

1           BEFORE THE STATE OF INDIANA  
2           ENVIRONMENTAL RULES BOARD

3           - - -

4  
5           PUBLIC MEETING OF FEBRUARY 10, 2016

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9           PROCEEDINGS

10 before the Indiana Environmental Rules Board,  
11 Beverly Gard, Chairman, taken before me, Lindy L.  
12 Meyer, Jr., a Notary Public in and for the State  
13 of Indiana, County of Shelby, at the Indiana  
14 Government Center South, Conference Center,  
15 Room A, 402 West Washington Street, Indianapolis,  
16 Indiana, on Wednesday, February 10, 2016 at  
17 1:30 o'clock p.m.

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

1 APPEARANCES:

2 BOARD MEMBERS:

- 3 Beverly Gard, Chairman
- 4 Gary Powdrill
- 5 Dr. Ted Niemiec
- 6 Dr. Joanne Alexandrovich
- 7 Chris Horn
- 8 Gail Boydston
- 9 Calvin Davidson
- 10 Mike Mettler, Proxy, Department of Health
- 11 Chris Smith, Proxy, Department of Natural Resources
- 12 Devin Hillsdon-Smith, Proxy, Indiana Economic Development Corporation
- 13 David Bausman, Proxy, Lieutenant Governor
- 14 Carol Comer, IDEM Commissioner (nonvoting)

11 IDEM STAFF MEMBERS:

- 12 MaryAnn Stevens
- 13 Lauren Aguilar
- 14 Jeff Sewell
- 15 Dan Watts
- 16 Michael Habeck
- 17 Stacy Jones
- 18 Christine Pedersen
- 19 Bruce Palin
- 20 Brian Rockenseuss
- 21 Donald Snemis
- 22 Courtney Arango
- 23 Nancy King
- 24 Janet Pittman

19 PUBLIC SPEAKERS:

- 20 Curt Publow
- 21 Bill Paraskevas

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1                   1:30 o'clock p.m.  
2                   February 10, 2016

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4                   CHAIRMAN GARD: It's 1:30, so we will  
5 go ahead and get started. The Chair sees a  
6 quorum, so I'll call the meeting to order.

7                   Our first business today is the approval  
8 of the summary of the October 14th Board meeting.  
9 Are there any additions or corrections to the  
10 summary as distributed?

11                   (No response.)

12                   CHAIRMAN GARD: Do I hear a motion to  
13 approve the minutes as distributed?

14                   DR. NIEMIEC: So moved.

15                   CHAIRMAN GARD: Is there a second?

16                   MR. HILLSDON-SMITH: Second.

17                   CHAIRMAN GARD: All in favor, say  
18 aye.

19                   MR. HORN: Aye.

20                   DR. NIEMIEC: Aye.

21                   DR. ALEXANDROVICH: Aye.

22                   MS. BOYDSTON: Aye.

23                   MR. POWDRILL: Aye.

                  MR. DAVIDSON: Aye.

1 MR. METTLER: Aye.

2 MR. HILLSDON-SMITH: Aye.

3 MR. BAUSMAN: Aye.

4 MR. SMITH: Aye.

5 CHAIRMAN GARD: Aye.

6 Opposed, nay.

7 (No response.)

8 CHAIRMAN GARD: The minutes from

9 October 14th, 2015 are approved.

10 Commissioner, Comm. Carol Comer, your

11 report.

12 COMM. COMER: Thank you. Thank you,

13 Senator. I appreciate the opportunity to be

14 here.

15 IDEM's been a little busy in the last

16 couple of months. We had an alleged cancer

17 cluster in Johnson County that we are working

18 with the Health Department on. On the heels of

19 that, we had Avian Flu in Jasper County, which

20 all of the agencies involved in that did

21 tremendous work, and we are hopeful that that --

22 that that has passed. We've had no new cases for

23 several weeks now.

1 And, of course, right now the issue is  
2 lead in drinking water systems. We will be going  
3 to Kokomo tomorrow to -- for a town hall meeting  
4 to discuss that issue. IDEM's responsible for  
5 approximately 4,000 drinking water systems, and  
6 those systems, of course, test every six months,  
7 and every six months, new systems have had lead  
8 exceedences.

9 This, for the agency, is a routine part of  
10 what we do. Of course, with the community and  
11 the homeowners it's not routine, but from the  
12 agency's standpoint, this is what we do. Site  
13 sample. Where there's an exceedence there,  
14 they -- there's a process by which we respond to  
15 that. They're required to give public notice.

16 That public notice goes out to all of  
17 their customers, then they're required to prepare  
18 a compliance plan. Right now Greentown High  
19 School is in the news regarding their -- the  
20 Greentown lead exceedences, and Greentown is  
21 moving forward with a compliance plan. They got  
22 a construction permit to install a pump to add --  
23 do the additive, polyorganophosphate, and that

1 will be -- that should be installed today, and  
2 the additive should be going in tomorrow.

3 So, then we'll test again and see if  
4 that's addressed the problem. If not, we'll  
5 continue to look at solutions for that. But what  
6 I -- this is one of actually a number of systems  
7 that have lead exceedences, so I would expect  
8 more information, more news to be out with that.

9 I'd also like to take this opportunity to  
10 introduce to you -- we have a Communications  
11 Director. Courtney Arango has joined the agency  
12 in the last couple of weeks, right in the middle  
13 of the Avian Flu, so she -- a trial by fire there  
14 for her, but she's been a tremendous help in  
15 responding to all of the media requests that  
16 surrounded the Avian Flu and now the  
17 lead-in-the-water issue.

18 And I'd also like to take a moment, with  
19 your indulgence, to ask Don Snemis to provide a  
20 legal update for the Board.

21 MR. SNEMIS: Good afternoon, ladies  
22 and gentlemen, Madam Chairwoman. Again, my name  
23 is Don Snemis. I'm General Counsel of IDEM.

1 Just two matters to report, and I certainly would  
2 be happy to answer any questions.

3 As most of you probably know, the Supreme  
4 Court voted five to four last night to stay the  
5 clean power plant rules that make up the clean  
6 power plant, pending the D.C. Circuit's  
7 resolution of the petition that was filed by a  
8 number of states, including Indiana, challenging  
9 the legality of those rules.

10 The stay will likely push back the need  
11 for any decisions by the state with regard to  
12 clean power plant until after these issues are  
13 resolved by the courts. This would probably  
14 include compliance with the upcoming September 6  
15 deadline for the state to either submit a  
16 compliance plan or present an initial plan and  
17 request for extension to EPA.

18 The D.C. Circuit Court of Appeals had  
19 agreed prior to the granting of this stay to hear  
20 this matter on an expedited basis, and it's  
21 scheduled for oral argument on June 2nd. A  
22 decision by the D.C. Circuit Court of Appeals  
23 could follow relatively quickly after that.

1       If that does occur, the matter is almost  
2 certainly likely to be -- for the nonprevailing  
3 party to file a writ of certiorari with the  
4 Supreme Court -- a petition for a writ of  
5 certiorari -- at which time, the Court would  
6 either decide to take it or not, and if it  
7 accepted the case, which I think it's very  
8 possible here, it would resolve the matter  
9 sometime in its October '16 to June 2017 term.

10       The long and short of it is that this is  
11 likely to wind its way through the courts and  
12 push these issues back until at least calendar  
13 year 2017 at some point. And also, it's probably  
14 worth at least mentioning that this will almost  
15 certainly push this issue into the next  
16 administration, and at which time anything could  
17 happen.

18       The other matter I wanted to give you an  
19 update on is the Waters of the United States  
20 litigation. Again, Indiana and a number of  
21 states are challenging the EPA's new Waters of  
22 the U.S. Rule, which would expand EPA's  
23 jurisdiction over certain -- certain waters.

1 The threshold question in that case is  
2 whether that claim should be heard at the  
3 District Court level or the Court of Appeals  
4 level, and that's really what's being litigated  
5 extensively right now. District -- one of the  
6 District Courts found that it was appropriate for  
7 the District Court.

8 The U.S. Circuit Court for the Sixth  
9 Circuit in -- sitting in Cincinnati has had all  
10 of those cases consolidated in its Court. It has  
11 stayed the Waters of the U.S. Rule. That's old  
12 news. That happened in October. On December 8th  
13 the Sixth Circuit heard arguments on that issue,  
14 the jurisdictional issue. I don't believe a  
15 ruling has been made yet.

16 The U.S. Congress did attempt to resolve  
17 this issue through legislation. Those attempts  
18 failed. The bill in the Senate was blocked, and  
19 the House actually passed a bill which was vetoed  
20 by President Obama. So, again, the Waters of the  
21 U.S. issue, which has been stayed, is likely also  
22 to get pushed out for some number of months,  
23 probably until late 2016, at a minimum. And

1 again, that's just the jurisdictional question,  
2 then the right court has to hear it on the  
3 merits, then that probably has to go to the  
4 Supreme Court. So, the wheels of justice turn  
5 slowly.

6 Those are the two matters I thought would  
7 be of most interest to you, but if you have any  
8 other questions, I'm happy to answer them.

9 CHAIRMAN GARD: Are there any  
10 questions from Board Members?

11 (No response.)

12 CHAIRMAN GARD: Thank you.

13 MR. SNEMIS: Thank you.

14 CHAIRMAN GARD: We appreciate that.

15 COMM. COMER: Madam Chair, with your  
16 indulgence, I also have our Legislative Liaison,  
17 Brian Rockenseuss, to talk about our legislative  
18 proposals this year.

