

1 BEFORE THE STATE OF INDIANA
2 ENVIRONMENTAL RULES BOARD

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6 PUBLIC MEETING OF MAY 11, 2016

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10 PROCEEDINGS

11 before the Indiana Environmental Rules Board,

12 Beverly Gard, Chairman, taken before me, Lindy L.

13 Meyer, Jr., a Notary Public in and for the State

14 of Indiana, County of Shelby, at the Indiana

15 Government Center North, 100 North Senate Avenue,

16 Room N1319, Indianapolis, Indiana, on Wednesday,

17 May 11, 2016 at 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
22 12922 Brighton Avenue
23 Carmel, Indiana 46032
23 (317) 848-0088

1 APPEARANCES:

2 BOARD MEMBERS:

- 3 Beverly Gard, Chairman
- 4 Thomas R. Anderson
- 5 Gary Powdrill
- 6 Dr. Ted Niemiec
- 7 Joanne Alexandrovich
- 8 Kelly Carmichael
- 9 Ken Rulon
- 10 Chris Horn
- 11 Gail Boydston
- 12 Calvin Davidson
- 13 Mike Mettler, Proxy, Department of
- 14 Health
- 15 Robert Carter, Jr., Proxy, Department of
- 16 Natural Resources
- 17 Devin Hillsdon-Smith, Proxy, Indiana Economic
- 18 Development Corporation
- 19 David Bausman, Proxy, Lieutenant
- 20 Governor

21 IDEM STAFF MEMBERS:

- 22 Bruno Pigott
- 23 Chris Pedersen
- 24 Nancy King
- 25 MaryAnn Stevens
- 26 Martha Clark Mettler
- 27 Stacy Jones
- 28 Lauren Aguilar
- 29 Keith Baugues
- 30 Dan Watts
- 31 Jody Arthur
- 32 Valerie Tachtiris

33 PUBLIC SPEAKERS:

- 34 Justin Barrett
- 35 Pat Coughlin
- 36 Ben Wicker
- 37 Bowden Quinn

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1 1:30 o'clock p.m.
2 May 11, 2016

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4 CHAIRMAN GARD: The Chair sees a
5 quorum, so I think we'll call the May 11, 2016
6 meeting of the Indiana Environmental Rules Board
7 to order. The minutes have been distributed.
8 Are there any additions or corrections to the
9 minutes as distributed?

10 MR. POWDRILL: A question.

11 CHAIRMAN GARD: Yes.

12 MR. POWDRILL: Now, based upon that
13 discussion that we had after the last meeting,
14 are we going to continue to receive those, or are
15 we not going to continue to receive those?

16 MS. KING: I can answer that. Nancy
17 King, with IDEM. We -- for purposes of
18 information, we have had a discussion with the
19 Board members about whether we wanted to continue
20 to provide the meeting summary, given the fact
21 that we provide the full transcript on-line now.

22 And --

23 (Laughter.)

MS. KING: Well, I don't know how I

1 lost my train of thought there. So, basically,
2 after the Board members kind of discussed it
3 among themselves and said to me, the majority of
4 the votes I got on that was that folks do like to
5 have the minutes provided.

6 There was some suggestion, and I believe
7 it was Mr. Etzler, who will not be able to attend
8 today's meeting, had suggested that he likes to
9 get them electronically. We're going to continue
10 to provide them to you. I presume you want to
11 still vote on them. We can provide them hard
12 copy.

13 We provide them both ways to you now, so
14 whatever the Board's preference is, is fine.
15 We're happy to do that. We were just trying to
16 sort of cut down on some of the paperwork that
17 you folks get. So, whatever your choice is,
18 we're happy to do, but we will continue to
19 summarize from the full transcript and provide
20 those for you.

21 CHAIRMAN GARD: Okay. Well, let's
22 approve these, and then we can have a short
23 discussion on that. Is there a motion to approve

1 the minutes as distributed?

2 MR. RULON: So moved.

3 DR. NIEMIEC: Second.

4 CHAIRMAN GARD: All in favor, say

5 aye.

6 MR. HILLSDON-SMITH: Aye.

7 DR. NIEMIEC: Aye.

8 MR. ANDERSON: Aye.

9 MR. BAUSMAN: Aye.

10 MR. POWDRILL: Aye.

11 MR. HORN: Aye.

12 MR. METTLER: Aye.

13 MR. DAVIDSON: Aye.

14 MR. CARMICHAEL: Aye.

15 DR. ALEXANDROVICH: Aye.

16 MS. BOYDSTON: Aye.

17 MR. RULON: Aye.

18 CHAIRMAN GARD: Aye.

19 Opposed, nay.

20 (No response.)

21 CHAIRMAN GARD: The summary is

22 approved. All right. How many people want the

23 hard copy?

1 (A few hands raised.)

2 CHAIRMAN GARD: How many people are
3 satisfied with getting a copy electronically?

4 (Several hands raised.)

5 CHAIRMAN GARD: I think that's your
6 answer, Nancy. Most for electronically.

7 MS. KING: All right.

8 CHAIRMAN GARD: Okay. Bruno Pigott
9 is going to give the Commissioner's Report.

10 MR. PIGOTT: Thank you, Chairman

11 Gard, members of the Board. My name's Bruno
12 Pigott, Chief of Staff, IDEM.

13 I just have two items to talk about today.

14 First of all, the agency is accepting public
15 comments on Indiana's Coal Combustion Residuals

16 Waste -- Solid Waste Management Plan until
17 June 30th. We're going to have a public hearing

18 on this on June 16th here in Indianapolis, at the
19 Government Center South building, from 1:00 till

20 2:00 p.m. in Conference Center C, at -- just
21 across the street, 302 West Washington.

22 So, the plan amends Indiana's existing
23 Solid Waste Management Plan, which was last

1 approved in 1991, and it describes our plan to
2 incorporate federal CCR rules for CCR landfills
3 and surface impoundments into our landfill rules.
4 It's going to describe the criteria IDEM will use
5 when approving compliance schedules or surface
6 impoundments.

7 And the ERB's action, the Board's action,
8 to renew the CCR Emergency Rule in today's
9 meeting is an important and necessary step in
10 supporting that portion of the plan. You should
11 also know that the plan does not specifically
12 require adoption or approval by the Environmental
13 Rules Board, but, of course, we would welcome the
14 Board's comments on the plan, and we'd be glad to
15 answer any questions, "we" being Bruce Palin and
16 Peggy Dorsey, not myself.

17 (Laughter.)

18 MR. PIGOTT: Next steps. Next steps,
19 upon completion of the public participation
20 process, IDEM will produce a final plan for
21 approval by our Commissioner, who will -- then
22 once that's done, will prepare a response to
23 comments and submit the plan to EPA for approval.

1 We've got a Web page on the Office of Land
2 Quality Web site that has more information on the
3 plan. Jeff Sewell in the Office of Land Quality
4 is our point person on this, and if you know Jeff
5 personally, feel free to bring up the topic with
6 him as well. So, that's the update on that.

7 A second Office of Land Quality issue is
8 that we've created a technical review panel in
9 our Office of Land Quality. We have several
10 sites in state cleanup or VRP where sometimes
11 technical issues get in the way of keeping the
12 site moving and getting a site cleaned up.

13 So, we've established a technical review
14 panel in the event that the agency and outside
15 entities are having trouble resolving technical
16 issues, and we just wanted you all to know about
17 it, in the event that there are issues, they're
18 welcome to bring them to the technical review
19 panel, and the review panel will take a look at
20 all sides of the issues and the complex nature of
21 these technical issues and hopefully be able to
22 keep these sites moving forward in cleanup.

23 It's just one of the things we're doing to

1 make sure that both programs keep moving and keep
2 their sites from stagnating and not getting
3 cleaned up in time, because we believe that it's
4 important to put these sites into productive use.

5 So, those are just a couple of efforts
6 that are going on at the agency, and that's my
7 report. Of course, I'm happy to answer any
8 questions that you all have.

9 CHAIRMAN GARD: Does the Board have
10 any questions for Bruno?

11 (No response.)

12 CHAIRMAN GARD: No.

13 MR. PIGOTT: Thank you.

14 CHAIRMAN GARD: Thank you.

15 For those people standing, there are a few
16 seats up front. Not interested? Okay.

17 MR. PIGOTT: This is the guy you talk
18 to.

19 (Laughter.)

20 CHAIRMAN GARD: Okay. There's still
21 two or three more seats available.

22 Chris Pederson, talk to us about
23 rulemaking.

1 MS. PEDERSEN: Can everybody hear me
2 okay? This is our new high-tech podium here.
3 Can everybody hear me in the back okay?
4 My name is Chris Pedersen. I'm with the
5 Rules Development Branch, and I wanted to mention
6 some of the rules that we anticipate coming
7 before you for the next Board meeting. At this
8 time, we expect them to -- likely to be ready for
9 the August 10th Board meeting.
10 The first of these are the emergency
11 rules. There are three of them. They're all
12 coming before you today. We would anticipate, if
13 they're adopted today, that they would also be
14 coming back at the next meeting in August.
15 In addition to that, there is a rule
16 before you today for preliminary adoption. It's
17 the reference updates to the Confined Feeding
18 Operation Rules. That, if it's preliminarily
19 adopted today, we would anticipate coming back
20 before you for final adoption in August.
21 Then we have two rules which are part of
22 our Section 8 Notice rulemaking. That's our
23 expedited rulemaking where there's only one

1 hearing. The first of those is the Hazardous
2 Waste Updates, and in that, we are just taking
3 some federal hazardous waste rules and
4 incorporating them into our state rules.

5 The second one is emission reporting for
6 Lawrenceburg Township in Dearborn County. In
7 this one, the area, which is Lawrenceburg
8 Township only, that part of Dearborn County, it
9 has attained the 2008 eight-hour ozone standard.
10 However, in order to designate it to attainment,
11 we have to have an emissions reporting
12 requirement that's established within our rules,
13 and so, this is the rulemaking that would be
14 doing that.

15 Also, possibly ready in August for
16 preliminary adoption, we have a startup, shutdown
17 and malfunction rule. This is an air rule, and
18 it's addressing deficiencies that were identified
19 by EPA to startup, shutdown and malfunction
20 provisions in state rules. Indiana is one of 36
21 states that have some changes they need to make
22 to their rules. So, that would be for
23 preliminary adoption.

1 Also, the rule for the definition of
2 interference, which came before you previously as
3 a citizens' petition, we anticipate that it will
4 be ready for preliminary adoption also in August,
5 and in that one, we are making the state
6 definition of interference consistent with the
7 federal definition.

8 And then the Total Coliform Revisions
9 Rule, that would be the regular rulemaking that
10 would take the place of the emergency rule that's
11 before you today. And also in August, we would
12 probably have the hearings for the nonexpiring
13 rules, as we do each year.

14 And that's what we think we might have in
15 August.

16 CHAIRMAN GARD: Thank you.

17 Are there questions for Chris?

18 (No response.)

19 CHAIRMAN GARD: Thank you, Chris.

20 Today there will be a public -- there will
21 be public hearings prior to consideration for
22 final adoption of the Solid Waste Facility
23 Operator Certification, and prior to

1 consideration for preliminary adoption of CAFO
2 and CFO Reference Updates. Also today, we have
3 three emergency rules that the Board will be
4 asked to adopt, revisions to the total coliform
5 rules, coal combustion residuals and sulfur
6 dioxide monitoring.

7 We will also have a presentation and a
8 hearing on the 2016 draft 303(d) List of Impaired
9 Waters under the Clean Water Act.

10 Finally, we have one nonrule policy
11 document presentation today on RCRA applicability
12 to baghouse dust and dust collection storage
13 tanks.

14 The rules being considered in today's
15 meetings are included in Board packets and are
16 available for public inspection at the Office of
17 Legal Counsel, 13th floor, Indiana Government
18 Center North. The entire Board packet is also
19 available on IDEM's Web site at least one week
20 prior to each Board meeting.

21 A written transcript of today's meetings
22 will be made. The transcript and any written
23 submissions will be open for public inspection at

1 the Office of Legal Counsel. A copy of the
2 transcript will be posted on the rules page of
3 the agency Web site when it becomes available.

4 Will the official reporter of the cause
5 please stand, raise your right hand and state
6 your name?

7 (Reporter sworn.)

8 CHAIRMAN GARD: Thank you.

9 The Board will now consider adoption of an
10 emergency rule to incorporate federal updates to
11 the Total Coliform Rules known as the Revised
12 Total Coliform Rule. This is the first extension
13 of the emergency rule which we originally adopted
14 at the February Board meeting.

15 I will enter Exhibit A, the draft
16 emergency rule, into the record of the meeting.
17 MaryAnn Stevens presented the emergency rule. Is
18 there Board discussion?

19 (No response.)

