

BEFORE THE STATE OF INDIANA  
FINANCIAL ASSURANCE BOARD

- - -

PUBLIC MEETING OF MARCH 8, 2018

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PROCEEDINGS

before the Indiana Financial Assurance Board,  
Greg Cobb, Chairman, taken before me, Lindy L.  
Meyer, Jr., a Notary Public in and for the State  
of Indiana, County of Shelby, at the Indiana  
Government Center South, Conference Center,  
Rooms 1 & 2, 402 West Washington Street,  
Indianapolis, Indiana, on Thursday, March 8, 2018  
at 1:31 o'clock p.m.

- - -

William F. Daniels, RPR/CP CM d/b/a  
ACCURATE REPORTING OF INDIANA  
12922 Brighton Avenue  
Carmel, Indiana 46032  
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1 APPEARANCES:

2 BOARD MEMBERS:

3 Greg Cobb, Chairman

Amy Smith

4 Sanka Prasad

Kim Logan

5 Kim Forster

Tom Navarre

6  
Nancy King, Legal Counsel

7  
8 IDEM STAFF MEMBERS:

9 Lisa McCoy

Doug Louks

10 Peggy Dorsey

Jason Goulet

11 Kim Diller

Roberta Steiff

12 Chris Pedersen

Dan Watts

13 Nancy Farrand

Janet Pittman

14  
15 PUBLIC SPEAKERS:

16 Christopher Braun

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1 1:31 o'clock p.m.

March 8, 2018

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3 CHAIRMAN COBB: I'd like to go ahead  
4 and call the meeting to order, and the first  
5 order of business, I'd like -- may we have  
6 introductions of the Board members.

7 So, Kim, could we begin with you?

8 MR. FORSTER: Kim Forster,  
9 representing the public.

10 MS. SMITH: Amy Smith, representing  
11 IDEM.

12 MS. KING: Nancy King. I'm the Board  
13 Counsel, from IDEM.

14 CHAIRMAN COBB: Greg Cobb, with  
15 Freedom Oil, representing the petroleum  
16 marketers, something like that.

17 (Laughter.)

18 MR. NAVARRE: I'm Tom Navarre with  
19 Family Express, and I'm representing convenience  
20 stores.

21 MR. PRASAD: Sanka Prasad. I'm  
22 representing Environmental Consulting.

23 CHAIRMAN COBB: Thank you.

1 (Ms. Logan arrived.)

2 CHAIRMAN COBB: The next order of  
3 business --

4 MS. LOGAN: Kim Logan, State  
5 Treasurer's Office.

6 CHAIRMAN COBB: Thank you, Kim.

7 The first order of business today is to  
8 approve the summary of the August 10th, 2017  
9 Board meeting. Are there any additions,  
10 corrections to the summary as presented?

11 (No response.)

12 CHAIRMAN COBB: Okay. Can I have a  
13 motion to approve?

14 MR. FORSTER: So moved.

15 MR. NAVARRE: I'll second.

16 CHAIRMAN COBB: Second? All in  
17 favor?

18 MS. SMITH: Aye.

19 MR. FORSTER: Aye.

20 MR. NAVARRE: Aye.

21 MR. PRASAD: Aye.

22 MS. LOGAN: Aye.

23 CHAIRMAN COBB: Aye.



1 claims processing information, presented by  
2 myself, as the IDEM staff member who oversees the  
3 UST branch; and second, the ELTF accounting and  
4 budgetary information that will presented by  
5 Ms. Kim Diller, IDEM's Chief Financial Officer.

6 So, on to the IDEM's claims processing  
7 section of the Financial Report. You'll notice  
8 this is distinctly different than the tables we  
9 have provided in the past. We opted to present  
10 our Fiscal Year 2018 information only through the  
11 time frame of July 1st, 2017 through  
12 December 31st, 2017, which is half of our Fiscal  
13 Year 2018. We will be providing a complete  
14 accounting of claims processing once Fiscal  
15 Year 18 closes on June 30th, 2018.

16 In this time frame Fiscal Year 2018, IDEM  
17 has received 925 claims, which is trending a bit  
18 lower than Fiscal Year '16 and Fiscal Year '17.  
19 The numbers continue as they have been in the  
20 first part of Fiscal Year '18. We believe part  
21 of the reason for this trend is the focus that  
22 IDEM has had on reducing resubmittals.

