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## ENVIRONMENTAL RULES BOARD MEETING

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12 Transcript of the proceedings held on the 14th  
13 day of August, 2019, at 402 West Washington Street,  
14 Conference Center Room A, Indianapolis, Indiana,  
15 before Heather S. Orbaugh, Notary Public in and for  
16 the County of Boone, State of Indiana, CCR: LA.

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ACCURATE REPORTING OF INDIANA  
William F. Daniels, Prop., RPR/CP, CM  
12922 Brighton Avenue  
Carmel, Indiana 46032  
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## 1 A P P E A R A N C E S

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## 3 Members

4 William Etzler, Vice Chair, Small Business

5 Dr. Joanne Alexandrovich, Local Government

6 Ken Rulon, Agriculture

7 Cal Davidson, Solid Waste

8 Chris Horn, Labor

9 Dr. Ted Niemi ec, Medical

10 Jeffrey Cummins, Proxy, Lt. Governor

11 Bruno Pi gott, Commi ssi oner

12 Chris Smi th, IDNR

13 Mark Wasky, Proxy, IEDC

14 Angelique Collier, Public Utilities

15 Paul Gilson, Manufacturing

16 Michael Schul er, Constructi on

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AUGUST 14, 2019

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MR. ETZLER: I will call the August meeting of the Environmental Rules Board to order.

First of all, I would like to welcome our new board member, Michael Schuler. And I would now ask that board members introduce themselves.

MR. HORN: My name is Chris Horn and I represent labor.

MR. SCHULER: Michael Schuler, construction.

MR. GILSON: Paul Gilson, manufacturing.

DR. NIEMI EC: Ted Niemi ec, health.

MR. ETZLER: Bill Etzler, small business.

MS. COLLIER: Angelique Collier, public utility.

DR. ALEXANDROVI CH: Joanne Alexandrovi ch, local government.

MR. WASKY: Mark Wasky, Indiana Economic Development.

MR. SMITH: Good afternoon. Chris Smith, director with the Indiana Department of Natural Resources.

1 MR. PIGOTT: Bruno Pigott, Commissioner,  
2 IDEM.

3 MR. ETZLER: Our first order of business  
4 is the approval of the minutes from the May 8, 2019,  
5 board meeting. Are there any additions or  
6 corrections? Hearing none, do we have a motion to  
7 approve?

8 MR. HORN: So moved.

9 MR. ETZLER: Second?

10 MR. GILSON: Second.

11 MR. ETZLER: We have a motion and a  
12 second to approve the minutes as submitted. All those  
13 in favor, say aye.

14 (All responded aye.)

15 MR. ETZLER: Those opposed?

16 (No response.)

17 MR. ETZLER: The minutes are approved.  
18 I will call on Mr. Pigott to give the Agency Report.

19 MR. PIGOTT: Thank you, Mr. Chairman,  
20 members of the committee. I have two items I would  
21 like to talk about today. The first is a permit that  
22 is before the agency. The Office of Air Quality at  
23 IDEM received an application for a permit from the  
24 Waelz Corporation. I may be mispronouncing it  
25 slightly, W-a-e-l-z.

1           This company plans to locate at the old Borg  
2 Warner site, for those who may be aware in Muncie, and  
3 is interested in taking electric arc furnace dust and  
4 extracting zinc from it because it is a fairly  
5 profitable endeavor and zinc is valuable. The permit  
6 application was submitted to our agency in April. We  
7 have been, it would be fair to say, contacted  
8 frequently by members of the community as well as  
9 leaders at Ball State University, the Ball Foundation,  
10 IU Hospitals, with concerns about the emissions from  
11 the facility of mercury as well as other pollutants.

12           And I wanted to let you know that, A, we have  
13 heard from a large number of constituents in Muncie  
14 and, B, we are in the process of evaluating the  
15 application that was submitted to us. It is what we  
16 do. It is the first thing we do. We are looking at  
17 the information submitted, double checking it,  
18 conducting modeling, and once we are complete with  
19 that, we will be drafting a permit.

20           We understand the concerns that residents have  
21 raised. Some have asked us to hold a public hearing.  
22 And typically what we do with our permits is make a  
23 decision about a public hearing once we have drafted a  
24 permit and put the permit out to the public on public  
25 notice. But because of the large number of comments

1 or concerns that have been raised to us by the public  
2 in Muncie, we are committed to having a public hearing  
3 when the time comes at the public comment period time  
4 frame.

5           We want to listen to the public's concerns as  
6 we do with all our permits and ensure that the permit  
7 meets all of the Clean Air Act requirements, and part  
8 of that process is to engage the public. We will be  
9 doing that and once we are done with that, the permit  
10 will be reviewed by USEPA before we can finally issue  
11 a permit.

12           So I wanted to let you know because it is one  
13 of the issues that has come into the press lately and  
14 you may receive questions about it. We are engaged in  
15 the process, we are at the forefront of that process,  
16 we will be drafting the permit, holding a public  
17 notice and public hearing before we do anything in  
18 terms of issuance or changing the permit. So that's  
19 the first thing I wanted to mention.

20           Are there any questions? I am happy to answer  
21 any questions and we have technical staff here who are  
22 working over that program. So if you do have  
23 questions, we are happy to answer them.

24           A second issue we are dealing with is  
25 something that goes across the agency. We are engaged

1 in an effort to improve our processes agency-wide.  
2 And that effort probably stemmed from an initial  
3 discovery that a lot of our software systems, like  
4 many places, need to be updated. They are not  
5 perfect, they don't work perfectly well when  
6 technology is advanced. And we are seeking to improve  
7 the way we receive information in our agency.

8           We are trying to establish what we call  
9 citizen portal. It is a place where you can submit  
10 information to our agency electronically if you are a  
11 permittee. If you are a member of the public and you  
12 need information, you can look at the virtual file  
13 cabinet but you might then also be able to look  
14 through this citizen portal.

15           As a part of the thought process behind  
16 updating our electronic systems, we discovered that it  
17 was really important not only to engage in exercise  
18 looking at what kind of software you need updated, but  
19 looking at the processes that you engage in today even  
20 without the most up-to-date technology and see whether  
21 or not we can improve the processes we currently have  
22 under way.

23           So we have been engaged program by program in  
24 an effort to look at the processes of issuing permits,  
25 of conducting various activities, and seeing are there

1 better, more efficient ways to do that. One of the  
2 areas we have been working in is our storm water  
3 program. In our storm water program we have sat down  
4 and looked at all our processes for reviewing notices  
5 of intent that are submitted to our agency and  
6 determining that we could probably improve our  
7 processes pretty dramatically even without a software  
8 upgrade.

9           We will upgrade our software but we are going  
10 to put in place improvements in our processes that we  
11 believe will dramatically reduce our timeframes for  
12 approving work for the storm water programs. A big  
13 part of our storm water program is our construction  
14 program. As you know, any subdivision in the state  
15 that needs to build a subdivision must come through us  
16 if they are disturbing more than an acre of land to  
17 receive what we call a Rule 5 or construction permit.

18           We have been looking at our process and saying  
19 can we do that better and we believe we can, we  
20 believe we can review these notices of intent in a  
21 much shorter time frame than we previously did. And  
22 then we believe we can build electronic systems that  
23 will aid that process and make it easier for the  
24 applicant as well.

25           Now, we are doing that not just in storm water



1 but we are also looking at our tanks program,  
2 underground storage tanks program, and doing it there  
3 as well. We are also working with DNR to look at ways  
4 that both programs that deal with similar situations,  
5 development in an area that may require, for example,  
6 a flood plain permit and a 401 water quality  
7 certification. There are some instances when both are  
8 necessary.

9           How can we improve our processes and install  
10 appropriate methodologies for approving those? And we  
11 have been working with Chris and the folks at DNR to  
12 take a look at that and we are pretty excited about  
13 that and we plan to do this in program after program  
14 at the agency so that we improve our processes.

15           And as you probably are aware, Governor  
16 Holcomb's fifth pillar is a good government service.  
17 And we just believe that if we can improve our  
18 processes we will deliver the good government service  
19 that citizens should demand of us. And that's  
20 essentially my report for today, Mr. Chairman.

21           MR. ETZLER: Thank you. Any questions?

22           DR. ALEXANDROVICH: Are you going to  
23 have like a public suggestion box/complaint box for  
24 things on that improvement process?

25           MR. PIGOTT: For each and every program

1 that we look at, we not only sit down with people that  
2 are inside our agency, but we also invite people who  
3 interact with the agency to help us look at our  
4 processes. Well, that's not really the way I see you,  
5 it is not the way that I see that your process works.  
6 So not exactly a public suggestion box, but -- and  
7 maybe that's worth thinking through, but actually  
8 having the people that interact with the program there  
9 at the table to look at the process with us and say,  
10 okay, that's a much better process.

11 So we like that approach because we like  
12 people sitting at the table and helping us out, but  
13 certainly we will consider whether or not it would be  
14 additionally a good step to take public input in some,  
15 way, shape or form in this process and I appreciate  
16 the suggestion.

17 DR. ALEXANDROVICH: Thank you.

18 MR. ETZLER: Anyone else? Thank you.

19 We will have Chris Pedersen on rulemaking.

20 MS. PEDERSEN: Good afternoon, my name  
21 is Chris Pedersen. I'm the Rules Development Branch  
22 of the Office of Legal Counsel. The first thing I  
23 would like to do is introduce our newest rule writer,  
24 Seth Engdahl. He just joined us this week and you  
25 will be hearing more from him at future board

1 meetings.

2           As far as upcoming rulemaking, we are  
3 anticipating our next board meeting would be on  
4 November 13th. At that time the emergency rule for  
5 Ozone Designations in Clark and Floyd Counties may  
6 need to be presented one more time to maintain the  
7 designation status for those counties because the  
8 regular rulemaking may not be effective by then. So  
9 that may come before you again.

10           If preliminarily adopted today, the NPDES  
11 General Permits Rule and Septage Management Rule may  
12 be ready for final adoption at the next meeting. And  
13 then new for the next meeting, an emergency rule to  
14 redesignate two townships in the Terre Haute area to  
15 attainment for the SO<sub>2</sub> standard is likely coming before  
16 you. And we are also anticipating emergency rule  
17 related to the ozone nonattainment status for Lake and  
18 Porter Counties.

19           A federal register notice either was published  
20 or will be published this week, I believe, to bump up  
21 the counties from moderate nonattainment to serious  
22 nonattainment and we will need to change our rules to  
23 reflect that.

24           In addition to that, there should be one rule  
25 ready for adoption for the expedited Section 8

1 process. That's the Title 326 CFR update. It is the  
2 update to the Code of Federal Regulations citations in  
3 our air rules and it will update the references to the  
4 July 1, 2018, edition of the CFR.

5 And two other rules that may be ready for  
6 preliminary adoption. The first one is waste tires.  
7 This rule was postponed from our May board meeting to  
8 reconsider certain revisions but it should be ready by  
9 November. The draft rule includes overall revisions  
10 to update the existing waste tire management  
11 requirements and also clarifications and removal of  
12 unnecessary requirements and repetition.

13 It also will add new standards and procedures  
14 for the legitimate use of waste tires. And the final  
15 rule, Indiana Harbor Coke Company and Cokenergy SO<sub>2</sub>  
16 revisions, this is to address a federal consent decree  
17 for those companies that certain SO<sub>2</sub> limits be revised.  
18 The revisions of the rule will reflect the consent  
19 decrees already laid out so they will be pretty  
20 straightforward. And that's all I have and I will be  
21 happy to answer any questions.

22 MR. ETZLER: Any questions from the  
23 board? Thank you. Mr. Piggot, you are going to  
24 overwhelm us with combined sewer overflow now.

25 MR. PIGOTT: Yes. I have a presentation

1 and it is up on the screen behind you. Do you mind if  
2 I stand up? It is probably better, right?

3 MR. ETZLER: Please.

4 MR. PIGOTT: So I want to talk to --

5 MR. ETZLER: If board members would like  
6 to move so that you can see the information on the  
7 screen, feel welcome.

8 MR. PIGOTT: So the title of this  
9 presentation is The Use Attainability Analysis Process  
10 for Combined Sewer Overflow Communities, which is a  
11 long, slightly obtuse title that I think is much more  
12 interesting than the title might indicate. So let me  
13 start with this, our -- we have got a program, let me  
14 see -- so really what we are talking about today is  
15 109 communities throughout the State of Indiana.

16 109 communities in the State of Indiana have  
17 what we call a combined sewer system. That's a sewer  
18 system that is designed literally to move wastewater  
19 and storm water through a single piping system to a  
20 wastewater treatment plant. And these systems, these  
21 109 systems, are old. They are over a hundred years  
22 old often and they were designed on purpose a century  
23 ago that when it rained in such a way as to create a  
24 backup at the wastewater treatment plant to literally  
25 discharge raw sewage directly into rivers, creeks, and

1 streams from that sewer system.

2           Now, you may say, well, I thought we moved  
3 beyond the age of discharging wastewater directly to  
4 our rivers, creeks, and streams, and largely we have.  
5 But our older systems were designed on purpose to  
6 discharge during rain events because their treatment  
7 plants weren't designed to handle the capacity of  
8 wastewater that was coming through their system during  
9 a rain event.

10           Now, so this is an issue and it was purposely  
11 designed to do this. In the -- during the inception  
12 of the Clean Water Act communities were required to  
13 create and actually implement a plan to dramatically  
14 reduce the discharges from these sewer pipes because  
15 the water quality in that area when those discharges  
16 occur, it is dramatically reduced.

17           So communities have been by law required to  
18 put in place plans that would dramatically reduce  
19 these discharges when it rains. IDEM received those  
20 plans and we received them decades ago. The year  
21 2000, I can remember when I joined the agency, we had  
22 already received quite a few of them. And then in  
23 2005 when Governor Daniels came into office, he said  
24 we are going to review these and approve these plans  
25 to ensure that communities follow through and

1 implement improvements to their systems that reduce  
2 the discharge of raw sewage into our water bodies.