20 CHAIRMAN GARD: Is there a motion to
21 adopt the emergency rule? Oh, sorry.

22 (Laughter.)

23 MS. STEVENS: That's fine. Your

1 summary basically said much of everything I've
2 got to present, but we can go through the precise
3 wording.

4 CHAIRMAN GARD: Yes, please do. I
5 just got ahead of myself.

6 MS. STEVENS: Are you ready?

7 CHAIRMAN GARD: Yeah.

8 MS. STEVENS: All right. Good
9 afternoon, members of the Board. I am MaryAnn
10 Stevens, a rule writer in the Office of Legal
11 Counsel, Rules Development Branch.

12 This is the second request by IDEM asking
13 the Board to adopt an emergency rule so that the
14 federally required revisions to the total
15 coliform rule adopted by the United States
16 Environmental Protection Agency under the Safe
17 Drinking Water Act will be included in Indiana's
18 Administrative Rules as part of Title 327.

19 At the Board meeting on February 10th,
20 2016, the Board adopted this emergency rule for
21 the first time in order to place the federal
22 requirements into Title 327 before the federal
23 deadline of April 1st, 2016.

1 The second notice for the regular
2 rulemaking to include the federally required
3 revised Total Coliform Rule and associated rule
4 revisions will be posted in the Indiana Register
5 today for a 30-day comment period that will end
6 on June 10th. We are scheduling the hearing for
7 consideration of preliminary adoption for the
8 Board meeting on August 10th.

9 The emergency rule adopts the requirements
10 and the minor revisions to various drinking water
11 standards affected by the revisions to the Total
12 Coliform Rule through incorporation by reference
13 of the federal rule.

14 If IDEM does not amend the state rules to
15 include the federally required changes to the
16 total coliform rule and the various minor
17 revisions to the drinking water standards, there
18 would be the potential for IDEM to lose primacy
19 to conduct the state's drinking water program as
20 required under the Safe Drinking Water Act, loss
21 of federal funding for the drinking water
22 program, and regulated entities would still be
23 required to comply with the federal standards,

1 but without the support, training or educational
2 assistance provided by IDEM's drinking water
3 program.

4 As a repeat of the background that I
5 mentioned to you in February, the Federal Total
6 Coliform Rule was adopted in 1989. The current
7 revisions to that rule were published in the
8 Federal Register on February 13th, 2013, and
9 technical corrections to the final rule revisions
10 were published on February 26th, 2014.

11 The revised Total Coliform Rule offers a
12 meaningful opportunity for greater public health
13 protection beyond the 1989 Total Coliform Rule.
14 Under the revised rule, there is no longer a
15 monthly maximum contaminant level violation for
16 multiple total coliform detections. Instead,
17 public water systems that have an indication of
18 coliform contamination in the distribution system
19 will be required to assess the problem and take
20 corrective action that may reduce cases of
21 illnesses and death due to potential fecal
22 contamination and waterborne pathogen exposure.

23 The revised Total Coliform Rule also

1 updates provisions in other drinking water rules
2 that reference analytical methods and other
3 requirements in the 1989 Total Coliform Rule; for
4 example, the public notification and the
5 groundwater rules.

6 These revisions to the Total Coliform Rule
7 are in accordance with the 1996 Safe Drinking
8 Water Act amendments that require the U.S. EPA to
9 review and revise as appropriate each national
10 primary drinking water regulation not less than
11 often -- not less often than every six years.

12 These revisions also conform to the Safe Drinking
13 Water Act provision that requires any revision to
14 maintain or provide for greater protection of the
15 health of persons.

16 And I'm open for questions, and technical
17 staff from the Drinking Water Branch also are
18 here that can more specifically answer questions.

19 CHAIRMAN GARD: Okay.

20 Are there questions for MaryAnn or the
21 staff?

22 MR. POWDRILL: MaryAnn, why does it
23 take so long to go from first notice to second

1 notice? First notice was in March of 2014.

2 That's over two years ago, and we always say it

3 takes 18 years -- or 18 months --

4 (Laughter.)

5 MR. POWDRILL: Yeah, years is

6 probably closer -- 18 months to do a total

7 rulemaking.

8 MS. STEVENS: Well --

9 MR. POWDRILL: So, this is well

10 beyond even the 18 months and we're not even at

11 second notice.

12 MS. STEVENS: It's true, and

13 Dr. Alexandrovich asked the same question at the

14 preliminary -- at the first adoption of the

15 emergency rule in February, and as I stated then,

16 there were some upper-management decisions yet to

17 be made at that point in time, in February, about

18 how we were going to proceed, whether or not we

19 were going to do a -- the permanent rule would be

20 a total incorporation by reference of every

21 portion that was necessary to revise our existing

22 administrative rules, or was it going to be

23 split, and as it turned out, the decision that

1 was made, it's part and part, the --

2 MR. POWDRILL: But at that point, we
3 were already at two years, in February.

4 MS. STEVENS: I think you're right.

5 MR. POWDRILL: Well, I'm --

6 MS. STEVENS: As I was going to add
7 in, the portion that has been decided, that
8 will -- in the permanent rule -- that will be an
9 incorporation by reference. The exact federal
10 language is the 40 CFR 141 Subpart Y. That is
11 the -- that's the guts of it. That's the actual
12 revised -- the revisions to the Total Coliform
13 Rule.

14 All of the other things that you see on
15 the emergency rule that you've got, in
16 subsection (a), the listings of subdivisions (1)
17 through (16), what's listed at subdivision (1),
18 Subpart Y, is what the permanent rule will
19 incorporate by reference of the federal language.

20 All of the other parts will be full text.

21 They're just little bits and pieces of added
22 language to our existing Administrative Rules.

23 The date of April 1st, 2016 is one of the

1 frequently added bits of language that's been
2 added to the other rules.

3 MR. PIGOTT: Martha?

4 CHAIRMAN GARD: Yeah, we have an
5 explanation.

6 MS. METTLER: They can correct me if
7 I'm wrong, but part of the reason this one took
8 longer is that we were basing it off the federal
9 rule and we had to wait and see what they were
10 exactly going to do, and then make sure we
11 followed their guidance and got clarity. There
12 was a lot of work groups back and forth about
13 implementation procedures and that, and we wanted
14 to make sure that would work and satisfy the
15 federal rule and work for IDEM as well.

16 So, knowing that we had to update the rule
17 to be in line with the Feds, we first noticed as
18 soon as we could, but then there was a lot of
19 that negotiation going on over the couple of
20 years.

21 MR. POWDRILL: But our information
22 sheet says the Federal Government published all
23 of the revisions February 26th of 2014, still two

1 years ago.

2 MS. METTLER: Right, but then they
3 have a lot -- theirs are sometimes more general
4 on -- we have discussions about implementation
5 and that kind of thing that we want to make sure
6 will work for Indiana, lots of regional
7 discussions.

8 MS. JONES: They --

9 MS. METTLER: Stacy, help me out.

10 MS. JONES: Stacy Jones, Drinking
11 Water Branch. EPA published the rule language at
12 that point in time. They are still in the
13 process of publishing guidance documents on this
14 rule. So, a lot of it is trying to ensure that
15 everything that's going into guidance is going to
16 fit into the process.

17 Another thing that was holding us back
18 during that time frame was some of the changes
19 not necessarily within IDEM, but in state
20 government overall. The first notice was done
21 initially pretty much right after the
22 Environmental Rules Board was put in place,
23 trying to figure out how things needed to be

1 worded, and also just some of the -- trying to
2 figure out the "no less stringent than" stuff.

3 So, I mean that was some of the timing,
4 and then just negotiating back and forth on are
5 we going to just incorporate the federal rule by
6 reference or are we going to try to take the
7 federal rule language and write it into LSA
8 standards, which was very tough to do, and we
9 tried to do that for about a year and a half.

10 So --

11 CHAIRMAN GARD: Okay. Any other --
12 any questions for MaryAnn?

13 MR. CARMICHAEL: I guess just one --
14 one general comment is --

15 CHAIRMAN GARD: Yes.

16 MR. CARMICHAEL: -- we've got a lot
17 of emergency rules in front of us, and, you know,
18 the statute outlines a robust public process that
19 stakes the 18 months, and I just want to be sure
20 that we're not abusing the emergency rule and
21 circumventing the normal statutory process for
22 public participation in rulemaking.

23 CHAIRMAN GARD: Uh-huh. That's a --

1 that's a valid comment.

2 MS. STEVENS: Well, the emergency
3 rule is just a 90-day temporary. We still are
4 required -- if you want those kind of languages
5 to be permanently in the Administrative Rules,
6 they still have to go through our regular
7 environmental rulemaking process, which includes
8 numerous public comment periods.

9 CHAIRMAN GARD: I do think that one
10 of the things for consideration in this is the
11 fact that the process is made longer because
12 before a rulemaking can begin, a regular
13 rulemaking, it has to go to OMB, and they have to
14 sign off or put their input into it, and this is
15 an element that we've only had to deal with the
16 last three years. We didn't have to deal with
17 that prior to that. So, I do think that has
18 added time to most -- most rules.

19 MR. PIGOTT: That's correct.

20 CHAIRMAN GARD: Okay. Thank you.

21 Now, is there any further Board
22 discussion?

23 (No response.)

1 CHAIRMAN GARD: And finally, is there
2 a motion to adopt the emergency rule?

3 MR. POWDRILL: So moved.

4 CHAIRMAN GARD: Is there a second?

5 MR. HILLSDON-SMITH: Second.

6 CHAIRMAN GARD: All in favor, say
7 aye.

8 MR. HILLSDON-SMITH: Aye.

9 DR. NIEMIEC: Aye.

10 MR. ANDERSON: Aye.

11 MR. BAUSMAN: Aye.

12 MR. POWDRILL: Aye.

13 MR. HORN: Aye.

14 MR. METTLER: Aye.

15 MR. DAVIDSON: Aye.

16 MR. CARMICHAEL: Aye.

17 DR. ALEXANDROVICH: Aye.

18 MS. BOYDSTON: Aye.

19 MR. RULON: Aye.

20 CHAIRMAN GARD: Aye.

21 Opposed, nay.

22 (No response.)

23 CHAIRMAN GARD: The ayes have it.

1 The emergency rule is adopted.

2 The Board will now consider adoption of
3 the emergency rule to incorporate federal
4 requirements for Coal Combustion Residuals. This
5 is first extension of this emergency rule which
6 the Board adopted at the February Board meeting.

7 I will enter Exhibit B, the draft
8 emergency rule, into the record of the hearing.

9 Lauren Aguilar will present the rule.

10 MS. AGUILAR: Good afternoon,
11 Chairman Gard, members of the Board.

12 As Chairman Gard said, this rule was
13 previously adopted on February 10th. Basically
14 this rule is incorporating 40 CFR 257
15 Subpart D -- that was effective on 10-19-2015 --
16 into 329 IAC 10, which deals with solid waste
17 management as well as landfills.

18 40 CFR 257 Subpart D deals with the
19 operation of a surface impoundment for CCR. CCR
20 are fly ash, bottom ash, boiler slag, flue gas,
21 desulfurization materials generated from burning
22 coal, for the purposes of generating electricity
23 by the electric utilities and independent power

1 producers.

2 Specifically, IDEM intends to incorporate
3 40 CFR 257.50 through 40 CFR 257.106. IDEM is
4 incorporating the federal language because
5 329 IAC 10 is limited in scope. We only regulate
6 currently CCR impoundments at final closure if
7 the waste is closed in place.

8 Federal regulations are self-implementing,
9 as we discussed at the last Board meeting, and
10 Indiana's -- again, Indiana's rules are limited
11 in scope, so there's no regulatory agency
12 providing oversight to the closure and
13 regulations of the CCR impoundment.
14 Incorporating this regulation by reference will
15 allow the Department to have authority to ensure
16 compliance and take enforcement action if
17 necessary, and this protects human health and the
18 environment.

19 Additionally, interested stakeholders
20 requested that IDEM take a look at these
21 requirements and consider approving alternative
22 compliance schedules. Alternative compliance
23 schedules are allowed under 40 CFR 256 if the

1 state incorporates this into the Solid Waste
2 Management Plan, and Bruno already gave you a
3 nice update on our efforts in updating the Solid
4 Waste Management Plan.

5 This emergency rule is key to that effort.
6 Indiana needs to be able to show that they can
7 enforce standards that are as stringent as the
8 federal regulations. There -- and because the --
9 because utilities and independent power producers
10 are under such strict compliance deadlines,
11 waiting for a regular rulemaking to run its full
12 course would not allow us to amend our Solid
13 Waste Management Plan and assist them with those
14 compliance schedules in a timely manner.

15 So, this second adoption will allow us to
16 continue our efforts to give you an update. A
17 regular rulemaking has been initiated, and as
18 Chairwoman Gard said, we do have to get
19 permission from the Governor's Office through OMB
20 before we can publish our first notice and get
21 the rulemaking started.