23 The pinnacle audit of the ELTF process

1 identified that 27 percent of claims submittals  
2 were actually resubmittals. Our focus to reduce  
3 resubmittals by reaching out to applicants to  
4 obtain necessary background information and/or  
5 clarification of the claims submittal is  
6 reflected in these lower claim numbers,  
7 effectively reducing the administrative paperwork  
8 burden for applicants and IDEM claims staff.

9 Of the 925 claims submitted in Fiscal  
10 Year '18 to date, the amount reflected was  
11 approximate -- well, it was \$24, 945,978.26, and  
12 the amount approved was 23,000 -- \$23,370,189.97,  
13 so resulting in a percentage approval rate of 94  
14 percent.

15 That 94 percent represents the actual  
16 reimbursable amount -- or I'm sorry -- the actual  
17 reimbursable amount will be will be discussed by  
18 Ms. Diller, as those amounts are paid by the  
19 auditor and does not take into account -- or does  
20 take into account the amounts precluded from  
21 reimbursement, such as deductibles and/or  
22 percentage reductions of reimbursement for  
23 certain entities. The bottom line is that the

1 vast majority of projects submitted to this  
2 agency as reviewed are determined to be  
3 reimbursable corrective action costs.

4 Finally, I would like to make note of the  
5 Speedway obligation that is contained in the  
6 Delayed Payment row of this chart. As of  
7 December 31st, 2017, that amount is  
8 \$10,423,696.94, arising from claims processed and  
9 approved in Fiscal Year '15, Fiscal Year '16,  
10 Fiscal Year '17 and the first half of Fiscal  
11 Year '18.

12 IDEM will issue another ten million  
13 payment to Speedway at the start of Fiscal  
14 Year '19. If trends continue as they have been,  
15 by Fiscal Year '20 IDEM will be able to issue  
16 timely payments of any remaining Speedway claims  
17 processed in that fiscal year.

18 I now turn the floor over to Ms. Kim  
19 Diller, IDEM's Chief Financial Officer, for the  
20 accounting portion of this report.

21 MS. DILLER: Thank you.

22 Good afternoon. I -- in your packet, you  
23 have two documents that I've prepared. The first

1 one is showing on that screen, and that's the  
2 third page in your packet, so I'm just going to  
3 shake things up here this morning and start with  
4 the -- what you're seeing on the screen should  
5 match up with the third page in your packet;  
6 okay? So, are we all together?

7 So, I want to talk first about the budget  
8 status of this fund, so we have an appropriation  
9 of 43.9 million dollars, with a three percent  
10 reserve; that's 1.3 million. So, that reserve  
11 is -- the budget agency requests all of the  
12 agencies to hold back three percent of all their  
13 general and dedicated funds.

14 It's really a budget tool. That three  
15 percent doesn't go anywhere. It stays in the  
16 fund. It's available to spend if we need it, and  
17 you'll see later that we do, and it doesn't  
18 revert anywhere, it doesn't get spent, it's just  
19 truly a budgeting tool that we use to help manage  
20 the health of the fund. So, it gives us a  
21 beginning available budget of 42.6 million  
22 dollars.

23 So, our total expenses through the first

1 half of this fiscal year, which would be through  
2 December 31st, is 32.8 million dollars. Of  
3 the -- 30.7 million of that is for claims.

4 The next highest cost that we have is  
5 personnel. That two million dollars through  
6 December represents around 40 people, but those  
7 40 people are claims staff, science services  
8 staff, UST inspection staff, and legal. And then  
9 the rest of it is really just administrative  
10 support of expenses that help support the overall  
11 function of the business.

12 So, that leaves us, as of December 31st, a  
13 balance of 9.8 million dollars, but we have  
14 remaining estimated expenses at 21.1 million, and  
15 so, if we didn't do anything, we would end up in  
16 the hole by 11.3 million dollars. This is a  
17 catch. That is a budget; okay? So, this is --  
18 I'm not talking about a negative fund balance;  
19 I'm talking about a negative budget balance.

20 So, what we've done is we've already  
21 released the reserve, that 1.3 million dollars,  
22 we've already submitted an augmentation to the  
23 budget agency for 10.5 million dollars. I think

1 that's being heard today, and so, once that's  
2 approved, then we have a revised estimated ending  
3 balance of \$451,000.