3           Now, these plans that have been put together  
4 for communities across the state of Indiana, small  
5 communities and large, as large as Indianapolis and  
6 very small communities, I think Clinton is one of  
7 them, I am just trying to pick one off the top of my  
8 head, but there is a lot of small ones, too. They all  
9 have to put in place improvements that will cost a  
10 significant amount of money and will take years and  
11 years to implement.

12           Indianapolis is right here, they have  
13 committed to spending over \$2 billion over this  
14 20-year period to put in place improvements to their  
15 sewer system that will dramatically reduce discharges  
16 to the water bodies in this area and I think will be  
17 one of the best things we can do to improve water  
18 quality in the State of Indiana across the nation.

19           This program will take a lot of money and has  
20 taken time. Indianapolis has been working through  
21 their plan as well as other communities around the  
22 state. And it is a very big ask. Communities around  
23 the state have been engaged with us on those plans. I  
24 also want to say briefly that the folks that work in  
25 our office to implement the plan to review and approve

1 the plans are actually sitting in the audience with us  
2 today. They are in the far back row and they deserve  
3 a lot of credit for working with communities to put in  
4 place practical solutions that will ensure that  
5 communities improve their sewer systems at a  
6 reasonable cost even though it is very expensive.

7           There are a couple Caras back there. Would  
8 you guys stand up for just a second so that people  
9 know who to credit for the work that we do in terms of  
10 improving our water? These three folks have been --  
11 they are a small but mighty crowd and they do a great  
12 job working with communities around the state to  
13 ensure that they are putting in place improvements to  
14 their sewer systems to ensure that water quality is  
15 improved throughout the State of Indiana and so  
16 thanks, guys, I appreciate it.

17           So Indianapolis I said would spend over \$2  
18 billion alone, that's alone, on infrastructure  
19 improvements and there are other big communities  
20 around the state that are engaged in this same  
21 process. So here is what you need to know about the  
22 process for these communities around the state. All  
23 of the communities that have these combined systems  
24 are under enforceable requirements to complete their  
25 plans. Ten of those communities are under federally



1 enforceable consent decrees to implement the plans  
2 that they have laid out and have approved by IDEM and  
3 USEPA. 99 communities are under state enforceable  
4 requirements, 53 have actually completed the work  
5 required to improve their systems. And so we are  
6 seeing water quality improvements as we speak. And  
7 others are in the process of implementing their plans.

8           It is very likely that most communities at the  
9 end of their expensive long process of improving their  
10 sewer systems will under certain high rain events have  
11 some discharges from some of their combined sewer  
12 discharge points. Not all, but some number will. And  
13 that's the reason we are talking today.

14           We know that certain communities just will not  
15 eliminate every discharge from their combined sewers  
16 and so you have to go back and say, well, what are the  
17 policy goals that we had that we were working with  
18 when we reviewed these plans and communities were  
19 required to implement. So the ultimate policy goals  
20 to try to meet water quality standards to protect  
21 designated uses such as fishing and swimming in our  
22 water bodies, and when water quality standards can't  
23 be met to reduce the frequency and the duration of the  
24 discharges, those residual discharges that I talked  
25 about to the maximum extent feasible without causing

1 serious adverse social and economic impacts in CSO  
2 communities around the state.

3           So the Clean Water Act fully anticipated these  
4 residual events and allows for what we call a change  
5 in the designated use. So this is a bureaucratic  
6 term. We talk about designated uses, fishable,  
7 swimmable, uses of the water bodies. And the Clean  
8 Water Act allows for a process for those designated  
9 uses of those water bodies to change under certain  
10 situations.

11           And that change in a water quality standard in  
12 the designated use can be approved by the Department  
13 of Environmental Management and USEPA. And in order  
14 to receive this change in designated use from  
15 swimmable, fishable to something else, a community  
16 that's interested in this because they have some sort  
17 of residual discharges at the end of their full  
18 implementation of a plan has to put together a  
19 document that we call a use attainability analysis.

20           It is really just a big assessment of certain  
21 factors to determine why they can't meet the  
22 designated use for the water bodies. It has to -- it  
23 is a change in the water quality standard from  
24 fishable, swimmable under certain circumstances and it  
25 is laid out in federal regulation.

1           So under what circumstances can we approve a  
2 change or a use attainability analysis? There is six  
3 factors we have to consider and those factors are  
4 embodied in federal use attainability analysis  
5 regulations, and that's the citation for those  
6 regulations. Now, let me talk about the six factors  
7 that we evaluate. When we determine whether or not we  
8 can change the use of a water body at the behest of a  
9 community that has spent a great deal of money and  
10 time to improve their systems there is six factors.  
11 The first is that there are naturally occurring  
12 pollution concentrations preventing the attainment of  
13 the use.

14           That is to say there is something that's  
15 happening that has nothing to do with the discharges  
16 from this wastewater treatment plant or this community  
17 that's preventing that water quality to meet the  
18 standards that are embodied in the Clean Water Act. A  
19 second factor we look at is whether there are natural,  
20 ephemeral, or low flow conditions in water levels that  
21 prevent the use, fishable, swimmable, to be attained,  
22 unless they can be compensated by a discharge,  
23 effluent discharges without violating water quality  
24 standards.

25           A third factor we look at is human caused

1 conditions or sources of pollution that might prevent  
2 the attainment of a use and can't be remedied or would  
3 cause more environmental damage to remedy than to  
4 leave alone. A fourth is the dams, diversions, or  
5 other types of hydrologic modifications might prevent  
6 the attainment of a water quality standard and a  
7 designated use.

8           A fifth is that there might be physical  
9 conditions related to natural features of a water body  
10 that would prevent that water body from attaining  
11 designated use. And finally, the controls more  
12 stringent than those required by the Clean Water Act  
13 would result in substantial and widespread economic  
14 and social impact. Those six factors have to be  
15 addressed by communities that want to change a  
16 designated use from full body contact, recreational  
17 use to something else, and they have to submit to us a  
18 document that outlines why it is they can't meet that  
19 designated use. And if upon our review of that we  
20 determine that they have met that criteria, then we  
21 can approve what we call this use attainability  
22 analysis.

23           Now what does that mean? Well, in this  
24 slide -- I am just going to skip past that. What does  
25 it mean if we say you will approve a use attainability

1 analysis? It means that there is another designated  
2 use that maybe the community can qualify for. In the  
3 case of CSO communities that designated use is  
4 embodied in law and it is called our CSO weather  
5 limited use subcategory. I know it is complicated.

6 But what it says is that up to four days after  
7 a rain event if you qualify, if you meet the criteria  
8 that I just outlined, the six different factors, that  
9 means we know that for up to four days after a rain  
10 event you may not be able to meet the water quality  
11 standards and therefore you qualify for this fallback  
12 standard which is the wet weather limited use  
13 subcategory.

14 And as I said, it is in the statute, it is  
15 available only to CSO communities, it allows for the  
16 suspension of full body version designated use,  
17 recreational, jumping in the water and swimming, not  
18 to exceed four days from the date the overflow  
19 discharge ends.

20 And it applies to specifically defined reaches  
21 of a water body. So if a community says I have done  
22 everything I can, I have spent \$2 billion, I have  
23 implemented the best technology, the agencies approved  
24 it, USEPA has approved it, and I have implemented all  
25 of that, and I still have residual overflows, there is

1 a recognition that they could apply for this wet  
2 weather limited use subcategory that would allow them  
3 to suspend the full bodied immersion during certain  
4 rain events.

5           And those rain events may be so high that it  
6 would be crazy for someone to be swimming in the water  
7 anyway and there may be other factors that may make  
8 the case for them to have an approved wet weather  
9 limited use subcategory, including the fact that they  
10 have spent a great deal of money and it would be  
11 socially or economically the wrong thing to force them  
12 to even control those residual overflows.

13           So the wet weather limited use subcategory is  
14 available. It is in law and a community that's almost  
15 done with their plan or is done with their plan can  
16 apply to the agency, the agency reviews the  
17 application, and examines the six different factors I  
18 talked about, and if they meet them, if they meet some  
19 of them, we can approve the use of the wet weather  
20 limited use subcategory which suspends full body  
21 recreational contact, in water body, only during  
22 limited amounts of time.

23           So why am I talking about this? Well, the  
24 reason I am talking about it is that to grant the CSO  
25 wet weather limited use subcategory, the board has to

1 approve this subcategory and it is a rule process and  
2 therefore when we approve -- the agency approves a use  
3 attainability analysis, we have approved that. But a  
4 rule still needs to be developed and implemented that  
5 grants this occasional use of the subcategory only  
6 when it is raining in sufficient amounts that you have  
7 this residual discharge. And therefore the board will  
8 face in the future requests from the agency for  
9 rulemakings that say we think it is appropriate to  
10 grant this subcategory under these circumstances.

11           And you will have to have hearings and will do  
12 the first notice and second notice as we always do  
13 with these rulemakings. And once we do that and once  
14 the board makes a decision on whether to grant that,  
15 if the board approves it, then we have a rule that  
16 applies for that specific community that would allow  
17 it to have this wet weather limited use subcategory.

18           Once that happens, of course, then the  
19 rulemaking because it is a change in a water quality  
20 standard has to go to USEPA for final approval. So it  
21 is important. It is important because there are  
22 communities throughout the state that we expect will  
23 do a Yeoman's effort trying to improve the environment  
24 by implementing the best controls, but may still have  
25 the occasional residual discharge and when they do,

1 they will want to have this limited use subcategory  
2 designation so they are not penalized for doing the  
3 right thing essentially.

4           And you as a board will want to consider the  
5 requests, consider the IDEM analysis of their use  
6 attainability analysis, and make decisions about  
7 whether or not to pass a rule that grants that  
8 request.

9           So this is -- it is important. It is  
10 important because communities throughout Indiana are  
11 implementing plans right now as we speak. Some are  
12 done. IDEM reviews, approves, tracks, and follows up  
13 personal inspections, looking at documents, looking at  
14 data, to ensure the communities are doing what they  
15 said they would do in their plans. And after fully  
16 implementing some communities are going to still  
17 experience residual discharges.

18           Now, as I said, Clean Water Act allows us to  
19 do this process that allows for this subcategory,  
20 limited use subcategory, if a community can  
21 demonstrate that they need that. IDEM will review  
22 that document that comes in, the board will review a  
23 rulemaking that grants it at IDEM's request.  
24 We think maybe as many as 24 communities could come to  
25 the board at different times to ask for this change in



1 designated use.

2           We believe the first one that will come  
3 forward is Indianapolis and you may say Citizens,  
4 Citizens Energy is now the entity in charge of the  
5 Indianapolis sewer systems. Indianapolis, as I said,  
6 has spent over \$2 billion. They have submitted to us  
7 a use attainability analysis, it was a thorough  
8 process, we have had several meetings with them. We  
9 believe that the use attainability analysis will  
10 likely qualify for approval and will likely want to  
11 start a rulemaking that would suggest to you, the  
12 board, that you pass a rule granting that subcategory  
13 to Indianapolis so that they can finish their  
14 implementation and they can successfully clean the  
15 water in the state.

16           I am sure a lot of you have seen the  
17 advertisements that Citizens has put out about the  
18 deep rock tunnel they are putting in place. And if  
19 you haven't seen it or heard it or been in it, it is  
20 an amazing engineering feat and it is going to do so  
21 much to improve the water quality in this area. It is  
22 200 feet below the surface of the earth, it will go  
23 beneath the White River, and it will collect the  
24 wastewater during these rain events, store it, so it  
25 doesn't overload the two wastewater treatment plants

1 that exist in Indianapolis, and then it will slowly  
2 feed in the wastewater instead of discharging it to  
3 rivers, creeks, and streams.

4 I am so excited about this process and I am so  
5 excited about the work that these communities are  
6 doing. We deal with permits every day, we deal with  
7 compliance issues every day, rarely is there a program  
8 that has such a huge effect in improving water  
9 quality. We are more incremental in nature, but this  
10 program, CSO program, will show dramatic improvements  
11 in water quality in the state of Indiana and is  
12 already doing so with 52 communities already  
13 implementing their plans. They are having far fewer,  
14 and there is an occasional community that is having no  
15 wet weather discharges at all.

16 So the reason for me talking today is I just  
17 wanted to let you know that the board is likely to  
18 face a rulemaking soon about Indianapolis and give you  
19 some background so -- because I know that the title  
20 and the topic is somewhat obscure. And I am happy to  
21 answer any questions that you may have.

22 DR. ALEXANDROVICH: I am curious, how  
23 big are these plans, UAA? Are they 20 pages or 500  
24 pages or what is the nature of the --

25 MR. PIGOTT: Paul, how big is it? Or

1 Cara or Dave, how big are these plans, the Use  
2 Attainability Analyses that are --

3 UNIDENTIFIED SPEAKER: Less than 50.

4 MR. PIGOTT: Less than 50 pages? Okay.

5 So they are not War and Peace. It is smaller. I will  
6 tell you what, the plans that have been submitted,  
7 they are. They are huge. And I have been in enough  
8 meetings over my 20 years at the Agency to know that  
9 every word in those plans was argued over and  
10 discussed, that EPA and IDEM worked hard to ensure  
11 that the plans did cost-effective but thorough jobs in  
12 improving and reducing the discharges from these sewer  
13 systems and I am excited to see them being put in  
14 place. Yes?

15 MR. RULON: It says like the third  
16 bullet about four times a year, but within the rule we  
17 are going to be asked to implement basically it is  
18 going to have -- if we have seven four-inch rains then  
19 that particular year there might be seven events that  
20 qualify; if we have no big rains in a year there would  
21 be zero events that qualify. Is that how the rules  
22 work?