22 And currently we are waiting for their
23 input on the regular rulemaking, but once they

1 give us the go-ahead, we will come forth and you
2 guys will be able to have a rulemaking that has
3 gone through the entire public participation
4 process.

5 The Department respectfully requests that
6 the Board adopt the emergency rule as presented,
7 and I am available to answer any questions that
8 you have, and program staff is also available.

9 CHAIRMAN GARD: Are there any
10 questions for Lauren?

11 MR. POWDRILL: Just one quick one.

12 CHAIRMAN GARD: Uh-huh.

13 MR. POWDRILL: On our summary sheet,
14 it says there's a scheduled public hearing, but I
15 didn't think we had public hearings on emergency
16 rules.

17 MS. AGUILAR: I guess, yes, that is
18 not a public hearing on an emergency rule. It's
19 just kind of your adoption of it.

20 MR. POWDRILL: I think another one of
21 the emergency rules had the same thing on it.

22 MS. AGUILAR: We tend to try to boil
23 things down to boilerplate language, and

1 sometimes we don't think that all of the way
2 through, so I appreciate your catching that for
3 us.

4 MR. POWDRILL: Copy and paste.

5 (Laughter.)

6 CHAIRMAN GARD: Any other comments or
7 questions for Lauren?

8 (No response.)

9 CHAIRMAN GARD: Thank you.

10 MS. AGUILAR: Thank you.

11 CHAIRMAN GARD: Is there any further
12 Board discussion?

13 (No response.)

14 CHAIRMAN GARD: Is there a motion to
15 adopt the emergency rule?

16 MR. CARMICHAEL: So moved.

17 CHAIRMAN GARD: All in favor say aye.

18 MR. HILLSDON-SMITH: Aye.

19 DR. NIEMIEC: Aye.

20 MR. ANDERSON: Aye.

21 MR. BAUSMAN: Aye.

22 MR. POWDRILL: Aye.

23 MR. HORN: Aye.

1 MR. METTLER: Aye.

2 MR. DAVIDSON: Aye.

3 MR. CARMICHAEL: Aye.

4 DR. ALEXANDROVICH: Aye.

5 MS. BOYDSTON: Aye.

6 MR. RULON: Aye.

7 CHAIRMAN GARD: Aye.

8 Opposed, nay.

9 (No response.)

10 CHAIRMAN GARD: The emergency rule is
11 adopted.

12 The Board will now consider adoption of
13 the emergency rule to incorporate federal
14 requirements for Sulfur Dioxide Monitoring.

15 I will enter Exhibit C, the draft
16 emergency rule, into the record of the meeting.

17 Chris Pedersen will present the rule.

18 MS. PEDERSEN: Again, I'm Chris
19 Pederson, with the Rules Development Branch.

20 This emergency rule amends the existing
21 Sulfur Dioxide Monitoring Rule at 326 IAC 7-3 to
22 add a requirement that sources in SO₂
23 nonattainment areas that currently operate an SO₂

1 monitor must continue to do so until the area is
2 redesignated to attainment and the source
3 receives a waiver from the Commissioner allowing
4 the monitor to be discontinued.

5 In 1990, the state rule was revised to say
6 a source emitting more than 10,000 tons per year
7 of SO₂ is required to submit a monitoring plan to
8 the Commissioner for approval that includes the
9 installation and operation of one or two ambient
10 SO₂ quality monitors and a meteorological data
11 acquisition system. This monitoring requirement
12 targeted the sources that were responsible for
13 the majority of the SO₂ emissions in the area.

14 In 2013, EPA designated townships in five
15 counties as nonattainment for the 2010 SO₂
16 National Ambient Air Quality Standard. These
17 counties include Daviess, Marion, Morgan, Pike
18 and Vigo Counties.

19 There are four monitors that have been
20 operating -- four SO₂ monitors that have been
21 operating based on the existing rule in those
22 areas: Indianapolis Power & Light Petersburg
23 Station and the Hoosier Energy Frank E. Ratts

1 Station, both of those in Pike County;
2 Indianapolis Power & Light Eagle Valley Station
3 in Morgan County; and Duke Energy Wabash River
4 Station in Vigo County. So, there are four
5 monitors involved.

6 Now, the Hoosier Energy Ratts Station has
7 ceased operation, so an agreement was reached
8 between Hoosier Energy and IPL, that the IPL
9 Petersburg Station will continue the operation of
10 the Ratts monitor, in addition to the monitor
11 they currently have.

12 In order for EPA to redesignate an area to
13 attainment, one of the requirements is three
14 consecutive calendar years of air quality
15 monitoring data that shows the area is meeting
16 the standard. These four monitors are necessary
17 in order to collect the data necessary for that
18 redesignation to attainment.

19 These sources have either reduced their
20 SO₂ emissions to below 10,000 tons per year, or
21 will soon do so. Due to the use of lower sulfur
22 fuels to lower fuel costs as well as to meet new
23 SO₂ standards, they are now going below the

1 threshold of the existing rule, and would no
2 longer be subject to the monitoring requirement.
3 The sources have recently indicated to IDEM that
4 they do not believe they are required to continue
5 the monitoring after the SO₂ emissions fall below
6 the 10,000 tons per year.

7 This emergency rule does not change any
8 existing SO₂ monitoring requirements for these
9 sources or any of the rest of the state. It does
10 add a requirement that sources that are currently
11 in SO₂ nonattainment areas and that are currently
12 monitoring ambient SO₂ levels continue to
13 monitor -- or to continue to operate those
14 monitors.

15 The three sources mentioned are the only
16 ones affected by this emergency rule. The
17 monitoring must continue until receipt of a
18 waiver from the Commissioner, which could be
19 considered after redesignation of the area to
20 attainment by U.S. EPA.

21 Originally we had planned to bring this
22 emergency rule before you at the next Board
23 meeting. However, we only realized after the

1 Board packet went out that one of the sources
2 already is emitting below the threshold, and that
3 there are no monitoring requirements in their
4 permit that would have them maintain this
5 monitor, so there would be no mechanism in place
6 to collect the data necessary for the
7 redesignation.

8 In addition, the other two affected
9 sources have recently indicated they do not
10 believe that they will be required to continue
11 operating the monitors when their SO₂ emissions
12 fall below the threshold, so for this reason, we
13 want to maintain the data collection that we need
14 in order to get the data for redesignation, which
15 is why we are bringing this emergency rule before
16 you, so that we can maintain that flow of data.
17 IDEM also plans to initiate a rulemaking through
18 the regular rule process to formalize these
19 changes if adopted.

20 IDEM requests that the Board adopt this
21 emergency rule as presented. I will be glad to
22 answer questions, and Keith Baugues, the
23 Assistant Commissioner of the Office of Air

1 Quality is here, and staff, to answer questions
2 also.

3 CHAIRMAN GARD: Does the Board have
4 any questions for Chris? Yes, Cal.

5 MR. DAVIDSON: Normally we see
6 comments, responses. Did you have that kind of
7 dialogue with any of the affected parties?

8 MS. PEDERSEN: Staff has been in
9 touch with the three sources affected. I don't
10 know if they -- we don't have the normal comment
11 period with emergency rules, so we haven't had
12 that dialogue, but they were provided with the
13 information about this rule and given copies of
14 the documents before the meeting.

15 MR. DAVIDSON: Okay.

16 MR. RULON: I think that's what Kelly
17 and Gary are both talking about; right? We're
18 basically penalizing people for reducing their
19 emissions.

20 MR. BAUGUES: No.

21 MR. RULON: If they fall below what
22 the goal was and make them keep paying for the
23 monitor --

1 MR. CARMICHAEL: Yeah.

2 MR. RULON: -- isn't that what we're
3 doing here, without any comment from them?

4 MR. CARMICHAEL: Yeah, the concern
5 is, is we're adopting -- or before us is asking
6 us to adopt a rule. We don't have all of the
7 input into it. Now, I realize we'll go through
8 the full process, but these rules come into
9 effect now.

10 MR. PIGOTT: So, perhaps, Keith, if
11 there were discussions held, you can give a
12 flavor of the feedback you all received from the
13 entities, because I think that was Cal's original
14 question. What did you hear back in --

15 MR. BAUGUES: The only thing we've
16 heard back is questioning whether we have the
17 authority to continue making sources continue to
18 operate these monitors. The problem is, is if
19 they close the monitors, we don't have that
20 complete year of data, and the area that -- what
21 is penalized is the local area will be
22 nonattainment forever, so their economic
23 development is going to be challenged into the

1 future.

2 What we're asking is that the source
3 maintain those monitors long enough to get three
4 clean years of data. We'll go to EPA right away,
5 ask for that area to be redesignated, and then
6 drop that requirement.

7 And the other option that people would say
8 is, "Well, why doesn't the state pick up the
9 monitoring?" The answer is I don't have any
10 spare SO₂ monitors sitting around. By the time I
11 went to the legislature next session, we would
12 have lost a year. By the time I get the funding
13 and get the monitor in, we would have lost
14 another year. So, it will delay the attainment
15 of that area by another couple of years.

16 So, that's really why we're trying to push
17 this along. It's not that we're putting the
18 requirement on the sources; they already have
19 that requirement. It's EPA's requirement to
20 bring the areas back into attainment. We need
21 the three years of clean data.

22 MR. PIGOTT: So, literally what we're
23 trying to do is ensure that economic development

1 is enhanced through showing attainment to U.S.

2 EPA.

3 MR. BAUGUES: The other thing, it
4 would look as if Indiana had nonattainment areas
5 because we didn't have the monitoring data to
6 show they're clean, and it would be obvious once
7 these -- some of those sources closed, converted
8 fuels, put in more controls, they're going to be
9 attainment, but we couldn't ever prove that
10 without the monitoring data, so --

11 MR. CARMICHAEL: And it's been a
12 while. You do actually need the monitoring data?
13 You can't demonstrate --

14 MR. BAUGUES: Yes.

15 MR. CARMICHAEL: -- attainment via
16 modeling?

17 MR. BAUGUES: Once we get the area
18 made attainment, we can show continued attainment
19 by doing modeling, but the initial attainment
20 designation has to be based on the monitoring,
21 because it was monitors that made it
22 nonattainment in the first place.

23 MR. CARMICHAEL: Have the sources

1 indicated if they'll continue to operate the
2 monitors voluntarily?

3 MR. BAUGUES: We haven't heard
4 officially. Duke, I think, was questioning, but
5 I think at this point they're willing to operate.
6 IPL, as was said earlier, took over the site down
7 in Hoosier Ratts, so I think we're okay there.

8 MR. POWDRILL: How much does it cost
9 to operate a monitor for a year, and how many
10 years have we got in -- already in the bag? Have
11 we got one, two, or are we just starting from
12 ground zero now?

13 MR. BAUGUES: Some sites have
14 probably been around 15, 20 or more years. I
15 don't know how much it costs. Maybe someone from
16 the utility could say how much it costs to
17 operate per year. I don't really know. Once you
18 have an investment of a monitor, you have a
19 consulting firm that comes around and keeps it
20 going, so I don't know how much that particular
21 annual cost is.

22 MR. POWDRILL: I mean it strikes me
23 that they actually were essentially forced to

1 shut down burning coal or to shut down their
2 power plant and convert to another fuel, and now
3 we're penalizing them by forcing them to run a
4 monitor for X number of future years.

5 MR. BAUGUES: Look at it the other
6 way. They put out too much SO₂, caused the area
7 to violate the standard, and now we're asking
8 them to get data to bring it into attainment.
9 So, you could look at it either way, I would say.

10 MR. POWDRILL: Were they issued
11 violations for all of those?

12 MR. BAUGUES: That's why they're
13 nonattainment, because they had too much SO₂, and
14 they had a monitor that showed it not meeting the
15 standard.

16 MR. PIGOTT: Keith, the designation
17 of nonattainment doesn't just affect the
18 individual company, does it?

19 MR. BAUGUES: No.

20 MR. PIGOTT: Maybe you can explain
21 what that means, to be in nonattainment for an
22 area.

23 MR. BAUGUES: The particular

1 townships that we're talking about here would not
2 be able to have major sources come in and locate
3 or other major sources modify if they put out SO2
4 emissions. This is -- as I say, if the area's
5 designated nonattainment forever, this would be a
6 ban on their economic development of certain
7 areas.

8 So, that's why we're trying to bring all
9 of those areas back into attainment, and we need
10 that three years of data to do that. That's a
11 federal requirement, not something we're
12 requiring.

13 MR. HILLSDON-SMITH: I understand the
14 focus on the three companies, but from an
15 economic development point of view, I can tell
16 you what -- we're going through site searches,
17 site selection, and there's -- we're looking to
18 whether or not we're going to be shortlisted for
19 a company looking to come to Indiana.