19 CHAIRMAN GARD: Okay.

20 MR. ROCKENSEUSS: Thank you, Chairman  
21 Gard and Members of the Board. Again, my name is  
22 Brian Rockenseuss. I'm the Legislative Liaison.

23 We have -- there are currently eight bills

1 that have environmental aspects to them going  
2 through the legislature at this time, four of  
3 which are IDEM proposals. I'll go through those  
4 first.

5 The first is Senate Bill 255. It has to  
6 do with the Excess Liability Trust Fund. What  
7 we're trying to achieve through this bill is to  
8 streamline and simplify the ELTF statute for  
9 making the standards easier to understand and  
10 follow for the agency as well as the regulated  
11 entities. There's a complicated multitiered  
12 deductible system currently in the statute.

13 There's actually four deductibles in the  
14 statute. We're taking that down to one simple  
15 deductible. We're getting rid of the idea of  
16 substantial compliance. We believe this concept  
17 injected far too much subjectivity into the  
18 process and created unnecessary disputes.

19 We have changed the penalty structure.  
20 Previously it was a reduction -- percentage  
21 reduction based on the number of years  
22 registration fees were not paid. What we're  
23 doing now is you have to repay all of your back

1 fees, and then for every year you didn't pay your  
2 fees, you have a thousand-dollar-per-tank fee  
3 that you have to pay on top to access the fund,  
4 and it also puts in timelines for IDEM to react  
5 to any claims that we receive.

6 The next bill is Senate Bill 256. This is  
7 the legitimate use bill. This bill and the ELTF  
8 bill were both authored by Sen. Charbonneau.  
9 Current law grants IDEM the authority to regulate  
10 the disposal, processing and incineration of  
11 solid waste and hazardous waste.

12 However, the law is silent on IDEM's  
13 authority to regulate the legitimate use of this  
14 waste and industry processes or other ways that  
15 we can take the waste out of the waste stream and  
16 put it into a process. The bill itself just  
17 gives the Rules Board the authority to write  
18 rules on legitimate use and the criteria we would  
19 use to implement that program.

20 The next IDEM bill is House Bill 1299.  
21 This is authored by Rep. Wolkins. This has to do  
22 with the Voluntary Remediation Program. Our VRP  
23 program offers responsible persons immunity from

1 lawsuits and administrative proceedings when they  
2 enter and sign an agreement into the program.

3       The expectation is that these immunities  
4 are given in exchange for a responsible person's  
5 cooperation in effectively moving the site toward  
6 closure and productive use. We have found many  
7 sites in VRP are taking advantage of the  
8 immunities and actually not working on getting  
9 the property into productive use, some of which  
10 over 10 to 15 years they've been in the program  
11 without doing anything.

12       The bill does two things. First, it  
13 separates the investigation plan and the  
14 remediation work plan. So, a big issue we've  
15 seen is we're getting faulty investigation plans.  
16 They have a six-month window to get an  
17 investigation done and a remediation work plan  
18 done, and because of that, they're rushing to get  
19 these plans in, and they're not adequate to  
20 delineate the property. We don't know what's  
21 actually going on, so there's a lot of back and  
22 forth and it takes a long time, so we've  
23 separated them, we've given them lengthier time

1 frames to get this work done.

2 And then the second part of this would  
3 give IDEM clear authority to remove responsible  
4 parties from the program. We feel we have that  
5 authority now, but we wanted to clarify that in  
6 case there were any issues going forward.

7 And the last IDEM bill is a cleanup bill.  
8 It's House Bill 1300. Again, Rep. Wolkins is  
9 authorizing this. It has seven cleanup items.  
10 The mercury switch program was set to sunset  
11 July 1 this year. We are still collecting a good  
12 number of mercury switches and feel the program  
13 should continue, so we are getting rid of the  
14 sunset.

15 There's a number of different provisions  
16 in Title 13 that reference rule citations that  
17 are no longer existent, so this bill works to  
18 remove those. We have a provision that clarifies  
19 when antidegradation demonstration should be  
20 done. Currently, the law says that all new  
21 permits should have them -- have antideg  
22 demonstrations done, and modifications that  
23 increase pollution to water should have one, and

1 it should say that new and increased discharges,  
2 whether it's a new permit or a modification, they  
3 have to meet that standard, and so that's what  
4 we're clarifying with that.

5       The other four bills are -- two are  
6 Sen. Charbonneau's. It's -- one is Senate  
7 Bill 257. This provide more options for small  
8 distressed utilities to be obtained under  
9 receivership by larger utilities. Smaller  
10 utilities could have financial and management  
11 problems in running the utility. This is  
12 voluntary for both big and small, and it just  
13 helps them go into receivership if they're having  
14 a hard prob -- a hard time running their  
15 facility.

16       Senate Bill 347 is a bill that authorizes  
17 the Indiana Finance Authority to study and report  
18 on water loss as it relates to the state's water  
19 utility system and infrastructure. It also has  
20 the IFA report on infrastructure needs across the  
21 state.

22       Sen. Brown has a bill, Senate Bill 366,  
23 that -- currently the statute says that each

1 county shall be part of a solid waste management  
2 district. This bill moves that to a "may" and  
3 gives the counties and locals the ability to  
4 choose whether they think that's the most  
5 appropriate option for them.

6 And then finally, as you've probably heard  
7 in the news, no more stringent than is House  
8 Bill 1082. It's Rep. Wolkins' bill. At this  
9 time, we don't have opinion on that bill, and  
10 it's currently going to be heard on Monday in  
11 front of the Senate Environment.

12 And that's all I have.

13 CHAIRMAN GARD: Brian, I have a  
14 question. Is -- Sen. Brown's bill on the solid  
15 waste districts, what's the status in the House  
16 yet? They probably haven't had a hearing yet.

17 MR. ROCKENSEUSS: They have not had a  
18 hearing yet. That is one of three bills that is  
19 set to go in front of the House Environment.  
20 They're -- the earliest time they could hear it  
21 is next Wednesday.

22 CHAIRMAN GARD: So, you don't have a  
23 feel for what's going to happen to that bill?

1 MR. ROCKENSEUSS: Not yet, but it's  
2 had -- the vote on it in the Senate was 37-13,  
3 and I believe the vote would follow around the  
4 same percentage in the House.

5 CHAIRMAN GARD: Uh-huh. Okay.  
6 Any questions for Brian on any of this  
7 legislation?

8 (No response.)

9 CHAIRMAN GARD: Thank you. It sounds  
10 like you're busy.

11 MR. HILLSDON-SMITH: Sorry; just for  
12 clarification, the Senate Bill 257, what was the  
13 one after that, the water loss reporting? What  
14 was the number?

15 MR. ROCKENSEUSS: 347.

16 MR. HILLSDON-SMITH: 347; thanks.

17 MR. ROCKENSEUSS: Uh-huh.

18 CHAIRMAN GARD: Okay. It sounds like  
19 you've been busy.

20 MR. ROCKENSEUSS: Yes. Thank you.

21 CHAIRMAN GARD: Thank you.

22 Commissioner?

23 COMM. COMER: We also -- yes, we have

1 one more thing. Bruce Palin, our Assistant  
2 Commissioner of the Office of Land Quality, will  
3 be presenting the UST Report to the Board -- AST  
4 Report to the Board.

5 MR. PALIN: Thank you, Chairwoman  
6 Gard and members of the Environmental Rules  
7 Board.

8 I want to kind of give you an update on  
9 Aboveground Storage Tanks. During the last  
10 legislative session, there were five things that  
11 were required in the statute that was passed.  
12 First was IDEM was to prepare a report on  
13 existing regulatory requirements for aboveground  
14 storage tanks.

15 Second, tanks that were located in  
16 critical zones that were not otherwise exempted  
17 were required to register with IDEM by January  
18 1st of this year.

19 Public water supply systems that utilize a  
20 surface water source were to prepare a surface  
21 water quality threat minimization and response  
22 plan, which has been shortened to source water  
23 emergency response plan so they would call it

1 SWERP, a nice acronym.

2 (Laughter.)

3 MR. PALIN: The Environmental Rules  
4 Board was also directed to adopt rules that  
5 establish a reporting system for tanks based on  
6 the relative danger of a disruption of a water  
7 supply in the event of a discharge from an  
8 aboveground storage tank.

9 And also, the Environmental Rules Board  
10 was directed to adopt rules requiring development  
11 of source water emergency response plans by the  
12 public water utilities.

13 I want to go through at least the first  
14 three of those, and then the last two, I think,  
15 are probably up to the Chair to discuss. The  
16 IDEM report, we did get a report prepared and  
17 placed on our Web site. I believe in your  
18 packets we've provided you the first 20 pages of  
19 that report.

20 The entire report is like 273 pages long  
21 when you get all of the appendices, but if you're  
22 interested in reading all 273 pages, on page 3 of  
23 the report that you have, there's a Web site

1 address identified that you can go to and access  
2 the full report.

3 The report identifies the various existing  
4 state and federal regulations that apply to  
5 aboveground storage tanks today. It also  
6 acknowledge that almost all of the tank  
7 information that was established in the statutory  
8 reporting requirements is obtainable from  
9 information gathered by the five different state  
10 regulatory systems that currently apply to  
11 aboveground storage tanks.

12 Relative to the registration of tanks,  
13 when the legislation was originally introduced  
14 last year, it pretty much required all stationary  
15 tanks except swimming pools with more than 200  
16 gallons capacity that hold a liquid other than  
17 drinking water or residential heating fuel to  
18 submit a registration to IDEM.