4 And then also knowing that we have an  
5 11-percent cap on administrative expenses, I just  
6 want to just note that our administrative cost,  
7 by the end of the year, will represent about 6.8  
8 percent of our total cost. Also showing on this  
9 sheet is the revenue that comes into this fund.  
10 Really what's coming in right now for normal  
11 business is our UST fuel inspection fees, and  
12 that's 23.6 million dollars.

13 So, I want to go to the next page that is  
14 in here. This kind of talks more about the  
15 health of the fund. What I want to do is kind of  
16 show you how our revenues are trending along with  
17 payouts. Now, this isn't our total expense. On  
18 here is just the claim payouts, and the reason  
19 why I did that is that's the majority of our  
20 costs; right?

21 And that's probably -- the administrative  
22 costs we can control, you know, managerially.  
23 So, this is really truly the payouts for this

1 fund. And you'll see, compared to -- so, the  
2 first section, the first block, is Fiscal  
3 Year '18 through December 31st, and the below box  
4 is Fiscal Year '17 as of December 31st.

5 And in total, in Fiscal Year '16 our  
6 revenues were about three million dollars less  
7 than our payouts. And Fiscal Year '18 through  
8 December 31st, we're -- our revenues are seven  
9 million dollars less than our payouts. So, it's  
10 kind of -- well, it is trending to negative.  
11 This is eating into our fund balance.

12 So, to be able to say what's it going to  
13 look like two years from now? I can't really  
14 tell you, because we don't have a really good way  
15 of -- we haven't had a really good way of  
16 capturing the information for future obligations;  
17 right? So, claims can come in today for  
18 something that happened five years ago. We don't  
19 know about that claim until it hits our door.

20 So, to be able to forecast in future  
21 years, I need to be able to know what our future  
22 obligations are. So, putting into place a  
23 process where we can capture that data up front

1 when we first know of a leak and know of action  
2 that needs to be taken, how much is that action  
3 really going to cost, and how much is going to be  
4 required from our fund; right? I mean that's how  
5 you run a business.

6 So, that's what I want to get to. I want  
7 to eventually get to where we can really capture  
8 those costs, be able to encumber those costs, so  
9 then we can actually see, when you're looking at  
10 the fund, you're not seeing this gigantic cash  
11 balance of a hundred million dollars and going,  
12 "Oh, they have tons of money," but actually see  
13 the future obligations that are going to be  
14 coming out of that fund so you can truly see a  
15 real balance sheet.

16 MS. SMITH: All right. That  
17 concludes our Financial Report.

18 CHAIRMAN COBB: Is it appropriate to  
19 ask them questions?

20 MS. KING: Sure.

21 CHAIRMAN COBB: Are there questions?

22 (No response.)

23 CHAIRMAN COBB: I do have one; how's

1 that? Can you tell us why the revenue is down so  
2 much, significantly down? I mean what happened?  
3 We didn't stop driving all of the sudden.

4 MS. DILLER: Right. It's -- as far  
5 as the trends go as far as revenue, compared to  
6 last year, I'm not really sure that I know. I  
7 don't -- I can't -- I haven't been able to dig  
8 in -- first of all, this is where I get to use  
9 the "I'm new" card, because I've only been here  
10 six months.

11 So, I mean we will need to look at this as  
12 far as the revenue part of it. I think the  
13 biggest issue right now, because we can't collect  
14 more revenue from our managerial standpoint, we  
15 don't have any control over that. What we can  
16 control is the expense.

17 CHAIRMAN COBB: Well, I -- the only  
18 reason I bring that up is because there's a  
19 couple of major events that happened --

20 MS. DILLER: Uh-huh.

21 CHAIRMAN COBB: -- and it's called  
22 tax increases.

23 MS. DILLER: Uh-huh.

1                   CHAIRMAN COBB:  And diesel -- we have  
2 the second-highest diesel taxes in the country,  
3 and people are -- truck stops are reporting a  
4 30-percent downward projection on diesel  
5 purchases in Indiana, which directly affects our  
6 fund.

7                   MS. DILLER:  Sure.

8                   CHAIRMAN COBB:  And I think we need  
9 to know that so that we can make sure the  
10 legislators are educated --

11                   MS. DILLER:  Okay.

12                   CHAIRMAN COBB:  -- about what they've  
13 done that's caused us a big problem.  I don't  
14 think gasoline volume is down that much, but I  
15 know diesel's down 30 percent --

16                   MS. DILLER:  Okay.  Well, then that  
17 helps explain it.

18                   CHAIRMAN COBB:  -- since July of last  
19 year.

20                   MS. DILLER:  Okay.

21                   MR. NAVARRE:  The only question I  
22 have, you were trying to project out what future  
23 claims may be against future revenues?

