out there when those
24 situations are occurring and plan those. We have a
25 very limited budget and very limited staff to be able

1 to do that, but we have done that in the past.

2 MADAM CHAIR GARD: Well, when you see
3 pictures of dust accumulating to the degree that
4 she's talking about and hear people talking about
5 that, and even though you haven't seen the dust
6 laying there, do you question --

7 MR. PERRY: Oh, certainly. Most complaints
8 that we get we see the videos, we see the pictures
9 and such. We're not able to take enforcement action
10 on that. It supports us talking to the companies to
11 try and do something about it, but it doesn't
12 necessarily support the ability to enforce the
13 sources to do that.

14 The Air Pollution Control Board actually
15 back in the late '90s there was a proposal to adopt a
16 secondary deposition, that if you saw dust on a car
17 that the Agency could cite a violation. The Board
18 decided not to pursue that and readopt the rule as
19 it's now written that you have to visibly see it
20 crossing the property line.

21 MADAM CHAIR GARD: It just seems to me
22 something's wrong here and I'm not quite sure what,
23 but there's something wrong.

24 MS. TOKARZ: I wanted to answer a couple of
25 things. Silica dust that causes silicosis, that

1 causes lung cancer, isn't in sand that hasn't been
2 ground or blasted, it's been made into a particulate,
3 so fine you can't see it. It carries with the dust
4 from the manufacturing plant. This isn't just mines.
5 If a road construction company has an outside setup,
6 you know, like where they're working on roads, you
7 might get some there.

8 I worked in a plant that made
9 sound-deadening for cars but yet in one of those
10 processes we used ground-up clay. When you work with
11 that ground-up clay, you must wear a NIOSH N95 filter
12 because there was silica in there and it would get
13 into your lungs.

14 I wasn't even going to do this tonight
15 because I don't have enough for everybody. These
16 were some of the things that were sent to me, some
17 newspaper clippings, some of the complaints or
18 comments, "complaint" is a bad word, comments from
19 some of these people. One family had to move out of
20 their decades-old family home that had been in the
21 family for generations, they can't live there, the
22 man can't breathe in it, he's already on oxygen, they
23 had to build another house.

24 MADAM CHAIR GARD: Why don't you just
25 circulate those and we can look at them as the

1 meeting goes on.

2 MS. TOKARZ: Okay. And there's some
3 comments, and in one of the newspaper articles is a
4 website where you can see the video online. These
5 are people I didn't know a few weeks ago.

6 MADAM CHAIR GARD: We appreciate you bringing
7 this to the Board and appreciate the work that you've
8 done on this. We will make a determination at a
9 later meeting as to whether to move forward or not.

10 MS. TOKARZ: I didn't even know if I could
11 bring this because my petition really is just
12 recognize silica and we can go from there, you know,
13 and this is a step beyond that, but I got nose, I
14 had to find out.

15 MADAM CHAIR GARD: Well, thank you.

16 MS. TOKARZ: Thank you.

17 MADAM CHAIR GARD: Thank you very much. The
18 second citizen petition we're going to be dealing
19 with includes Dr. Beranek's petition. At the last
20 meeting there was a public hearing on the citizen
21 petition to amend the definition of "interference"
22 from the Water Rules at 327 IAC 5-17-11. After the
23 hearing was concluded several motions were made by
24 Board members asking for additional information on
25 specific points raised during the hearing. IDEM

1 included the memo in the Board packet in an attempt
2 to provide additional information and the petitioner,
3 Dr. Beranek, recently sent a memo to the Board
4 addressing some of the issues the Board asked about.
5 Mr. Carmichael specifically asked for examples of the
6 uses of the rule as currently written as well as any
7 information on how the Agency interprets the words
8 "inhibits" or "disrupts" in practice or definition,
9 and finally Board members wanted time to further
10 review the issue.

11 At this time I'd like to open this up for
12 more discussion and allow members to ask follow-up
13 questions on the issues raised. After discussion I
14 believe this board has the option of either deciding
15 to vote today on action to take on the petition or
16 defer your decision until the next Board meeting to
17 have time to further consider the information that is
18 provided today.

19 We have several people that have asked to
20 speak on this issue. Let's go ahead and do that
21 before we move on. Ann McIver.

22 MS. MCIVER: Good afternoon, Madam Chair and
23 members of the Environmental Rules Board. My name is
24 Ann McIver and I am the Director of Environmental
25 Stewardship for Citizens Energy Group. I appear

1 before you today to offer this statement on the
2 Petition for Amendment to the regulatory definition
3 of POTW interference on behalf of CWA Authority.

4 CWA Authority owns the Indianapolis
5 wastewater collection and treatment system as a
6 result of the acquisition completed in August of 2011
7 from the City of Indianapolis. CWA Authority is an
8 Indiana nonprofit corporation that, through the
9 Indiana Interlocal Act, is vested with all of the
10 powers to own, operate, and maintain the system.

11 Given the legal structure of CWA Authority,
12 the Indianapolis wastewater collection and treatment
13 system is a publicly owned treatment works, or a
14 POTW, for purposes of implementing the pretreatment
15 program requirements found at 40 CFR 403. As such,
16 we are an interested stakeholder in the IDEM rules
17 that apply to pretreatment programs found at Title
18 327 IAC Article 5, particularly the definition of
19 "interference" found at 327 IAC 5-17-11.

20 Currently, the sewer use ordinance that
21 provides the regulatory authority for our
22 pretreatment program reflects the federal definition
23 found at 40 CFR 403.3(k). In November 2012 CWA
24 Authority requested that the Indianapolis
25 pretreatment program authority be provided directly

1 to CWA Authority rather than using the city's
2 original approval that we are currently implementing.
3 Region 5 has reviewed our submittal and found that
4 CWA Authority must conform its definition to the
5 state rules in order that our request for direct
6 delegation be deemed approvable. Senator, you
7 mentioned earlier their "bully pulpit" and that's
8 kind of how we feel. Based on our experiences,
9 though, with the pretreatment program implementation,
10 we believe that EPA will use its authority to enforce
11 state rules against pretreatment programs.