23 MR. PIGOTT: No. So this -- so I put  
24 the word out because each community as I said goes  
25 through a process of having their plan evaluated, and

1 each community has a different end goal. I think in  
2 Indianapolis it is two to four events depending on a  
3 variety of factors. But in another community, their  
4 expectation may be slightly different. It may be that  
5 they are going to have zero discharges and that's in  
6 the plan. Or another one might say six discharges.

7           What the rule will say is whenever you have a  
8 discharge, and we are expecting that if you don't --  
9 if you have it much more than the times that you have  
10 committed to, we are going to be talking to you. But  
11 when you have a discharge for up to four days after  
12 the conclusion of that discharge, we are suspending  
13 the use because it is likely that the water levels in  
14 that creek are so high any way you shouldn't be in it.  
15 Because we expect that when they are fully done  
16 implementing these programs, the only time they will  
17 have discharge is during really high rain events.

18           And so it will really read that you -- it will  
19 be very simple language, almost nothing, but it will  
20 say you qualify for this category. And then the  
21 category says you can take advantage of the  
22 subcategory for four days after a rain event. Up to,  
23 it is not even all four days if you can avoid it.

24           MR. GILSON: Thank you. This was very,  
25 very helpful so thanks for that. I wonder if the

1 agency would consider having some sort of briefing or  
2 something for the one for Indianapolis for board  
3 members ahead of time so that we can maybe talk with  
4 staff and understand what they considered for the  
5 request?

6 MR. PIGOTT: I am sure we can arrange  
7 that. If you don't mind, I would like to talk to  
8 Nancy and others about how we might brief, but I fully  
9 expect we should brief the board before you guys have  
10 to.

11 MR. DAVIDSON: The exception that you  
12 described now for the one-off, after the planned  
13 improvement, are we going to see those on a somewhat  
14 regular basis. In my mind I am comparing it to the  
15 Clark Floyd folks, it's an oldy but goody, we love  
16 hearing from them, are we going to field that as  
17 ongoing or could that somehow be implemented into the  
18 plan that there is an exception level that's  
19 understood, if you exceed that maybe you come see us?

20 MR. PIGOTT: Well, the rulemakings  
21 will -- since there are about 24 that we think could  
22 come forward, for some period of time I think we could  
23 see a number of these requests come before the board.  
24 And after those communities are approved or decisions  
25 are made, then I think it slows down a bit. But

1 communities will be required to review their progress  
2 and the number of discharges they are having and may  
3 come back to the board again for renewal of that  
4 subcategory five years down the line or something in  
5 some time frame.

6           So the idea is that communities work hard to  
7 make improvements, we grant the subcategory, we see  
8 how they are doing, and you can re-up it at a later  
9 time. But it could be that there is a regular  
10 occurrence of this for some period of time.

11           I think that as we go through this it will  
12 become a second nature to the board in terms of  
13 understanding what we are talking about and how it all  
14 works and the briefings will be -- they will be  
15 specific to the individual communities because each  
16 community has different approved levels that they have  
17 to get down to and Indy seems -- I think it is two and  
18 four and that's the way I see it working.

19           MR. SCHULER: Is there an existing  
20 option now other than the subcategory we are talking  
21 about creating for these communities that are still  
22 experiencing, that completed their plans that are  
23 still experiencing illegal discharge?

24           MR. PIGOTT: There are some that would  
25 but there is another potential option in changing some

1 of the water quality criteria, and that is something  
2 that the agency has been looking at, but it would  
3 require rulemaking and it may or may not depending on  
4 how it is structured actually benefit the community  
5 that would be looking at if we revised the criteria.

6           So that's an option we have been looking at,  
7 but we haven't concluded whether it makes the most  
8 sense, and since this option is available and we can  
9 get moving on it, communities are looking for these  
10 approvals, and in addition to that I want to say the  
11 Indianapolis consent decree, the Fort Wayne consent  
12 decree and other consent decrees that have been  
13 embodied and signed off on by the federal government  
14 and state government and the localities all require  
15 the communities to submit these. So in some respects  
16 we are doing just what their consent decrees require.

17           Other questions? Well, I do appreciate your  
18 listening to me talk about this. And if you have  
19 questions along the way, I am happy to answer any of  
20 them and the really smart people in the back could  
21 answer them even better than I can. So thank you for  
22 your time.

23           MR. ETZLER: Thank you, Commissioner.  
24 Today we have one emergency rule that the board will  
25 be asked to adopt, Clark and Floyd Counties 2015 Ozone

1 Designation. We will also have hearings for the  
2 follow board actions; Final Adoption of the Hazardous  
3 Waste Updates, and Preliminary Adoption of the NPDES  
4 General Permits Rule and Septic Management.

5 There will also be a hearing on non-expiring  
6 rules in accordance with the requirements of IC  
7 13-14-9.5-1.1. And finally there will be a  
8 presentation on the Title V Air Permit Fee Adjustments  
9 which the board will be asked to approve.

10 If anyone is present that would like to  
11 comment on any of these matters, please fill out a  
12 comment card and give them to Janet Pittman at the  
13 sign-in table if you wish to testify at today's  
14 hearing. The rules being considered at today's board  
15 meeting were included in board packets and available  
16 for public inspection at the Office of Legal Counsel  
17 on the 13th floor of the Indiana Government Center  
18 North.

19 The entire board packet is also available on  
20 IDEM's website at least one week prior to each board  
21 hearing. The written transcript of today's meeting  
22 will be made. The transcript and any written  
23 submissions will be open for public inspection at the  
24 Office of Legal Counsel. A copy of the transcript  
25 will be posted on the rules page of the agency website



1 when it becomes available.

2 Will the official reporter for the cause  
3 please stand and raise your right hand and state your  
4 name?

5 MS. ORBAUGH: Heather Orbaugh.

6 (Court reporter sworn.)

7 MR. ETZLER: The first item is board  
8 consideration of emergency rules for the 2015 Ozone  
9 Designation for Clark and Floyd Counties. The board  
10 will now consider adoption of an emergency rule to  
11 adopt the 2015 Ozone Designations for Clark and Floyd  
12 Counties. This emergency rule temporarily  
13 incorporates current federal designation. I will  
14 enter Exhibit A, the draft emergency rule, into the  
15 record of the meeting. Krystal Hackney will present  
16 the rule for the Agency.

17 MS. HACKNEY: Good afternoon, members of  
18 the board. My name is Krystal Hackney and I am a rule  
19 writer in the rules development branch within the  
20 Office of Legal Counsel. I am here to present the  
21 emergency ozone rule to designate Clark and Floyd  
22 County to nonattainment for the 2015 8-hour ozone  
23 standard for consistency with the federal  
24 designations.

25 This rule temporarily revises 326 IAC 1-4-11

1 and 326 IAC 1-4-23 to designate Clark County and Floyd  
2 County to nonattainment for the 2015 8-hour ozone  
3 standard until the regular rulemaking is completed.  
4 On June 4 of 2018 the USEPA designated Clark, Floyd,  
5 and a part of Lake County as nonattainment, while the  
6 remainder of the state has been classified attainment  
7 unclassifiable, IDEM is proposing the temporary  
8 nonattainment designations to Clark and Floyd Counties  
9 so that effective sources in that area can be  
10 permitted under the appropriate state permitting rule.  
11 Because all of Lake County is currently designated  
12 nonattainment for the 2008 8-hour ozone standard,  
13 action through this emergency rule is not necessary.

14           The formal rulemaking for designations under  
15 the 2015 8-hour ozone standard will include the  
16 designations for all Indiana counties. This emergency  
17 rule was most recently adopted on May 8 of 2019. If  
18 readopted, this emergency rule will be filed and  
19 become effective immediately for 90 days. IDEM  
20 requests that the Board adopt this emergency rule as  
21 presented and program staff and I are available to  
22 answer any further questions that you may have. Thank  
23 you.

24           MR. ETZLER: Is there any board  
25 discussion? Hearing none, is there a motion to adopt

1 the emergency rule?

2 DR. NIEMI EC: So moved.

3 MR. ETZLER: Is there a second?

4 DR. ALEXANDROVICH: Second.

5 MR. ETZLER: We have a motion and a  
6 second to approve the rule. All those in favor say  
7 aye.

8 (All responded aye.)

9 MR. ETZLER: The emergency rule for 2015  
10 Ozone Designation for Clark and Floyd Counties is  
11 approved.

12 We will now have a public hearing before the  
13 Environmental Rules Board of the State of Indiana  
14 concerning the final adoption of amendments to Rule  
15 329 IAC 3.1 regarding updates to the hazardous waste  
16 rule. I will now introduce Exhibit B, the rule, as  
17 preliminarily adopted with IDEM's suggested changes  
18 into the record of the hearing. Dan Watts will  
19 present the rule on behalf of the Department.

20 MR. WATTS: Good afternoon, Chairman  
21 Etzler and members of the board. I am Dan Watts of  
22 the Rules Development Branch and I am presenting LSA  
23 Document 18-481 for final adoption. This rulemaking  
24 updates the hazardous waste rules in Title 329 with  
25 the incorporation by reference of recently promulgated

1 federal hazardous waste rules and also makes technical  
2 amendments and corrections to the rule language that  
3 are related to the updated requirements or are  
4 identified in the included sections.

5           As a component of administering an authorized  
6 state hazardous waste program, IDEM must maintain  
7 requirements that are consistent with and no less  
8 stringent than the federal hazardous waste  
9 requirements. IDEM is proposing to incorporate recent  
10 federal hazardous waste rules that include  
11 improvements to the hazardous waste generator  
12 requirements, revisions to the requirements for  
13 import/export of hazardous waste, and revisions to the  
14 hazardous waste electronic manifest system. The  
15 rulemaking also includes conforming amendments that  
16 update exclusions to the incorporated parts of the  
17 Code of Federal Regulations, as the incorporated  
18 federal rules reorganized some CFR sections and  
19 amendments are necessary to accurately reflect the  
20 reorganization.

21           Those can be found at 329 IAC 3.1-1-9. Since  
22 the preliminary adoption of this rulemaking, IDEM has  
23 proposed a change at 329 IAC 3.1-1-14.1 (e)(2) to move  
24 the annual deadline for the assessment of hazardous  
25 waste annual operation fees from January 15 to June

1 15. This amendment is related to a statutory change  
2 included in the 2019 fee changes legislation which  
3 moved the date of the annual deadline.

4 Other changes in 329 IAC 3.1-9-2 and 3.1-10-2  
5 are corrections to minor errors in the rule language  
6 to conform with administrative rules drafting  
7 standards.

8 Between the end of the third comment period on  
9 July 24 and this final adoption hearing, IDEM was  
10 informed about potential compliance concerns with the  
11 new contingency plan requirements for satellite  
12 accumulation areas included as a component of the  
13 generator improvements federal rule.

14 IDEM is aware of the implementation challenges  
15 of these particular federal requirements at specific  
16 facilities and is planning to work with affected  
17 companies to understand how the implementation of  
18 these requirements may create issues and how we can  
19 work together to develop sensible solutions.

20 IDEM hazardous waste staff are currently  
21 attending a conference this week with EPA and other  
22 states and among the topics of discussion will be the  
23 implementation of these requirements. In fact, at the  
24 conference a work crew has been formed on this  
25 particular issue and it will be an ongoing work group.

1 At this time, IDEM will work with -- well, in the  
2 future IDEM will work with affected sources on  
3 challenges based on information obtained at the  
4 conference and in this work group, which actually IDEM  
5 staff members currently at the conference has  
6 volunteered to be a part of the work group so that  
7 will be useful for helping entities with compliance  
8 here.

9           And at this time IDEM believes that clarifying  
10 implementation with these particular contingency plan  
11 requirements is best done through guidance and  
12 compliance assistance rather than specific rule change  
13 proposals, as related rule changes might be  
14 interpreted as less stringent than federal  
15 requirements.

16           Representatives from IDEM are available to  
17 answer any questions you may have on this rulemaking  
18 and the Department request that the rulemaking is  
19 adopted as presented so Indiana's hazardous waste  
20 program can include recent amendments to federal  
21 hazardous waste rules in maintaining stringency.  
22 Thank you.

23           MR. ETZLER: Thank you, Mr. Watts. I  
24 don't have any speaker cards. Is there anyone that  
25 wishes to speak to this issue? Seeing none, this

1 hearing is concluded. The board will now consider  
2 final adoption of amendments to 329 IAC 3.1, updates  
3 to the hazardous waste rule. Is there any board  
4 discussion or questions?

5 MR. GILSON: Dan, I have got a question  
6 for you. The guidance on the implementation of the  
7 generator requirements, you said that would be  
8 captured in what type of document.

9 MR. WATTS: Well, we currently don't  
10 have any particular guidance at the moment. It is an  
11 ongoing issue and since we have been informed of it,  
12 you know, we do have plans to create some sort of  
13 guidance related to that. And the EPA in other states  
14 are definitely aware of this.

15 MR. GILSON: Yeah. And my question is  
16 just how is that captured? Is that in -- is there a  
17 non-rule policy document that can be created or what  
18 is the -- what are the different options for creating  
19 this guidance?

20 MR. WATTS: We do have non-rule policy  
21 documents, options beyond that I am not exactly sure.  
22 John, do you happen to have any input on that?

23 MR. John: Well, currently we don't have  
24 any guidance documents or non-rule policy documents  
25 developed for this. We are working off of federal

1 guidance. This has been an ongoing federally approved  
2 rule since May of '17. This really hadn't come up  
3 previously in this state since we had not considered  
4 adopting it up until this time, so we are working with  
5 constituents and we are working on this work group  
6 with EPA. EPA has acknowledged there is an issue, so  
7 it is something we are going to have to work through,  
8 but right now it is something that is more stringent  
9 and we are required to adopt the rule.