20 Those communities that are nonattainment,
21 even if they're not actually, though, because of
22 this situation, they never even make it to the
23 drawing board. They are -- they are completely

1 ignored, and they never get a chance to even put
2 forth their best assets. So, I think it's best
3 to, I mean find -- I mean move forward and make
4 sure that we can get these areas into
5 nonattainment to show exactly what's going on in
6 reality, especially for economic development.

7 MR. CARMICHAEL: Yeah, and I think
8 that's the common goal here. The question is, is
9 how? If the companies were to donate the
10 equipment, how much time would it take IDEM to
11 come in and start operating those monitors such
12 that if there was a notice, we don't lose the
13 data, right, that the monitors continue to
14 operate?

15 MR. BAUGUES: I don't know.

16 MR. CARMICHAEL: Is it 30 days, or,
17 you know --

18 MR. BAUGUES: Oh, no, it's months,
19 because we have to go through lease agreements
20 and we'd probably have to pay to be on your
21 property, so it's not something that happens.
22 The other problem is that requisitions close in
23 about a month, so we couldn't do anything

1 until -- start anything until July 1. So, we
2 would have several months that we would have to
3 work through trying to get this to happen.

4 CHAIRMAN GARD: Just a comment. I'm
5 real sensitive to the communities that have had
6 and may have nonattainment problems. We had a
7 lot of those communities show up and talk to us
8 in the General Assembly over the years as we
9 dealt with some of these issues, and, you know, I
10 understand the companies' concerns.

11 But for these areas that are
12 nonattainment, if they're not going to have the
13 opportunity to expand their economic business
14 base, that -- that's going to affect the utility
15 as well, because the utility is obviously going
16 to benefit the more economic development that an
17 area has.

18 So, it's a difficult situation, but I
19 really am sensitive to the concerns of the
20 nonattainment areas with respect to economic
21 development. The county I lived in was in that
22 situation at one time.

23 DR. NIEMIEC: I would just expand

1 upon something that was already stated. The rule
2 we're looking at today, when we get around to
3 looking at a final rule and so on, I would hope
4 that we'd have data available about how much it
5 is costing someone to have and maintain a monitor
6 for a year's period of time, for example.

7 MR. BAUGUES: Sure.

8 MR. PIGOTT: Be happy to do that.

9 CHAIRMAN GARD: Any other questions
10 for Keith?

11 (No response.)

12 CHAIRMAN GARD: It's unusual that we
13 have any public comment during the emergency rule
14 discussions, but I do have one person that signed
15 up, and I am going to give him an opportunity to
16 express his comments because of the interest the
17 Board has had in this issue.

18 Justin Barrett.

19 MR. BARRETT: Thank you. Hello. May
20 it please the Board. My name is Justin Barrett,
21 and I work at Indianapolis Power & Light Company.

22 Here today, I'm representing the Indiana
23 Energy Association. This is an association of

1 energy companies that include Indianapolis Power
2 & Light, Duke Energy, that are the affected
3 sources here from this emergency rule. We're an
4 association of energy companies that provide
5 Indiana consumers with affordable and reliable
6 energy that benefit families and businesses
7 across the entire state.

8 We are opposed to IDEM's use of emergency
9 rulemaking as it relates to this SO₂ monitoring
10 issue. Specifically, IEA, the Indiana Energy
11 Association, is concerned with IDEM's decision to
12 use the emergency rulemaking process where we do
13 not believe an emergency situation exists. We
14 are concerned that this rulemaking will establish
15 a precedent for regulations to be revised without
16 following established rulemaking processes and
17 timelines.

18 We fear that this will create uncertainty
19 for the regulated community when rules are
20 changed with short notice and without time for
21 thoughtful consideration and public input, as it
22 the case with this emergency rule relating to SO₂
23 monitoring. In fact, I think we were just put on

1 notice about this a week or two ago. While IEA
2 is not necessarily opposed to the impact of this
3 particular rulemaking, we believe that the use of
4 the emergency rulemaking process in this
5 situation is unwarranted.

6 As a point of contrast, I just wanted to
7 point out the difference between this emergency
8 rulemaking and the CCR emergency rulemaking that
9 we renewed here earlier today. That CCR
10 emergency rulemaking simply incorporates federal
11 requirements into state regulations to provide
12 certain aid to facilities, and does not impose
13 any additional regulations.

14 On the other hand, this SO₂ monitoring
15 emergency rulemaking would impose new regulations
16 on affected facilities that we do not believe is
17 necessary, given the existing requirements to
18 petition IDEM to shut down an SO₂ monitoring
19 network operating under 326 IAC 7-3. We believe
20 IDEM should follow its established process for
21 reviewing petitions to cease operation of
22 monitors, and that this emergency rulemaking is
23 unnecessary.

1 Further, IEA and its members have a
2 history of working cooperatively with IDEM on
3 various issues, and plan to continue to do so. I
4 believe Chris had pointed out earlier today about
5 IPL agreeing to operating the Hoosier Energy
6 Ratts SO2 monitor.

7 Therefore, in conclusion, an emergency
8 rule is not necessary to ensure that the
9 continuous operation of SO2 monitoring remains.

10 Thank you.

11 CHAIRMAN GARD: Thank you.

12 MR. BARRETT: Any questions?

13 CHAIRMAN GARD: Questions?

14 MR. POWDRILL: Do you have any idea
15 how much it costs to run those?

16 MR. BARRETT: I would say a rough
17 estimate -- I can't speak on behalf of IEA; I'm
18 speaking on behalf of Indianapolis Power & Light.
19 I believe the cost, because we took over the
20 Hoosier Energy Ratts Station, was between twenty
21 and twenty-five thousand dollars per year.

22 MR. POWDRILL: Per monitor?

23 MR. BARRETT: Per mon -- it's only

1 one monitor.

2 MR. POWDRILL: Well, but you've got
3 one of your own, too.

4 MR. BARRETT: Correct, that's
5 correct.

6 MR. POWDRILL: So, that's --

7 MR. BARRETT: But I'm talking about
8 that situation, because I believe Keith was
9 talking about the lease agreements and all of
10 that. We had to work out a transfer of ownership
11 with Hoosier Energy, so they donated the
12 equipment and everything to us.

13 DR. NIEMIEC: Related to that,
14 though, how much is it to -- if you don't have to
15 work through those agreements and you're just
16 continuing your own monitor?

17 MR. BARRETT: I -- I don't know
18 what -- the actual cost to operate. It's
19 something that the IEA could -- we could research
20 and get back to the Board.

21 DR. NIEMIEC: That's a different
22 question.

23 MR. POWDRILL: Yeah.

1 MR. BARRETT: So, you're talking
2 about if we establish our on monitoring station,
3 how much does that cost?

4 DR. NIEMIEC: Or if you already have
5 one and you're continuing to monitor, how much to
6 continue it for an extra couple of years if --

7 MR. BARRETT: I'm not sure. I'm not
8 sure.

9 CHAIRMAN GARD: Do you think that the
10 risk of -- of not continuing the monitoring of SO2
11 is worth the penalties that you may get in these
12 areas for nonattainment by EPA?

13 MR. BARRETT: I -- let me clarify, on
14 behalf of IEA, that it is no one's intention,
15 including Indianapolis Power & Light's or Duke's,
16 to turn off these SO2 monitoring stations, so
17 that's not even really an option. We're
18 committed to bringing these counties into
19 attainment.

20 I mean that's kind of the core issue with
21 this is that it's in our best interest, it's in
22 the best interest of our ratepayers, it's in the
23 best interest, I believe, as Mr. Smith spoke

1 about earlier, to bringing in business
2 development in our counties. We want these
3 counties to be redesignated.

4 So, one of the issues that I pointed out
5 is, there is a mechanism to petition IDEM to be
6 released of operating an SO2 monitor. However,
7 no, I don't believe any company would choose to
8 do that until the county has been redesignated as
9 attainment. I mean that's a key component here.
10 We want these counties in attainment.

11 CHAIRMAN GARD: Yeah. I'm just
12 struggling a little bit with your position.

13 MR. BARRETT: The position of IEA is
14 about process. We believe that this emergency
15 rule is not necessary, that there was no need for
16 it at all. The companies continue to run these
17 SO2 monitoring stations. There was no -- there's
18 no point that they're going to, so to speak, pull
19 the plug and just turn them off before the
20 counties are redesignated.

21 CHAIRMAN GARD: Did you have a
22 question?

23 DR. NIEMIEC: I just would ask IDEM

1 to comment on this, because I anticipate there
2 may have been some discussions about this
3 already. Apparently what is being said that --
4 is that there will be compliance with what the
5 rule would be, but they're asking that there not
6 be a written rule, just that they will give their
7 word to do so, and if they don't, then address it
8 at that point.

9 MR. PIGOTT: Well, first of all, I'd
10 like to say Keith can fully explain this answer,
11 but I would indicate that I thought we had heard
12 from people that there was concern about that --
13 from the entities themselves, the three that were
14 mentioned -- that there wasn't the authority to
15 require them to continue to operate these
16 monitors.

17 Keith, you can correct me and fill in the
18 rest of it.

19 MR. BAUGUES: That is true. My staff
20 has had conversations with Duke where they have
21 asked to close monitors in Gallagher, Cuyahoga
22 and Wabash River, not formal requests, but
23 preliminary requests to start that process.

1 That's exactly why this emergency rule came
2 about.

3 MR. PIGOTT: And we're --

4 MR. BAUGUES: There was a real
5 question about that.

6 MR. PIGOTT: -- balancing the good of
7 the region against the individual interests of
8 the companies, and the agency's just trying to
9 ensure that the economic development that we all
10 count on for jobs in this state happens, and if
11 we're not in attainment, then I think the region
12 suffers.

13 And this rule is not to impose new
14 requirements. It is not a new regulation. It's
15 not beyond what we've done in the past, nor are
16 the costs incurred -- except for that they're
17 continuing. We're not ordering new monitoring,
18 we're just requiring them to continue -- will
19 help us all achieve that goal, which we think is
20 vitally important to the state overall. So, it's
21 balancing the interests of the state and the
22 region against the interests of the individual
23 corporations.

1 And while we want the best of both worlds,
2 in this case, for the reasons of being approached
3 by companies, we thought it would be a good idea
4 to ensure that we get the data we need and not
5 have an interruption of it and delay that process
6 further; to get this done now.

7 MR. BAUGUES: The other thing is, we
8 think this emergency rule gives the utilities a
9 clear authority for the IURC to get cost
10 recovery. If there was a question, this makes it
11 very clear that they can get cost recovery. We
12 are requiring them to continue monitoring. So,
13 it's partly in their benefit.

14 CHAIRMAN GARD: Any other questions
15 from the Board?

16 MR. CARMICHAEL: Justin, is the heart
17 of this, though, the use of the emergency rule?

18 MR. BARRETT: Correct.

19 MR. CARMICHAEL: It's not about
20 attainment, it's not about running the monitors,
21 it's --

22 MR. BARRETT: It's bypassing the --

23 MR. CARMICHAEL: -- getting a rule --

1 MR. BARRETT: -- rulemaking process.

2 MR. CARMICHAEL: -- some frustration

3 about a rule, we getting a rule two weeks before

4 the Board meeting and not having it -- the

5 opportunity as the affected sources to fully vet

6 what it all means and having an input from all of

7 the affected stakeholders. So, it's less about

8 the specific issue, more about the issue of --

9 MR. BARRETT: The use of an emergency

10 rule.

11 MR. CARMICHAEL: -- the use of the

12 emergency rule; is that fair?

13 MR. BARRETT: Correct.

14 MR. HILLSDON-SMITH: But the effect

15 of your client's commitments and the emergency

16 rule -- I understand it's procedure versus

17 substance, but am I correct? You're saying your

18 clients are committed to continue monitoring

19 until there be a final rule adopted, whereas IDEM

20 simply want to make sure that that is put in

21 place by way of an assurance of an emergency

22 rule? At the end of the day, your commitments

23 are the same.

1 MR. BARRETT: Well, I -- yes. I
2 wanted to point out, too, just on behalf of IPL,
3 for example, about this Morgan County monitor
4 outside of Eagle Valley, the current requirement
5 is that a facility shall operate and maintain a
6 monitor that emits over 10,000 tons of SO₂. Our
7 IPL Eagle Valley Station has not emitted over
8 10,000 tons in five years. So, we've continued
9 to run it for the past five years without an
10 emergency rule or without this requirement in our
11 Title V permit.

12 So, that's why I was pointing out, too,
13 about the good faith and good working
14 relationship between the utilities and IDEM. We
15 would just ask that that continue, you know, as I
16 mentioned previously about IPL taking on the
17 Hoosier Energy Station.