12 In late 2009 representatives from EPA Region
13 5 conducted a pretreatment compliance inspection, or
14 an enforcement audit, of the Indianapolis
15 pretreatment program. During their review of program
16 implementation EPA determined that the City of
17 Indianapolis failed to pursue enforcement action
18 against an industrial user that discharges to our
19 system for creating an interference as a result of a
20 spill released to the sewer. This user experienced a
21 spill of non-toxic corn syrup into the sewer that was
22 reported to the City. While the timeliness of the
23 reporting can certainly be questioned, EPA determined
24 that under the state definition of "interference" as
25 it still currently exists the spill created an

1 interference and that an enforcement action should
2 have been pursued against the industrial user in
3 accordance with our enforcement response plan. In
4 this event, the wastewater discharges, including the
5 spilled corn syrup, from this industrial user were
6 managed at our Southport wastewater pretreatment
7 plant. There was no operational impact to the
8 collection system or to the treatment plant and
9 compliance was maintained at all times with the POTW
10 NPDES permit.

11 The City's response to the pretreatment
12 compliance inspection report indicated their belief
13 that no interference occurred because the City's
14 definition of "interference," the one that we are
15 implementing in our pretreatment program,
16 incorporated into the sewer use ordinance requires
17 both an operational impact and a violation of the
18 NPDES permit, that federal definition. However, in
19 order to resolve the findings of the pretreatment
20 compliance inspection, including allegations that
21 there was a failure to pursue enforcement action
22 against industrial users, the City of Indianapolis
23 and CWA Authority executed an Order on Consent with
24 EPA in September 2012. The current definition of
25 "interference" found at 327 IAC 5-17-11 creates

1 concern for CWA Authority and we're supportive of the
2 petition before this board to conform the state
3 definition to the federal rule. We don't believe
4 that conforming the state rule to the federal rule,
5 that is changing that construct of "or" to an "and"
6 in the conditional, would compromise the ability of a
7 pretreatment program to protect both the collection
8 system and the wastewater treatment plant through
9 actions against industrial users or the ability of
10 IDEM to protect water quality.

11 I have a few specific comments to offer
12 based on our experience and some conversations that
13 we had with our pretreatment permitholders in
14 February where we discussed this question in detail.

15 First is that isolating contributions from
16 industrial sources is a challenge for CWA Authority.
17 From an operational perspective, industrial
18 contributions to the Belmont wastewater treatment
19 plant are approximately 6 percent of the volume on an
20 average day, so our average daily treatment
21 throughput at the Belmont plant is about 100 million
22 gallons per day, and during wet weather events
23 industrial contributions contribute to about 2
24 percent of the flow into the Belmont plant. For our
25 Southport plant it's a little bit larger, it's about

1 16 percent, and during wet weather following that
2 plant capacity expansion to support the long-term
3 control plan industrial contributions will contribute
4 to about 4 percent of the flow at the Southport
5 plant.

6 The use of the words, quote, inhibits or
7 disrupts the POTW, its treatment processes or
8 operations, coupled with the "or" conditional in the
9 state rule, puts a potentially unreasonable burden on
10 our operations group to identify the possible origin
11 of small volumes of wastewater into the system.

12 The plants are robust in their design and
13 resilience to ensure that the final effluent achieves
14 compliance with the NPDES permits issued by IDEM. If
15 we are unable to find an individual contributor to a
16 particular situation that caused our operations group
17 to have to make a change or to adjust the treatment
18 processes, what are the consequences back on CWA
19 Authority? Are we now in violation of our permit for
20 failing to pursue enforcement action again someone?

21 Because the definition of POTW, so that
22 construct in the pretreatment program of a publicly
23 owned treatment works, includes the collection
24 system, we're wondering how we should manage grease
25 blockages, et cetera, in the "or" conditional. Our

1 current practice includes working with restaurants in
2 areas where there are grease blockages, and the terms
3 and conditions of service approved by the Indiana
4 Utility Regulatory Commission assess a monthly fee to
5 restaurants for the cost of managing these fats,
6 oils, and greases associated with their operations.
7 However, we don't pursue enforcement action against
8 these users, nor are they permitted in our industrial
9 pretreatment program. Without a change in
10 definition, CWA Authority is potentially subject to
11 EPA or IDEM in a future state to differences of
12 opinion resulting in subsequent enforcement action,
13 again, for failing to enforce against a user for
14 creating an interference.

15 There is a burden also for our industrial
16 users. If we use enforcement discretion when
17 applying the "or" conditional in the implementation
18 of our own enforcement response plan, that discretion
19 is subject to question by EPA and IDEM and that
20 creates an unquantifiable risk to our industrial
21 dischargers, how are they to know of possible
22 unanticipated synergistic negative impacts that their
23 permitted discharges may have like others? We've done
24 a local limits evaluation for our system and
25 individual permits are issued to individual users

1 intended to protect the collection system and the
2 treatment plant and to ensure that we achieve
3 compliance with our NPDES permit. There are
4 conditions that were raised by one of our dischargers
5 at a public meeting in February that we held. If a
6 discharger exceeds their permit limit for copper, for
7 example, and other dischargers into our system
8 discharge copper, are they at risk for enforcement if
9 there's a problem with our wastewater treatment plant
10 complying with our copper limits? So is it all
11 dischargers of copper, is it the one that exceeded
12 their copper limit? How do we determine who caused
13 or created that situation in the "or" conditional?

14 So in close, CWA Authority appreciates the
15 complexity of this matter and the need to be
16 protective of surface water quality. However, we
17 believe that the broad application of the definition
18 of "interference," which is more restrictive for our
19 users to pretreatment programs and large POTWs,
20 creates implementation challenges and uncertainty for
21 both the control authority and the industrial users
22 that discharge to the system.

23 MADAM CHAIR GARD: Any questions for Ann?

24 (No response.)

25 MADAM CHAIR GARD: Vince Griffin.

1 MR. GRIFFIN: Thank you, Madam Chair and
2 members of the Board. I'm Vince Griffin with the
3 Indiana Chamber and I think that Ms. McIver has done
4 a very good job by identifying some of the potential
5 issues within the interference rule.

6 The current language in the Indiana rule
7 does not track the federal words, quite simply. As
8 currently written, the interference provision could
9 be used by the state or federal authority to say that
10 a business or industry is in violation if there is a
11 potential for them to interfere, and I think that Ann
12 also gave you a couple of the conditions related to
13 that operational impact and interruption as opposed
14 to "or" interruption, which is the way that the feds
15 have worded it. We think that's excessive and
16 unfair. If the state or the federal agency needs to
17 encourage a business to do or not do something, the
18 use of "interference" language is not an appropriate
19 mechanism.

20 Additionally, as I understand it, individual
21 municipalities can impose pretreatment requirements
22 on their individual dischargers, in which case they
23 can make it more restrictive, but that's up to them,
24 that's up to them to do that. So quite simply, the
25 Chamber supports the align of the state and the

1 federal language. Thank you.