19 After going through that -- the  
20 negotiation process and discussion process and  
21 amendment process in the legislature, what passed  
22 was that the capacity was raised to tanks greater  
23 than 660 gallons. It was also limited to tanks

1 that were within critical zones of surface water  
2 drinking supplies, and there were an additional  
3 24 exemptions that were listed in the statute.

4 So, the scope of what the legislation  
5 identified changed pretty much from all tanks in  
6 Indiana to tanks that are in critical zones that  
7 are not otherwise regulated by a state or federal  
8 requirement. So, it's still useful information,  
9 because it helped us to identify potential tanks  
10 that might be -- fall outside of existing  
11 requirements.

12 We received registrations from ten  
13 different facilities and it covered 218 tanks,  
14 amongst -- four of those facilities accounted for  
15 203 of those 218 tanks, and we're currently  
16 actually evaluating that information. We suspect  
17 that probably a lot of those tanks would actually  
18 qualify for one of the exemptions, but folks,  
19 just for purposes of being cautious, went ahead  
20 and registered their tanks anyway. So, that was  
21 the result of that registration effort.

22 The -- as far as the source water  
23 emergency response plan, the Indiana Finance

1 Authority, in cooperation with IDEM Drinking  
2 Water Branch, has been working with the different  
3 utilities to develop their response plans. All  
4 of the utilities have been contacted, and they've  
5 been provided with a draft plan that they can use  
6 to help satisfy this requirement, and it's  
7 expected that probably by mid-summer all of them  
8 will have an acceptable plan in place.

9 So, that's kind of the status of the  
10 aboveground storage tanks, and I'll let  
11 Chairwoman Gard discuss the rule part of that.

12 CHAIRMAN GARD: Okay.

13 MR. PALIN: Thank you.

14 CHAIRMAN GARD: But before I make a  
15 couple of comments, are there questions from  
16 any -- yes.

17 DR. NIEMIEC: I just have one brief  
18 question, which is: For those tanks that have an  
19 exemption, are you notifying those individuals  
20 that those don't have to be updated in the future  
21 for those specific tanks --

22 MR. PALIN: That will be a --

23 DR. NIEMIEC: -- for the reporting

1 requirements?

2 MR. PALIN: -- part of that process,

3 yes.

4 DR. NIEMIEC: Very good. Thank you.

5 MR. PALIN: Yes.

6 CHAIRMAN GARD: Any other questions?

7 Yes, Dr. Alexandrovich.

8 DR. ALEXANDROVICH: What kind of

9 outreach did you do to let people know they

10 needed to register tanks?

11 MR. PALIN: Well, that's a good

12 question. Really, most of it was through

13 different industrial groups that were aware of

14 that statutory requirement. There was a

15 significant amount of participation by those

16 groups as that legislation was going through, so

17 we felt like we had a pretty good awareness of

18 that requirement. Exactly what all of the

19 different types of ways we advertised it, I'm not

20 quite sure, but I know we had a lot of interest

21 in it while it was going through the legislative

22 procedures.

23 DR. ALEXANDROVICH: Thank you.

1 CHAIRMAN GARD: Yes, Gary.

2 MR. POWDRILL: Do you feel that with  
3 your four facilities and 216 tanks, you have  
4 captured the whole environment or the whole  
5 waterfront or whatever, or are there hundreds or  
6 thousands out there waiting that just didn't do  
7 what they were supposed to do?

8 MR. PALIN: That's a good question.  
9 I think that given the breadth of the exemptions,  
10 that there's probably not a lot of other  
11 additional tanks that would be -- fall into that  
12 category that would also be located within  
13 critical zones.

14 And that's part of what we hope to better  
15 understand by looking at these ones who did file:  
16 Are there other people who maybe fall into their  
17 category? If they legitimately don't qualify for  
18 the exemptions, are there other tanks similarly  
19 situated that we should also reach out to?

20 CHAIRMAN GARD: Okay. Any other  
21 questions for Bruce?

22 (No response.)

23 CHAIRMAN GARD: Thank you.

1 MR. PALIN: Thank you.

2 CHAIRMAN GARD: As you know, this  
3 legislation called for the Rules Board to be  
4 involved, and so I had talked a good bit about an  
5 advisory group, but was kind of dragging my feet  
6 on making the appointments, for a couple of  
7 reasons.

8 One, I wanted to give the new IDEM  
9 leadership a chance to get established and see  
10 what direction that they were interested in going  
11 in this, and it's somewhat different than the  
12 previous leadership. So, I wanted to give them a  
13 chance to get their feet on the ground and come  
14 up with a lot of the things that Bruce has  
15 presented to us.

16 I'd like to keep the advisory group to  
17 probably no more than ten people. It gets a  
18 little unruly past that. I know one company had  
19 three different people tell me they'd like to  
20 serve. Well, we're not going to have three  
21 people from one company, so, you know, if you're  
22 interested in being on the advisory group -- and  
23 I intend to make those appointments just within a

1 couple of weeks, because we'd like to have an  
2 organizational meeting in March. But keep your  
3 requests down to one person in your particular  
4 organization.

5 My e-mail is -- and I prefer you, rather  
6 than tell me a name, e-mail me a name so I'll be  
7 sure and have it in writing -- bevjgard,  
8 b e v j g a r d, @gmail.com.

9 So, you know, that's pretty much where we  
10 stand on the advisory group. There will be a  
11 little bit more information given to the advisory  
12 group once -- once the appointments are made and  
13 we schedule a meeting in March.

14 Are there any questions from anybody on  
15 this?

16 (No response.)

17 CHAIRMAN GARD: I've had two members  
18 of this council request to be on that, and they  
19 represent very different groups, and I'll  
20 probably go ahead and encourage them to continue  
21 their interest to serve.

22 Okay. Chris Pedersen, rulemaking updates.

23 MS. PEDERSEN: Good afternoon. I'm

1 Chris Pederson with the Rule Development Branch.

2 I wanted to go over the rules that we  
3 anticipate are likely to be presented to you at  
4 the next Board meeting, and right now, based on  
5 the schedules of those rules, we would anticipate  
6 the next Board meeting possibly being on  
7 May 11th.

8 And if we do hold it at that time, the  
9 meeting is going to be in a different location.  
10 It would be in the North Building on the 13th  
11 floor, in Room 1319, and again, if we do have the  
12 meeting at that time, we will send out more  
13 information so that you can find it easily.

14 As far as the rules that we would  
15 anticipate for that meeting, first of all, before  
16 you today are going to be two emergency rules.  
17 If they are adopted by the Board, they would be  
18 filed tomorrow, and if that is the case, they  
19 only last for 90 days.

20 The 90th day is actually May 11th, so we  
21 would anticipate bringing those two emergency  
22 rules back to you on that date in order to extend  
23 them, because we are working on regular

1 rulemakings for both of those rules, and until  
2 those are effective, we need to keep the  
3 emergency rules in place.

4 Also before you today for preliminary  
5 adoption is the Solid Waste Facility Operators  
6 Certification Rule. I would anticipate that  
7 unless there was significant comment on that  
8 rule, that that should be ready for final  
9 adoption in May.

10 And then in addition to those rules, we  
11 have a couple of other rules. One is a Hazardous  
12 Waste Update Rule. That would be done through a  
13 Section 8 rulemaking, which is a rule process we  
14 use for rules with limited options. This would  
15 be incorporating amendments to federal rules into  
16 the state rules for consistency. It would also  
17 make some administrative corrections and updates,  
18 and we expect that notice to be posted in the  
19 Indiana Register very soon, so it could be ready  
20 in May.

21 And then also, we have another rulemaking,  
22 which would be a Section 7 notice. It's one that  
23 is -- has limited options, but a little more

1 flexibility, and that is a rulemaking that would  
2 be providing updates to rules on CAFO's, the  
3 Concentrated Animal Feeding Operations, as well  
4 as the Confined Feeding Operation Rules.

5 Those rules have a number of references in  
6 them, some to the Code of Federal Regulation, and  
7 also technical documents, and this rule would  
8 provide updates to those documents to use more  
9 current versions and make corrections and things  
10 like that to the rule, too. Those amendments do  
11 not substantively change anything in the rules.

12 And that is all I have.

13 CHAIRMAN GARD: Thank you.

14 Any questions for Chris?

15 DR. NIEMIEC: I have one brief  
16 question. Since it's listed here under our  
17 schedule, what is anticipated regarding the  
18 Asbestos Program Updates, No. 09-363?

19 MS. PEDERSEN: That rulemaking, we're  
20 still working on the second notice draft rule  
21 language. There's just been some delays in  
22 getting some of the information together that we  
23 need for that in working with the program. So,

1 that is still moving along, it's just we can't  
2 anticipate when it'll be ready to publish, so we  
3 can't anticipate when we can bring it to the  
4 Board.

5 DR. NIEMIEC: Okay. Thank you.

6 CHAIRMAN GARD: Any other questions  
7 for Chris?

8 (No response.)

9 CHAIRMAN GARD: Thank you.

10 MS. PEDERSEN: Thank you.

11 (Applause heard in Room B.)

12 CHAIRMAN GARD: Well, that was  
13 timely.

14 Today there will be public hearings prior  
15 to consideration for final adoption of Cost  
16 Recovery for Review of Amendments to Restrictive  
17 Covenants, and prior to consideration for  
18 preliminary adoption of Solid Waste Facility  
19 Operator Certification.