18 CHAIRMAN GARD: But you implied that
19 one of the utilities had not made the commitment
20 to continue running SO₂ monitors?

21 MR. PIGOTT: We had been -- Keith had
22 indicated that we had been approached by Duke and
23 that they had indicated that there were questions

1 about whether or not they were interested in
2 continuing, and this made sure that they do
3 continue. We are interested in making sure that
4 these places are in attainment. And when that
5 came up, I think the chief thinking was balancing
6 all of the interests. We want to make sure
7 we're -- we get to attainment.

8 MR. HILLSDON-SMITH: It sounds like
9 that was the trigger for the emergency rule.

10 MR. PIGOTT: That's exactly right.

11 MR. BAUGUES: Yes.

12 MR. HILLSDON-SMITH: Do you have any
13 idea -- have you heard from Duke that this is the
14 case, that they're concerned about having to
15 continue to operate?

16 MR. BARRETT: I believe a
17 representative from Duke is here, if you would
18 let him address the Board.

19 Pat?

20 MR. COUGHLIN: Hi. My name is Pat
21 Coughlin. I work for Duke Energy. I guess
22 the -- well, as far as the emergency rule, we
23 just want a little bit more time. Wabash River,

1 the two units there have shut down, Wabash River
2 and the synfuel plant, so there really are no SO2
3 sources in that area, so that's our concern. We
4 are not going to shut down a monitor and make the
5 area go nonattainment. That's not going to
6 happen. But we would like to have the
7 opportunity to explore other options.

8 I -- Keith, what I've heard is this is a
9 regulatory requirement. I'm not sure it is. You
10 know, the slam networks, Park 58 has requirements
11 for shutting down monitors. The data
12 requirements rule has requirements for shutting
13 down monitors. This falls in the kind of gray
14 area with guidance, the SO2 one-hour nonattainment
15 SIP guidance.

16 And I think that -- you know, I just think
17 we need a little bit more time to work through
18 the issue. As far as Cuyahoga and Gallagher go,
19 they are not in nonattainment areas. We would
20 submit a petition to shut them down, but, you
21 know, that's in that regulatory framework.

22 So, that's kind of our issue with the
23 rule. So, unless you have any questions --

1 CHAIRMAN GARD: Yes.

2 MR. BAUSMAN: Maybe more for Keith
3 here, what is -- how long is the process to shut
4 one of the monitors down? If Duke were to come
5 to IDEM and -- you know, and petition for their
6 monitor be turned off, how long would that take
7 from you --

8 MR. BAUGUES: A couple --

9 MR. BAUSMAN: -- receiving it?

10 MR. BAUGUES: A couple of weeks, at
11 most. Yeah, it's fairly quick.

12 CHAIRMAN GARD: Any other questions?

13 (No response.)

14 CHAIRMAN GARD: If not, do I hear a
15 motion to adopt the emergency rule?

16 MR. ANDERSON: So moved.

17 CHAIRMAN GARD: Is there a second?

18 MR. HILLSDON-SMITH: Second.

19 CHAIRMAN GARD: All in favor, say
20 aye.

21 MR. HILLSDON-SMITH: Aye.

22 DR. NIEMIEC: Aye.

23 MR. ANDERSON: Aye.

1 MR. BAUSMAN: Aye.

2 MR. HORN: Aye.

3 MR. METTLER: Aye.

4 MR. DAVIDSON: Aye.

5 DR. ALEXANDROVICH: Aye.

6 CHAIRMAN GARD: Aye.

7 Opposed, nay.

8 MR. CARMICHAEL: Nay.

9 MS. BOYDSTON: Nay.

10 MR. POWDRILL: Nay.

11 MR. RULON: Nay.

12 CHAIRMAN GARD: I think we need to

13 have a show of hands. The -- would the ayes

14 raise your hands?

15 MR. HILLSDON-SMITH: (Raised hand.)

16 DR. NIEMIEC: (Raised hand.)

17 MR. ANDERSON: (Raised hand.)

18 MR. BAUSMAN: (Raised hand.)

19 MR. HORN: (Raised hand.)

20 MR. METTLER: (Raised hand.)

21 MR. DAVIDSON: (Raised hand.)

22 DR. ALEXANDROVICH: (Raised hand.)

23 CHAIRMAN GARD: (Raised hand.) Seven

1 ayes, counting myself.

2 Nays, raise your hand.

3 MR. CARMICHAEL: (Raised hand.)

4 MS. BOYDSTON: (Raised hand.)

5 MR. POWDRILL: (Raised hand.)

6 MR. RULON: (Raised hand.)

7 CHAIRMAN GARD: Four nays. Is that

8 what you all saw? Okay. The emergency rule is

9 adopted, seven ayes, four nays.

10 This is a public hearing before the

11 Environment Rules Board of the State of Indiana

12 concerning final adoption of amendments to rules

13 at 329 IAC 12, Solid Waste Facility Operator

14 Certification.

15 I will now introduce Exhibit D, the

16 preliminarily adopted rule with IDEM's suggested

17 changes incorporated, into the record of the

18 hearing.

19 Is there someone from the Department to

20 present the rule? Dan Watts will present the

21 rule.

22 MR. WATTS: Good afternoon. My

23 name's Dan Watts, a rule writer with the Rules

1 Development Branch, and I am presenting LSA
2 Document 14-111 for final adoption.

3 This rulemaking proposes amendments to the
4 Solid Waste Facility Operator Certification Rules
5 as 329 IAC 12, which ensure that certain solid
6 waste facilities are operated by certified and
7 trained operators.

8 The rulemaking proposes an extensive
9 reorganization of Article 12, including
10 amendments to definitions, exclusions, operator
11 certification requirements, exam and training
12 course provider requirements, procedures for
13 expired certificates, and allowance of the use of
14 continuing education for recertification. IDEM
15 also has made various clarifications and
16 reorganizations throughout Article 12 to improve
17 the rule language and requirements.

18 After preliminary adoption of the draft
19 rule at the February Board meeting, IDEM held a
20 21-day third comment period because of
21 substantial changes to the draft rule between the
22 second notice of comment period and preliminary
23 adoption. No comments were received during this

1 third comment period.

2 IDEM also reviewed the proposed rule as
3 preliminarily adopted and determined that five
4 additional definitions in 329 IAC 12-2 could be
5 repealed. The definitions no longer are used in
6 Article 12 after the proposed amendments take
7 effect, and continuing to include these
8 definitions is unnecessary.

9 Finally, as requested by a commenter at
10 the preliminary adoption hearing, IDEM will delay
11 the effective date of this rulemaking until
12 January 2017, in order to align the effective
13 date with some of the proposed compliance dates
14 in the rule amendments.

15 Representatives from IDEM are available to
16 answer any questions you may have for this
17 rulemaking. The Department asks that you -- that
18 the Board finally adopt this rule as presented.

19 Thank you.

20 CHAIRMAN GARD: Are there any
21 questions for Dan? Yes, Dr. Alexandrovich.

22 DR. ALEXANDROVICH: Yeah. You talk
23 about the five definitions you're repealing --

1 MR. WATTS: Yes.

2 DR. ALEXANDROVICH: -- and I only saw
3 in our packet one of them shown as a strikeout.

4 MR. WATTS: Yeah.

5 DR. ALEXANDROVICH: Four others that
6 are in the packet show "repealed."

7 MR. WATTS: The additional ones have
8 been added to Section 40 on the last page,
9 page 28, and they're bold and underlined. They
10 were never -- the sections were never amended
11 originally in the --

12 DR. ALEXANDROVICH: Okay.

13 MR. WATTS: -- proposed amendments.

14 DR. ALEXANDROVICH: I see.

15 MR. WATTS: They were just in
16 Article 12, and we just added them to the
17 "Repealed" section at the end of the rule.

18 DR. ALEXANDROVICH: Okay.

19 MR. WATTS: So, that's why only --
20 the one not in there was amended, and then we
21 decided to delete it.

22 CHAIRMAN GARD: Any other -- any
23 other questions?

1 (No response.)

2 CHAIRMAN GARD: Thank you.

3 I don't have any signup sheets to -- for
4 anyone to speak. Is there anyone in the audience
5 who cares to speak on this rule?

6 (No response.)

7 CHAIRMAN GARD: Then the hearing is
8 completed. The Board will now consider final
9 adoption of amendments to rules concerning Solid
10 Waste Facility Operator Certification. Further
11 Board discussion?

12 (No response.)

13 CHAIRMAN GARD: Is there a motion to
14 adopt IDEM's suggested changes?

15 MR. RULON: So moved.

16 MR. DAVIDSON: Second.

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

19 MR. HILLSDON-SMITH: Aye.

20 DR. NIEMIEC: Aye.

21 MR. ANDERSON: Aye.

22 MR. BAUSMAN: Aye.

23 MR. POWDRILL: Aye.

1 MR. HORN: Aye.

2 MR. METTLER: Aye.

3 MR. DAVIDSON: Aye.

4 MR. CARMICHAEL: Aye.

5 DR. ALEXANDROVICH: Aye.

6 MS. BOYDSTON: Aye.

7 MR. RULON: Aye.

8 CHAIRMAN GARD: Aye.

9 Opposed, nay.

10 (No response.)

11 CHAIRMAN GARD: The suggested changes
12 are adopted.

13 (Discussion off the record.)

14 CHAIRMAN GARD: Is there a motion to
15 final adopt the rule as amended?

16 MR. ANDERSON: So moved.

17 MR. POWDRILL: Second.

18 CHAIRMAN GARD: Dr. Alexandrovich?

19 DR. ALEXANDROVICH: Yes.

20 CHAIRMAN GARD: Ms. Boydston?

21 MS. BOYDSTON: Yes.

22 CHAIRMAN GARD: Mr. Powdrill?

23 MR. POWDRILL: Yes.

1 CHAIRMAN GARD: Mr. Davidson?

2 MR. DAVIDSON: Yes.

3 CHAIRMAN GARD: Mr. Horn?

4 MR. HORN: Yes.

5 CHAIRMAN GARD: Mr. Hillsdon-Smith?

6 MR. HILLSDON-SMITH: Yes.

7 CHAIRMAN GARD: Mr. Bausman?

8 MR. BAUSMAN: Yes.

9 CHAIRMAN GARD: Mr. Carmichael?

10 MR. CARMICHAEL: Yes.

11 CHAIRMAN GARD: Mr. Mettler?

12 MR. METTLER: Yes.

13 CHAIRMAN GARD: Dr. Niemiec?

14 DR. NIEMIEC: Yes.

15 CHAIRMAN GARD: Mr. Rulon?

16 MR. RULON: Yes.

17 CHAIRMAN GARD: Mr. Anderson?

18 MR. ANDERSON: Yes.

19 CHAIRMAN GARD: Did I forget anybody?

20 (No response.)

21 CHAIRMAN GARD: The Chair votes aye.

22 Thirteen ayes, no nays, so the rule is adopted.

23 This is a public hearing before the

1 Environmental Rules Board of the State of Indiana
2 concerning preliminary adoption of amendments to
3 rules at 327 IAC 15 and 327 IAC 19, CAFO and CFO
4 Reference Update.

5 I will now introduce Exhibit E, the draft
6 rules, into the record of the hearing.

7 Lauren Aguilar will present the rule.

8 MS. AGUILAR: Good afternoon again,
9 members of the Board.

10 This rule preliminarily -- that we are
11 asking to preliminarily adopt today amends
12 327 IAC 15-16 and 327 IAC 19. These are rules
13 concerning concentrated animal feeding
14 operations, who known as CAFO's, and concentrated
15 feeding operations, known at CFO's.

16 We are seeking to update the references to
17 the NRCS, or the National Resources Conservation
18 Service, standards. These standards are
19 maintained by the USDA. They deal with nutrient
20 management conservation practices. The NRCS
21 provides technical assistance through
22 conservation practice standard codes, and they
23 tailor them to states, and sometimes even the

1 county level.

2 Sometimes the NRCS codes will be updated
3 and there are additions, and IDEM is just seeking
4 to update the rules to accommodate those new
5 additions. The practice codes that are being
6 updated in the propose rulemaking make it easier
7 for the regulated entities as well as any members
8 of the public to access these standards.

9 The NRCS maintains a Web site and a Field
10 Technical Guide that you can go on-line and
11 access all of these standards. The older
12 versions sometimes are a little harder to come
13 across. They only maintain on-line the most
14 current editions.

15 IDEM spoke with interested stakeholders,
16 and a lot of these standards are actually already
17 being used by the regulated community, but in
18 order for them to use them, they have to seek a
19 variance from their permit, and that is a
20 time-consuming and costly administrative
21 procedure that IDEM thinks doesn't benefit anyone
22 to continue with this process.

23 We also spoke with interested

1 stakeholders, and there's no appreciable
2 difference in cost between the old standards and
3 the newer standards.