2 MADAM CHAIR GARD: Any questions for Vince?

3 (No response.)

4 MADAM CHAIR GARD: Thank you. Those are the
5 only two sign-up sheets that I got on this issue. Is
6 there anybody else in the audience that wants to
7 address this or the specific questions that the Board
8 had at the last meeting? And would you fill out a
9 form and give it to us for the record, please?

10 MR. PRIME: Yes. My name is Matt Prime with
11 Indiana American Water and I just stand to support
12 the comments that were made by the previous speakers.
13 Indiana American Water primarily serves water but we
14 do have a couple sewer operations across the state
15 and expect that to be the case in the future.

16 I also wanted to provide an introduction
17 myself as Director of Government Affairs for Indiana
18 American Water, I joined the company just back in
19 July of this last year, look forward to working with
20 this committee on water issues moving forward. I
21 know there's a number of things coming out of the
22 Senate and the House that may impact water and this
23 board may be asked to weigh in on those things. So
24 with that, I support my colleagues.

25 MADAM CHAIR GARD: Thank you. Anyone else

1 that wanted to address the issues that were presented
2 at the last meeting? Bruno.

3 MR. PIGOTT: Senator Gard, members of the
4 Board, my name is Bruno Pigott, Assistant
5 Commissioner, Office of Water Quality. We'd like an
6 opportunity to talk a little bit about the homework
7 assignment we were given by the Board, but before I
8 do I'd like to pass the baton to our Chief of Staff,
9 Carol Comer, for a few comments and then I'll talk.

10 MADAM CHAIR GARD: Yes, Carol.

11 MS. COMER: Thank you. Just very quickly.
12 From an agency-wide perspective I'd like to tell you
13 why it's important that we maintain that flexibility,
14 that discretion. Having acted as IDEM general
15 counsel for two years, we frequently heard the
16 response that "You can't ask for information, you
17 don't have authority to ask for that information," so
18 given the proposal that's before you, IDEM
19 potentially loses the flexibility to even ask the
20 questions "Is there something going on, is there
21 something that we need to look at," prior to an upset
22 of a system, so I encourage you to consider that
23 flexibility is important to the Agency. IDEM has
24 broad discretion when it comes to performing the
25 duties to protect Hoosiers and the environment. I

1 hope we have not abused that discretion and I hope
2 people would bring that to our attention if there's a
3 perception that we have. I am very disappointed in
4 the suggestion in Dr. Beranek's brief that we would
5 somehow retaliate against an entity if they brought
6 that kind of concern to our attention, but I just
7 wanted to raise those issues to this board and also
8 let you know that Bruno Pigott is now the Deputy
9 Chief of Staff, so you should congratulate him.

10 MADAM CHAIR GARD: He has two jobs now.

11 MS. COMER: And I will pass it back to him to
12 respond in full to the Board's questions. Thank you
13 very much.

14 MR. PIGOTT: First, Senator Gard, we passed
15 out to members of the Board just an updated version
16 of the memo that was included in your Board packet
17 that more fully fleshes out this issue, gives a
18 little more background on the pretreatment program,
19 and one thing to know that sometimes you don't know
20 or some people may not know is that certain
21 communities, 47 around the state of Indiana, are
22 delegated the authority to issue permits, what we
23 call IWP permits, themselves to the pretreatment
24 entities. In addition to that, of all of the other
25 communities that have pretreatment entities that are

1 regulated under our pretreatment program, IDEM issues
2 those permits. So just for a little background,
3 there's this dual responsibility, and you should also
4 know that IDEM is not the authority, we've not been
5 granted the delegation of authority to operate a
6 pretreatment program like we have the NPDES program
7 in Indiana. EPA delegates the authority to the 47
8 communities and they've given us the responsibility
9 of writing those permits for the other communities,
10 but just in terms of background it's a little
11 different.

12 So just, first of all, to reiterate, IDEM's
13 current regulations give the Agency flexibility to
14 prevent permit violations and harmful discharge of
15 pollutants into waters of the state. The federal
16 regulation that's currently in existence requires a
17 violation first, so that's the big difference,
18 Indiana there doesn't have to be a violation, this
19 gives us the authority to work with entities before a
20 violation occurs.

21 The second thing that we wanted to let you
22 know is that, as Carol mentioned, that there are
23 sometimes assertions that IDEM's definition will
24 somehow allow the Agency, our agency, to operate in
25 an unpredictable fashion and subjectively initiating

1 enforcement and subjectively setting permit limits.
2 I just don't believe that's the case. There's not a
3 documented instance where we've actually done that.
4 The case regarding Indianapolis' pretreatment
5 program, while there was a consent decree signed, and
6 there's no dispute about that, the basis of that, and
7 it did involve pretreatment issues, but it's
8 important to note that there were a host of issues,
9 and while interference was mentioned, it was not the
10 only issue in that settlement, it is important to
11 note that, it was not solely an interference issue.

12 Third, it's important to answer the question
13 that the Board asked and that question was "Can you,
14 Bruno, articulate to us what it means in Item 1 of
15 the two items under this rule?" Remember, Item 1
16 says it inhibits or disrupts a POTW, and then the
17 second is it causes the violation of a permit.

18 What does "inhibit" or "disrupt" mean to
19 IDEM and would we use that tool, those words, as a
20 cudgel against any entity that was operating in a way
21 that just varied the flow of pollutants a little bit.
22 When we think of "inhibition" or "disruption," we
23 think of the prohibition of operations that can
24 interfere with a POTW's ability to remove BOD or
25 other pollutants or to transport wastewater to and

1 through the treatment plant for treatment which
2 causes damage to the treatment plant and equipment,
3 and in this case the definition of POTW in our rules
4 literally articulates a POTW including the collection
5 system, not just the plant itself, which is
6 oftentimes where the violation -- When we talk about
7 a violation, we talk about it in terms of a numeric
8 violation, but in addition to that, the inhibition
9 can be the inhibiting of the flow of wastewater to a
10 wastewater treatment plant.

11 Also, in 40 CFR 403.5(b) there are other
12 instances that are mentioned that include
13 interference that we would consider inhibition,
14 creating a fire or explosion hazard, corrosiveness to
15 a POTW's structure, obstructing wastewater flow
16 resulting in interference, releasing pollutants,
17 including BOD, at concentrations that could cause
18 interference or a permit violation, including
19 increasing the temperature of the wastewater coming
20 to the treatment plant to about 40 degrees Celsius.