20 Also today, we have two emergency rules  
21 that the Board will be asked to adopt: Revisions  
22 for the Total Coliform Rules, and Coal Combustion  
23 Residuals. Although we do not usually hold

1 hearings prior to adopting emergency rules, if  
2 anyone would like to address the Board on either  
3 rule, please fill out a speaker card and I'll  
4 allow you a couple of minutes to speak.

5 Finally, we have one Nonrule Policy  
6 Document presentation today for Alternative Water  
7 Supply.

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

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

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

1 (Reporter sworn.)

2 CHAIRMAN GARD: Thank you.

3 The Board will now consider adoption of  
4 the emergency rule to incorporate federal updates  
5 to the Total Coliform Rules known as the Revised  
6 Total Coliform Rule.

7 I will enter Exhibit A, the draft  
8 emergency rule, into the record of the meeting.

9 MaryAnn Stevens will present the rule.

10 MS. STEVENS: Good afternoon, members  
11 of the Board. I'm MaryAnn Stevens, a rule writer  
12 in the Office of Legal Counsel, Rules Development  
13 Branch.

14 IDEM is asking the Board to adopt an  
15 emergency rule so that the federally required  
16 revisions to the Total Coliform Rule adopted by  
17 the United States Environmental Protection Agency  
18 under the Safe Drinking Water Act will be  
19 included in Indiana's administrative rules as  
20 part of Title 327 before the federal deadline of  
21 April 1, 2016.

22 The emergency rule adopts the requirements  
23 and the minor revisions to various drinking water

1 standards affected by the revisions to the Total  
2 Coliform Rule through incorporation by reference  
3 of the federal rule.

4 If IDEM does not amend the state rules to  
5 include the federally required changes to the  
6 Total Coliform Rule and the various minor  
7 revisions to drinking water standards, there  
8 would be the potential for IDEM to lose primacy  
9 to conduct the state's drinking water program as  
10 required under the Safe Drinking Water Act, loss  
11 of federal funding for the drinking water  
12 programs, and regulated entities would still be  
13 required to comply with the federal standards,  
14 but without the support, training, or educational  
15 assistance provided by IDEM's drinking water  
16 programs.

17 As a bit of background, the federal Total  
18 Coliform Rule was adopted in 1989. The current  
19 revisions to that rule were published in the  
20 Federal Register on February 13th, 2013, and  
21 technical corrections to the final rule revisions  
22 were published on February 26th, 2014. The  
23 revised Total Coliform Rule offers a meaningful

1 opportunity for greater public health protection  
2 beyond the 1989 Total Coliform Rule.  
3 Under the revised Total Coliform Rule,  
4 there is no longer a monthly maximum contaminant  
5 level violation for multiple total coliform  
6 detections. Instead, public water systems that  
7 have an indication of coliform contamination in  
8 the distribution system will be required to  
9 assess the problem and take corrective action  
10 that may reduce cases of illnesses and deaths due  
11 to potential fecal contamination and waterborne  
12 pathogen exposure.

13 The revised Total Coliform Rule also  
14 updates provisions in other drinking water rules  
15 that reference analytical methods and other  
16 requirements in the 1989 Total Coliform Rule; for  
17 example, the Public Notification and Ground Water  
18 Rules.

19 These revisions to the Total Coliform Rule  
20 are in accordance with the 1996 Safe Drinking  
21 Water Act Amendments that require the U.S. EPA to  
22 review and revise, as appropriate, each national  
23 primary drinking water regulation not less often

1 than every six years. These revisions also  
2 conform to the Safe Drinking Water Act provision  
3 that requires any revision to "maintain, or  
4 provide for greater protection of the health of  
5 persons."

6 If there are any questions, I can answer  
7 generally, and we have technical staff from the  
8 Drinking Water Branch who can give more specific  
9 answers.

10 CHAIRMAN GARD: Are there any  
11 questions from the Board?

12 Yes, Dr. Alexandrovich.

13 DR. ALEXANDROVICH: Yes. Why is it  
14 taking so long to get this adopted? I guess it  
15 has a schedule with EPA to get this done.

16 MS. STEVENS: Well, we have the  
17 deadline --

18 DR. ALEXANDROVICH: Right.

19 MS. STEVENS: -- of April 1st, 2016.

20 DR. ALEXANDROVICH: Right.

21 MS. STEVENS: We have been working.

22 There's a draft, I've prepared a draft, and it's  
23 been under consideration among upper management

1 as to how we're going to proceed. There's a  
2 question of whether we put into our  
3 administrative rules, as we have done to date,  
4 the whole -- the full text of the federal  
5 language given our various rule writing  
6 differences in state administrative rules, or to  
7 do an incorporation. That decision is out of my  
8 hands, but that's where it lies.

9 DR. ALEXANDROVICH: I did just look  
10 up on-line and, of course, I didn't read the  
11 whole thing, but apparently there was a deadline  
12 last February to have some kind of schedule set  
13 up with EPA to get this stuff adopted and the  
14 rule incorporated.

15 MS. JONES: MaryAnn, I can --

16 MS. STEVENS: Okay.

17 MS. JONES: I'm Stacy Jones, from the  
18 Drinking Water Branch, and we did file an  
19 extension with EPA to work on that. Our  
20 provision with them was that we would have  
21 something in place to require systems to follow  
22 the federal regulations, and that we would be  
23 doing all of the work, basically so they wouldn't

1 have to do the work, once April 1st of 2016 got  
2 here.

3 Basically we're just -- you know, we've  
4 been working on this rule for two and a half  
5 years. It's just trying to figure out what  
6 format it needs to take.

7 DR. ALEXANDROVICH: Okay. Thank you.

8 DR. NIEMIEC: I also have a brief  
9 question. Other than determining whether to lay  
10 out the text or incorporate by reference, what  
11 are the other substantive differences you  
12 anticipate or additional material you anticipate  
13 based upon the draft you have seen so far?

14 MS. STEVENS: Differences between the  
15 federal language and what would be the state  
16 language?

17 DR. NIEMIEC: Yes.

18 MS. STEVENS: There are a couple of  
19 exceptions, things that we do not include in our  
20 state rules. I can, again, generally talk about  
21 it, but if you would like more --

22 DR. NIEMIEC: Yes, just in general.

23 MS. STEVENS: Okay. This one will

1 make you laugh. Federal language has, at  
2 40 CFR 141.803, coliform sampling. It's called  
3 the airline or aircraft rule, you know, the water  
4 you are served on airplane flights? It's under  
5 regulation, but Indiana and the other states, as  
6 well -- it's federal only; right, Stacy?

7 MS. JONES: The EPA does things with  
8 that, yes, does for every single rule.

9 MS. STEVENS: There are a couple --  
10 Stacy, do you want to step up here and help me  
11 with this one? I had an e-mail exchange with  
12 Stacy just today, because this was crossing my  
13 mind. Stacy has informed me that since 1993, our  
14 Indiana Administrative Rules under drinking water  
15 do not allow unfiltered --

16 MS. JONES: Surface water.

17 MS. STEVENS: Not ground water?

18 MS. JONES: Unfiltered surface water.

19 MS. STEVENS: Surface water systems.

20 This is -- I like this bit of information. This  
21 will be noteworthy. I think Indi -- or I think  
22 New York City is the largest city in the United  
23 States. It's served by an unfiltered surface

1 water system, water coming from lakes up in the  
2 Adirondacks; right?

3 MS. JONES: Uh-huh.

4 MS. STEVENS: Which traditionally has  
5 been a very protected area, lots of trees, and  
6 that if it stays that way, their water system is  
7 considered to be pretty safe, I guess. But  
8 Indiana doesn't have any systems like that, so  
9 our exclusion of that hasn't been an issue at  
10 all. So, in answer to your question, the only  
11 exceptions are things that haven't, you know,  
12 been an issue in Indiana.

13 DR. NIEMIEC: Thank you.

14 MS. STEVENS: Yes.

15 CHAIRMAN GARD: Are there any other  
16 questions?

17 (No response.)

18 CHAIRMAN GARD: Thank you.

19 I haven't received any requests to speak  
20 on this rule. Is there any Board discussion?

21 (No response.)

22 CHAIRMAN GARD: Do I hear a motion to  
23 adopt the emergency rule?

1 MR. POWDRILL: So moved.

2 CHAIRMAN GARD: Is there a second?

3 MR. HORN: Second.

4 CHAIRMAN GARD: All in favor, say

5 aye.

6 MR. HORN: Aye.

7 DR. NIEMIEC: Aye.

8 DR. ALEXANDROVICH: Aye.

9 MS. BOYDSTON: Aye.

10 MR. POWDRILL: Aye.

11 MR. DAVIDSON: Aye.

12 MR. METTLER: Aye.

13 MR. HILLSDON-SMITH: Aye.

14 MR. BAUSMAN: Aye.

15 MR. SMITH: Aye.

16 CHAIRMAN GARD: Aye.

17 Those opposed, nay.

18 (No response.)

19 CHAIRMAN GARD: The emergency rule is

20 adopted.

21 The Board will now consider adoption of an

22 emergency rule to incorporate federal

23 requirements for Coal Combustion Residuals.

1 I will enter Exhibit B, the draft  
2 emergency rule, into the record of the meeting.

3 Don Snemis -- and I can't pronounce  
4 your -- how do you pronounce it again?

5 MR. SNEMIS: You pronounced it  
6 correctly, Snemis.

7 CHAIRMAN GARD: Did I? Okay.

8 MR. SNEMIS: Simpler than it might  
9 otherwise appear. Thank you.

10 I just want to give a short introduction  
11 to this rule. Lauren Aguilar will give a more  
12 lengthy introduction, and then Bruce Palin and  
13 Jeff Sewell are here to answer any technical  
14 questions that you might have.