10 MR. PIGOTT: In terms of the kinds of  
11 documents, the kinds of documents you could put  
12 together, a non-rule policy document is one way to do  
13 it. A guidance document is another thing we could do  
14 as well. So there are some options that we have.  
15 Those are two non-rule options that are most  
16 frequently employed by the agency.

17 MR. GILSON: Okay.

18 MR. WATTS: One thing to consider, too,  
19 since this is something EPA is aware of, they might  
20 come out with a guidance document that if we deem  
21 adequate, we will be able to use that reference for  
22 regulated entities. And, you know, if we feel further  
23 clarification is necessary at the state level, we  
24 might have our own (inaudible). We will see as it  
25 develops.



1 MR. GILSON: Thanks, Dan.

2 DR. ALEXANDROVICH: Another question,  
3 can you briefly explain what the issue is? I am not  
4 following completely.

5 MR. WATTS: Yeah, it's -- I guess it is  
6 a little particular based on the generator  
7 improvements. So there is a generator improvements  
8 federal rule that was promulgated I think in November  
9 of 2016 and one of the new requirements that's part of  
10 that is the inclusion of satellite accumulation areas  
11 for hazardous waste. And these are usually  
12 concentrated in amounts of I believe it is 55 gallons  
13 or less in the areas; is that correct?

14 MR. NADDY: Yes.

15 MR. WATTS: And so -- and this is for  
16 large quantity generators and small quantity is  
17 included as well, or is it just large? I think it is  
18 just large. They are allowed to accumulate these in  
19 separate satellite areas and then eventually to  
20 centrally accumulate them for storage or treatment.  
21 So it is kind of like thinking in terms of maybe  
22 geographically it is kind of like suburbs and then  
23 there is a central accumulation area. So these are  
24 like suburbs of a satellite accumulation area.

25 DR. ALEXANDROVICH: Is this something

1 new? The federal rule doesn't allow that anymore.

2 MR. WATTS: It does. It created --  
3 these were already in existing rules in a very minimal  
4 sense and now they are -- there is definitely more  
5 particular requirements for the satellite accumulation  
6 areas. One of these requirements is these contingency  
7 plans that generators are required to submit, and  
8 these contingency plans include a number of  
9 requirements including quick reference guides that are  
10 submitted to emergency response agencies in the  
11 geographic area, the municipality where they are  
12 located, and there is these -- one of the particular  
13 requirements is just clarifying exactly how to  
14 implement some of these requirements for the  
15 contingency plan. One of the questions we acquired is  
16 just how detailed do the maps need to be that are  
17 included.

18 MR. PIGOTT: Is it possible we could  
19 have John come on up here for a second? John already  
20 works in the program area and he may give some  
21 additional information. Thanks, John.

22 MR. NADDY: Good afternoon. With the  
23 recent changes --

24 MR. ETZLER: Could you state your name  
25 for the record?

1                   MR. NADDY: I'm sorry, my name is John  
2 Naddy. I work for IDEM. With the recent changes, to  
3 boil it down to the very simplest form, small or  
4 satellite accumulation areas which are -- they can be  
5 located and there can be very many of them at  
6 different facilities, they are located at or near the  
7 point of generation under the control of an operator  
8 and they can accumulate up to 55 gallons of hazardous  
9 waste. It basically allows somebody from having to go  
10 to a centralized area every time they generate a small  
11 amount of waste. These things have always had some  
12 leeway under the federal rules as far as including  
13 them in the preparedness and prevention part which is  
14 the contingency plan.

15                   With the new rules EPA chose to include those  
16 and where that comes into play is some companies,  
17 institutions, can have many of these and if they  
18 change location, they would need to update their  
19 contingency plan. And some places change these  
20 frequently and we do not want to make that burdensome,  
21 but it is something that is more stringent, the rule  
22 was picked up and is more stringent and we are  
23 required to do this. We are looking to work through  
24 this. I am not sure what kind of a way we are going  
25 to do that. EPA has acknowledged that this is a

1 problem. They have been told loud and clear by many  
2 states, some of the regions, larger companies.

3 So what's involved is we have a lot of small  
4 areas of waste that are now under a microscope and we  
5 need to figure out a way to help companies comply with  
6 that rule. So did I answer your question?

7 DR. ALEXANDROVICH: Yes, thank you.

8 MR. GILSON: If I could add, John, I  
9 think you are exactly right. I think the other -- the  
10 other concern, the purpose of the contingency plan is  
11 for emergency response. It is giving information to  
12 emergency responders so we keep them safe. We want  
13 the contingency plan to focus on the bigger hazards in  
14 the facility.

15 If you can imagine having hundreds of little  
16 dots and saying worry about all these hundreds of  
17 little dots, that's going to confuse emergency  
18 responders. We want to give them this is the critical  
19 information you need when you go in a facility that  
20 stores hazardous waste. And so we want that -- we  
21 don't want to lose that clarity that I think we have  
22 today. Is that fair, John?

23 MR. NADDY: Yes. And when I said it was  
24 a 55-gallon container, it is up to 55 gallons. You  
25 could have this under a hood in a lab, could be a

1 quart jar, it could be a 55-gallon container. It  
2 could be anything in between. All right.

3 MR. PIGOTT: Thank you, John.

4 MR. ETZLER: Any other questions from  
5 the board? Thank you. We need a motion to adopt  
6 IDEM's suggested changes.

7 MR. GILSON: So moved.

8 MR. NIEMI EC: Second.

9 MR. ETZLER: We have a motion and a  
10 second to adopt IDEM's suggested changes. All those  
11 in favor say aye.

12 (All responded aye.)

13 MR. ETZLER: Those opposed, nay?

14 (No response.)

15 MR. ETZLER: The motion is carried to  
16 adopt IDEM's suggested changes. We now need a motion  
17 to final adopt the rules as amended.

18 DR. NIEMI EC: So moved.

19 MR. SCHULER: Second.

20 MR. ETZLER: This will be a roll call  
21 vote. Dr. Niemi ec?

22 DR. NIEMI EC: Yes.

23 MR. ETZLER: Ms. Collier?

24 MS. COLLI ER: Yes.

25 MR. ETZLER: Mr. Gilson?

1 MR. GILSON: Yes.

2 MR. ETZLER: Mr. Wasky?

3 MR. WASKY: Yes.

4 MR. ETZLER: Mr. Rulon?

5 MR. RULON: Yes.

6 MR. ETZLER: Mr. Davidson?

7 MR. DAVIDSON: Yes.

8 MR. ETZLER: Mr. Smith?

9 MR. SMITH: Yes.

10 MR. ETZLER: Mr. Schuler?

11 MR. SCHULER: Yes.

12 MR. ETZLER: Mr. Horn?

13 MR. HORN: Yes.

14 MR. ETZLER: Ms. Alexandrovich?

15 DR. ALEXANDROVICH: Yes.

16 MR. ETZLER: And the chair votes yes.

17 The motion is adopted 11 to zero. Thank you. The  
18 next item is a public hearing before the Environmental  
19 Rules Board of the State of Indiana concerning the  
20 preliminary adoption of amendments. The rules at 327  
21 IAC 5 and 15, NPDES general permits. I will now  
22 introduce Exhibit C, the draft rule into the record of  
23 the hearing. Mary Ann Stevens will present the rule  
24 for the agency.

25 MS. STEVENS: Good afternoon, Members of

1 the Board, I am Mary Ann Stevens, a rule writer in the  
2 Office of Legal Counsel Rules Development Branch here  
3 to present for preliminary adoption hearing on NPDES  
4 general permits.

5 The goal of this rulemaking is to change the  
6 process by which three categories of dischargers  
7 receive general permit coverage from the existing  
8 permit by rule process to the administratively issued  
9 general permit coverage that is issued by the  
10 commissioner of IDEM. This is the second of likely  
11 three rulemakings to transition the existing rules for  
12 issuance of general permit coverage.

13 The Environmental Rules Board adopted the  
14 first general permits rulemaking in August of 2015.  
15 That transitioned five of the existing general permit  
16 rules. Two existing permits by rule general permit  
17 rules will remain after this rulemaking and will be  
18 handled in a future rulemaking.

19 Changing how general permit coverage is issued  
20 is based on comments from USEPA concerning  
21 establishing a permit term limit for general permits  
22 and coverage under them and concerns about potential  
23 conflicts of interest related to the way general  
24 permits coverage is currently issued.

25 The three categories of dischargers for which

1 general permit is transitioning under this rulemaking  
2 from existing permit by rule process to the  
3 administratively issued general permit coverage that  
4 is issued by the Commissioner of IDEM include those  
5 discharging stormwater associated with construction  
6 activity, stormwater associated with municipal  
7 separate storm sewer system conveyances, and on-site  
8 residential sewage discharging disposal systems within  
9 the Allen County On-Site Waste Management District.

10           The existing permit by rules for these three  
11 categories of discharges are found at 327 IAC 15-6,  
12 15-13, and 15-14. This rulemaking is changing the  
13 process by which these dischargers receive the permit  
14 coverage they must have in order to discharge. The  
15 requirements of the general permit for each of the  
16 three categories are not being changed by this  
17 rulemaking. Only the process by which permit coverage  
18 is issued is changing.

19           IDEM believes the draft rule addresses USEPA's  
20 concerns about the existing permit by rule, general  
21 permit rules, and therefore asks for the board's vote  
22 for preliminary adoption. If there are any questions,  
23 I can answer, and we have Office of Water Quality  
24 staff members here as well.

25           MR. ETZLER: No questions? If there are



1 none, we need a motion to preliminarily adopt the  
2 rule.

3 MS. STEVENS: Excuse me, Chair, you need  
4 to conclude the hearing prior to seeking the motion.

5 MR. ETZLER: Oh, I am sorry, I skipped a  
6 step. Thank you, Mary Ann. I have no speaker cards.  
7 Does anyone wish to speak on this matter? Hearing  
8 none, this hearing is concluded.

9 Now the board will consider preliminary  
10 adoption of the amendments to 327 IAC 5 and 15  
11 regarding NPDES general permits. Is there any  
12 discussion? Hearing none, we will need a motion to  
13 preliminarily adopt the rule.

14 MR. GILSON: So moved.

15 DR. NIEMIEC: Second.

16 MR. ETZLER: We have a motion and a  
17 second. Those in favor say aye.

18 (All responded aye.)

19 MR. ETZLER: Those opposed?

20 (No response.)

21 MR. ETZLER: The motion is carried to  
22 preliminarily adopt the rule. Next we will have a  
23 public hearing before the Environmental Rules Board of  
24 the State of Indiana concerning preliminarily adopting  
25 Amendments to Rules at 327 IAC 7.1 regarding septage

1 management. I will now introduce Exhibit D, the draft  
2 rule, into the record of the hearing. Krystal Hackney  
3 will present the rule on behalf of the Department.

4 MS. HACKNEY: Good afternoon, again. My  
5 name is Krystal Hackney and I am going to present the  
6 Septage Management rule. Septage is the human  
7 excreta, water, scum, sludge, sewage, and incidental  
8 or accidental seepage from sewage disposal systems.  
9 It also includes the retained contents of sewage  
10 holding tanks and portable sanitary units, grease,  
11 fats, and retained wastes from grease traps or  
12 interceptors, and human wastes carried in liquid from  
13 ordinary living processes.

14 Managing the transportation, storage,  
15 treatment, and disposal, including land application,  
16 of septage protects the public from threats to water  
17 quality resulting from run-off, spills, and leaks that  
18 can result from the use of improper techniques and  
19 lack of safeguards. When water quality is degraded,  
20 members of the public may lose drinking water,  
21 fishing, and recreational resources.

22 Septage comes from the sewage disposal systems  
23 that includes septic tanks and a variety of similar  
24 sources of human waste. IDEM issues permits to  
25 septage management businesses for cleaning sewage

1 disposal systems and for the transport, treatment,  
2 storage, or disposal of septage. This rule amends 327  
3 IAC 7.1 to address the changes that have been made  
4 through the Indiana General Assembly regarding the  
5 change of terminology from wastewater to septage and  
6 removal of the vehicle licensing requirements.

7 This rule also addresses recordkeeping  
8 requirements for the cleaning of portable sanitary  
9 units, adds flexibility to septage transportation  
10 requirements, allows for alternate design and  
11 construction of storage and treatment facilities, and  
12 adds phosphorus testing requirements.

13 The addition of phosphorus testing is to  
14 prevent septage from contributing to excess phosphorus  
15 in the soil, to reduce contamination of surface and  
16 ground waters. The draft rule also includes  
17 amendments to ensure the rules are consistent with the  
18 most current applicable state law, removes outdated  
19 language and forms, and reorganizes and revises  
20 language for improved clarity and understanding.

21 IDEM requests that the Board preliminarily  
22 adopt this rule as presented, and program staff and I  
23 are available to answer any further questions that you  
24 may have. Thank you.

25 MR. ETZLER: I have no speaker cards.

1 Is there anyone that would like to speak to this  
2 matter? Hearing none, the hearing is concluded. The  
3 Board will now consider preliminary adoption of  
4 amendments to Rule 327 IAC 7.1 regarding septage  
5 management. Is there any board discussion or  
6 question?

7 DR. ALEXANDROVICH: I do have some. I  
8 think they are kind of just housekeeping more or less.  
9 If I understand this right, anywhere the rule  
10 originally said waste management is supposed to be  
11 septage management; is that correct? I think you  
12 might need to run your word search through the whole  
13 rule because I was looking through and I just happened  
14 to notice under Rule 3, general requirements, it still  
15 says wastewater management instead of septage  
16 management. So I caught that one, I don't know where  
17 else it might be because that wasn't in our packets.