21 Now, these things in and of themselves may
22 not cause a violation of a permit limit and if they
23 don't, if we switch to the federal definition, that
24 would mean that IDEM would not have the authority to
25 go to the pretreatment entity on behalf of a

1 community and say "We think there's a problem here,
2 we'd really like you to figure it out and help
3 resolve it." There will be no violation to speak of.
4 Does IDEM already have broad authority? We do, but
5 we don't have specific authority in this instance
6 unless this rule is written the way it is. That's
7 the specific answer to your question, which is what
8 do you mean by "inhibit," that's what we mean.

9 We also want to stress that we do not
10 believe that this agency would take random or as was
11 characterized subjective steps to create enforcement
12 actions. We've got a lot of communities that we need
13 to help that have other issues and we'd prefer to
14 focus on those. This is used as an attempt to assist
15 communities that have trouble with their pretreatment
16 entities, not to use it as a cudgel. So if there are
17 any questions we'd be happy to answer them.

18 MADAM CHAIR GARD: Are there questions for
19 Bruno?

20 MR. CARMICHAEL: Bruno, does it concern you
21 in the Indianapolis case that EPA even alleged
22 ability to enforce the state definition?

23 MR. PIGOTT: It always concerns me when
24 anyone uses our rules inappropriately and that's why
25 we're committed to working with communities and not

1 creating an adversarial relationship. Our boss, the
2 Commissioner, is really very focused on customer
3 assistance and views our entities as customers. Does
4 it concern me? Yes. Were there issues aside from
5 this in that settlement? Absolutely. The basis of
6 that consent decree may have involved pretreatment
7 and I would not say the central point was
8 specifically and only interference.

9 MR. CARMICHAEL: And could you talk a little
10 bit more about your broad authority?

11 MR. PIGOTT: We have broad authority to
12 regulate under the Clean Water Act and under our
13 state rules in a variety of ways, but the specific
14 authority in these cases, someone would say "Look,
15 we're not violating the terms of our permit, so what
16 argument do you have with us?" That's the reason
17 that this isn't -- Remember the timing of this, this
18 rule was changed by the Water Board in 2000, just
19 after the Guidant incident where there was clearly
20 pass-through and interference, and, well, that may
21 have really influenced that board's decision about
22 the wording here, it is a factor that the timing was
23 maybe not coincidental.

24 MR. CARMICHAEL: Sorry.

25 MADAM CHAIR GARD: Go right ahead.

1 MR. CARMICHAEL: Are you aware of any
2 instances where you've taken an enforcement action
3 under that State definition but there had not been an
4 NPDES violation?

5 MR. PIGOTT: No, I'm not aware of any IDEM
6 enforcement actions since this rule was changed in
7 2000.

8 MR. CARMICHAEL: And have you used it as a
9 tool -- For example, you said you have broad
10 authority but under the current State definition it
11 seems to give you a tool in your toolbox. Have you
12 used that, I mean do you have examples of where there
13 was a violation, you had to work with the pre-
14 treatment folks and exercise sort of the "Well, we
15 can enforce if we need to"?

16 MR. PIGOTT: There have been instances where
17 we've worked with pretreatment entities. I hesitate
18 to where we've not seeked an enforcement action but I
19 can think of a dairy in the state, and I really think
20 it's unfair to call out specific entities but I
21 could.

22 MR. CARMICHAEL: No, no, just general
23 examples. No, I don't want specific, you don't need
24 to name names.

25 MR. PIGOTT: That's right. There was a dairy

1 that we worked with because we were actually notified
2 by the town that there were issues and that the
3 operator's having difficulty maintaining the permit
4 limits and they just wanted us to go out and talk to
5 them and they felt that themselves that it was
6 difficult to go out and have that conversation
7 because there's a unique relationship between a
8 company that provides employment in your community
9 and maybe your willingness to go out and say
10 something that needs to be done to help their
11 processes.

12 MR. CARMICHAEL: And in that instance do you
13 feel like that dairy would not have been responsive
14 but for the enforcement authority under the State
15 definition?

16 MR. PIGOTT: I think it helped the
17 conversation, I think it helped us to convince them
18 that maybe there was something they could do to make
19 sure that the flow to this treatment plant wasn't
20 causing an operator to have to, you know, do
21 backflips to ensure that they're meeting our permit
22 limits.

23 There were other communities, too, there was
24 a larger industry in another community in the state
25 where we went out and talked to the mayor and we

1 talked to the company and we resolved it and it never
2 became an enforcement action, it never got to that
3 point, so that's why we think it's a valuable tool.
4 I understand the concerns of abuse that could
5 potentially happen, but I think that the State's been
6 very careful about that and we would commit to
7 continuing to be careful about that.

8 MR. CARMICHAEL: It's not you that worries
9 me.

10 MR. PIGOTT: That's what everybody tells me.

11 MADAM CHAIR GARD: Mr. Etzler.

12 MR. ETZLER: I have to reiterate what Bruno
13 said because a few years ago when I was operating
14 water and wastewater plants we did not have a
15 pretreatment program because we were strictly a
16 residential servicing company.

17 We did have one manufacturer that was
18 manufacturing a green product for cleaning purposes
19 that at some point in the delivery one of their
20 constituent products had a spill. The company washed
21 all of that down, it went into the sanitary sewer
22 system and it created a foaming problem at our
23 wastewater treatment plant. Because we didn't have
24 pretreatment rules, we called on IDEM to make the
25 call on the company to assist us with not creating

1 problems like that for us. Without the rule as it
2 exists, IDEM would not have been able to've taken
3 action, and it did not result in enforcement but it
4 certainly resulted in us creating a much better
5 relationship with that company because they didn't
6 even notify us of their action. We found out through
7 a call from an individual that worked at that company
8 that there was an issue because we didn't even know
9 where it came from.

10 So I can say that my personal experience is
11 I'm glad the rule was in place that it is because it
12 assisted us. You know, like everybody else, we've --
13 you know, some of us have had this conversation
14 about, well, if not for this current agency
15 leadership what would happen with this rule if it
16 remains, but I still believe that we owe the Agency
17 its due and allow them the flexibility that the rule
18 currently gives.

19 MADAM CHAIR GARD: Dr. Alexandrovich.

20 DR. ALEXANDROVICH: Yeah. All the cities
21 that have delegated authority, POTWs, don't their
22 local ordinances have to be as stringent as the
23 State's or can they adopt the federal definition?