1 MS. DILLER: Uh-huh.

2 MR. NAVARRE: What kind of  
3 methodology are you thinking, or --

4 MS. DILLER: So, capturing when  
5 people submit their plans to start with, knowing  
6 how much that instance -- excuse me, incident --  
7 how much that incident is going to cost overall;  
8 right? So, being able to actually have a budget  
9 for that incident would really help us be able to  
10 know what we're going to end up paying over two,  
11 three, five, ten years. That would be the best  
12 way of doing it, so that we know -- before we  
13 even start paying on an incident, we know how  
14 much it's going to cost.

15 MR. NAVARRE: And how do we get to  
16 that? Do we just -- how do you estimate that;  
17 based on previous cases that are similar, or --

18 MS. SMITH: We'll get into that in  
19 our UST Report.

20 MR. NAVARRE: Okay.

21 MS. SMITH: It's more of a claims  
22 processing issue --

23 MR. NAVARRE: Okay.

1 MS. SMITH: -- rather than a budget  
2 issue.

3 MR. NAVARRE: Okay. Thank you.

4 MS. DILLER: Any other questions?

5 (No response.)

6 MS. DILLER: All right. Thank you.

7 CHAIRMAN COBB: Thank you.

8 Now, a report from the UST Branch Update.  
9 Amy?

10 MS. SMITH: I'm actually going to  
11 have Doug Louks, our UST Branch Chief, give you  
12 the update.

13 MR. LOUKS: Hello, everybody. I'm  
14 Doug Louks, the UST Branch Chief. I've got my  
15 notes here.

16 Okay. So, I'm mostly going to be talking  
17 about the claims section today. We had some --  
18 we made a personnel change in mid-January, and  
19 for the time being I'm now managing the ELTF  
20 Claims Section as well as the UST Branch. If you  
21 have -- if you have any questions, so you can go  
22 ahead and send those to me and I'll get back to  
23 you guys.

1           We also are going to have a questions  
2 e-mail address, kind of a generic e-mail address,  
3 where anybody can ask any question, and you  
4 can -- that should be up fairly shortly. We'll  
5 get an announcement out to everybody when that's  
6 ready to go.

7           I also wanted to say we created a new  
8 position in -- within the branch. This person  
9 will be doing cost-effectiveness determinations  
10 under the rule, which is 328 1-3-1.3. This will  
11 be for corrective action plans that come into the  
12 agency, as well as performing preapprovals. This  
13 kind of gets to what Amy was saying. We are  
14 going to be placing emphasis on getting  
15 preapprovals for various different reasons, and  
16 I'll talk about that a little bit later on in the  
17 presentation.

18           We still have one vacancy to fill. It was  
19 left open by a promotion opportunity for a staff  
20 member. We have one claim reviewer that we're  
21 short right now, but we posted it, and hopefully  
22 should have that filled fairly soon.

23           When I took over in mid-January, I

1 immediately started doing some process changes.  
2 I tried to keep it as simple as I could. There  
3 were several things that I felt that we could  
4 make really dramatic headway with pretty simple  
5 changes, so we went ahead and did that.

6           When I started, there was a backlog of  
7 claims, a rather significant one, as a matter of  
8 fact. By the end of January, so two weeks after  
9 I took over, we had whittled down the amount of  
10 claims that were in-house over 60 days to 35.

11           The numbers that came out by the end of  
12 February, we already had that down to 17, and I  
13 know of those 17, seven of those claims were sent  
14 out the door within the last week, and the other  
15 ten are ones that have very specific problems,  
16 and I -- there's a reason why they're on that  
17 list, including toll-road claims and stuff like  
18 that.

19           The number on the claims that have been  
20 in-house 45 to 60 days, again, at the end of  
21 January, was 49, and that number now at the end  
22 of February was 35. So, we're chipping away,  
23 we're getting there. Overall, I think the

1 average time is down roughly 20 percent. I think  
2 the end of December, our average claim review  
3 time for claims at the end of that month was a  
4 hundred days, 108, I believe, to be exact. The  
5 numbers at the end of January and February were  
6 both in the 80's and 70's.