18 My other question as I was kind of going  
19 through this, on Page 27 of 46, it is just the way it  
20 was written it kind of sounded funny to me, vehicles  
21 and equipment that would be used for land application  
22 by surface application of septage, da, da, da. So it  
23 is kind of redundant so that got me looking up surface  
24 application and land application. Surface application  
25 is defined on Page 11 here, but then later in the rule

1 you don't use the term "surface application," you use  
2 the term "land application." So I am not sure what it  
3 is supposed to be. I would think it would be surface  
4 based on --

5 MS. KING: I think I can speak to this.  
6 My name is Nancy King, I am IDEM's general counsel.  
7 Surface application is a type of land application.  
8 Surface application doesn't necessarily mean not going  
9 into the ground. There are multiple types of land  
10 applications so they are not the same term. They can  
11 be mutually exclusive, but based on what you have said  
12 in making sure that we are using it accurately, we  
13 would make sure that it is -- that it is accurately  
14 reflected because you are absolutely right, if we put  
15 a definition into a rule it is because we use that  
16 term.

17 DR. ALEXANDROVICH: I couldn't find a  
18 definition of land application. I may have missed it,  
19 but --

20 MS. KING: No, it may well not be in  
21 there because often some of these terms are already in  
22 state statute and I --

23 DR. ALEXANDROVICH: I looked there, too.

24 MS. KING: If it is not there then  
25 that --

1 DR. ALEXANDROVICH: That doesn't mean it  
2 is not there.

3 MS. KING: Sometimes they are in state  
4 statute, sometimes they are not. Not every term does  
5 get defined, but if we use it and it creates a  
6 complication like this then it means we do need to  
7 define it so it is something we will look into before  
8 final adoption.

9 DR. ALEXANDROVICH: Thank you.

10 MS. KING: Thank you.

11 DR. ALEXANDROVICH: And one last thing  
12 and it is just a curiosity if I can find it here.  
13 Somewhere there is requirements for what's on the  
14 receipt that the septage hauler gives to the person  
15 they get the septage from, and then it includes a  
16 whole bunch of things including the date and how much  
17 septage was there. But then for port-a-potties you  
18 don't have to date it or say how much you have  
19 collected and I am just wondering why. I mean you  
20 would think that a date on a receipt is kind of  
21 critical for recordkeeping purposes.

22 MS. STEPHANOFF: Hi. I am Brenda  
23 Stephanoff with the Office of Land Quality. That was  
24 a change that was made to the statute in 2016. They  
25 took out that requirement for those who do portable

1 toilets and they did come and ask us about that. And  
2 what we find, and our inspectors were having problems  
3 with that as well, when they do a contract for  
4 portable toilets, it could be a long-term thing like  
5 at a construction site.

6 And so they may have so many toilets put  
7 around a place and they are required to go clean those  
8 maybe on a weekly basis. They could be there for six  
9 months to a year and so it is difficult to have  
10 certain information on those receipts when they go  
11 clean those toilets.

12 Now, the company would have a contract with --  
13 so the portable toilet company and the people that  
14 they are giving the toilets to would have a contract  
15 and under that contract they would be required to  
16 supply the portable toilets and clean those out on a  
17 regular basis. But they may have not have actual  
18 dates of when they are supposed to and so that kind of  
19 goes with why they took that out.

20 DR. ALEXANDROVICH: Okay. When you said  
21 the State Legislature did it that was kind of enough.  
22 Thank you.

23 MR. ETZLER: Any other questions?

24 MR. RULON: Couple of clarification  
25 questions. The phosphorus testing is you are testing

1 the septage; is that right? For the phosphorus  
2 testing requirement you are testing the septage or are  
3 you testing the land?

4 MS. STEPHANOFF: That would be testing  
5 the soil.

6 MR. RULON: The soil? Okay.

7 MS. STEPHANOFF: Yes.

8 MR. RULON: Are there any specific  
9 guidelines on how that is to be done?

10 MS. STEPHANOFF: What we are looking at  
11 is requiring them to test the soil during the permit  
12 application process and test just for the phosphorus  
13 which would be like a P-1 test. Most of our sites are  
14 small so maybe one or two samples across the field and  
15 then we have laid out the concentrations.

16 So if it meets those concentrations in the  
17 rules, then we would -- and their permits allow them  
18 to continue with that application and at those rate  
19 that's suggested. If it is over that then we would  
20 tell them that they couldn't land apply and we would  
21 have to deny that part of their application and so  
22 then they would just -- every time they renew that or  
23 renew their business permit every three years, they  
24 would be required to take that sampling.

25 MR. RULON: There is not any specific



1 number of tests like one every three acres or one  
2 every five acres or ten or --

3 MS. STEPHANOFF: No. Like I said, most  
4 of our sites are pretty small so I guess I didn't  
5 think that far ahead. So they -- you know, we have  
6 some that are five acres, some that are only three  
7 acres so, you know, one soil sample would be plenty  
8 probably for those. We can consider that moving  
9 forward if you want.

10 MR. RULON: I just -- he knows a lot  
11 about the last topic and I know a lot about this one,  
12 and soil phosphorus level varies a hundred percent  
13 within 50 feet. And we know where those are and we  
14 are going to -- we have septage applied at this point  
15 so amazingly the samples we submit never fail to be  
16 low enough. I am not -- we are not breaking the law  
17 at all.

18 I am just suggesting to you that if you really  
19 want to focus on phosphorus for land application, at  
20 some point in the future -- and this applies to CAFOs  
21 and everybody else, anyone who has done any land  
22 application, we really need to get more sophisticated  
23 on the amount of soil testing required, the grid size  
24 required, because we should only be allowing  
25 phosphorus application in specific areas.

1           So any specific, because almost every single  
2 field because of topography, rainfall, soil formation  
3 processes, blah, blah, blah will be high in  
4 phosphorus, other spots may be low, so in terms of  
5 improving the environment long term, future rulemaking  
6 you really need to think about -- and trust me, the  
7 technology now is so easy on this. We test every --  
8 we do five samples per acre on our farm so the  
9 technology to implement this in the rulemaking is not  
10 at all hard and would be beneficial to the waters of  
11 the state.

12           And in our case the CAFO operators because  
13 right now we can almost prove we are in violation at  
14 all times, but you don't get to see the data because I  
15 am not required to submit that, and I am not doing  
16 anything wrong, it is just because of the way the  
17 system works. The thought process is for in the  
18 future the septage to me seems to be much more toxic  
19 in terms of the levels of phosphorus that's in them  
20 probably than the little bit of stuff that we deal  
21 with all the time.

22           So just maybe in the future add some guidance  
23 to the rulemaking on acreage of the phosphorus  
24 sampling of the land. Because the land, especially in  
25 Indiana, is extremely variable just naturally. Thank

1 you.

2 MR. PIGOTT: Great suggesti on. Thank  
3 you. We will be sure to be talking about that. Thank  
4 you.

5 MR. ETZLER: Any other questions? If  
6 not, we need a motion to preliminarily adopt the  
7 rules.

8 MR. GILSON: So moved.

9 MR. RULON: Second.

10 MR. ETZLER: We have a motion and a  
11 second. All those in favor signify by saying aye.

12 (All responded aye.)

13 MR. ETZLER: Those opposed?

14 (No response.)

15 MR. ETZLER: Motion carries. The next  
16 item is a public hearing before the Environmental  
17 Rules Board by the State of Indiana concerning the  
18 review of rules that do not expire under IC  
19 13-14-9.5-1.1. Every year IDEM is required to publish  
20 a list of rules that have been effective for seven  
21 years that are not subject to expiration because they  
22 are necessary for a federally delegated program in  
23 order to receive or maintain federal funding.

24 This year notices were published for the air  
25 rules at Title 326 and the water rules entitled 327.

1 The 30-day comment period was provided through each  
2 Notice and no comments were received.

3 I will now introduce Exhibit E entitled 326,  
4 List of Rules that Do Not Expire, and Exhibit F, List  
5 of Rules at Title 327 That Do Not Expire under IC  
6 13-14-9.5-1.1 into the record of the hearing.

7 At this time is there anyone who would like to  
8 comment on any of the rules listed in either notice?  
9 I do not have any comment cards. There is no one who  
10 wishes to speak on this rule. This hearing is  
11 concluded. The Board must determine based upon  
12 comments received whether to direct the agency to open  
13 a new rulemaking for any of the rules that were listed  
14 in the Notices. If the Board chooses not to ask for  
15 rulemaking, the motion should be made for no further  
16 action to be taken on the rules.

17 Is there any Board discussion? If not, a  
18 motion should be made to either take no further action  
19 on the list of rules or to direct the agency to begin  
20 rulemaking on the specific list of rules. Do we have  
21 a motion?

22 MR. SMITH: Mr. Chairman, seeing no  
23 written comments or comments today, we move that no  
24 action is needed on this subject.

25 MR. ETZLER: Is there a second?

1 MR. HORN: Second.

2 MR. ETZLER: We have a motion and a  
3 second. Those in favor of the motion, say aye.

4 (All responded aye.)

5 MR. ETZLER: Those opposed?

6 (No response.)

7 MR. ETZLER: The motion has carried for  
8 no further action to be taken on the list of rules.  
9 The next item on the agenda is presentation of  
10 information on the Title V permit fee request for  
11 increases. Mr. Piggot?

12 MR. PIGOTT: Thank you, Mr. Chairman.  
13 Mr. Chairman, today IDEM is bringing forward to you a  
14 request for fee increases for our Title V fee program.  
15 This is the first of we expect many discussions about  
16 fee increases that we will have with you over the  
17 coming years. It should be known that in 2019 the  
18 General Assembly passed House Enrolled Act 1278 which  
19 provided the rules board with the authority to grant  
20 fee increases.

21 IDEM will be seeking fee increases and it will  
22 be the first time we have sought fee increases in 25  
23 years for our water programs and for our land  
24 programs. It will be the first time since 2006 that  
25 we have had a fee increase for our air program. The

1 new law that was passed in the last legislative  
2 session actually mandates that we complete rulemakings  
3 to increase fees for our land and water programs by  
4 \$3.2 million by January 1, 2022.

5           For Title V our Office of Air Quality permit  
6 fees, the new law mandates a fee increase of \$2  
7 million and also requires that that fee increase be  
8 done in accordance with the existing process for  
9 adjusting Title V fees which is found in 326  
10 IAC-2-17-9 for our air rules.

11           IDEM has had the ability annually to adjust  
12 fees for Title V as necessary to adequately fund the  
13 Title V program, but as I just mentioned, we have only  
14 done it one time since 1995 in 2006. According to  
15 this new law, any time IDEM seeks to adjust fees, we  
16 have to do several things. One thing that we have to  
17 do is prepare a report that shows a revenue shortfall,  
18 the need for additional resources to adequately fund  
19 the Title V permit program and the proposed fee  
20 adjustment.

21           You have in your packet an independently  
22 produced report that details that need. It was made  
23 available for public review for 60 days as required  
24 under air rules. If the fee's proposal is approved  
25 today, the adjusted fees will be billed in the next

1 billing cycle starting right after the first of the  
2 year. The fee section of the air rules will then be  
3 amended to include adjusted fees.

4           Matt Stuckey, our deputy assistant  
5 commissioner in the Office of Air Quality is here to  
6 go into more depth about why we are -- what we are  
7 proposing for a fee increase in our air fees, how we  
8 came to those numbers, and how they comport with the  
9 mandate under HEA 1278.

10           Kim Diller, our chief financial officer is  
11 here as well to answer any questions you have. I want  
12 to say thank you to the folks that we will be  
13 presenting today. Matt and Kim have worked hard to  
14 both talk to our stakeholders about the need for fee  
15 increases. I want to thank Brian Rockensuess, our  
16 chief of staff, and all the program folks for the work  
17 they have done to put together proposals that will be  
18 reasonable and not -- and ensure that we don't  
19 increase our staffing numbers or do anything really  
20 except ensure that we continue to do the business that  
21 we are doing today.

22           We are not talking in any of these fee  
23 increases about expanding our reach, expanding our  
24 staffing numbers, but really just paying bills and  
25 doing the work that you want us to do to ensure the

1 environment is clean and that we are issuing permits  
2 on time.

3           Matt, do you want to come on up and talk to us  
4 more about the specifics?

5           MR. GILSON: Just a question, a process  
6 question. So what is before the board today? What  
7 are we doing?

8           MR. PIGOTT: Today we are explaining the  
9 need that is outlined under our rules to -- for a fee  
10 increase for our office of air fees. We are not  
11 doing -- and the board could take a vote to say we  
12 approve of the fees that I think our charge is to  
13 present to you and we believe it is an important part  
14 of the public process. And we are operating today  
15 under the old rules that govern a requirement to ask  
16 for a fee increase, not the new ones which will  
17 require old rulemaking.

18           So really what we are looking for today is  
19 assent from the board that yes, the fees that you are  
20 proposing make sense and that we should go ahead and  
21 do it and it's not a rulemaking in the future when we  
22 ask for fee increases. We are going to go through a  
23 full-fledged rulemaking process for air, land, and  
24 water fees. That is a first notice, letting people  
25 know what we are doing.





1 say I don't -- I am supportive of the fee increase  
2 absolutely, I am just trying to understand the  
3 process. Why aren't we going through the rulemaking  
4 process at this time?

5 MR. PIGOTT: In the current rules that  
6 is not a requirement for the air quality fee  
7 increases. This process does not -- I don't think and  
8 Nancy, it doesn't require even a vote, does it?

9 MS. KING: It does --

10 MR. PIGOTT: A vote for?

11 MS. KING: It does.

12 MR. PIGOTT: It does?

13 MS. KING: If you like I can --

14 MR. PIGOTT: Feel free.

15 MS. KING: What this process is is laid  
16 out in the rule that we have now and this has happened  
17 one time before the air board before. This board  
18 didn't exist the last time this happened. So the  
19 process is under the existing rules that we prepare  
20 this cost of surface study.