4 While we are making these changes to these
5 two rules, we are also updating the CFR. The
6 Code of Federal Regulations is recodified
7 annually, but that does not necessarily mean that
8 there's been a change to the CFR.

9 From the version that was -- that's
10 currently in the IAC that we are updating to now,
11 which is 2014, there have not been any
12 substantive changes made. It's just purely,
13 again, to make sure that people have easier
14 accessibility to the most current edition. This
15 provides consistency, clear expectations, and,
16 again, easy accessibility.

17 In addition, while the rules are already
18 open, IDEM reviews them to make sure that any
19 defunct Web sites are updated, any incorrect
20 cross-references are updated and the like, and to
21 continue to strive for plain language, and that
22 it is easily understandable by the public as well
23 as the regulated community.

1 So, the Department respectfully requests
2 that the Board preliminarily adopt this rule. I
3 am happy to answer any questions, and I have
4 technical staff available should I not be capable
5 of answering those questions.

6 CHAIRMAN GARD: Are there questions
7 for Lauren? Yes, Doctor.

8 DR. ALEXANDROVICH: The NRCS practice
9 codes, I tried to follow some of the links that
10 you have in there, and they're not necessarily
11 easy to find, even if you go to those sites.

12 MS. AGUILAR: Okay.

13 DR. ALEXANDROVICH: But I did notice
14 on IDEM's page, 2362, you've got them all there,
15 nice and simple. So, I don't know if you can --
16 I know they're not your publications, but they're
17 all there, plain and simple, so I was wondering
18 if you could maybe fix that, change that.

19 MS. AGUILAR: We can look into making
20 sure that there are maybe multiple Web site --

21 DR. ALEXANDROVICH: Yeah.

22 MS. AGUILAR: -- addresses. Normally
23 we like to link to the original publisher --

1 DR. ALEXANDROVICH: Yeah.

2 MS. AGUILAR: -- to kind of give

3 credit where credit is due, but we can explore

4 maybe some different ways to present these things

5 so that you guys have easy -- and that is what

6 we're striving to do is provide --

7 DR. ALEXANDROVICH: It wasn't easy to

8 find them all --

9 MS. AGUILAR: Okay.

10 DR. ALEXANDROVICH: -- on all of the

11 links.

12 MS. AGUILAR: I will look into that

13 for you.

14 DR. ALEXANDROVICH: I have one other

15 comment, Madam Chair.

16 CHAIRMAN GARD: Yes.

17 DR. ALEXANDROVICH: And I know this

18 is just update references, but as I was going

19 through the material that was presented to us,

20 kind of a buzzer went off, because they talked

21 about the offsets to sinkholes, and if you recall

22 when we did the satellite manure storage, the

23 definition of how to measure how far away it is

1 from the sinkhole was changed, so I don't know if
2 that's something that the Board wants to consider
3 to fix in the CAFO rules.

4 CHAIRMAN GARD: Is there somebody
5 here that's worked with that part of the rule
6 that wants to comment on that? Yes, Nancy.

7 MS. KING: Thank you. We have had
8 that question before, but based on the first
9 notice that we provided, it was also a shortened
10 rulemaking process for this particular rule,
11 specifically because we were doing very minimal
12 changes and we, specifically within the first
13 notice, essentially said that these are the
14 changes we're making in terms of updating NRCS.

15 While -- yes, we did make that change to
16 the satellite manure storage structure rules.
17 Because that was not specifically part of the
18 first notice and it's really something that, in
19 terms of more of a substantive change, related to
20 CAFO and CFO operations, we didn't feel that it
21 was appropriate to sort of wedge that into this,
22 but -- because it's a more substantive change
23 that affects both and may affect setbacks and

1 things like that.

2 So, because we specifically said that this
3 is just for these very minimal changes in terms
4 of what versions we're using, we didn't think it
5 was appropriate to try to put it into the rule at
6 this point in time, and thought it would be more
7 appropriate for when we open the rule to more
8 substantive changes that would allow everyone who
9 is affected by those types of changes to be able
10 to comment on those rules. So, that's why we did
11 not include that in this.

12 DR. ALEXANDROVICH: I get that, but
13 when might you look at making other changes to
14 the rule where you could make those kind of
15 fixes?

16 MS. KING: I'm sorry?

17 DR. ALEXANDROVICH: Well, you said
18 when you make more, so --

19 MS. KING: When might we change it?

20 DR. ALEXANDROVICH: Yeah. Are there
21 other things --

22 MS. KING: Yeah, I really --

23 DR. ALEXANDROVICH: -- you're looking

1 at?

2 MS. KING: I have not heard at this
3 point in time from staff or the regulated
4 community that there are -- there's a great will
5 to reopen that rule in the near future. However,
6 at the point at which that is necessary, we will
7 certainly do that and continue to keep a list of
8 topics that we would like to pursue in that, yes,
9 because we certainly want it to be consistent
10 with the satellite manure storage structure rule
11 as well.

12 CHAIRMAN GARD: Any other questions?

13 MR. RULON: Madam Chairman, I --

14 CHAIRMAN GARD: Yes.

15 MR. RULON: -- recall the discussion
16 when we did that. We did that because the
17 satellite storage structures are not tended
18 daily.

19 CHAIRMAN GARD: Right.

20 MR. RULON: We wanted a higher safety
21 standard at a facility that's attended to daily,
22 so we were trying to be more protective for those
23 satellites. That's why we did that, and the

1 industry supported picking up a more severe
2 setback.

3 CHAIRMAN GARD: Uh-huh.

4 MR. RULON: That's -- I don't know if
5 that helps resolve your issue or not.

6 CHAIRMAN GARD: Yes, I remember that.

7 MR. RULON: We kind of intentionally
8 wanted two different setbacks there.

9 CHAIRMAN GARD: Right.

10 DR. ALEXANDROVICH: It was not more
11 the distance, but the definition of how you
12 measure that distance --

13 MR. RULON: Uh-huh.

14 DR. ALEXANDROVICH: -- with the
15 end -- the edge of the sinkhole or the center of
16 the sinkhole.

17 MR. RULON: Okay.

18 CHAIRMAN GARD: Any other comments?

19 (No response.)

20 CHAIRMAN GARD: I have two speaker
21 cards.

22 Ben Wicker.

23 MR. WICKER: Madam Chair, members of

1 the Board, thank you for the opportunity to
2 comment today on LSA Document 16-3. My name is
3 Ben Wicker, representing the Indiana Pork
4 Advocacy Coalition.

5 And today, on behalf of the Indiana Pork
6 Advocacy Coalition, Indiana Farm Bureau, Indiana
7 Corn Marketing Council, members of the Indiana
8 Soybean Alliance, Indiana Dairy Producers,
9 Indiana Beef Cattlemen's Association, and the
10 Indiana State Poultry Association, we would like
11 to voice our support of the CAFO and CFO
12 reference update.

13 While we would like to continue to
14 dialogue with IDEM about the possibility of
15 expanding some of these references to include
16 alternative approaches that are equally
17 protective of the environment, we appreciate the
18 agency's work to make sure the references that
19 already exist in the rule are current.

20 Thank you.

21 CHAIRMAN GARD: Thank you.

22 Are there any questions for Mr. Wicker?

23 (No response.)

1 CHAIRMAN GARD: Thank you.

2 Bowden Quinn.

3 MR. QUINN: Thank you, Chairwoman

4 Gard, members of the Board.

5 I just wanted to bring up the issue that

6 Ms. Alexandrovich raised and the old definition

7 of the setbacks -- or the measuring point for the

8 setbacks for sinkholes. I think this is an

9 opportunity missed. We don't know when this rule

10 will be opened up again, if there is a discussion

11 as to whether the setback -- and this has to do

12 not just with manure storage structures, but also

13 with manure application.

14 My own feeling is that the setback as

15 measured from the lowest point or the opening

16 when you're applying manure is simply not strong

17 enough, considering the size of some of the

18 sinkholes in the southern part of the state.

19 This is -- the setback is only a few feet, which

20 there are many sinkholes that have much greater

21 length to -- between the hole and the rim.

22 So, I think this is an opportunity missed.

23 I would like to have seen IDEM be a little more

1 thorough when it's opening up a rule, to see if
2 there are issues like this that should be
3 addressed, and so, I appreciate the Board raising
4 this issue, and I would certainly like the
5 discussion to continue as to whether this setback
6 as measured from the opening of the sinkhole or
7 the lowest point is sufficiently protective of
8 the environment.

9 Thank you.

10 CHAIRMAN GARD: Questions for Bowden?

11 (No response.)

12 CHAIRMAN GARD: Thank you.

13 Anyone that did not sign up in the
14 audience that cares to comment on the proposed
15 rule?

16 (No response.)

17 CHAIRMAN GARD: Seeing none, the
18 hearing is concluded. The Board will now
19 consider preliminary adoption of amendments to
20 the CAFO and CFO rules at 327 IAC 15 and 19. Any
21 further Board discussion?

22 DR. NIEMIEC: Just a quick question
23 for IDEM. Do you have any comments at this time

1 regarding either the definition that was just
2 discussed or other definitions that may be
3 relevant to examine?

4 MR. PIGOTT: I don't now, but we'll
5 certainly discuss this after our meeting today --

6 DR. NIEMIEC: Sure.

7 MR. PIGOTT: -- to determine what
8 next steps might be involved in this.

9 CHAIRMAN GARD: Okay. Any further
10 questions for IDEM?

11 (No response.)

12 CHAIRMAN GARD: Is there a motion to
13 preliminarily adopt the rule?

14 MR. METTLER: So moved.

15 CHAIRMAN GARD: Is there a second?

16 MR. HORN: Second.

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

19 MR. HILLSDON-SMITH: Aye.

20 DR. NIEMIEC: Aye.

21 MR. ANDERSON: Aye.

22 MR. BAUSMAN: Aye.

23 MR. POWDRILL: Aye.

1 MR. HORN: Aye.

2 MR. METTLER: Aye.

3 MR. DAVIDSON: Aye.

4 MR. CARMICHAEL: Aye.

5 DR. ALEXANDROVICH: Aye.

6 MS. BOYDSTON: Aye.

7 MR. RULON: Aye.

8 CHAIRMAN GARD: Aye.

9 Opposed, nay?

10 (No response.)

11 CHAIRMAN GARD: The rule is

12 preliminarily adopted.

13 (Discussion off the record.)

14 CHAIRMAN GARD: Now we will have a

15 presentation of the Draft 2016 List of Impaired

16 Waters under Subsection 303(d) of the Clean Water

17 Act. The Draft List was published in the Indiana

18 Register on April 6th for public comment. The

19 written comment period runs through July 5th,

20 2016. Jody Arthur from IDEM will present the

21 report, after which we will have a public hearing

22 on the draft report.

23 MS. ARTHUR: If it is acceptable to

1 the Board, I'd like to do my presentation from
2 back here so I can refer to the --

3 CHAIRMAN GARD: Yeah. It's a little
4 hard to hear you; that's the problem.

5 MS. ARTHUR: Okay. I raised two
6 boys. I think I can project.

7 CHAIRMAN GARD: Okay.

8 MS. ARTHUR: My name is Jody Arthur.

9 I work for the Indiana Department of
10 Environmental Management in the Watershed
11 Assessment and Planning Branch, and we develop
12 the 303(d) List every two years, and pursuant to
13 Indiana Code, we present those 303(d) Lists to
14 the Environmental Rules Board.

15 What I'm going to do today, I'm going to
16 start by giving you a little bit of regulatory
17 context, then we'll talk about how we actually
18 develop the 303(d) List, and then I'll give you
19 some -- I'll show you some summary results for
20 this cycle.

21 The Clean Water Act, Section 305(b),
22 requires states to assess the quality of the
23 waters in their state to determine how well

1 they're supporting their designated uses -- those
2 are the uses articulated in the state's water
3 quality standards -- and then we're required to
4 report our assessments to U.S. EPA. Clean Water
5 Act Section 303(d) requires states to submit a
6 list of impaired waters to the U.S. EPA.

7 So, these are two essentially very large
8 lists, there are two reports, and we now combine
9 them into one report, the Integrated Report, that
10 we submit to U.S. EPA every two years. EPA has
11 approval authority over the 303(d) List component
12 of that report, but it doesn't integrate -- the
13 305(b) portion is not subject to any approval by
14 the U.S. EPA. They use that information, then,
15 to report to Congress on the state of the
16 nation's waters.

17 So, are in terms of how we develop the
18 303(d) List, it all starts with data collection.
19 We can't do anything without data, so what we do,
20 IDEM monitors Indiana waters using two basic
21 approaches. One is a probabilistic approach. We
22 rotate through one of nine major basins every
23 year and monitor each basin, one a year. We do

1 that -- we monitor about three times in the
2 summer.