7 So, with some of the process changes that  
8 I've talked about and with working off the  
9 backlog, I anticipate we'll be able to reduce it  
10 by another 20 to 25 percent in the next four to  
11 six weeks. It might be a lofty goal, but  
12 honestly, we've worked off the backlog about two  
13 or three weeks ahead of when I anticipated doing  
14 so, so I feel fairly confident in that.

15 Let's see. What's next? We made some  
16 changes just to try and provide a little bit  
17 better service. We started e-mailing letters  
18 based on application, the e-mails during the  
19 application, the contact information, kind of  
20 a -- just following up on that, make sure that  
21 the -- as things change, we get different project  
22 managers and things like that, and e-mail address  
23 changes, make sure that what's in that

1 application is who you want it sent to, because  
2 we're pulling it right from that application and  
3 we're e-mailing those letters out, so you'll be  
4 notified instantly when we have a final decision.

5 The new ELTF Phase Application, which I  
6 believe we talked about in the last meeting, that  
7 went live January 1st. Those costs that are  
8 incurred after January 1 of 2018, they are  
9 required to be put into the ELTF Phase  
10 Application for claims. Claims for costs that  
11 were incurred prior to January 1st of 2018,  
12 though highly encouraged, is still optional. If  
13 anyone has any questions about those, please let  
14 us know. Don't hesitate to ask at all.

15 We're still planning -- we have two more  
16 outreach forums that we have planned coming up,  
17 and I'll -- I have those dates in a later slide.  
18 But we also want to hear your questions. We're  
19 still formulating Q&A's and FAQ's on what  
20 problems people have, questions around that, so  
21 that we can get that out and everybody, you know,  
22 can get good responses.

23 We're also in the process of really trying

1 to provide much better customer service. There  
2 we go. We -- actually, I just found out those  
3 were published today, about an hour ago, so we  
4 have some frequently asked questions in the fact  
5 sheet that are now on the IDEM Web site. An  
6 announcement just went out, if you're on that  
7 e-mailing list, you already got it.

8 The idea is we get a lot of questions from  
9 external stakeholders. We get an awful lot. It  
10 sometimes -- well, it all kind of bogs us down,  
11 but the real issue with that is we tend to see  
12 the same questions, so if we've answered it once,  
13 why wouldn't we want the whole -- the external  
14 stakeholders to have the same response every  
15 single time? It's quick, it's easy for  
16 everybody, it levels the playing field for  
17 everybody, and I think that that's just going to  
18 be a much more efficient way for all of us to get  
19 our jobs done.

20 Let's see. What else? We're really  
21 pushing to try and get electronic submittals of  
22 claims. Dear God, the paper. It's -- there's  
23 just so much paper. I know that -- I mean some

1 people drop them off, some people mail them in,  
2 but I mean just truckloads of paper that come in  
3 on a weekly basis. It's just astounding, and I'm  
4 tired of handling it and I'm tired of my claims  
5 reviewers handling it. I'm sure you guys are  
6 tired of printing. So, we're really trying to  
7 push towards that. I don't have a time frame on  
8 that, but it's something we're really looking at  
9 and we'll really be emphasizing that later.

10 In order to, again, answer a lot of  
11 questions and kind of show folks how to use the  
12 new ELTF Phase Application, we're still having  
13 another -- a couple more outreach forums where  
14 you can come in and meet with our staff. They  
15 can help you input some of your data into that  
16 form and get -- feel a little bit more  
17 comfortable with it before you start using it  
18 yourself.

19 One of my -- kind of my pet projects is --  
20 well, it's actually a pet peeve of mine, but  
21 having more formalized guidance published for  
22 everyone out there. There are a lot of questions  
23 that come -- that we have -- or that people have

1 for things that they shouldn't have questions  
2 about, like "what backup documentation should you  
3 have?"

4 We need to have that out there, forward  
5 facing, for everyone to see, and I think it's  
6 going to make your jobs a lot easier in the  
7 claims processing, completing them and submitting  
8 them to us, and it should make it a lot easier on  
9 us in reviewing them, because everybody should  
10 know what to expect.

11 Getting to preapprovals, again, we're  
12 emphasizing that. I think that will really help  
13 from the claims submittal standpoint as well as  
14 from our standpoint. If you're going to go  
15 through and we're going to preapprove your costs,  
16 once you submit your claim with that preapproval,  
17 it's going to go through really, really quickly.  
18 It's almost like if you only submitted three  
19 bids. We've already got your three bids, you  
20 went with the lowest bid, you're just verifying  
21 the work was done, boom, boom, boom, and it's out  
22 the door.