24 MR. PIGOTT: They're supposed to be equal to
25 the State's. I couldn't tell you whether all of them

1 are. It's clear that the citizens local ordinances
2 mimics the federal. And here's another thing, while
3 some people would worry that that kind of paperwork
4 issue of IDEM going guns a blazing, that certainly
5 would not be because that's not consistent. We would
6 want to talk to pretreatment entities, but we haven't
7 taken any enforcement action for that either.

8 DR. ALEXANDROVICH: That's defined by state
9 law?

10 MR. PIGOTT: It's the state rule that's
11 different, yeah.

12 DR. ALEXANDROVICH: Well, what I'm saying is
13 that just like IDEM can't be less stringent than the
14 feds, is it state law that says the locals can't be
15 less stringent than the state?

16 MR. PIGOTT: I believe so. I can't cite
17 that. I'm not a lawyer and won't pretend to be one.

18 DR. ALEXANDROVICH: That's the assumption I
19 always went by, but, you know, now that I'm thinking
20 about it I don't know where that --

21 MR. PIGOTT: That's my assumption as well.

22 DR. ALEXANDROVICH: -- rule is or law is.

23 MADAM CHAIR GARD: Any other questions?

24 MR. POWDRILL: Bruno, to follow up on Kelly's
25 questions, you said that you have instances where you

1 have implemented enforcement based on this rule and
2 you have instances where you could have instituted
3 enforcement based on this rule, and the problem I
4 have with that is that as an industry you look for
5 things like permit certainty and permit consistency
6 and if you're looking at this from the outside you're
7 saying "Well, am I or aren't I going to have a
8 problem with this?"

9 And as an example of that, in the last
10 meeting the Commissioner was talking about the City
11 of Fort Wayne who is operating at .6 to their permit
12 limit of 1 for phosphorus and he indicated, and I
13 couldn't believe it myself when I heard it, but he
14 indicated that if they vary above .6 he's going to go
15 in there and enforce against them. They're still
16 well below their limit and how can they identify, as
17 Ms. Weaver said, how can they identify who put that
18 extra little ghost of phosphorus in there, and the
19 people thinking about coming to Fort Wayne for a
20 business are going to say "Well, I've got a little
21 bit of phosphorus in there, you know, what am I going
22 to do here?" So that's the concern I have, and you
23 say you don't use it as a club but it sure sounded
24 like it to me the last meeting.

25 MR. PIGOTT: Well, this is the part where I

1 respond by saying "Let me explain what the
2 Commissioner meant to say."

3 MR. CARMICHAEL: Now that the transcripts get
4 posted.

5 MR. PIGOTT: I can't dispute what's there,
6 but what he meant was that -- I think the context of
7 what he was saying is just because you haven't
8 violated a limit doesn't mean that the water's just
9 A-OK when you add some more phosphorus to it.

10 And it has never been our practice, Gary,
11 and I don't think it would be that we would want to
12 go run in and take enforcement action because someone
13 had .7 phosphorus when we just did this new NPD with
14 our phosphorus limit.

15 MR. POWDRILL: But we do have to look 20
16 years down the road.

17 MR. PIGOTT: And I totally understand that
18 and I understand the concern that was raised from
19 those comments, and I just want you to understand
20 that I think the Commissioner's point was that just
21 because you haven't exceeded a permit limit doesn't
22 mean that you aren't adding pollutants to a waterway.

23 I don't know how it all came out, but I
24 think his overall point was that really it's
25 important because when you add pollution to a stream,

1 even though it doesn't exceed a permit limit, it
2 isn't that the stream is the same, there is an added
3 pollutant and I think he was saying that in context
4 of explaining why it's good to go out and have that
5 conversation with a pretreatment entity in the event
6 that the loadings aren't quite exceeding a limit but
7 they're causing the operator to take unusual measures
8 and I like to say do backflips because I fall into
9 that slang, but take unusual measures to obtain where
10 they're at and have that conversation.

11 So while I understand the concern you raise
12 and if I heard it and understood it without knowing
13 my shortcuts about the Commissioner in my head, I
14 would say "Okay, I understand those concerns and,
15 yeah, that would scare me, too," but I truly believe
16 that what he meant was explaining why this is
17 environmentally a good thing. Even though you're not
18 violating a permit limit, if you're adding pollutants
19 to a waterway, it's not necessarily that there's no
20 impact to that waterway and that it might be a good
21 thing to have a conversation and be authorized
22 through our rules to have a conversation with a
23 pretreatment entity and I don't think we've taken and
24 I will not take enforcement action against Fort Wayne
25 for a .7, .8, .9 on their phosphorus limit, but we

1 sure would like to have a conversation if Fort Wayne
2 says "Gosh, we'd really like a little help out there,
3 can you send your operator assistance person out
4 there because we think it might have some
5 implications for us running our plant efficiently and
6 wisely?"

7 MR. POWDRILL: Does the federal rule preclude
8 you from having those conversations?

9 MR. PIGOTT: Well, what this rule does, the
10 current rule gives us that authority to say "You
11 know, guys, at your plant you may not be causing a
12 permit violation but the operator at the treatment
13 plant is having difficulty keeping that limit in
14 place and can we work together to figure out so that
15 we're not making it difficult for that treatment
16 plant?" that's the goal of this.

17 MR. POWDRILL: And you can't have that
18 conversation with --

19 MR. PIGOTT: I think this gives us explicit
20 authority to do so with the ability to say, and we
21 have, we certainly have the authority to call this
22 "interference" as it's currently written. Whether we
23 do anything about it, we're there to assist the
24 people that are operating their treatment plants.

25 MR. CARMICHAEL: Let me continue along that a

1 little bit. Would you if you didn't have the
2 authority -- If you conform to the federal
3 definition, would you still have those conversations
4 because I've got to imagine that if IDEM showed up
5 at, you know, my door and said "Well, we think
6 there's an issue here, get us some information, and
7 if this results in a violation downstream we're going
8 to take action," I've got to imagine, I mean, I would
9 imagine most folks would cooperate at that point.

10 Do you feel like, No. 1, you would still
11 have those conversations, and then I guess secondly
12 do you think that the regulated community, the
13 pretreaters would not respond, meaning you would have
14 authority? Now, it would be after the fact,
15 obviously, if there was a violation, but you're
16 giving them the warning.