21 Every year we are supposed to look at this,  
22 but we only come to the board when we are seeking an  
23 amendment to those rules. And under the old process  
24 we bring that to the board after it has been out for  
25 60 days for public comment to determine if we are

1 meeting the requirements in the rule of what is  
2 required for purposes of fully funding the Title V  
3 program and everything that is required in that is  
4 enumerated in statute.

5           So those funds -- and it is based on the  
6 consumer price index. So that is the information that  
7 was provided in your board packet and is available for  
8 people to comment on. If the board finds that that  
9 information is accurate, adequate, the board, what we  
10 have done in the past the one time we did it before,  
11 we actually had a vote of the board to approve those  
12 fees. So it is a process that is laid out in the rule  
13 and it is also in accordance with what is required  
14 under Title V.

15           It's been in place for quite some time.  
16 During the negotiations for the fees increase that we  
17 will be talking about in the other rulemakings, the  
18 Title V program, the consideration for that and the  
19 fact that it has separate legal kind of a framework  
20 within the existing statute was considered, which is  
21 why in this particular instance the first round of  
22 rulemakings that we do, there is a non-code provision  
23 that was in House Enrolled Act 1278 that speaks to  
24 what that process will be and puts the amount and the  
25 timing, puts that time frame around it and that's a

1 non-code provision.

2           After that we would go to what was encased in  
3 statute, which will be the regular rulemaking process  
4 that we do for all of our rules and that will include  
5 the fee structure. This is the first time since,  
6 well, in 25 years that boards have been able to  
7 actually do fee rules. The rules used to be  
8 originally were by rule and then the issue that came  
9 up with being sued and land and water rules were  
10 negated and that's how these sort of emergency  
11 processes of putting in statute a fee structure was  
12 put in there.

13           At that time the air rules were not part of  
14 that so they remained in rule. And that was another  
15 distinction, we were also at the time working on our  
16 Title V program so those rules were going into place.  
17 So that's kind of the historical background for it.  
18 So in the future the air fee increases will be part of  
19 the rulemaking, but the process whereby we come about  
20 those numbers will be similar to what it is now and  
21 will be in -- will comport with what is required under  
22 1278.

23                           MR. GILSON: Okay. Thank you.

24                           MR. DAVIDSON: So are we considering a  
25 fee --

1                   MR. PIGOTT: Well, first step, I thought  
2 Matt Stuckey would inform us more about the air fee  
3 increase if that's all right with you all?

4                   MR. ETZLER: I will interject here, at  
5 the end of this presentation you will be asked to  
6 either approve the fee increase, to make a motion to  
7 approve a fee increase or not. That's the simplest  
8 way to approach this. Go ahead, Matt.

9                   MR. STUCKEY: Lots of discussion. I  
10 will try to make this simple. I am Matt Stuckey, I am  
11 the deputy assistant commissioner at the Office of Air  
12 Quality. Good afternoon, Board, Chairman. As the  
13 Commissioner stated, IDEM's Office of Air Quality is  
14 proposing to increase the Part 70 permit fees.

15                   As indicated in the documentation to the Board  
16 60 days ago, IDEM is requesting a 27 percent increase  
17 to permit fees associated with Part 70 permit  
18 programs, our major sources. IDEM has concluded that  
19 in order to continue to provide quality permit service  
20 in the air permit branch and to ensure that IDEM has  
21 sufficient revenue to maintain the air program, it is  
22 necessary to request an increase in these permit fees.

23                   Since the inception of Part 70 of the permit  
24 rules which was in 1995-96, IDEM has had the  
25 regulatory authority to increase fees every year using

1 the consumer price index. Since 2006 IDEM has not  
2 increased these fees because IDEM has been able to  
3 adequately fund the program at current levels.  
4 Because IDEM delayed this fee adjustment until it was  
5 necessary to adequately fund the program, sources have  
6 benefited by paying lower fees in the past than what  
7 would have been assessed had the fees been adjusted  
8 annually by the CPI.

9 In fact, assessed fees for the majority of  
10 sources have gone down as emissions have decreased.  
11 The analysis of the CPI which was included in the  
12 information packet and were public noticed showed an  
13 analysis that IDEM raised fees annually by the CPI  
14 would have been an aggregate increase of about 27.1  
15 percent which was relevant for our analysis. The  
16 requested 27 percent fee increase which will increase  
17 the annual aggregate fee revenue, I take that from  
18 House Enrolled Act 1278, which required that we  
19 increase the annual aggregate fee revenue by  
20 approximately \$2 million over fiscal year 2018.

21 So the actual language in the rule was, "The  
22 board will increase the fees established by 13-17-8 to  
23 the extent calculated to cause annual aggregate fee  
24 revenue after the fee increase under the Subsection to  
25 be \$2 million greater than the aggregate fee revenue

1 actually received from the fees established by 13-17-8  
2 in the year immediately preceding the fee increase  
3 under the subsection."

4           So essentially what that means if you look at  
5 that, our fee billing for this year, which bills went  
6 out in early January of 2019, which were based on  
7 emissions data submitted to the agency in the previous  
8 year. Based on that, the approximate amount was about  
9 \$7.9 million in fee revenue. So if you take that and  
10 adjust upwards by a percent and then account for the  
11 fact that we have seen reductions in fees consistently  
12 over the last several years, 27 percent comes out to  
13 be about the exact right amount to get that \$2 million  
14 with a little bit perhaps we will lose if the fees  
15 decrease more than what we project. Which, again, is  
16 consistent with what the CPI analysis showed as well.  
17 So that's where we came out with the 27 percent  
18 increase.

19           To provide additional clarification to the  
20 Board and those present, this means that the following  
21 increases will occur after approval by the board.  
22 Title V annual based fees will increase from \$1,875 to  
23 2,381.25. That's a 27 percent increase to the base  
24 fee. The per ton fee assessed sources, Title V  
25 permits pay a fee on a per ton basis, previously it

1 was \$41.25, it will increase to \$52.39.

2           The fee cap which applies to the largest  
3 sources will increase from one hundred eighty-seven  
4 five to 238,125 in areas that are not designated as  
5 serious or severe nonattainment. There is a different  
6 fee cap for areas that are designated as severe  
7 (inaudible) serious, that cap was 250,000, that will  
8 increase to three hundred and seventeen five .

9           Project specific fees which include a number  
10 of fees not specifically mentioned in the presentation  
11 but where the agency is called upon to do (inaudible)  
12 interpretations, analysis of certain regulatory  
13 requirements be charged individual fees for those  
14 ranging from several hundred dollars to several  
15 thousand dollars, each of those fees will by --  
16 independently be raised by 27 percent.

17           All of these changes will be presented to the  
18 board and the revisions made to the rules at --  
19 subsequent to this, but the approval comes and the fee  
20 increases will occur in January of 2020 as part of our  
21 billing cycle which is House Enrolled Act (inaudible)  
22 presentation presents.

23           So IDEM is asking that the Board approve this  
24 proposed fee increase. I will answer any questions  
25 you might have .



1 MR. HORN: Do all those come at the same  
2 time?

3 MR. STUCKEY: The billings go out in  
4 early January, mid-January, and they are all due the  
5 first part of the year.

6 MR. GILSON: I have got a few questions.  
7 I am looking at the information sheet that was sent  
8 out. So the first paragraph, the Clean Air Act  
9 requires each state to establish air permit fees that  
10 fully cover all reasonable costs. Are the emission  
11 fees, do those cover all the costs or do you have  
12 other sources of revenue for Title V permits?

13 MR. STUCKEY: So the aggregate permit  
14 fees, so not just the emission fees but the base fee,  
15 the fees on a per project basis, and the per ton fees  
16 all go into the Title V fund and the Title V fund is  
17 used to fund the program. There are some additional  
18 funds that we receive from EPA, some additional  
19 general monies, but the vast majority of almost all of  
20 the Title V programs is funded out of just the Title V  
21 account, so they are self-sustaining.

22 MR. GILSON: Okay. And do you -- I am  
23 sure you do have a breakdown of the different -- so  
24 how much of our funding comes from EPA?

25 MR. STUCKEY: How much of our funding

1 for Title V?

2 MR. GILSON: Yeah. Just roughly?

3 MR. STUCKEY: Yeah, I don't have that  
4 breakdown with me today. It is a small fraction of  
5 roughly a couple percent. And then the majority, like  
6 I said, 97-98 percent of the funding comes directly  
7 from the Title V funding.

8 MR. GILSON: Fair enough. Thank you.

9 MR. STUCKEY: I can get you more  
10 clarification on that.

11 MR. GILSON: No, no, that's okay. I was  
12 just trying to understand how this --

13 MR. STUCKEY: Yeah.

14 MR. GILSON: This fee -- the fees you  
15 collect from emissions is probably a fairly  
16 significant -- is a fairly significant amount?

17 MR. STUCKEY: Absolutely, yeah. And  
18 what funding we do receive from EPA primarily funds  
19 things that could be paid for out of the Title V fund,  
20 but we use that, those federal monies for that. For  
21 example, things like air monitoring equipment. Some  
22 of that could be paid out of Title V fund but where we  
23 get grants, we use it to buy equipment so that we  
24 don't have to tap into our Title V funding.

25 MR. GILSON: On the second page, the

1 first paragraph, the first sentence. It says that  
2 funding has dropped to approximately .6. (Inaudible)  
3 projected to drop further in the future. What are  
4 those -- how far out have you projected and -- how far  
5 out have you projected and what is the --

6 MR. STUCKEY: So I mean we can project  
7 and it would be essentially a fairly rough estimate  
8 out two or three years based on trends that we have  
9 seen. The problem is the trends that we have seen  
10 come as rather dramatic drops at certain times. So if  
11 we were to project in a linear fashion straight out,  
12 we would have no money. I mean that certainly is not  
13 the case but that's how it would come out.

14 So we have projected out at least next year we  
15 know that with the additional \$2 million that will  
16 make us solvent for at least the next year and we  
17 believe for the following year. We won't know and we  
18 just received the emission statements this past month  
19 and we are processing those now, we won't really know  
20 how much we are going to bill in 2020 until we  
21 actually see what those emissions were.

22 And then again, same thing, we have to wait  
23 until middle of the year next year to see what  
24 increases or decreases occur in the emissions. We  
25 have not seen anything to suggest emissions will

1 increase. We have seen that they have slowed some in  
2 the last year. So if you take those projections, I  
3 think this is a better position. But I can't tell you  
4 definitively. It purely is a projection.

5 MR. GILSON: Okay. And farther down in  
6 that paragraph, and I am not nitpicking, I am really  
7 just trying to understand the last sentence, expenses  
8 related to staff. Expenses related to staff increase  
9 in part due to pay differential. So is that -- are  
10 those expenses because if you look at the table, your  
11 expenses have gone down fairly significantly over the  
12 last nine years.

13 MR. STUCKEY: Uh-huh.

14 MR. GILSON: So are you speaking just to  
15 staff, expenses related to staff, or -- because in the  
16 paragraph you say it has increased. I am just trying  
17 to understand.

18 MR. STUCKEY: So the cost -- yeah. So  
19 there is several things that go into play and this is  
20 perhaps not as detailed as we could have made it.  
21 There is obviously cost of running the program. One  
22 of the main things and the vast majority I think to  
23 the tune of (inaudible) give or take is just south.  
24 So we have X number of employees, Office of Air  
25 Quality has roughly just a little shy of 200 people,

1 we have to pay all of them. And every year it gets  
2 more expensive just to maintain their salaries because  
3 of insurance costs and all those things.

4 But in addition to those things we have to  
5 provide them with resources and computers and  
6 licenses, software they need, pens and paper. But we  
7 have in the meantime over the course of the last  
8 several years implemented a number of changes to  
9 reduce costs that are sort of secondary to that.

10 So, for example, we have gone almost  
11 exclusively to digital. Everything that we do is done  
12 electronically until the day which we issue a permit.  
13 So we have saved hundreds of thousands of dollars in  
14 costs in paper and print ink. I mean so we have  
15 literally looked at everything that we spend and try  
16 to reduce what we can for those expenses.

17 So this was really just referencing back to  
18 staff costing more money, but some of our expenses  
19 have gone down because other things don't cost as much  
20 money. We even -- we saved depending on how you  
21 calculate it 50 grand by not posting in the newspaper  
22 because they were charging us more and more every  
23 year. Now we post online so that saves us money. So  
24 that's why there is a disparity there. The cost of  
25 maintaining (inaudible) has gone up but we have also

1 reduced other expenses .

2 MR. GILSON: And I assume gone down in  
3 head count?

4 MR. PIGOTT: Yes.

5 MR. GILSON: That's probably a savings  
6 right there. So your cost per person is going up,  
7 which it should, we want to retain the people so  
8 okay --

9 MR. PIGOTT: The agency has lost over  
10 100 people since 2000 and what? '12? Yeah. So there  
11 have been associated reductions in staffing across the  
12 board.

13 MR. STUCKEY: The Office of Air Quality  
14 Permits Branch consistently runs about six to eight  
15 people shy of our full staff because we hire new  
16 people, we lose people at sort of almost a steady  
17 pace.

18 MR. GILSON: And urgency of getting this  
19 approved today versus November; can you speak to that?  
20 So you are going to be sending out bills in January,  
21 is there some urgency to have this approved today  
22 because of that billing cycle?

23 MR. STUCKEY: Well, I mean we have to  
24 prepare bills and it takes us a couple months to  
25 process, calculate, QA, print, invoice (inaudible).

1 So, yeah, if we waited until November to decide  
2 whether we were going to at the higher rate or the  
3 lower rate, that would put us in a bind to try to get  
4 that done in January.