23 All of this fits within my goal from the

1 last meeting we had, increasing efficiency,  
2 making for faster reimbursements. We want to be  
3 more efficient internally. We want to make it  
4 easier for you guys to be more efficient in what  
5 you are doing and to get your money faster.

6 All right. These are the dates for the  
7 ELTF outreach sessions we have planned. They --  
8 are they on-line?

9 MS. STEIFF: Yeah, they're posted  
10 on-line. There was an announcement.

11 MR. LOUKS: They -- we did send out  
12 an announcement. They're also posted on the Web  
13 site. If anyone has any questions or you want to  
14 RSVP, contact Bobbi Steiff. Again, that's in the  
15 announcement, and also should be on the Web page.  
16 We've had some pretty good turnout on most of  
17 these recently, and I feel like we get a lot of  
18 good feedback after the fact as well that, you  
19 know, that's really helpful. I think we had a  
20 couple of people come in, two or three of them,  
21 because they -- you know, they really got a lot  
22 out of it. So, if you want to learn more, I  
23 highly encourage it.

1 I want to talk a little bit about the rule  
2 amendments and what that means. Dan will talk a  
3 little bit more when he comes up. I think the  
4 two big highlights, in the current rule we do  
5 have preapproval. It's under 1-3-1.6, 328, but  
6 you can only get preapproval for corrective  
7 action plan costs. You can't get preapproval for  
8 site investigation work.

9 So, the change to the rule will allow you  
10 to get preapprovals for that as well, and again,  
11 that's to increase the rate at which we can  
12 reimburse your claim. You're going to get your  
13 preapproval for site investigation, it's going to  
14 be coming in-house with your preapproval. As  
15 long as your costs are matching, we're just going  
16 to match it with you, verify it, and it's going  
17 to go out the door.

18 The really major aspect of it is it  
19 removes technical milestones as a requirement for  
20 reimbursement. I think the next slide bears that  
21 out pretty well. We know that right now we have  
22 really four, but three and a half, I guess,  
23 milestones that are met. You have site

1 characterization, corrective action plan, then  
2 you have the corrective action plan  
3 implementation, just kind of a short milestone,  
4 and then your NFA.

5 So, in order to get reimbursed for any of  
6 the work done after the release is reported  
7 during the ISC stage, however many further site  
8 investigations you have, which most  
9 optimistically is 365 days, but how many have  
10 seen these go on two, three, four years,  
11 sometimes longer, while they're still  
12 investigating? All of that whole time until the  
13 site characterization is approved, you can't  
14 reimburse your costs -- or we can't reimburse  
15 costs for you. You can't submit them.

16 So, if you look at the new rule, the only  
17 real milestone that you're going to have is the  
18 ISC submittal and approval of that, and the only  
19 reason for that is because it's tied to your  
20 eligibility, so we have to have the initial site  
21 characterization in order for us to determine  
22 eligibility. It's a requirement of the statute.

23 After that, pretty much once you've

1 incurred the work and you can substantiate that  
2 work's been done, you can submit the work, and we  
3 will reimburse what's applicable. The deadline  
4 for that will be 365 days after the costs are  
5 incurred, so you'll have 365 days, one year out  
6 from when the costs are incurred to submit your  
7 documentation and get your claim reimbursed.

8 And again, this is just highlighting what  
9 I said in the previous slide. The ISC is still  
10 required to determine whether it's an eligible  
11 release, and you can submit once the costs are  
12 incurred. Resubmittals will be 300 -- you'll  
13 have another 365 days, so after denial of costs  
14 for resubmittals.

15 Preapproval of work, so we have a new  
16 Scope of Work Form. It directly mirrors the ELTF  
17 Phase Application. It doesn't have all of the  
18 parts in it, but it pretty much fits right with  
19 that. Now, the way that's supposed to work, the  
20 way -- we built them that way so that when you  
21 get your preapproval, we can directly match that  
22 with the ELTF Claims Application as it comes in,  
23 and again, that's going to expedite our ability

1 to process that claim.

2 It's a simplified application process. It  
3 should be a very rapid review, very rapid  
4 reimbursement, and denials should be very, very  
5 rare. I can't say that there won't be an  
6 instance where a denial would occur with a  
7 preapproval, but I can't really envision one in  
8 my head right now. And again, this is going to  
9 make it much, much easier for everyone involved,  
10 I believe.