17 MR. PIGOTT: Yeah, and that's a really good
18 thing to give them a warning, but this gives us the
19 authority to say that there's interference going on.
20 We couldn't say that. And while a lot of
21 pretreatment entities do as much as they humanly can
22 to ensure that they are discharging pollutants to a
23 collection system that are well within their
24 boundaries, there might be some, and we have
25 experience with at least a couple, where they didn't

1 seem to regard that as important as we might've
2 wished they would, and to have that ability to say
3 "This is in a rule and qualifies as interference"
4 helps us and it may make that conversation a little
5 more serious and maybe they take it more seriously,
6 or an operator could say "Yeah, well, check back with
7 me when we violate, when the POTW violates, and by
8 the way, you can't figure out where that phosphorus
9 loading or whatever the BOD problem's coming from
10 anyway, be on your way." It gives us more authority
11 and specific authority and it allows that
12 conversation to be taken very seriously.

13 MR. CARMICHAEL: But under an EPA or say
14 another IDEM administration in the future there's not
15 clarity for the regulated community, right? At what
16 point does interference occur? I mean it's not
17 defined, right? And so as you operate how do you
18 know because most operators I know want to make sure
19 that they're in compliance. I don't see how they
20 know if they are or not.

21 MR. PIGOTT: Well, certainly that argument
22 has been made, and Dr. Beranek has done a terrific
23 job of arguing that point and saying "Lack of
24 clarity." I would just say that --

25 MR. CARMICHAEL: "Trust us," right?

1 MR. PIGOTT: No, no, I wouldn't. I've tried
2 to answer by saying that we do have a way to
3 articulate what we would consider to be "inhibition"
4 or "disruption" and it is in the memo on Page 3 that
5 we provided you and spilling over to Page 4 where we
6 say that in practice IDEM's terms are understood to
7 prohibit the inhibition of operations that can
8 interfere with a POTW's ability to remove BOD or
9 other pollutants or to transport wastewater.

10 One of the big criticisms of the rule
11 currently is that it could be any natural variation
12 on the flow of pollutants to that treatment plant,
13 and while you could -- I mean I can't argue that that
14 could be the case.

15 What we mean is this, what we mean is this,
16 and what we mean is the other things that are listed
17 on Page 4, and I would also argue that there has not
18 been an instance where IDEM has either threatened or
19 taken enforcement action for a natural variation of
20 pollutant loadings to a treatment plant, and I think
21 that that would be extremely difficult, but while it
22 certainly is possible, we have a lot of areas where
23 most of the time we have communities that are trying
24 desperately and either because of infrastructure or
25 other reasons they just can't meet their treatment

1 limits and we have plenty of those to keep us busy,
2 so we're not looking for additional ones. We're
3 looking for the authority to go out and assist and
4 this allows it.

5 Is there a little uncertainty? Absolutely.
6 And remember, there was uncertainty in a lot of our
7 rules. If you look at our narrative language in our
8 rules and our permits, it's pretty broad, too. This
9 actually hones, allows us to say "Look, guys, at your
10 pretreatment entity it would be useful because we
11 think we could make an argument that there's
12 interference if you would adjust your treatment
13 processes."

14 MADAM CHAIR GARD: Any other questions from
15 Board members? Yes, Cal.

16 MR. DAVIDSON: I want to go on the record to
17 say I like you, too. It's been awhile, I figure you
18 need to hear that. And I don't want to beat on some
19 of the same things, but maybe in a different kind of
20 way with that future administration what could
21 happen, and I pondered while I prepared for this who
22 would look back and say "You guys had the opportunity
23 to fix this" and because it almost sounds like we're
24 waiting around for that "what-if" that hasn't
25 happened and we trust in your and my time, but I

1 would almost like to hear the rulemaking process or
2 what you just stated, that generous, cooperative
3 spirit of work together as a rule, in the form of a
4 clearly defined rule, so that folks on the playing
5 field know -- You know, we've probably all driven
6 down the road and thought "I don't remember seeing
7 the last speed limit sign" and that's an
8 uncomfortable feeling, or as a pitcher begins a
9 baseball game, he likes to know where the strike
10 zone's at.

11 MR. PIGOTT: That's a perfect analogy because
12 just as in baseball, I'm a big baseball fan, you
13 know, there are different umpires that have different
14 strike zones and it would be great if the umpire
15 would measure out with a ruler what that was and that
16 would provide certainty to the batter, but there's
17 some discretion allowed for the size of the hitter,
18 you know, how big is the guy, how far does he lean
19 over, that allows the umpire to say "I need a little
20 flexibility." That's all we're asking for here is a
21 little flexibility.

22 In some respects because we haven't taken
23 any enforcement action, as we haven't moved against
24 needing one, we see this as a solution in search of a
25 problem, it's a solution to no enforcement action

1 taken by IDEM. We haven't done it. We haven't
2 forced people to go through an AO, pay a big fine or
3 do all of that. What we have done, and I promise
4 you, we've gone out and talked to operators out there
5 and tried to help them along to ensure that the whole
6 system is working properly.

7 MR. DAVIDSON: I'll continue on that baseball
8 analogy. Once the ump defines that zone, the pitcher
9 knows the parameters with some degree of certainty
10 for the rest of the game. That provides a comfort
11 level for the players, but within that cooperative
12 existence on the field they have a basic
13 understanding of the game and the definition of the
14 zone that they need to operate within, and I'm not
15 suggesting as some have that this is as simple as
16 "and/or." I would love to have some of that same
17 flexibility that you designed. After the last
18 meeting you and I talked about almost a caution zone
19 so that it could be identified, this caution zone
20 where someone could be approached, again with or
21 without the authority, whether it's granted under
22 federal or not or specifically, I don't see yourself
23 as a hammer. You may not see yourself as
24 threatening, but just as we hear in many communities
25 today they don't trust the police, you may not have

1 meant it in a threatening way, but when you propose
2 something that discharger may have felt threatened,
3 maybe not in the sense that you meant it I guess is
4 all I'm offering. I guess I don't see it as an
5 opportunity to create a problem, I'm still struggling
6 with why the Department doesn't see it as a way to
7 create a definition so everybody knows, you included,
8 where you can have that conversation and where you
9 can't, and I don't think anybody is saying you
10 shouldn't go have a conversation with dischargers, I
11 would be the first one to say that should happen
12 first and foremost.

13 MR. CARMICHAEL: Bruno, can you envision a
14 rulemaking that would both provide clarity and the
15 ability for you to have those conversations in a
16 robust way?