15 Federal Coal Combustion Residual, or CCR,  
16 Rules became effective last October. They  
17 established technical requirements for coal  
18 combustion residual of landfills and surface  
19 impoundments under RCRA.

20 The federal rule is self-implementing and  
21 is designed to only be enforced through citizens'  
22 suits, but the rule allows states to amend their  
23 own solid waste management plans in order to

1 grant and enforce compliance schedules for  
2 federal deadlines.

3 IDEM was approached by members of the  
4 regulated community, who thought it would be  
5 better to be regulated by IDEM than under the  
6 federal scheme, and would like to work with IDEM  
7 to negotiate extensions for compliance with some  
8 of the initial deadlines.

9 Now, Indiana rules already regulate CCR  
10 landfills, but the emergency rule incorporates  
11 federal requirements and applies to surface  
12 impoundments. This emergency rule, if adopted,  
13 will be the first step toward that regulatory  
14 effort. It's our understanding that some  
15 interested parties might not support the effort  
16 or might propose different approaches.

17 IDEM believes that a state-regulated  
18 program is better for the State of Indiana than a  
19 federal system enforced through citizens' suits,  
20 but this was not initiated necessarily by IDEM,  
21 and we'll be happy to defer to the federal system  
22 if that's what the Board decides.

23 So, with that, I would ask Lauren Aguilar

1 to come up and finish the presentation.

2 Thank you.

3 CHAIRMAN GARD: Thank you.

4 MS. AGUILAR: Good afternoon,  
5 Chairman Gard, members of the Board. Again, my  
6 name is Lauren Aguilar, and I'm here to provide  
7 you with a little more information about this  
8 emergency rule.

9 The department is proposing this emergency  
10 rule to address the operation of any impoundment  
11 operated by electric utilities or independent  
12 power producers for coal combustion residuals,  
13 otherwise known as CCR, that are subject to the  
14 new federal regulations found at 40 CFR 257,  
15 Subpart D, promulgated by the United States  
16 Environmental Protection Agency. They became  
17 effective, like Don said, on October 19th, 2015.

18 This emergency rule will incorporate the  
19 federal regulations found at 40 CFR 257.50  
20 through 40 CFR 257.106, and I can, at the end,  
21 kind of give you a little -- a little bit of more  
22 information about why we kind of chunked out a  
23 little bit of what we're incorporating. Only

1 those CCR impoundments that are subject to the  
2 regulation under the federal regulations would be  
3 subject to our incorporated regulations.

4 CCR are fly ash, bottom ash, boiler slag,  
5 and flue gas desulfurization materials generated  
6 from burning coal for the purposes of generating  
7 electricity. The U.S. EPA promulgated federal  
8 regulations for the operation, record keeping and  
9 closure of CCR impoundments. These regulations  
10 are self-implementing, but contain compliance  
11 deadlines. A CCR impoundment must meet operation  
12 criteria within six months or close within 18  
13 months.

14 Indiana's solid waste rules, found at  
15 329 IAC 10, are limited in scope, only regulating  
16 CCR impoundments at final closure if waste is  
17 closed in place. Because these federal  
18 regulations are self-implementing and Indiana's  
19 rules are limited in scope, there's no regulatory  
20 agency providing compliance and enforcement  
21 oversight. By incorporating this regulation by  
22 reference, the department will have the authority  
23 to ensure compliance and take enforcement action

1 if necessary to ensure protection to human health  
2 and the environment.

3       Additionally, like Don said, the  
4 department was contacted by interested  
5 stakeholders who requested that the department  
6 explore the possibility of approving alternative  
7 compliance schedules to the federal regulation  
8 deadline. Alternative compliance schedules are  
9 allowable in accordance with 40 CFR 256, if  
10 approved by the U.S. EPA as part of Indiana's  
11 Solid Waste Management Plan.

12       In order to pursue a change to the Solid  
13 Waste Management Plan, Indiana must be able to  
14 show that they can enforce standards as stringent  
15 as federal regulations. The department has a  
16 short window of time to request an amendment to  
17 the Solid Waste Management Plan and to work with  
18 the affected regulated entities before the  
19 federal compliance deadlines would approach.

20       The department respectfully requests the  
21 Board adopt the emergency rule as presented, and  
22 program staff is available should you have any  
23 questions, but I will kind of give you a quick

1 summary as to why we did not fully incorporate  
2 all of 40 CFR 257, Subpart D.

3 We basically removed kind of some  
4 housekeeping language in the beginning of the  
5 federal regulations, as well as a requirement  
6 from the federal regulations that the utilities  
7 and independent power producers maintain a  
8 Web site. IDEM doesn't feel like it benefits  
9 anyone that we worry about what they're doing  
10 with their Web site; that that can be handled  
11 very nicely by the power producers on their own.

12 And if you have any further questions, I  
13 can do my best to answer them, and Jeff and Bruce  
14 are here, should you have any.

15 CHAIRMAN GARD: Any questions for  
16 Lauren?

17 Yes, Gary.

18 MR. POWDRILL: If the legislation for  
19 "no more stringent than" were to pass, would it  
20 impact this rule?

21 MS. AGUILAR: I don't want to speak  
22 out of turn on that one, but I don't think it  
23 would. Those would have to do with rules that

1 are moving forward. If you were to adopt this  
2 today, it would be in effect as of tomorrow, once  
3 it's filed with LSA.

4 MR. POWDRILL: Then there's a second  
5 legislation in front of the legislature, the  
6 beneficial use.

7 MS. AGUILAR: Uh-huh.

8 MR. POWDRILL: Is there a beneficial  
9 use component to this closure process?

10 MS. AGUILAR: Not currently, and we  
11 do -- we will have a companion regular rulemaking  
12 that will come forward, should you choose to  
13 adopt the emergency rule, and current -- in its  
14 current state, the regular rulemaking is going to  
15 very closely mimic what's in front of you today.  
16 So, we intend to just go ahead and adopt what the  
17 federal regulations are dictating for CCR  
18 impoundments. We just want to put ourselves in a  
19 position to be the enforcement agency.

20 MR. POWDRILL: But is there a  
21 beneficial use opportunity?

22 MS. AGUILAR: I don't think there  
23 currently is. Jeff and Bruce might have

1 better --

2 MR. SEWELL: There is a provision --

3 MS. AGUILAR: Is there a definition

4 for it?

5 MR. DAVIDSON: Why don't you have him

6 stand up over here?

7 MS. AGUILAR: Yeah, come up.

8 They have way more in-depth working with

9 this federal rule than I do.

10 MR. SEWELL: My name's Jeff Sewell.

11 I work for the Land Quality Permits Branch.

12 There is a provision in the Federal CCR

13 Rule in definitions of beneficial use of CCR, and

14 that provides some limitations on certain

15 beneficial uses above a certain quantity.

16 Indiana statute bars us from regulating uses of

17 CCR in some cases, and obviously this rule action

18 would not supersede those prohibitions.

19 The way the emergency rule is structured,

20 it intends only to incorporate by reference the

21 standards to the degree that they regulate

22 impoundments, and it does not intend to

23 incorporate the provisions that relate to

1 beneficial uses.

2 MR. POWDRILL: Okay. Thank you.

3 CHAIRMAN GARD: Any other questions?

4 Yes, Dr. Alexandrovich.

5 DR. ALEXANDROVICH: There is just so

6 I understand this better. Is the Solid Waste

7 Management Plan the same thing as the regulations

8 under 329 IAC, or is it separate?

9 MS. AGUILAR: So, the Solid Waste

10 Management Plan would encompass more than what's

11 in front of you today dealing with the CCR

12 impoundments. We just would have to amend that

13 component to get EPA's approval to negotiate any

14 type of compliance schedule beyond what's in

15 their current schedule, which is the six months

16 or the 18 months.

17 DR. ALEXANDROVICH: Okay. So, the --

18 MS. AGUILAR: The Solid Waste

19 Management Plan is very large.

20 DR. ALEXANDROVICH: And that's

21 329 IAC?

22 MS. AGUILAR: Yes.

23 DR. ALEXANDROVICH: Okay. I didn't

1 know if it was separate from the rules or in --

2 MS. AGUILAR: Well, I mean there's

3 some --

4 DR. ALEXANDROVICH: -- addition to

5 the rules.

6 MS. AGUILAR: -- there's some

7 components of 329 IAC that are different. They

8 deal with --

9 DR. ALEXANDROVICH: But when you

10 refer to the Solid Waste Management Plan, you're

11 referring to the rules?

12 MS. AGUILAR: No, the rules are

13 separate.

14 DR. ALEXANDROVICH: Okay.

15 MS. AGUILAR: So, the Solid Waste

16 Management Plan --

17 DR. ALEXANDROVICH: I just wanted to

18 understand that. I'm sorry.

19 MR. SEWELL: The RCRA regulations in

20 the federal program provide for states to prepare

21 a plan that describes how they will implement the

22 federal criteria. This was done back in the

23 '80's, when Indiana began regulating municipal

1 solid waste landfills using the standards, the  
2 federal standards for those, and EPA is  
3 encouraging states to do that in this case as  
4 states consider whether to develop programs for  
5 the CCR program.