11 And to answer Kim's point about -- or the  
12 question you were asking about how to be able to  
13 forecast, once we have the preapproval, that's  
14 money we know is obligated. So, if you've got a  
15 site, you've got a corrective action plan, it's  
16 going to cost you X dollars, we know that that X  
17 dollars is going to be coming out over the next  
18 three to four years, depending on how long that  
19 corrective action plan is sited out for.

20 So, that's money that we can obligate on a  
21 yearly basis, we can obligate it over the long  
22 term, and we can even look at it quarterly as  
23 well, because it's broken up in quarters, some of

1 the costs, so your O&M costs, your quarterly  
2 monitoring, we can pull those out by quarter and  
3 know what to expect.

4 I wanted to also take time to do an audit  
5 recap. So, based on the audit in 2010, Indiana's  
6 average cost per incident was \$191,760. By 2015,  
7 a number that they used in the audit as well, our  
8 average cost per incident was 341,135 over that  
9 five-year span. That's a 170-percent --  
10 178-percent increase in costs. The 2015 national  
11 average at that time was 157,347, which put us at  
12 217 percent above the national average.

13 At that time, which, again, this was based  
14 on the 2015 numbers for states, Indiana was the  
15 third-highest payout. Neighboring competition  
16 were 1.94 times, Illinois; 2.8 times, Kentucky;  
17 and over three times, Ohio. Now, you compare  
18 this with the price parity index, which tells you  
19 how much things cost in Indiana relative to other  
20 states. Things in Indiana, we basically get  
21 an 8.6 percent discount on the national average  
22 because things are that much cheaper here, you  
23 know, labor, materials, et cetera.

1           Now, we -- new numbers were recently --  
2 this is the same survey of states that run funds,  
3 the verified state funds, and the new numbers  
4 have come out. In 2016, the national average  
5 cost per incident actually went down by 1.3  
6 percent. At the same time, Indiana's average  
7 cost per incident increased by 10.1 percent. So,  
8 our average cost is now 375,572, which places us  
9 from 217 to 242 percent greater than the national  
10 average.

11           Now, what does that mean? It means we're  
12 no longer the third highest. We are the highest  
13 state in reimbursement costs per incident. We  
14 are ahead of Pennsylvania, California and  
15 New York. Neighboring competition, we went from,  
16 I believe -- what was it? -- 1.82 -- 2.23 what  
17 Illinois has, 482 percent of Kentucky, and 343  
18 percent of Ohio.

19           So, next steps. Where do we go from here?  
20 We're going to increase efficiency. That goes  
21 for us and you. I can do what I can on my side,  
22 but as someone who has a business background and  
23 a legal background, I understand that when you

1 are dealing with a highly regulated industry, any  
2 inefficiency that we have internally is  
3 automatically externalized onto the external  
4 stakeholders, the owners and the operators.

5 If we're inefficient, that's just some way  
6 we're making something more expensive for you.  
7 So, my goal is to be as lean and mean as I  
8 possibly can be and do our job as well as we  
9 possibly can as quickly as we can, and in as  
10 efficient a manner as we possibly can.

11 Improve reimbursement speed. The more  
12 money you have hanging out there for a longer  
13 period of time, the more expensive that debt  
14 becomes. It's a simple principle of business.

15 We're also going to try and decrease our  
16 costs associated with regulatory burden. That  
17 kind of pairs with number one. We are revamping  
18 our internal processes. We're looking at any  
19 form we have. We're compiling forms for -- in  
20 some instances, we're pulling them apart to make  
21 them easier and to make them make more sense so  
22 that what you guys do on the outside does not  
23 take as much time, does not take as much effort,

1 does not cost as much. All of this is to  
2 decrease the costs on the owners and the  
3 operators.

4 The fourth thing, and it's all tied to  
5 those three, I want to try to make Indiana  
6 competitive. Right now, we aren't. We are more  
7 expensive than everyone else, and that is a cost  
8 that owners and operators -- we really -- you  
9 know, we really want to make that cost really  
10 competitive with other states for you guys, and  
11 that's our overall goal.

12 And like I said, I look forward to any  
13 feedback you have on that. If you've got ideas,  
14 that's great. I look forward. I am always  
15 thinking ahead. You know, I can't think of  
16 everything, and I usually don't.