17 MR. PIGOTT: Well, the proposal in the
18 citizen's petition envisions a simple change, one
19 that just changes an "and" to an "or" -- or sorry,
20 the other way. Whoops! So that's the proposal
21 before us, and there are a variety of ways, perhaps,
22 to address some of the concerns that some of Board
23 members have. Nonrule policy documents are often
24 used to articulate things that what we meant in the
25 rule kind of thing, that's certainly an option. But

1 we will, of course, do as the Board recommends, but
2 the other change is the simple change to the rule,
3 which is the "or" to an "and". I think those are a
4 couple of the things that we could --

5 MADAM CHAIR GARD: Let me ask a question and
6 Nancy may be the one to answer this. If, in fact,
7 today or at a future date the Board were to vote to
8 start a rulemaking to amend the definition, would
9 that rulemaking be restricted to Dr. Beranek's
10 proposal or could that rulemaking take a different
11 direction and provide a better definition of
12 interference or something to that effect?

13 MS. KING: Well, I think a couple of things
14 about that. The issue you guys have before you is
15 the petition, so you have to put that to bed one way
16 or the other and at some point decide because there's
17 a specific request before this board pertaining to
18 that specific petition, but this board always has the
19 authority to ask the Agency to look at any kind of
20 issue and to discuss a type of a rulemaking that you
21 would like to see started, just like anybody has the
22 ability as we've seen recently to bring citizen's
23 petitions for issues related to this, so you could
24 ask the Agency to start a rulemaking and suggest the
25 parameters for it, certainly.

1 When we do the documents that go into
2 rulemaking, a first notice, we're required to
3 basically explain what we're trying to achieve with
4 that notice and what the options are under that
5 notice. That has changed statutorily over the years
6 to require us to really say we're considering these
7 options within this rulemaking, so you have to kind
8 of put some boundaries around it, but oftentimes and
9 certainly as we changed many years ago from the --
10 from having to a logical outgrowth standard, we can
11 change the direction of a rule based on the input we
12 get from everybody involved in it throughout the
13 process, from preliminary to final adoption.

14 As long as everybody involved has notice of
15 that particular issue and the Board feels that
16 everybody was included in that, that's approvable by
17 the Attorney General's Office, assuming it's within
18 our general authorities that we have. So the
19 rulemaking has to be within our authorities, it needs
20 to have -- we need to make sure everyone has notice,
21 and so it can expand. You know, if, for example, if
22 you told us that you wanted us to start a rulemaking
23 based on Dr. Beranek's petition, for example, as that
24 rulemaking continues, I'm not saying it would bring
25 in a lot of other things, but it may expand and we

1 may have the legal authority under the rulemaking
2 process to allow that to happen as well.

3 MADAM CHAIR GARD: But initially when you
4 give that first notice, if the motion were to proceed
5 with Dr. Beranek's petition, the parameters would be
6 very narrow, it would just be changing that that you
7 would state in that initial notice?

8 MS. KING: It would. I mean as you were
9 voting on this particular issue if you said we'd like
10 to see this rulemaking include other things, we would
11 have that authority to do that, you know, assuming
12 Bill wouldn't be too upset and that he could write it
13 all in his public comments and then we can respond
14 and all of that, but, yeah, you can -- you can expand
15 that.

16 MR. DAVIDSON: It would be subject to public
17 comment.

18 MS. KING: Yes, it's just like any other
19 rulemaking. So the citizen's petition statute, as
20 we've discussed, it's a little open-ended once you
21 get one in front of you, so we've tried to come up
22 with sort of parameters that are fair to everybody
23 who brings them to us, but in terms of the rulemaking
24 process, we simply have to follow what's required
25 under the law in terms of notice and the authority to

1 do things, so it doesn't have to be strictly limited
2 to exactly what the petition says.

3 DR. NIEMIEC: For example, one option might
4 be, Nancy, that we could say that we do not agree
5 with the petitioner or do not support the petitioner
6 or something to that effect, but we would like to see
7 rulemaking brought forth to redefine "interference"
8 in a way that is perhaps less nebulous but still
9 allows some discretion or something to that effect?

10 MS. KING: This board always has the ability
11 to engage in discussion with the Agency, to ask us to
12 bring those issues before you.

13 DR. NIEMIEC: Correct.

14 MADAM CHAIR GARD: Okay. Thank you. More
15 discussion?

16 (No response.)

17 MADAM CHAIR GARD: We have actually a number
18 of options before us. There can be a motion made for
19 no further action, or if no motion is made that there
20 is no further action at least for today, we could
21 make a motion to start a rulemaking to amend the
22 definition. That motion could be expanded to set out
23 some parameters for the definition of "interference."
24 We could have a motion since we've received a lot of
25 information today to defer a decision until our next

1 regularly scheduled bBoard meeting.

2 MR. ETZLER: I'd like to offer up a motion
3 with some comment first that because we've got a lot
4 of new information presented that we defer taking
5 action until the next meeting and that would be my
6 motion with, again, some further comment.

7 I think that I've had discussions with a
8 number of members of the Board about this issue and I
9 understand that from being on the operations side
10 that there is a lot of concern about how the rule is
11 written currently that we take the time over the next
12 month or two months to pull this together to give
13 some guidance to the Agency on what we would like to
14 see in a rulemaking because I think there's enough
15 impetus that we need to look at how we change the
16 rule in order to provide that guidance going forward.

17 So at this point I would like to offer up a
18 motion to defer action on this until our next
19 regularly scheduled meeting when we are provided the
20 guidance that's necessary.

21 MADAM CHAIR GARD: Is there a second to that
22 motion?

23 MS. BOYDSTON: Just a question. Are you
24 suggesting, Bill, like an advisory committee that we
25 talked about before?

1 MADAM CHAIR GARD: Because this board has the
2 ability to establish advisory committees.

3 MR. ETZLER: Yeah, I think so, but right now
4 my motion is just let's defer taking any action until
5 we can put something definitive together as a board
6 to give the Agency direction as to where we want to
7 go rather than just simply to change a word.

8 DR. NIEMIEC: Are you saying not to take any
9 action or not to make a final decision on this
10 petition?

11 MR. ETZLER: Just not to make a final
12 decision.

13 DR. NIEMIEC: Okay, I second that.

14 MADAM CHAIR GARD: Is there any further
15 discussion?

16 MR. HORN: Yes, ma'am. Dr. Beranek in your
17 motion, would he have any input into that?

18 MR. ETZLER: Oh, I think we'll take a lot of
19 things into consideration as we present this. All
20 I'm saying is let's take a couple more months and put
21 some information together.