6 The plan simply lays out the agency's --  
7 or the state's intent to develop that program.  
8 It itself does not establish any requirement.

9 The agency would still have to go through the  
10 standard rule-writing process with affected  
11 stakeholders and bring a rule to the Board for  
12 consideration before we would implement any  
13 program.

14 DR. ALEXANDROVICH: Thank you.

15 CHAIRMAN GARD: Any further  
16 questions?

17 MS. AGUILAR: Jeff, if they wanted to  
18 see the Solid Waste Management Plan, where would  
19 they go for that? Is that currently on our Web  
20 site?

21 MR. SEWELL: It'll soon be posted on  
22 our Web site.

23 MS. AGUILAR: All right.

1 MR. SEWELL: It's in the --

2 MS. AGUILAR: Then you can get some

3 more information on that, so -- but 329

4 encompasses more than just solid waste.

5 DR. ALEXANDROVICH: Uh-huh.

6 MS. AGUILAR: There's hazardous waste

7 and other rules that don't have to do with this.

8 CHAIRMAN GARD: Okay. Thank you very

9 much.

10 MS. AGUILAR: Huh-uh.

11 CHAIRMAN GARD: I don't have any

12 speaker cards, so is there Board discussion on

13 the emergency rule?

14 (No response.)

15 CHAIRMAN GARD: Seeing none, do I

16 hear a motion to adopt the emergency rule?

17 MR. DAVIDSON: So moved.

18 CHAIRMAN GARD: Is there a second?

19 MR. POWDRILL: Second.

20 CHAIRMAN GARD: All in favor, say

21 aye.

22 MR. HORN: Aye.

23 DR. NIEMIEC: Aye.

1 DR. ALEXANDROVICH: Aye.

2 MS. BOYDSTON: Aye.

3 MR. POWDRILL: Aye.

4 MR. DAVIDSON: Aye.

5 MR. METTLER: Aye.

6 MR. HILLSDON-SMITH: Aye.

7 MR. BAUSMAN: Aye.

8 MR. SMITH: Aye.

9 CHAIRMAN GARD: Aye.

10 Those opposed, nay.

11 (No response.)

12 CHAIRMAN GARD: The motion to adopt

13 the emergency rule is passed.

14 Okay. This is a public hearing before the

15 Environmental Rules Board of the State of Indiana

16 concerning final adoption of amendments to rules

17 at 329 IAC 1, Cost Recovery for Review of

18 Amendments to Restrictive Covenants.

19 I will now introduce Exhibit C, the

20 preliminarily adopted rules with IDEM's suggested

21 changes incorporated, into the record of the

22 hearing.

23 Lauren Aguilar will present the rule.

1 MS. AGUILAR: Good afternoon, again.  
2 My name is Lauren Aguilar, and I am here to talk  
3 with you about the Cost Recovery for Restricted  
4 Covenants.

5 The department is proposing amendments to  
6 329 IAC 1 to describe the process for requesting  
7 a modification of a restrictive covenant and  
8 allow for cost recovery. On October 14, 2015  
9 this Board preliminary adopted the proposed  
10 amendments.

11 To quickly review, restrictive covenants  
12 are land-use restrictions recorded in the county  
13 of the restricted property. Restrictive  
14 covenants are typically used in lieu of full  
15 cleanup and closure, because they are more cost  
16 effective.

17 Using a risk-based standard as prescribed  
18 by Indiana statute, sites with greater risks to  
19 contaminant exposures require more use  
20 limitations than sites with lower contaminant  
21 exposure risks. Restrictions are also based on  
22 current and anticipated land use. Prospective  
23 purchasers of the land are aware of the

1 restrictions and this is often reflected in the  
2 price of the land.  
3 Indiana statute authorizes an owner of  
4 property with a restrictive covenant to request a  
5 modification from the department if there has  
6 been a change in conditions or advancement in  
7 science or technology that would allow for a  
8 modification. The proposed modification of the  
9 conditions and restrictions may not increase the  
10 potential hazards to human health or the  
11 environment.

12 Additionally, the statute instructs the  
13 Environmental Rules Board to adopt rules for  
14 cost recovery. The costs associated with  
15 reviewing the modification request include  
16 administrative and personnel expenses.

17 Currently, there are over 1800 remediation  
18 sites in Indiana with a restrictive covenant.  
19 The department has received approximately 30  
20 requests over the past three years for a  
21 modification or termination, with only five  
22 requests received in 2015.

23 Modifying a restrictive covenant will

1 benefit the landowner who can potentially  
2 increase the value of the property, but the  
3 department must ensure that human health and the  
4 environment are still protected. Reimbursement  
5 of costs to the department will allow the  
6 department to properly review the modification  
7 requests while maintaining a high level of  
8 customer service.

9 The department has calculated the cost for  
10 personnel expenses using wages, benefits, payroll  
11 taxes and the like incurred by the department to  
12 employ personnel. The rate is also adjusted for  
13 inflation using the Midwest region urban zone  
14 consumer price index. The current rate is \$75  
15 per employee hour worked.

16 Any administrative expenses will be actual  
17 costs incurred by the department. The average  
18 review is approximately 20 hours of staff time,  
19 and administrative expenses are typically zero,  
20 which brings the total average cost to review a  
21 request to be \$1500.

22 The department did not receive any  
23 comments during the first and second comment

1 period. Comments were received during the first  
2 public hearing, and there was Board discussion  
3 about some of the proposed provisions in the  
4 rule. Concerns were expressed about the  
5 regulated community's ability to anticipate  
6 costs.

7 IDEM held internal meetings and conducting  
8 research on the effectiveness and legality of the  
9 proposed rule language. An in-depth memo was  
10 provide on December 30th, 2015 to address the  
11 concerns you raised during preliminary adoption.  
12 This memo has also been included in your Board  
13 packet.

14 To summarize, the department concluded  
15 that in order to comport Indiana statute, the  
16 proposed rule must contain provisions for cost  
17 recovery. However, for transparency and to aid  
18 the regulated community in anticipating costs,  
19 IDEM has included changes to the proposed rule  
20 language to include the hourly rate of \$75 that  
21 will be charged for personnel expenses.

22 IDEM also researched other Midwestern  
23 states' programs and concluded that Indiana was

1 either in line or less expensive than our  
2 companion states. In a timely fashion,  
3 Wisconsin's DNR actually just recently published  
4 draft guidance addressing these similar  
5 modifications and established a set fee totaling  
6 \$1400, which is pretty illustrative that IDEM is  
7 pretty similar to what other states are doing.  
8 One of our other companion states, Michigan, does  
9 not currently charge for the services.

10 The department respectfully requests the  
11 Board finally adopt the rule with IDEM's  
12 suggested changes as presented. Program staff is  
13 available should you have any questions.

14 CHAIRMAN GARD: Are there any  
15 questions for Lauren?

16 MS. BOYDSTON: I just have one.

17 CHAIRMAN GARD: Yes.

18 MS. BOYDSTON: Lauren, I think I was  
19 the person who asked you to look into these  
20 things, so --

21 MS. AGUILAR: Sure.

22 MS. BOYDSTON: -- thank you, and I  
23 think you did a nice job of looking at all of the

1 doughnut states. I appreciate that. The heart  
2 of it, and the question I had, was more related  
3 to a cap.

4 MS. AGUILAR: Uh-huh.

5 MS. BOYDSTON: You know, as we go  
6 forward, in the case of permits, you know, we  
7 know exactly what we're going to pay for the  
8 majority of permit applications, et cetera, but  
9 what I was looking for is a cap. So -- and I see  
10 that one of the neighboring states has a cap.

11 Is it possible for us to have something  
12 that would limit the amount of -- the cost to the  
13 requester, because you have -- it's -- the  
14 language that we have in here says that you have  
15 to recover any costs and all costs, and I -- it  
16 still feel like that could mount.

17 MS. AGUILAR: I understand. I  
18 understand your concern.

19 MS. BOYDSTON: So, I'm looking for a  
20 cap.

21 MS. AGUILAR: IDEM decided that a cap  
22 would not necessarily comport with the  
23 authorizing legislation, which says "to recover

1 costs." I do know the state that you're speaking  
2 about that does have a cap, their cap is tied to  
3 state statutory language that says that you will  
4 charge fees in this manner up to a cap.

5 MS. BOYDSTON: Uh-huh.

6 MS. AGUILAR: So, IDEM's recovery  
7 costs are what we feel comports with the  
8 authorizing legislation.

9 MS. BOYDSTON: So, tell me again what  
10 steps you'll take to make sure that the final  
11 expense to the requester stays in line.

12 MS. AGUILAR: Well, that actually  
13 might be better answered by -- well, my assistant  
14 did not come, but Bruce might be able to shed  
15 some light on this, as well as Peggy, as to how  
16 the process works when they -- I don't want to  
17 speak incorrectly, because I don't run their  
18 program, about how the process works when they  
19 bring these things in.

20 MR. PALIN: Yeah. It's very similar  
21 to the VRP program, where we are allowed to  
22 recover our costs and essentially keep track of  
23 our staff's actual time on specific projects, and

1 that's what the company gets billed for is the  
2 actual time spent. So -- and certainly we'd be  
3 more than happy to sit down with an applicant if  
4 they want to try and get an estimate of the  
5 amount of time that may be required.

6 The problem is these projects range from  
7 very simple to very complicated, and so, some may  
8 only take an hour or so, some may take 10 or 15  
9 hours of staff time to process, depending upon  
10 what all's being required or requested.