5 MR. GILSON: Okay.

6 MR. RULON: A couple other points, I  
7 mean this is what you want to see, right? This is a  
8 lot less pollution.

9 MR. PIGOTT: That's right.

10 MR. RULON: I mean that's kind of a --  
11 kind of a -- kind of missed that lost in the weeds on  
12 the number, so it is kind of cool that the funding has  
13 gone down. My only question was --

14 MR. PIGOTT: Well, that's less money  
15 but, yes, relatively speaking --

16 MR. RULON: Well, that kind of speaks to  
17 the fact that the initial program wasn't very well  
18 thought through.

19 MR. STUCKEY: On the up side, that was  
20 EPA who established the Clean Air Act and we simply  
21 adopted that.

22 MR. RULON: The question I had, though,  
23 with the \$3 million cap. Is that a number you guys  
24 pulled out of the air? Is that a hard number that has  
25 to be followed? The only reason I am bringing this up

1 is I can see this, well, it is 3 million but we are  
2 kind of busy so when it gets to 5 million then we will  
3 start (inaudible) and sending it back to people. we  
4 kind of run a savings account which we need. We need  
5 a buffer. What's the legalities of how this cap works  
6 if there are any? If there are not, that's fine.

7 MR. STUCKEY: Well, a couple things.  
8 The term "cap," so essentially what you are referring  
9 to I believe is the fact that the (inaudible) fund  
10 itself can't accumulate beyond the point where we have  
11 \$3 million essentially of appropriated funds.

12 So we have -- and I was telling people that  
13 are trying to understand how we do our program. It is  
14 like getting your paycheck the first of the year and  
15 having to live on it for the rest of the year, right?  
16 So we get all of our revenue in initially in the first  
17 part of the year and so we appropriate all those  
18 funds, we put them in our budget, we establish what we  
19 are going to spend, and we hope we are pretty close.  
20 But think about in your terms if you figured out what  
21 you have to spend for the next 12 months and figured  
22 all that out on January 1st how accurate would you be?  
23 So things happen, additional requirements come into  
24 play.

25 So we have not had this as an issue, I don't



1 see how we would ever have it as an issue unless you  
2 guys would have raised fees substantially more than  
3 what we are asking for. But it effectively says that  
4 if we have that buffer created, we have enough to sort  
5 of get us by if we see a dip.

6           If something happens and a reduction or some  
7 big expense comes in and we can accommodate it by  
8 having a little bit of a -- call it a rainy day fund  
9 if you will. We haven't had a rainy day fund in a few  
10 years, but if we have it, it -- the designation of \$3  
11 million came out of the Clean Air Act, the original  
12 federal standard. How they came up with that number,  
13 I couldn't tell you. It goes back before me and I  
14 have been here 26 years.

15           But the reality was it was a base number that  
16 we use and they adopted it from the federal rules and  
17 it made sense and we get audited every year when the  
18 inspector general looks at whether or not our program  
19 has sufficient funding to run the program. And if we  
20 were to be determined to be insufficient; in other  
21 words, we didn't have enough revenue to run the  
22 program and accomplish everything we are required to  
23 do, then there is a risk that the EPA would consider  
24 our program deficient, they might take the program or  
25 at least sanction us.

1           So those are all reasons why we don't want to  
2 get to that point, but I don't see us ever getting to  
3 a point where we would have to return fees. But,  
4 again, that's the point, you reach that \$3 million  
5 cap, now we have to start refunding money in  
6 appropriate places.

7           MR. RULON: So it is regulatory or  
8 actually statutory?

9           MR. PIGOTT: We don't believe that this  
10 will allow us to do anything except keep our current  
11 staffing levels.

12          MR. STUCKEY: Yes, the \$3 million is  
13 just regulatory.

14          MR. DAVIDSON: Thanks. I couldn't agree  
15 more, to wait 25 years is not a good business plan.  
16 But what we are being asked to consider today, my  
17 understanding is not just an increase for the coming  
18 billing cycle, it would be an annual based on CPI. So  
19 we are not just considering an increase and maybe see  
20 you again in 20 years, we are setting something in  
21 motion that happens based on the CPI and --

22          MR. STUCKEY: No, so the 27 percent that  
23 will be approved today just means that all of those  
24 fees would be increased by 27 percent and then that  
25 would be a fixed. We wouldn't next year raise it

1 another 27 percent and another 27 percent. And we are  
2 not looking to raise it by the CPI each year for the  
3 coming years, we are simply asking that these fees  
4 be -- the fixed fees that we have be raised by that  
5 percentage and now they become the new fixed fee.

6 MR. DAVIDSON: Do you have a plan for  
7 the next year? Never mind, I won't be in here in 25  
8 years for the next one.

9 MR. STUCKEY: Hopefully I won't either.  
10 I will go on record as saying if I am something went  
11 sorely wrong.

12 MR. GILSON: So if I understand how you  
13 did the calculation, you did it using the CPI. It  
14 came out to 27 percent, you kind of went to that and  
15 said does that get us where we need to be and you said  
16 yes. So you kind of backed in -- using the CPI you  
17 kind of backed into --

18 MR. STUCKEY: Not exactly. Sort of the  
19 opposite. I mean I always -- I am not a huge fan of  
20 coincidence but in this particular case it seemed to  
21 kind of come out that way. Our last increase was 25  
22 percent so it didn't shock me that it came out in that  
23 25 to 30 percent range. What we did is we looked at  
24 what the last year's billing was, we looked at what  
25 percentage would get us to \$2 million and that was

1 about 27 percent. And then we looked at the CPI and  
2 said, well, what would the CPI allow us to do as -- at  
3 least in part as a part of our presentation so we  
4 could sort of justify our actions and it just happened  
5 that they come out roughly the same.

6 Had the CPI come out 40 percent, we still  
7 would have been relegated to only raising it to like  
8 27 because that's the \$2 million the legislative  
9 approved. So the cap became the \$2 million, and the  
10 way they presented it was to just simply take last  
11 year's aggregate and increase it by that amount,  
12 whatever the new quote would be.

13 MR. GILSON: Okay.

14 MR. SCHULER: Are there any other  
15 options or ideas short of staffing changes for us that  
16 you have done before as far as to reduce cost going  
17 forward? Things you still see that can be done  
18 whether it is digital or any other aspects?

19 MR. STUCKEY: We have. And I started  
20 from a branch chief in 2007 or '8, I can't remember  
21 now. I was (inaudible) branch chief for a long time  
22 and now the deputy assistant commissioner, but we have  
23 completely revamped the program. Since then we did  
24 away with contractors which were costing us a fortune.  
25 The last time we presented increased fees we were \$6

1 million in the hole because of what we had spent on  
2 contractor, so we have implemented everything that we  
3 could think of thus far. We are continually looking  
4 at process improvement, process improvement that we  
5 can look at whether it be computer based or whether it  
6 is changes in our process, our staffing.

7           You know, we don't think under current  
8 staffing, again, because we are generally about six to  
9 seven people short just in staffing. Even if we were  
10 full up, you know, the number of permits we get isn't  
11 changing. I mean they increase, decrease by a small  
12 percentage, one or two percent every year. The types  
13 of permits we are getting isn't changing.

14           In fact, one of the things that we put out  
15 there is that, you know, some of these reductions are  
16 the result of people installing controls and being  
17 subject to more complex regulations and now we have to  
18 make those assessments and incorporate those in the  
19 permits and do those reviews. So our people are doing  
20 more and making less money (inaudible).

21           So, yeah, we are constantly looking at it.  
22 Today I can't tell you what that would be. All of our  
23 decreases over the last few years have been really  
24 sort of small, incremental reductions. I don't know  
25 that there is this huge, you know, magic bullet that

1 is going to get us a huge amount of revenue all of a  
2 sudden. Certainly if you find it, we will  
3 (inaudible).

4 MR. PIGOTT: Well, one of the things we  
5 are engaged in and I talked about at the beginning of  
6 the day was that we are engaged in agency-wide process  
7 improvement work, and we have started with a couple of  
8 programs. We are moving to air quality and we are  
9 going to go program by program examining processes and  
10 whether or not there are improvements that can be made  
11 to those processes. And then once we find whether  
12 there are process improvements we can in addition to  
13 that say, well, would there be new electronic  
14 methodologies that would make this process better, but  
15 also better for the folks we serve.

16 So, yeah, we are constantly looking for  
17 improvements to reduce our costs and to do things in a  
18 way -- and we are trying to identify real return on  
19 investment in those processes, not just theoretically  
20 we don't have as many people, but where can we do  
21 things better in a way that benefits us.

22 And while it is not in Matt's program today,  
23 in storm water where we have evaluated our systems and  
24 it takes us, for example, 30 days to issue an NOI and  
25 we are going to -- we are hoping to get it down to

1 two. And we are planning to put that program of  
2 process improvement in place in each and every program  
3 in the agency.

4 MR. STUCKEY: And where that's relevant  
5 to error, and one of our things we are working on now  
6 that we are hopeful is going to get us a big gain is  
7 this portal that we are going to talk about earlier,  
8 this ability to submit documentation electronically.

9 So the Office of Air Quality processes,  
10 quarterly reports, semi-annual reports, annual  
11 reports, annual notifications, there is a whole slew  
12 of documentation that comes in, emission statements,  
13 they all come in off hard copy because the rules  
14 require that currently and so it takes a lot of people  
15 to bring those and copy them and put them in our  
16 virtual file cabinet and route them to the appropriate  
17 place, scan them in. So if we can reduce that time  
18 and effort up front because everything comes in  
19 digitally and is moved digitally then we can reduce  
20 cost. So that's the one thing that we do see. It is  
21 not in the permit program, but understanding  
22 compliance, enforcement, permitting are all paid for  
23 out of Title V funds so that is a savings to us  
24 overall.

25 So those are the kinds of things we are

1 looking at as very much doing this process improvement  
2 is ongoing. We are going to have a more formal  
3 process improvement analysis for Office of Air Quality  
4 over the next couple years and we will continue to do  
5 that.

6 DR. ALEXANDROVICH: Matt, those paper  
7 requirements, is that in the rules or in Air permits?

8 MR. STUCKEY: They are in the rules. So  
9 unfortunately right now the biggest hurdle we have is  
10 documentation. Permits are required to be submitted  
11 by hard copy. We have cut it down from three to two,  
12 but it is the wet signature that tends to get us in  
13 trouble. Those documents have to be signed, original  
14 signature and submitted.

15 That's one of the things we are trying to get  
16 through with these digital submittals is can we have  
17 an identity verification system that allows us to  
18 submit something and it be essentially the same as  
19 being signed. Right now the rule requires a wet  
20 signature.

21 MS. COLLIER: Matt, you mentioned the  
22 funds that IDEM receives for an EPA. How is that  
23 amount determined and does it ever change?

24 MR. STUCKEY: It changes. It changes  
25 consistently to go lower. EPA continues to cut its



1 budget. They -- and, again, there is a couple  
2 different funds that are provided to us and those tend  
3 to be fairly static and that's primarily what we use  
4 for our monitoring program. They also have what's  
5 called a multi-purpose grant that varies periodically,  
6 but it is to the tune of a few hundred thousand  
7 dollars and it may be here next year, it may not be  
8 here next year. Last year I think it went up  
9 slightly. So as we get that additional revenue, and  
10 it is generally in terms of a few hundred thousand,  
11 not millions, we try to use that money before we use  
12 the Title V money.

13 MR. ETZLER: I have two public comment  
14 cards. The first is Tim Rushenberg.

15 MR. RUSHENBERG: I am Tim Rushenberg,  
16 vice president of the Indiana Energy Association for  
17 the trade association and investor on electric and  
18 natural gas utilities in Indiana. And I know this was  
19 alluded to earlier, I have prepared remarks which I  
20 printed out which I will at this point hand out or at  
21 least allow to be handed out at some point.

22 But rather than read that to you I just  
23 thought -- I wanted to touch upon just a couple of key  
24 points. It was referred to House Enrolled Act 1278  
25 which really addressed this issue with regards to

1 funding, not only for the air program but something  
2 you will deal with later on the land and water piece  
3 as well. Just for purposes of air, there are really  
4 two parts to the legislation I think relevant for  
5 today's discussion.

6           The first was, and I don't know if you have  
7 the Enrolled Act in front of you or in your packet,  
8 but it is in Section 35 of the bill of the law. It  
9 addresses what we are here for today which is the  
10 shortfall, the \$2 million, and it specifically lists  
11 out the 2 million. And that was something that the  
12 energy association and other business related  
13 organizations work very closely with IDEM to address.  
14 And I know you also have in your packet my  
15 understanding is the Crowe Report (inaudible) the cost  
16 of service study.

17           So the two parts, the first is filling the  
18 shortfall, the upcoming shortfall that IDEM projects  
19 beginning in the 2021 biennium. And that's where the  
20 \$2 million comes from in the air program. So that's  
21 kind of Phase 1. Phase 2 which at some point maybe in  
22 the future you will address as a board is a separate  
23 and distinct rulemaking which addresses any future  
24 potential fee increases in the air program, and that  
25 will go through an actual rulemaking process which is

1 established in the law and which is also addressed in  
2 House Enrolled Act 1278.

3           And that second phase is future, though  
4 subsequent, fee increases has some guardrails on  
5 there. That basically says that the board, that IDEM  
6 based on the cost of service study and other  
7 information they are to present to you, IDEM is  
8 restricted in terms of what they can raise the fee to.  
9 They can only do it one time every five years and no  
10 more than ten percent for any subsequent fee  
11 increases.

12           So those are really the two phases of fee  
13 increases that are addressed in House Rule 1278 and we  
14 are just here for Phase 1 which is to fill the  
15 shortfall. We support that as the Energy Association,  
16 a (inaudible). We feel that it is in our utility  
17 industry's best interest to have a well-funded and  
18 well-staffed IDEM for purposes of issuing permits.