3 And then we also use targeted monitoring,
4 which includes about 92 fixed station. Our fixed
5 stations are monitored monthly. The other types
6 of targeted monitoring to develop total maximum
7 daily loads, determine how well our watershed
8 plans are working and that sort of thing. Those
9 can be anywhere in the state, and the frequency
10 of which we monitor varies depending on the
11 questions we're trying to answer.

12 And IDEM also looks for data that are
13 collected by others. In late 2015, we launched
14 our external data framework, and the framework is
15 intended to address the issue of workload issues
16 associated with getting external data, data
17 collected by other -- universities,
18 municipalities, those data collected from them.

19 It used to be a very big burden to do
20 this, and so we developed the external data
21 framework to help facilitate those folks bringing
22 the -- sharing their data with IDEM, if they
23 want; it's a voluntary process. It helps to

1 streamline the reviews of those data so that we
2 can see if they're reliable for use in -- or for
3 potential use in our 305(b) and 303(d) processes.

4 It's early yet. We've had -- I think
5 we're up to about six different submittals.
6 We're hoping that we'll have -- we'll identify
7 data sets that we can use for the 2018 cycle, so
8 our early results are kind of promising.

9 This is our rotating basin approach. I
10 just showed -- I just wanted to put this up to
11 help you understand how we monitor through the
12 state, when I say a rotating basin. We monitor
13 in this basin, this is the White River West Fork
14 in the first year.

15 And then the second year we hit up the
16 Patoka; third year, East Fork White River; fourth
17 year, the Great Miami; fifth, Upper Wabash;
18 sixth, Lower Wabash; seven is the Upper Illinois
19 River Basin up there in the corner of the state;
20 year eight is the Great Lakes basin, and then we
21 go around the Ohio River tributaries in year
22 nine. And this -- for this report, the most two
23 recent basins assessed are the East Fork White

1 River Basin and the Patoka River Basin.

2 So, this is really a nutshell version of
3 how it works. We monitor first, we assess
4 second, and then we report third. So, these are
5 the two basins that have been assessed for this
6 report. They've all been assessed at one point
7 or another, but these are the two that we're
8 revising assessments based on most recent data
9 collected.

10 We collected the data for the Patoka
11 in 2012 and assessed it in 2014, for the White
12 River East Fork, we collected those data in 2013
13 and assessed it in 2015. Together, those are
14 combined into revised assessments and worked into
15 our 2016 Integrated Report and the draft 303(d)
16 List.

17 And I just threw this slide in here to
18 give you some idea of the scope and scale of our
19 monitoring. Now, I did say that we assess one
20 basin every year, but when we sit down to do an
21 Integrated Report and 303(d) List, and every time
22 we do assessments, we look at the last five
23 years' worth of the data.

1 So, while we collect in each of those
2 major basins, we typically collect about 36
3 sites, we monitor 36 sites. But again, we also
4 have 92 sites, roughly, that are monitored every
5 month, and then those little clusters you see,
6 those kind of represent our targeted sites. So,
7 we do a lot of our targeted monitoring for total
8 maximum daily loads, we look for areas where we
9 have improvements, so we actually bring quite a
10 bit of data to bear to this process.

11 So, a little bit about our water quality
12 assessments. They are based on the narrative and
13 numeric criteria expressed in our water quality
14 standards. We assess for three designated uses.
15 There are more than three designated uses in our
16 water quality standards, but the criteria for
17 these uses -- recreational use, aquatic life use
18 and public water supply -- are far more stringent
19 than any criteria for other uses, so we feel like
20 if we're assessing and protecting, watching out
21 for these uses, the other uses will be adequately
22 protected.

23 We also do other types of assessments. We

1 do assessments for fish consumption, using fish
2 tissue data, and then we also assess the trends
3 and trophic state of our state's lakes. We do
4 all of this -- all of our assessments are guided
5 by our Indiana -- our consolidated assessment
6 listing methodology, which we call the CALM,
7 somewhat ironic.

8 We describe IDEM's -- the CALM describes
9 IDEM's water quality assessment criteria and how
10 we apply those. It describes how IDEM decides to
11 add or remove water bodies from the 303(d) List,
12 and it's a living document that evolves with new
13 science and U.S. EPA policy. So, we look at the
14 CALM every year, and if there are changes we need
15 to make to keep it up to date with the new
16 science or policy, we'll make revisions.

17 There aren't any really significant
18 changes for 2016. However, I'd like to direct
19 everyone's attention, if you are going to look at
20 the 303(d) List, to look in the narrative portion
21 of our notice of comments. We have included that
22 there are new methods -- that we propose new
23 methods for the assessment of public water

1 supply. We're not using those yet. We're
2 proposing them, and we hope to implement them
3 in 2018.

4 And I want to clarify one real quick thing
5 there. Those -- the methods that we propose are
6 designed to look at the quality of the water
7 before it gets into the plant. We're looking at
8 source waters now, not -- the Safe Drinking Water
9 Act is what regulates the water coming out of the
10 plant.

11 And by doing this, by working --
12 developing more robust assessment methods for
13 public water supply, our hope is that we can
14 marry up the Clean Water Act and the Safe
15 Drinking Water Act a little bit better, to afford
16 better protection for our public water supply.

17 So, we have an assessment infrastructure.
18 We rely on this to help us track all of this
19 information. As you can imagine, there's a lot
20 of information we're looking at. The two main
21 parts of that infrastructure are the Reach Index
22 and the Assessment Database.

23 The Reach Index is like an address book

1 for all of the lakes and streams in Indiana.
2 Every water body in that index has a unique
3 assessment unit ID. It's like its own address,
4 and these addresses allow us to then map that
5 assessment information -- to show it on a map.

6 The Assessment Database is where we house
7 all of our information that we have about that
8 water body, our assessment decisions, that data
9 we use to make the decisions about whether or not
10 it's supporting or impaired.

11 And the nice thing about that is the
12 assessments are cumulative, so we have records of
13 assessment going back -- we adopted -- first
14 adopted the Assessment Database in like 2002.
15 So, we have records going back far before that,
16 but in the Database we're drawing from 2002, so
17 it's a rather robust data set.

18 So, in order to talk about the 303(d)
19 List, I feel like I -- I want you to understand
20 the larger context in which -- into which it
21 fits. We actually develop two really large lists
22 every two years. One is called the Consolidated
23 List, and that's something pursuant to the 305(b)

1 part of our Integrated Report.

2 The Consolidated List is really a summary
3 of everything we know about all of the waters in
4 the state. What we're doing there is we take --
5 it's a report of all of the waters, and for every
6 designated use, we assign a category to it based
7 on what we know, and we'll talk about categories
8 in just a moment. Some of those waters are fully
9 supporting, some are impaired. It's everything,
10 our whole compendium of knowledge; that's why we
11 call it a Consolidated List.

12 The 303(d) List is subset of that. We
13 pull out just -- of everything that's in that
14 Consolidated List, we pull out just those
15 impairments to develop the 303(d) List. So, the
16 303(d) List is a problem -- is a list of the --
17 where we have our water quality problems. These
18 are waters that require a total maximum daily
19 load, and I don't know if all of you know what
20 that is, but the total maximum daily load is
21 basically the maximum amount of a pollutant that
22 a water body can take and still meet its water
23 quality standard.

1 So, a total maximum daily load, it is
2 basically a report, but it's more than that. To
3 develop a total maximum daily load, IDEM takes a
4 much deeper dive into the problem that they're
5 finding. We collect additional data, we study
6 land uses, and we develop a much larger report
7 that actually is a pretty good tool for local
8 level restoration. Watershed groups often pick
9 those up and use those as a starting point for
10 their restoration efforts.

11 So, here are those categories in the
12 Consolidated List. Category 1 is where we've
13 been out to assess and we know about all of the
14 designated uses and none of them impaired, and
15 that's kind of the gold standard, and it's not
16 that it's hard to find those waters; we just
17 can't -- it's hard to assess all of the
18 designated uses for every water, and that will
19 become apparent why when you see the mileage
20 numbers I have to show you.

21 Category 2 is where we have a designated
22 use, one or more designated uses have been
23 assessed, those uses are fully supporting, and

1 there are no other impairments. That's another
2 good -- that's basically -- a Category 2 water
3 body is a pretty good water body. We're happy
4 when we find those.

5 Category 3 are water bodies that are not
6 assessed. Either we have some data and it's not
7 enough to make the decision, or we don't -- we
8 haven't monitored it yet. There are a number of
9 those.

10 Category 4 and Category 5 are categories
11 where we place our impaired waters. Now,
12 Category 4 is where the use is impaired but a
13 TMDL isn't required. Category 4a -- we break
14 that down into three different reasons for why a
15 TMDL isn't required. Category 4a is a TMDL is
16 not required because the TMDL is done. So,
17 basically, if we do a TMDL and we get it
18 approved, we move it from Category 5 into
19 Category 4a.

20 Category 4b is where we put waters where
21 there are other, better ways than a TMDL to
22 resolve the problem. For example, if we
23 determine that a permitted facility is the sole

1 source of that impairment, we have regulatory
2 mechanisms already built into our system to bring
3 that water back into attainment, so we don't have
4 to put it -- there's no point in developing a
5 TMDL.

6 And then Category 4c, that's where we put
7 waters where you really can't calculate a load
8 for the problem that we're seeing. For example,
9 if you've got a really bad habitat issue, it's
10 been -- you know, the habitat's destroyed, you
11 can't really calculate how much habitat we need,
12 you know, to put in a -- it's not a load. So, we
13 put waters there typically that have more natural
14 sources of impairment.

15 Category 5 are all of the rest. We also
16 subdivide Category 5. Anything that's -- any --
17 we have Category 5b, where we put all of our
18 fish-tissue-related impairments, and Category 5a
19 is everything else. The reason we do that is
20 that IDEM maintains, and has maintained for many
21 years now, that the total maximum daily load is
22 not the appropriate tool to deal with
23 fish-consumption-related impairments --

1 fish-tissue-related impairments.

2 While they're still all part of our 303(d)
3 list, we maintain that division to help us in our
4 planning when we prioritize for where we want to
5 go and do additional monitoring and additional
6 work.

7 So, this is, in a nutshell, the process.
8 It's a very -- I've obviously very simplified in
9 how we build our list. We compile the data,
10 conduct our assessments based on our consolidated
11 assessment listing methodology, we enter those
12 assessment decisions into the ADB.

13 When it comes time to build the 303(d)
14 List and the Consolidated List, we pull all of
15 that stuff back out, and then for each assessment
16 unit, we decide what category it belongs in for
17 its recreational use, what category it belongs in
18 for its aquatic life use, and what category for
19 fish consumption use.

20 We also do that for public water supplies.
21 There are very few waters designated for that
22 particular use, so you don't see a lot of that.
23 And then we pull out that Category 5 and turn it

1 into a 303(d) List.

2 We do follow EPA's requirements for
3 delisting. There are specific requirements, one
4 being new data. If we have new data that shows
5 that water quality standards are now being met,
6 we can put that in Category 2. We like that.
7 That's good stuff.

8 When the assessment unit is no longer
9 considered impaired based on changes in our
10 assessment and listing methodology -- as I said,
11 that's an evolving document, so if new science
12 comes along and says, "Well, that's not really
13 the right way to assess," we'll make our changes,
14 and sometimes that means that a water body we
15 once thought was impaired isn't now. So, we can
16 delist under those circumstances.

17 We can also delist when an assessment unit
18 is no longer considered impaired based on an
19 error in the original assessment of our listing.
20 I am always going through our 303(d) List and
21 previous assessments. When something looks off
22 to me or something doesn't make sense, we
23 sometimes find where we've used the wrong data or

1 applied it in the wrong way or something like
2 that. In those cases -- often it's a clerical
3 error. In those cases, we can pull something off
4 the 303(d) List.

5 And also, we don't have to -- we can pull
6 something off if we decide that a TMDL won't
7 solve the problem. That's if we determine that
8 there are better ways than a TMDL to address it.
9 Again, that would be -- those would probably go
10 into a Category 4b or 4c.

11 Or the problem is not caused by a
12 pollutant. That actually would go into 4c. So,
13 that's where you would put the -- if a TMDL won't
14 solve it but you know it's impaired, it will go
15 into one of those Category 4's. And when the
16 TMDL's approved, we can pull something off the
17 list and put it into Category 4a, once the TMDL
18 is approved.

19 So, I wanted to talk to you a little bit
20 about where we're at with our 303(d) List
21 approval. IDEM received partial approval of its
22 2010 303(d) List on May 18, 2013. At issue was
23 IDEM's decision to use dissolved as opposed to

1 total metals when we make our aquatic life use
2 assessments and our listing decisions.