11 So -- but we have -- we can certainly sit  
12 down with an applicant when they come in and give  
13 us an idea of what -- how complicated their  
14 request is and the specifics of what they want  
15 changed, and try to give them some kind of an  
16 estimate of what -- the cost they might be  
17 looking at.

18 MS. BOYDSTON: I think that would be  
19 a valuable thing to do. Is the structure around  
20 the VRP program in the same way, in that you  
21 can't apply a cap to that as well?

22 MR. PALIN: Yeah, there's no cap in  
23 the VRP program either.

1 MS. BOYDSTON: Okay.

2 MR. PALIN: It's even more difficult  
3 to predict there because you're doing assessments  
4 and valuing an unknown situation. At least with  
5 the restrictive covenants the site's already been  
6 evaluated, the specific concerns have been  
7 identified, and restrictions put in place  
8 consistent with that. So, it's actually a little  
9 easier to look at one of those and be able to  
10 quantify the amount of work required to be able  
11 to get to a revised restrictive covenant.

12 MS. BOYDSTON: Well, I think you can  
13 be compliant with what your structure is. I  
14 would just say I think it would be valuable to  
15 not incur costs until the requester has an  
16 understanding what those costs are going to be,  
17 because you can pursue those costs if you've  
18 already -- there's nothing that says you can't  
19 incur those costs without their knowledge, and  
20 then they have to pay for whatever that cost  
21 would be, and that just feels uncomfortable to  
22 me.

23 MR. PALIN: Right. Well -- and

1 that's where coming in and meeting with us in  
2 advance and saying, "Here's what I want. Can you  
3 give me an idea of how many hours of effort this  
4 is?" We can get it in the pall bark. We can't  
5 necessarily guarantee, because you never know  
6 once you get into it what you might encounter,  
7 but we can certainly keep the communication open  
8 with them, if we see that things are going to  
9 run -- be more involved than what we originally  
10 expected.

11 MS. BOYDSTON: Okay.

12 CHAIRMAN GARD: Any other questions  
13 of Lauren or Bruce or any staff from the Board?

14 (No response.)

15 MS. AGUILAR: And just to supplement  
16 what Bruce already said, the statute lays out how  
17 these modifications need to be requested from the  
18 department. It's completely in the landowner's  
19 purview, and they also have to provide us with  
20 the information that would allow us to conduct a  
21 reasonable review to make a decision.

22 So, the amount of time that we would spend  
23 reviewing these is also a lot of -- in the

1 landowner's control. If they provide us with  
2 good information about what's currently going on  
3 with the site, we can whip through these things,  
4 get them their approval, and let them do their  
5 own thing.

6 CHAIRMAN GARD: Thank you.

7 MS. AGUILAR: Thank you.

8 CHAIRMAN GARD: I don't have any  
9 speaker -- well, maybe I do. No? I have no  
10 speaker cards for this rule, so the hearing is  
11 concluded. The Board will now consider final  
12 adoption of amendments to rules concerning Cost  
13 Recovery for Review of Amendments to Restrictive  
14 Covenants. So, is there Board discussion?

15 (No response.)

16 CHAIRMAN GARD: Do I hear a motion to  
17 adopt IDEM's suggested changes?

18 DR. NIEMIEC: So moved.

19 CHAIRMAN GARD: Is there a second?

20 MR. POWDRILL: Second.

21 CHAIRMAN GARD: All in favor, say  
22 aye.

23 MR. HORN: Aye.

1 DR. NIEMIEC: Aye.

2 MS. BOYDSTON: Aye.

3 MR. POWDRILL: Aye.

4 MR. DAVIDSON: Aye.

5 MR. METTLER: Aye.

6 MR. HILLSDON-SMITH: Aye.

7 MR. BAUSMAN: Aye.

8 MR. SMITH: Aye.

9 CHAIRMAN GARD: Aye.

10 Opposed, nay. The motion --

11 DR. ALEXANDROVICH: Nay.

12 CHAIRMAN GARD: -- passes -- pardon

13 me?

14 DR. ALEXANDROVICH: Nay.

15 CHAIRMAN GARD: Okay. One nay. Do I

16 hear a motion to adopt the final rule -- the rule

17 as amended?

18 MR. DAVIDSON: So moved.

19 CHAIRMAN GARD: Is there a second?

20 MR. BAUSMAN: Second.

21 CHAIRMAN GARD: Dr. Alexandrovich?

22 DR. ALEXANDROVICH: No.

23 CHAIRMAN GARD: Ms. Boydston?

1 MS. BOYDSTON: Yes.

2 CHAIRMAN GARD: Mr. Powdrill?

3 MR. POWDRILL: Yes.

4 CHAIRMAN GARD: Mr. Davidson?

5 MR. DAVIDSON: Yes.

6 CHAIRMAN GARD: Mr. Horn?

7 MR. HORN: Yes.

8 CHAIRMAN GARD: Mr. Hillsdon-Smith?

9 MR. HILLSDON-SMITH: Yes.

10 CHAIRMAN GARD: Mr. Bausman?

11 MR. BAUSMAN: Yes.

12 CHAIRMAN GARD: Mr. Smith?

13 MR. SMITH: Yes.

14 CHAIRMAN GARD: Mr. Mettler?

15 MR. METTLER: Yes.

16 CHAIRMAN GARD: Dr. Niemiec?

17 DR. NIEMIEC: Yes.

18 CHAIRMAN GARD: And the Chair votes

19 aye. The rule is adopted ten to one.

20 Okay. This is a public hearing before the

21 Environmental Rules Board of the State of Indiana

22 concerning preliminary adoption of amendments to

23 rules at 329 IAC 12, Solid Waste Facility

1 Operator Certification.

2 I will now introduce Exhibit D, the draft  
3 rules, into the record of the hearing.

4 Who is -- yes, Dan watts will present the  
5 rule.

6 MR. WATTS: Good afternoon,  
7 Chairwoman Gard and members of the Board. I'm  
8 Dan Watts, a rule writer for the Rules  
9 Development Branch, and I'm presenting LSA  
10 Document No. 14-111 for preliminary adoption.

11 LSA Document 14-111 proposes amendments to  
12 the Solid Waste Facility Operator Certification  
13 Rules at 329 IAC 12, which ensure that certain  
14 solid waste facilities are operated by certified  
15 and trained operators.

16 The rulemaking proposes an extensive  
17 reorganization of 329 IAC 12, with the goal to  
18 improve the rules for all parties involved with  
19 operator certification. The amendments offer  
20 additional compliance flexibility for certified  
21 operators through extended recertification time  
22 periods, the option for using a training course,  
23 an examination, or continuing education for

1 recertification, and clear procedures for  
2 certificate revocations and renewal of expired  
3 certificates.

4 Providers of examinations and training  
5 courses are offered increased flexibility through  
6 simplification of overly specific examination and  
7 training course content requirements.

8 We also made extensive amendments to  
9 resolve confusing or inconsistent definitions and  
10 requirements, eliminate unnecessary or repetitive  
11 requirements, and generally make the rules easier  
12 to understand and follow, because these rules  
13 have not been significantly modified for many  
14 years.

15 In addition, the rulemaking includes a  
16 related technical correction at 329 IAC 10-8.2-4  
17 regarding citations and requirements for the  
18 certification of asbestos waste disposal  
19 managers. In a pair of previous rulemakings that  
20 went effective in 2005, the term and requirements  
21 for asbestos waste disposal manager were deleted  
22 from 326 IAC 18-1 and they were added to  
23 329 IAC 12. Because today's rulemaking involves

1 relating subject matter, we are making these  
2 corrections at 329 IAC 10-8.2-4.

3 Representatives from IDEM are available to  
4 answer any questions you may have for this  
5 rulemaking. The department asks that the Board  
6 preliminarily adopt this rule as presented.  
7 Thank you. If anyone has any questions --

8 CHAIRMAN GARD: Are there questions  
9 for Dan?

10 (No response.)

11 CHAIRMAN GARD: No. Thank you.  
12 Speaker cards. Curt Publow.

13 MR. PUBLLOW: Chairwoman Gard, members  
14 of the Board, thank you for your attention this  
15 afternoon. My name is Curt Publow. I'm here  
16 representing the Hoosier Chapter of the Solid  
17 Waste Association of North America.

18 We're here regarding the proposed changes  
19 to the Solid Waste Operator Certification Rules.  
20 SWANA is an organization of professionals  
21 committed to the education and advocacy and  
22 research in the solid waste industry.

23 We would like to thank IDEM for including

1 us in this rule development process, and just  
2 encourage their advancement of these rules, and  
3 we would like to see the Board adopt these rules  
4 as they've been presented. I just wanted to come  
5 in support of IDEM.

6 Thank you.

7 CHAIRMAN GARD: Thank you.

8 Are there any questions for Mr. Publow?

9 (No response.)

10 CHAIRMAN GARD: No. Thank you.

11 The next speaker is Bill -- I'm sorry.

12 MR. PARASKEVAS: Paraskevas.

13 CHAIRMAN GARD: Okay.

14 MR. PARASKEVAS: My name is Bill

15 Paraskevas. I serve as the Facilities Chairman

16 for the Indiana Chapter of the National Solid

17 Waste Management Association, a trade

18 organization representing private waste companies

19 nationally and in Indiana.

20 Our organization is also in support of

21 these rules, and originally I had no comments to

22 make, but during the course of this hearing,

23 during the rule update, it was mentioned that the

1 rules could be finally adopted at the May Board  
2 meeting, which got me thinking about the schedule  
3 a little bit.