22 MR. HORN: I don't have a problem with that,
23 but I think all the interested parties should have a
24 chance to --

25 MADAM CHAIR GARD: Well, I don't think we

1 want to open another public hearing.

2 MR. HORN: Well, I'm not saying another
3 public hearing, but at some point in time you're
4 going to speak to IDEM about our ideas.

5 MADAM CHAIR GARD: If, in fact, his motion
6 would pass, it would be before the Board at the next
7 meeting, which would require giving opportunity for
8 people to address the issue.

9 MR. ETZLER: My plan would be to reach out to
10 a lot of people and gather some input and bring
11 something back at the next meeting.

12 MR. CLARK: That's my question is that to
13 vote to not take action in anticipation of our
14 position being formulated, I think we need a plan, if
15 I could say so, as to how that position is going to
16 be put together, you know, some sort of advisory
17 committee or some group of people who are going to
18 volunteer to reach out and solicit comments, solicit
19 opinions, and then put something together for us.
20 Without something like that it's going to be up to
21 one, maybe two, people to kind of go off on their own
22 to put something together on behalf of the Board.

23 MADAM CHAIR GARD: In the statute
24 establishing this board there is a provision for
25 advisory groups and so I can certainly appoint one, I

1 can appoint one here before the day's out and
2 certainly anybody that would be an interested party
3 can attend the advisory group, they don't have to be
4 a member of it.

5 MS. BOYDSTON: Yeah, I'd feel more
6 comfortable with a motion to do that, if we have to
7 have a motion, because I'm struggling with what will
8 be different in a month that we haven't already heard
9 in three sessions.

10 MADAM CHAIR GARD: Well, his motion doesn't
11 preclude me from appointing an advisory, but his
12 motion would have to pass before I could appoint an
13 advisory --

14 DR. NIEMIEC: His motion, again, is to not
15 make a final decision on the petition today.

16 MS. BOYDSTON: Okay, I understand.

17 MR. POWDRILL: Would an advisory group be
18 made up solely of Board members or would it be made
19 up of members from the community?

20 MADAM CHAIR GARD: That's my discretion, and
21 I would hope to have people of every persuasion. If
22 it's too big, it won't be workable.

23 MR. POWDRILL: Right.

24 MADAM CHAIR GARD: But you certainly don't
25 want a one-sided advisory group.

1 MR. DAVIDSON: I'd like to thank Ann and the
2 fellow from Indiana American. I know at the last
3 meeting, Bill, you asked for somebody that's real
4 instead of just -- I'd like to thank you guys.

5 MADAM CHAIR GARD: Well, we'll try a voice
6 vote. If that's not conclusive I'll ask for a show
7 of hands. All in favor of the motion to defer action
8 to the next regular meeting say "aye".

9 (All respond "aye".)

10 MADAM CHAIR GARD: Any opposed say "nay".

11 (No response.)

12 MADAM CHAIR GARD: I think that's definitive,
13 so we will do that. Do you all want me to write down
14 or attempt to put together a committee while we're
15 sitting here or do you want me to work on that and
16 send out e-mails?

17 MS. BOYDSTON: I'd like to have a chance to
18 get input on membership, if that's all right.

19 MADAM CHAIR GARD: Yeah.

20 MS. BOYDSTON: But you're targeting, what,
21 six people, maybe?

22 MADAM CHAIR GARD: I think six, five, six,
23 seven people. Any more than that I think --

24 MS. BOYDSTON: Is not effective.

25 MADAM CHAIR GARD: -- would be a little bit

1 -- If this board is willing to let me work with
2 people that have expressed an interest and to come up
3 with a broadly based advisory group and then I will
4 appoint those members and notifying you all of that,
5 are you all --

6 MR. POWDRILL: We trust your judgment.

7 MADAM CHAIR GARD: Okay, I would be more
8 comfortable with a motion to allow that.

9 MR. RULON: So moved.

10 MR. POWDRILL: Second.

11 MADAM CHAIR GARD: Any further discussion?

12 MR. CARMICHAEL: The one add would be
13 certainly to include on that invite the folks that
14 have made comment --

15 MADAM CHAIR GARD: Yes.

16 MR. CARMICHAEL: -- that have taken time and
17 are obviously interested in both comment periods or
18 hearings we've had --

19 MADAM CHAIR GARD: Yes.

20 MR. CARMICHAEL: -- to be able to participate
21 on that.

22 MADAM CHAIR GARD: Yeah, thank you. All in
23 favor say "aye".

24 (All respond "aye".)

25 MADAM CHAIR GARD: Those opposed "nay".

1 (No response.)

2 MADAM CHAIR GARD: The motion passes and I
3 will get to work on that and you all will be advised
4 as to the makeup.

5 Did anybody order supper? Open forum. Is
6 there anybody that wishes to address the Board, at
7 your own risk?

8 (No response.)

9 MADAM CHAIR GARD: Well, the next meeting of
10 the Environmental Rules Board has not been scheduled,
11 but I believe it will be Wednesday, June the 10th or
12 Wednesday, July the 8th, at 1:30 in this conference
13 room, and you will be notified as soon as that date
14 is determined. Is there a motion to adjourn?

15 DR. NIEMIEC: So moved.

16 MR. RULON: Second.

17 MADAM CHAIR GARD: All in favor say "aye".

18 (All respond "aye".)

19 MADAM CHAIR GARD: "Nay."

20 (No response.)

21 MADAM CHAIR GARD: The meeting is adjourned.

22 (WHEREUPON, at 5:30 p.m., March 11, 2015,
23 this hearing concluded for the day.)
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CERTIFICATE

STATE OF INDIANA

ss:

COUNTY OF HAMILTON

I, Marjorie A. Addington, the undersigned Court Reporter and Notary Public residing and maintaining offices in the City of Carmel, Hamilton County, Indiana, do hereby certify:

That I reported to the best of my ability in machine shorthand all of the words spoken by all parties in attendance during the course of the hearing;

That I later reduced my shorthand notes into the foregoing typewritten transcript form, which typewritten transcript is a true record to the best of my ability of the hearing;

That I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or an employee of such attorney or counsel, and that I am not financially interested in this action.

IN WITNESS HERETO, I have affixed my Notarial Seal and subscribed my signature below this 21st day of MARCH, 2015.

Notary Public
County of Residence: Hamilton (Seal)
My Commission Expires on: August 22, 2015