3 There are also some issues regarding
4 IDEM's position on the use of derived criteria.
5 These are criteria that had been developed in
6 accordance with our rules but had not been yet
7 approved by the Board, they have not been caught
8 up by those water rules. These issues are still
9 unresolved.

10 So, where we're at, where that leaves us,
11 the 2012303(d) List, we submitted that with our
12 IR, our Integrated Report, on March 30th of 2012.
13 We revised and added an addendum to that
14 Integrated Report on December 28th of that year.
15 On April 1st of 2014, we submitted our 2014 cycle
16 List, and -- with an Integrated Report, and we
17 also submitted a revised addendum to the List
18 on -- for the 2014 list in 2015.

19 We've not heard anything from U.S. EPA on
20 any of these subsequent Lists. The last
21 communication we have regarding our List approval
22 is the partial approval in 2010. But we have to
23 continue; right? I mean we have to keep doing

1 what we're doing. The public has a right to know
2 the quality of its waters, so we continue to
3 conduct our water quality assessments. We remain
4 committed to reporting those results to the
5 public.

6 Each 303(d) List builds on the previous
7 303(d) List. We don't start over every time. We
8 start with the original List and we build from
9 that. That helps us to ensure we have the most
10 up-to-date information on our 303(d) List.

11 So, moving forward, this situation with no
12 approve -- with a partial approval kind of
13 initially left us in a bit of a quandary about,
14 "Well, now how do we develop our List? Some of
15 it's approved, some of it's not, so what do we
16 start with?"

17 So, what we basically did was we developed
18 the 2012 List and we simply segregated off the
19 impairments that were still at issue, that EPA
20 and IDEM did not agree on, and we used the rest
21 as a starting point for our List development
22 for 2014. We did the same thing in 2016, we used
23 the 2014, which, again, those impairments that

1 were at issue were segregated off to develop our
2 2014 and our 2016.

3 So, right now, the reason I'm here
4 presenting this to you, is the public comment
5 period is now underway. It will run -- we
6 published the List in the Integrated Report on --
7 or I'm sorry, in the Indiana Register -- on
8 April 16th, and the public comment period and our
9 media public comment period will run through
10 July 5th of this year.

11 IDEM submitted its Integrated Report,
12 including this draft 303(d) List, to U.S. EPA on
13 April 1st of this year, so since the public
14 comment period is still underway, what we're
15 going to do is we're going to submit an addendum
16 to this cycle List as well. We'll submit an
17 addendum to the Integrated Report, which will
18 include a revised 303(d) List based on any
19 changes we might make, and public comments.

20 So, now for the summary data that I
21 promised early on. You survived all of the
22 tech-heavy slides. The impairments -- we'll
23 start with what we've taken off the 303(d) List.

1 We started with the 2014 List, and for the 2016
2 cycle, we remove -- we found 23 impairments that
3 are no longer im -- they're no longer impaired.
4 The waters now can be taken off the list. That's
5 awesome. Those go into Category 2, and we're
6 always happy to see that.

7 We also completed a number of TMDL's.
8 We -- 22 of those were already on the 303(d)
9 List, but that number doesn't include another 64
10 impairments that we found while we were taking
11 that deeper dive and doing that additional
12 monitoring. So, really, we've completed TMDL's
13 for 86 impairments, but the total number of
14 delistings for this cycle is 45.

15 And just to give you an idea of where
16 those are, these are the delistings based on the
17 water quality improvements. Not surprisingly, we
18 found those in the basins most recently
19 monitored, so they occur in the East Fork White
20 River and Patoka, and some of them occurred in
21 the Great Miami River Basin here. This is where
22 we were developing some of those TMDL's, and
23 while they also found new impairments when they

1 developed TMDL's, sometimes they also find waters
2 that are fully supporting their uses.

3 And here, where we did most of those
4 develop -- most of that TMDL development, back on
5 the Great Miami River Basin, most of that's in
6 the Southern Whitewater River Basin. The red
7 there, just to give you an idea of the different
8 colors of -- I don't know if it shows up on this
9 screen, but the ones in the red are those that
10 were already on the 303(d) List, and the ones in
11 orange are the other 64 or so that we identified
12 during that process.

13 IDEM also -- and this isn't really part of
14 the 303(d) List, but I also wanted to give you an
15 idea of some -- why we do so much of that
16 targeted monitoring. U.S. EPA, as part of other
17 requirements -- as part of the U.S. EPA's
18 strategic plan, requires that states show
19 improvements based on their program -- from their
20 water quality programs.

21 And we've been able to do that. We submit
22 these to U.S. EPA independently of our 303(d)
23 List, but we do report on those in the Integrated

1 Report. So, these are water bodies that we have
2 found that were originally impaired but where we
3 had found water quality improvements that are, in
4 large part, based on restoration efforts at the
5 local level. So, this is good stuff. We always
6 like to report on those.

7 Now, for what we've added to the 303(d)
8 List, we found 119 new impairments based on the
9 monitoring that we did in the last two years, so
10 we added 119, and those, again, were mostly in
11 those lower basins, the East Fork White River
12 Basin and the Great Miami and Patoka down here.
13 So, the overall changes, our 2014 303(d) List had
14 3584 impairments, we removed 45, added 119, we
15 end up with 3,658 impairments on the draft 303(d)
16 List.

17 And this is what it looks like if you map
18 all of those impairments, and before you all just
19 flex your chest and say, "Oh, my goodness," I
20 wanted to give you this to perhaps offer a
21 clearer perspective. We have about -- a little
22 over 63,000 stream miles in Indiana, and I wanted
23 to show you this to kind of help you understand

1 why -- what that red map looks like. You know,
2 that map has all of the impairments, all three --
3 all different kinds on it, and basically these
4 bars each equal the amount of streams we have in
5 Indiana, so 63,130.

6 So, this blue area here are the streams we
7 haven't been to yet, so while there's a lot of
8 red on that map, there's also -- if I were to map
9 the blue, and I probably should have, you would
10 have seen an awful -- probably as much blue as
11 you saw red. So, there's a lot of streams --
12 these are the number of miles that are actually
13 assessed, at the top of the bar, and this is the
14 use.

15 So, for recreational use, we've assessed
16 31,683 of our stream miles. Of those, a little
17 more -- in fact, a little less than half -- so
18 that's why we -- these are unassessed. Of the
19 half that we've assessed, we have, oh, I don't
20 know, about 8,000 miles that are impaired, and
21 more than that, 22,000, that are fully
22 supporting.

23 So, likewise, this is fish consumption.

1 We haven't done -- much of that monitoring occurs
2 on larger rivers -- larger streams so that we
3 don't have a lot of data for that, but there you
4 see that it's pretty balanced in terms of what is
5 supporting and what isn't.

6 Boy, I have my colors mixed up. My
7 apologies. The green is actually impaired. It
8 should have been -- I should have flipped that
9 around. That got transposed. So, this is the
10 impaired waters, and that's the good waters,
11 which is opposite when you think about how colors
12 work, but -- and over here, the aquatic life use,
13 actually, most of that is fully supporting. Most
14 of the 36,693 miles are fully -- most of those
15 are fully supporting and there are fewer
16 impaired.

17 So, that kind of gives you an idea, a
18 little better perspective, anyway. Despite my
19 faux pas with the colors, that hopefully gives
20 you a little bit better perspective about what
21 the situation is in terms of impairments.

22 So, additional changes. I said we will be
23 submitting an addendum to our Integrated Report.

1 The possible changes we might make would include
2 changes based on additional review of the 303(d)
3 List, that quality assurance and quality control
4 sort of stuff.

5 Any changes that might be requested when
6 we submit a 303(d) List draft, U.S. EPA sometimes
7 finds things they want changed, and if it's not a
8 big deal -- often it's just a difference between
9 their record and ours, and we figure that out and
10 we might make changes.

11 And then any changes -- again, sometimes
12 the public provides additional information, data,
13 other things that might make us want to change
14 the 303(d) List. So, those are the kinds of
15 changes that might occur.

16 As I said, it's still underway, the public
17 comment period is. We welcome your comments. We
18 also welcome comments on the Consolidated
19 Assessment and Listing Methodology. We want to
20 hear what you think about how we're making our
21 assessments and about the assessments themselves.
22 If there are additional data, we'll take that,
23 too, and -- yeah. So, that's where we're

1 standing right now. The public comment period
2 will end July 5th.

3 If you need more information, you can find
4 it all on-line, or if that's too daunting, you
5 can call me directly, because I'm happy to help
6 anybody figure things out if they need any help.

7 So, are there any questions?

8 CHAIRMAN GARD: Thank you.

9 Are there questions from Board members?

10 Yes.

11 MR. BAUSMAN: Jody, our Division of
12 Soil Conservation at ISDA has been doing a lot of
13 modeling data. Is any of that data that we're
14 collecting -- has that been used in any of these
15 reports? Because it's showing a lot of the
16 benefits at NRCS. SWCB's and our division, along
17 with IDEM, have been doing and improving nutrient
18 reductions. Is that a part of this report?

19 MS. ARTHUR: It has not been used in
20 this, but I'd like to talk to you, because we'd
21 like to get that data from you.

22 MS. METTLER: Part of it would be
23 captured in those success stories.

1 MS. ARTHUR: Oh, yes, that's true.

2 MR. BAUSMAN: Okay.

3 MS. ARTHUR: Yes, that's right. We
4 do -- it's for some of those other things we do.
5 But in this report, we don't -- for assessments,
6 we don't use model data, we just apply the data
7 at the point where it was collected. But even if
8 you're modeling, your model's built on raw data
9 that you've collected, so we could use those
10 data, and if they meet our quality control
11 standard, we might be able to use those for
12 assessments, absolutely.

13 Any other questions?

14 CHAIRMAN GARD: Any other questions?

15 (No response.)

16 CHAIRMAN GARD: Thank you --

17 MS. ARTHUR: Thank you.

18 CHAIRMAN GARD: -- very much.

19 We will now have a public hearing on the
20 Draft 303(d) List. This is a public hearing
21 before the Environmental Rules Board of the State
22 of Indiana on the 2016 Draft List of impaired
23 waters under Section 303(d) of the Clean Water

1 Act. IDEM is seeking comment on the Draft List
2 from September 6th -- or April 6th through
3 July 7th. The List and associated information
4 can be found on the IDEM Web site under the
5 title, "Section 303(d) List of Impaired Waters."
6 The Draft List was submitted to EPA for comment
7 on April the 1st, 2016.

8 Is there anyone who would like to speak on
9 the 2016 Draft List?

10 (No response.)

11 CHAIRMAN GARD: No? This hearing is
12 concluded.

13 We will now have a presentation on a
14 nonrule policy document regarding RCRA
15 Applicability to Baghouse Dust and Dust
16 Collection Storage Tanks. Valerie --

17 MS. TACHTIRIS: Tachtiris.

18 CHAIRMAN GARD: Thank you -- from
19 IDEM will be presenting the document.

20 MS. TACHTIRIS: Hi. I'm Valerie
21 Tachtiris. I am the Deputy General Counsel of
22 the agency, and I'm here to present the RCRA
23 Applicability to Baghouse Dust and Dust

1 Collection Storage Tanks, a nonrule policy
2 document.

3 This policy basically revises a previous
4 IDEM policy to treat baghouse dust as RCRA waste.
5 IDEM determined that the rules, both federal and
6 its own rules, permitted either interpretation,
7 so this revision will make it consistent with
8 EPA's interpretation, which holds that if the
9 collection system is integral to the pollution
10 collection -- or pollution control system, that
11 it will not be considered hazardous waste storage
12 until the point where it's taken out of the
13 collection system. And this is consistent with a
14 letter from EPA dated June 1st, 1998.

15 And if there are any questions, I can
16 answer them, or I may defer to Bruce Palin.

17 CHAIRMAN GARD: Any questions from
18 the Board?

19 (No response.)

20 MS. TACHTIRIS: Thank you.

21 CHAIRMAN GARD: Thank you.

22 This is an Open Forum. Is there anyone
23 that wishes to address the Board today?

1 (No response.)

2 CHAIRMAN GARD: Okay. The next
3 meeting of the Environmental Rules Board was
4 tentatively set for August the 10th at 1:30 in
5 Conference Room 22, Indiana Government Center
6 South, Conference Center. It's a little
7 different room than we sometimes have.

8 Is there a motion to adjourn?

9 MR. POWDRILL: So moved.

10 DR. NIEMIEC: Second.

11 CHAIRMAN GARD: We're adjourned.

12 Thank you all.

13 - - -
14 Thereupon, the proceedings of
15 May 11, 2016 were concluded
16 at 3:15 o'clock p.m.
17 - - -

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1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Wednesday, May 11, 2016 in this matter and
8 transcribed by me.

9

10

11

Lindy L. Meyer, Jr.,

12

Notary Public in and

13

for the State of Indiana.

14

15 My Commission expires October 27, 2016.

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