4 The rule could take effect during the  
5 middle of this year, when some organizations that  
6 are currently providing courses under the old  
7 rule may still have scheduled training classes or  
8 exams, and while there could be enough time for  
9 them to adjust that, I'd like to suggest that the  
10 Department propose implementation of the new rule  
11 January 1st, which would give a certain date for  
12 people to focus on, and the January 1st date also  
13 corresponds to several sections of the draft  
14 rule, where January 1st is listed as a date for  
15 training course operators or exam providers to  
16 provide their accreditation.

17 That's the substance of my comment.

18 CHAIRMAN GARD: Are there any  
19 questions?

20 (No response.)

21 CHAIRMAN GARD: Thank you.

22 Bruce, can the -- is that January  
23 the 1st -- is it possible to do that?

1 MR. PALIN: I don't see why that  
2 would be a problem to set a date specific for it  
3 to become effective.

4 CHAIRMAN GARD: Because I do think he  
5 makes a good point --

6 MR. PALIN: Yeah.

7 CHAIRMAN GARD: -- if they already  
8 have courses in the works.

9 MR. PALIN: Yeah. And that's  
10 something we could add between preliminary and  
11 final adoption --

12 CHAIRMAN GARD: Yeah.

13 MR. PALIN: -- if you want, sure.

14 CHAIRMAN GARD: Okay. Thank you.  
15 There is a letter that was passed around  
16 from a Mr. -- well, this is from Dan Watts, so we  
17 can go ahead and read that.

18 MR. POWDRILL: Madam Chair, this is  
19 to Dan Watts from the President of SWANA.

20 CHAIRMAN GARD: Oh, okay.

21 DR. NIEMIEC: Yes, we've got a copy  
22 of that.

23 CHAIRMAN GARD: Okay. Is there a

1 motion to preliminarily adopt the rules?

2 MR. DAVIDSON: So moved.

3 CHAIRMAN GARD: Is there a second?

4 MR. POWDRILL: Second.

5 CHAIRMAN GARD: All in favor, say

6 aye.

7 MR. HORN: Aye.

8 DR. NIEMIEC: Aye.

9 DR. ALEXANDROVICH: Aye.

10 MS. BOYDSTON: Aye.

11 MR. POWDRILL: Aye.

12 MR. DAVIDSON: Aye.

13 MR. METTLER: Aye.

14 MR. HILLSDON-SMITH: Aye.

15 MR. BAUSMAN: Aye.

16 MR. SMITH: Aye.

17 CHAIRMAN GARD: Aye.

18 Opposed, nay.

19 (No response.)

20 CHAIRMAN GARD: The rule is

21 preliminarily adopted.

22 We will now have a presentation on the

23 Nonrule Policy Document regarding an Alternative

1 Water Supply. Michael Habeck from IDEM will  
2 present the document.

3 MR. HABECK: Good afternoon. My name  
4 is Mike Habeck. I work in the Office of Land  
5 Quality.

6 So, this Nonrule Policy Document concerns  
7 private drinking water wells that have been  
8 affected by a chemical release. The state law  
9 provides for actions, including the provision of  
10 an alternate water supply, that would address  
11 that risk.

12 This document does not address background  
13 concentrations of chemicals in drinking water,  
14 and it does not address public water supplies,  
15 but it does have four parts that we hope will  
16 promote timely, consistent and cost-effective  
17 application of IDEM's authority to reduce risk.

18 The first part describes when IDEM  
19 proposes to ask responsible parties to provide an  
20 alternate water supply. That's generally when a  
21 water supply exceeds screening levels that IDEM  
22 publishes.

23 The second part describes steps that we

1 consider necessary for demonstrating that an  
2 alternate water supply is safe for its -- fit for  
3 its intend use. Typically that involves  
4 sampling.

5 The third part describes procedures that  
6 we think are appropriate for showing that an  
7 alternate water supply is no longer necessary.  
8 Again, that involves sampling of the original  
9 water source.

10 And the fourth part basically states that  
11 IDEM will, at its discretion, though not required  
12 to do so by state law, provide an alternate water  
13 supply and seek to recover costs from the  
14 responsible party once that party is identified.

15 That's all I have.

16 CHAIRMAN GARD: Are there any -- any  
17 questions?

18 Yes, Gary.

19 MR. HABECK: Yes.

20 MR. POWDRILL: I'm just kind of  
21 confused as to why this particular Nonrule Policy  
22 Document comes into the purview of the Office of  
23 Land Quality and not the purview of the Office of

1 Water Quality, because it is contaminated water  
2 that people would be drinking or swimming in. I  
3 don't understand it.

4 MR. HABECK: That probably has an  
5 historical basis that predates my employment at  
6 IDEM.

7 (Laughter.)

8 MR. HABECK: I think historically we  
9 have been involved in these situations because of  
10 releases to the land through tank programs or  
11 voluntary remediation programs or other programs  
12 which are under the purview of the Office of Land  
13 Quality.

14 CHAIRMAN GARD: Bruce is shaking his  
15 head yes, so --

16 MR. PALIN: It doesn't predate me.

17 (Laughter.)

18 MR. POWDRILL: Dinosaurs don't  
19 predate you, Bruce.

20 MR. PALIN: That's true.

21 (Laughter.)

22 MR. PALIN: That's -- Mike's answer  
23 is correct. We often, in evaluating or

1 researching remediation sites or contamination  
2 sites, because we're the ones who encounter  
3 individual private wells that become  
4 contaminated.

5 And so, we have in the past in those  
6 situations provided alternative water until we  
7 can identify a specific source and have those  
8 responsible parties that are responsible for the  
9 contamination to take that over. So, that's why  
10 it's kind of grown out of our office.

11 MR. POWDRILL: I'm just kind of  
12 wondering if there might be some confusion on  
13 who's in charge. I mean just what you explained,  
14 or there could be lead or -- you know.

15 MR. PALIN: Yeah.

16 MR. POWDRILL: Now, lead's going to  
17 come under water quality, so --

18 MR. PALIN: Well -- and certainly the  
19 Office of Water Quality deals with public water  
20 supply systems. This is limited to just private  
21 well type situations, and -- but we do work with  
22 them also on those kind of situations that we  
23 encounter as far as opportunities -- sometimes

1 it's a matter of running a public water supply  
2 out to provide water to some type of contaminated  
3 well.

4 So, we certainly communicate back and  
5 forth and work with them on that, but we seem to  
6 be the office that encounters that situation, and  
7 have the authorities to pursue the responsible  
8 parties to cover the costs of those alternative  
9 water supplies.

10 CHAIRMAN GARD: Any other questions?

11 (No response.)

12 CHAIRMAN GARD: Is -- well, I don't  
13 know about this.

14 Thank you.

15 MR. HABECK: Thank you.

16 CHAIRMAN GARD: Okay. Open Forum.  
17 Is there anyone who wishes to address the Board  
18 today?

19 (No response.)

20 CHAIRMAN GARD: Seeing none, the next  
21 meeting of the Environmental Rules Board is  
22 tentatively set for May the 11th, 2016 in -- at  
23 1:30 in a conference room on the 13th floor of

1 Government Center North, Room 1319.

2 So, are we pretty fixed on May, or --

3 MS. KING: At this point, I think we

4 are.

5 CHAIRMAN GARD: Okay.

6 DR. ALEXANDROVICH: Can I ask -- so,

7 does that mean it wouldn't come in April, or --

8 MS. KING: I beg your pardon?

9 DR. ALEXANDROVICH: Does that mean --

10 if you're fixed on May, does that mean it

11 might -- it won't be in April, or it will -- or

12 that's still a possibility on the table?

13 MS. KING: At this point, based on

14 the schedule that Chris spoke with you about, May

15 appears to be the earliest we would be having a

16 meeting. We don't want to bring you here for a

17 very minimal amount for you to do, so we want to

18 have enough for you to do without overwhelming,

19 so --

20 CHAIRMAN GARD: Okay. Very good.

21 Is there a motion to adjourn?

22 DR. NIEMIEC: So moved.

23 CHAIRMAN GARD: Is there a second?

1 MR. BAUSMAN: Second.  
2 CHAIRMAN GARD: All in favor, say  
3 aye.  
4 MR. HORN: Aye.  
5 DR. NIEMIEC: Aye.  
6 DR. ALEXANDROVICH: Aye.  
7 MS. BOYDSTON: Aye.  
8 MR. POWDRILL: Aye.  
9 MR. DAVIDSON: Aye.  
10 MR. METTLER: Aye.  
11 MR. HILLSDON-SMITH: Aye.  
12 MR. BAUSMAN: Aye.  
13 MR. SMITH: Aye.  
14 CHAIRMAN GARD: Aye.  
15 Opposed, nay.  
16 (No response.)  
17 CHAIRMAN GARD: We're adjourned.  
18 - - -  
19 Thereupon, the proceedings of  
20 February 10, 2016 were concluded  
21 at 2:46 o'clock p.m.  
22 - - -  
23

1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned  
3 Court Reporter and Notary Public residing in the  
4 City of Shelbyville, Shelby County, Indiana, do  
5 hereby certify that the foregoing is a true and  
6 correct transcript of the proceedings taken by me  
7 on Wednesday, February 10, 2016 in this matter  
8 and transcribed by me.

9

10

\_\_\_\_\_

11

Lindy L. Meyer, Jr.,

12

Notary Public in and

13

for the State of Indiana.

14

15 My Commission expires October 27, 2016.

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