19           That's first and foremost what is important to  
20 us and we work closely again with the Commissioner,  
21 with Ms. King, and with Mr. Rockensuess as well on  
22 that and we feel fairly satisfied at this point that I  
23 think we have achieved that.

24           The second reason is, and I know this was  
25 alluded to by Mr. Stuckey as well, is the fact that we

1 haven't had an increase in air fees since 2006. So it  
2 will be about -- when the billing goes out in January  
3 or February of 2020, it will be about 14 years have  
4 passed and you see about a 27.1 percent increase. So  
5 if you kind of do simple math, 27 percent divided by  
6 14, it is about the inflation rate.

7           So we are satisfied with that and we feel that  
8 that is reasonable as well. So that concludes my  
9 comments. I am willing to answer any questions  
10 anybody throws my way. But, again, I do have a more  
11 thorough and prepared response, but based on the fact  
12 we have been here a long time and I think Mr. Stuckey  
13 did a good job of answering questions, I just wanted  
14 to be succinct.

15           MR. GILSON: Did you have -- are you  
16 familiar with any more detailed analysis than what we  
17 have in our packets?

18           MR. RUSHENBERG: I haven't seen the  
19 packet, but I have seen enough paperwork and  
20 documentation over the last -- since October to choke  
21 a horse I think. So they have the Crowe Commission,  
22 they have the Crowe --

23           MR. PIGOTT: Crowe Study.

24           MR. RUSHENBERG: Which has been the  
25 primary documents that we have reviewed.

1                   MR. GILSON: To be clear, is that the  
2 one page that we have got here?

3                   MS. KING: The Crowe Chizek -- I'm  
4 sorry, I will jump up and speak. The Crowe Study that  
5 Tim was speaking about was the cost of service study  
6 that we did overall for the whole agency, which is  
7 what led to the negotiations that we had to develop  
8 1278 with Tim and the other folks. That study is not  
9 part of this packet. It will be part of the regular  
10 rulemakings that we will be doing for the land and  
11 water programs because it will be based on that. It  
12 will be updated, but it will be based on that.

13                  The air portion, because this particular  
14 aspect of the rulemaking for these fees is under the  
15 old process. We just went by the CPI and what was  
16 required under 1278 which was what the cap that we had  
17 for this particular (inaudible). So the Crowe study  
18 while informative as to what it cost to do a permit,  
19 and it does include air, it wasn't included in air  
20 because it is not specifically pertinent to this  
21 particular fee raise.

22                  But we do have it available and we can provide  
23 it to you, but we will fully be providing it to you  
24 when we are doing regular rulemaking.

25                  MR. GILSON: Okay. Thank you. Any

1 other questions for me? Thank you.

2 MR. ETZLER: Thank you. Our second  
3 commenter is Malika Butler.

4 MS. BUTLER: Thank you members of the  
5 board. My name is Malika Butler. I am the assistant  
6 vice president at Indiana Manufacturers Association.  
7 We are a statewide association representing small to  
8 large manufacturers in various industry sectors. I  
9 will be brief in my comments and I will not be  
10 redundant.

11 As a representative of the regulated  
12 community, the IMA recognizes the importance of  
13 efficient and cost-effective governance in  
14 environmental regulation. The IMA is very engaged in  
15 the policy discussions for House Enrolled Act 1278  
16 during the legislative session and we are supportive  
17 of funding IDEM, funding the Title V permitting  
18 program at a level where permits are processed -- are  
19 processed and administered by professionals necessary  
20 expertise.

21 Well-run programs are very important for the  
22 regulated businesses and as the air permit fees  
23 increases our burden to discuss all the other  
24 permitting fees conversations that this board will  
25 have, IMA would like to take this opportunity to

1 highlight the importance of transparency in  
2 information in regards to expenses associated with the  
3 discussions.

4           Some of the topics I would like to be  
5 considered are the performance and evaluation in the  
6 agency's permitting; issuance process, the number of  
7 permits that are issued; understanding of emission  
8 rates and the volumetric calculation it has on the fee  
9 levels; the staff time associated with this; and how  
10 this data compares to other states and their  
11 practices. I will be happy to take any questions.  
12 Thank you for the opportunity.

13           MR. ETZLER: Are there any questions?

14           MR. GILSON: The information -- this is  
15 maybe to Nancy. The information she is requesting,  
16 that was in the Crowe -- a lot of that was in the  
17 Crowe Chizek report I would assume?

18           MS. KING: The Crowe Chizek report was  
19 done basically to look at what they process throughout  
20 the agency for issuing various permits and actions  
21 happen. As it relates to what Malika was just  
22 speaking about, I can't specifically say, I don't have  
23 it in front of me.

24           MR. PIGOTT: I am not sure that it does  
25 contain the information about what other states

1 charge, but I do know that we do have that  
2 information. Matt, I don't know if you have it with  
3 you, but if not, we certainly can provide it to you  
4 all.

5 MR. STUCKEY: I have some.

6 MR. PIGOTT: Okay. We are happy to talk  
7 about what we know.

8 DR. ALEXANDROVICH: Is that study  
9 available on the web anywhere, Matt?

10 MR. PIGOTT: The Crowe Chizek Study? I  
11 don't think it is on our web site, but we are happy to  
12 provide it to you.

13 MR. STUCKEY: So in preparation for some  
14 of this, for today's discussion, we did look at it and  
15 we looked at this before as we did our analysis  
16 previously instead of this, Nancy mentioned sort of  
17 agency-wide. So, again, not specific to this  
18 particular process, but just looking at the agency as  
19 a whole.

20 But, again, just sort of breaking it down,  
21 Michigan, for example, and remember, our rates -- and  
22 this is primarily the cost for time number. We have  
23 some additional funding information, but the new cost  
24 per ton is roughly \$52 per ton for us, Michigan  
25 charges 51. I looked at Region 5 states and we looked



1 at a couple other states that were sort of -- Missouri  
2 being very similar in terms of make up and industrial  
3 component as Indiana, and then understanding Indiana  
4 has the third highest number of Title V sources in the  
5 country, Pennsylvania being one that is ahead of us,  
6 and Texas the other.

7           So Michigan, about 51.15 is their fee  
8 currently. They are undergoing some additional fee  
9 increases under the next legislative session for them.  
10 They have already told us that they are in the same  
11 boat we are. Minnesota is \$117 per ton, Ohio is \$51  
12 per ton. Wisconsin is \$31 per ton but then they  
13 charge additional fees, base emission plus generation  
14 fees of upwards of \$46,000 for power plants and large  
15 industrial facilities. So they have a per ton and  
16 then they charge an additional sort of service fee for  
17 operations.

18           Kentucky is \$75 a ton. Missouri, their base  
19 fee plus -- charges an hourly rate for the work that  
20 they do but also the \$75 per ton cost. And  
21 Pennsylvania is \$93.87 per ton. So as you can see,  
22 even at 52 we are right in line with most of the  
23 Region 5 states or well under. Again, Pennsylvania  
24 being a facility source that has just slightly more  
25 Title V's than we do and charges over \$100.

1                   MR. SCHULER: Do you know, is their cap  
2 structure similar?

3                   MR. STUCKEY: Cap structure is similar  
4 to some -- it was hard to find some of those.  
5 Illinois has a \$294,000 cap and I don't have caps for  
6 the other facilities.

7                   MR. SCHULER: Ours moved to what number?

8                   MR. STUCKEY: Don't make me go by  
9 memory. So the cap went up by about 27 percent. So  
10 our cap currently is one hundred and eighty-seven five  
11 and it went up to 238,120. And, again, keep in mind I  
12 think it is relevant to note, years ago we had upwards  
13 of 25 or so caps facilities of the state. Currently I  
14 think we have nine. So most of the facilities that we  
15 operate with, we are down to single digits of the  
16 sources that are actually capped out.

17                   The ones that are, I think the top four make  
18 up about something like to the tune of several million  
19 dollars. I think overall the cap, the amount offsets  
20 about 4.6 million. So that is money we are not  
21 collecting as a result of the cap. So that will go up  
22 by \$60,000 per facility. That's about in line with a  
23 27 percent increase on sources not counted.

24                   I don't know, is that all you need from this  
25 one is the other states?

1                   MR. ETZLER: I don't have any other  
2 public comment cards. Is there anybody else that  
3 wishes to speak? Thank you. At this time the board  
4 is asked to approve the fee increase as requested by  
5 the agency. Do I have a motion to approve?

6                   MR. RULON: So moved.

7                   MR. GILSON: Are we going to have  
8 discussion?

9                   MR. ETZLER: Do I have a second?

10                  MR. HORN: I will second the motion  
11 pending discussion.

12                  MR. ETZLER: Is there any discussion?

13                  MR. GILSON: I just want to comment  
14 thank you very much for staff and Matt for the extra  
15 information, I really appreciate it. And industry is  
16 very supportive of this increase. As Malika said, you  
17 know, having high quality staff is just crucial for us  
18 for manufacturing growth and quick turn around and we  
19 really appreciate the partnership of the agency on  
20 that. And it is in our best interest definitely to  
21 continue to support IDEM and recruiting and retaining  
22 staff.

23                  I am supportive of this today. I do think  
24 maybe in the future and it sounds like with the other  
25 media we will get some more information and I would

1 have felt more comfortable with more information.  
2 Just looking at the packet and seeing the increase, I  
3 didn't have much to go on. This was helpful  
4 conversation to help me get there. So thank you, I  
5 appreciate that.

6 MR. PIGOTT: Thank you for the comments  
7 and, you know, always feedback is welcome. And so we  
8 will beef it up. Thank you.

9 MR. DAVIDSON: I, too, would like to  
10 echo that thanks because in working with some of the  
11 folks, you could tell it is not just an increase to  
12 the permit holders because those fees get passed along  
13 to consumers, users, taxpayers, it is not taken  
14 lightly and we appreciate the effort and the  
15 consideration.

16 MR. ETZLER: Any further discussion? We  
17 will have a roll call vote. Dr. Niemi ec?

18 DR. NIEMI EC: Aye.

19 MR. ETZLER: Ms. Collier?

20 MS. COLLIER: Yes.

21 MR. ETZLER: Mr. Gilson?

22 MR. GILSON: Yes.

23 MR. ETZLER: Mr. Wasky?

24 MR. WASKY: Yes.

25 MR. ETZLER: Mr. Rulon?

1 MR. RULON: Yes.

2 MR. ETZLER: Mr. Davidson?

3 MR. DAVIDSON: Yes.

4 MR. ETZLER: Mr. Smith?

5 MR. SMITH: Yes.

6 MR. ETZLER: Mr. Schuler?

7 MR. SCHULER: Yes.

8 MR. ETZLER: Mr. Horn?

9 MR. HORN: Yes.

10 MR. ETZLER: Ms. Alexandrovich?

11 DR. ALEXANDROVICH: Yes.

12 MR. ETZLER: And the chair votes yes.

13 The motion carries 11 to zero for the Title V permit  
14 fee increase. Other matters? Open forum, anybody  
15 wish to address the board?

16 MR. SUTHERLAND: I promise to be very  
17 quick. Joe Sutherland, Citizens Energy Group. To  
18 follow up on what Commissioner pointed out during his  
19 presentation on UAA. The Indianapolis project is  
20 under construction right now. The solution is. You  
21 have heard of the Dig Indy Tunnel, that's will be done  
22 in 2025.

23 We can do tours of the project so I would like  
24 to offer to anyone on the board that has an interest  
25 in touring the tunnel, we can coordinate that with the

1 agency. We can accommodate groups of ten to twelve.  
2 Normally we can find a date that works for whoever has  
3 an interest. So I just wanted to mention that.

4 DR. NIEMI EC: What are the date ranges  
5 that the tours might begin or end?

6 MR. SUTHERLAND: Whatever is convenient  
7 for the group. We can accommodate just about  
8 anything. We have to work around the construction  
9 schedules. Normally we do early morning or right  
10 after lunch to avoid interfering, but we can be pretty  
11 creative.

12 DR. NIEMI EC: Thank you.

13 MR. ETZLER: Thank you. Was there  
14 anyone else that wishes to address the Board? The  
15 next meeting of the Environmental Rules Board is  
16 tentatively set for November 13, 2019, at 1:30 in  
17 Conference Room A. This meeting date is tentative and  
18 subject to change and we will keep everyone apprised  
19 of the next meeting. With that, do I have a motion to  
20 adjourn?

21 DR. NIEMI EC: So moved.

22 MR. ETZLER: A second?

23 MR. GILSON: Second.

24 MR. ETZLER: All in favor say aye?

25 (All responded aye.)

1 MR. ETZLER: The meeting is adjourned.

2 Thank you.

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5 (Proceedings adjourned at 3:41 p.m.)

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## 1 CERTIFICATE

2 STATE OF INDIANA )  
 ) ss:  
 3 COUNTY OF BOONE )

4

5 I, Heather S. Orbaugh, the undersigned Court  
 Reporter and Notary Public residing and maintaining  
 6 offices in the City of Zionsville, Boone County,  
 Indiana, do hereby certify:

7

8 That I reported to the best of my ability in  
 machine shorthand all of the words spoken by all  
 parties in attendance during the course of the ensuing  
 9 proceedings, including objections, if any, made by all  
 counsel present;

10

11 That I later reduced my shorthand notes into the  
 foregoing typewritten transcript form, which  
 typewritten transcript is a true record to the best of  
 12 my ability of the testimony given by the witness as  
 stated above;

13

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

16

17 IN WITNESS HERETO, I have affixed my Notarial Seal  
 and subscribed my signature below this 30th day of  
 18 August, 2019.

19

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24 \_\_\_\_\_  
 Notary Public  
 County of Residence: Boone (Seal)  
 25 My Commission Expires on: April 4, 2026