17 So, that's pretty much all I have, unless  
18 anybody has any questions.

19 CHAIRMAN COBB: Doug, when you  
20 dissect the audits --

21 MR. LOUKS: Yeah.

22 CHAIRMAN COBB: -- in the other  
23 states versus us, have you looked at individual

1 cleanups at a site versus what we're doing at a  
2 site? I mean are we getting crystal clean  
3 property and are they getting still dirty  
4 property, or -- I mean what is -- why are we  
5 having such a big disparity? What are we doing  
6 wrong? I mean --

7 MR. LOUKS: There are -- there are  
8 two parts to that. One, I cannot answer  
9 definitively. I haven't looked at every single  
10 state and seen exactly how they do it. For the  
11 most part, we tend to take a much more  
12 conservative approach than is necessary than  
13 other states, it's certainly true.

14 But the other part of it is we're one of  
15 the only functioning states without cost  
16 guidelines, and that details exactly -- we have  
17 rates, which is fine, but we don't have any  
18 guidelines whatsoever that says, "Ten hours is  
19 cost effective, but 50 is not." And that is  
20 something that's unique to this state. So, I  
21 think -- I do believe that that is a huge part of  
22 the problem.

23 The other part of the problem, I think

1 that, yeah, we are far more aggressive. And to  
2 answer your question, at the end of the day, I  
3 don't believe so. I don't believe that our sites  
4 are any cleaner or any better than --

5 CHAIRMAN COBB: I mean would you not  
6 agree that it looks like something's broken?

7 MR. LOUKS: Oh, absolutely,  
8 absolutely.

9 CHAIRMAN COBB: I mean as the Board  
10 here, our responsibility is to keep the fund  
11 solvent, and with decreased revenue and what  
12 you're spending, I don't think, as a Board, we  
13 are doing our job, at the end of the day. And we  
14 need to give you the tools to be able to get that  
15 in line, and I think we'd be more than happy to  
16 have a discussion also about what we can do, do  
17 something legislatively or whatever. But that --  
18 to me, that's ridiculous.

19 MR. LOUKS: And I absolutely agree  
20 with you. It is a problem, and again, as you've  
21 seen and what's more alarming to me is that, you  
22 know, as national costs over -- from 2010, so the  
23 survey that the state's put in and the

1 information they've put in started in 2010, and  
2 we have numbers from 2010 through 2016. We  
3 actually just got a request for our data  
4 from 2017, so that should be coming out hopefully  
5 midsummer.

6 But if you look at it, the national  
7 averages remain fairly stagnant. It's right  
8 around that same range. But in that same amount  
9 of time, we have increased as a state nearly 200  
10 percent our actual costs. So, yeah, I absolutely  
11 believe that there's something broken. I'm doing  
12 what I can, and I will think of anything I can to  
13 bring to you guys.

14 CHAIRMAN COBB: Thank you.

15 MR. PRASAD: With the preapproval  
16 process, do we know how much we can cut down on  
17 the spent time frame?

18 MR. LOUKS: I can't tell you  
19 definitively, but I mean it should be much  
20 faster, it really, really should, I would say by  
21 at least half. And I don't think that that's  
22 that optimistic of a goal, because we've already  
23 gone through -- you're going to do -- so, you're

1 doing your substantiation beforehand; right?

2 So, if you read that part of the rule,  
3 you're basically presenting all of that  
4 information you would before, association that we  
5 can make that decision. We've already looked at  
6 what the costs should be. We've agreed that  
7 \$200,000 is a reasonable cost for whatever you're  
8 doing.

9 So, you're just going to submit your  
10 claims as you incur them up to the \$200,000, and  
11 we're going to look and make sure you did the  
12 work, and it's just going to come right back out.  
13 And then at that point, it's pushing the paper  
14 over to the accounting department and the  
15 auditors, and it's out the door from there.

16 So, yes, I mean I -- an exact number I  
17 can't really tell you until we start doing it  
18 more regularly, but yeah, it's -- it should  
19 expedite it really, really rapidly.

20 MR. PRASAD: Is -- will there be any  
21 budget change process? The reason is: In any  
22 industry, not only in the environmental, but in  
23 any industry --

1 MR. LOUKS: You mean like a change  
2 order?

3 MR. PRASAD: Yeah.

4 MR. LOUKS: Yeah, yeah, absolutely.  
5 So, we haven't worked out exactly how that --  
6 right now what it would be is we'd just do  
7 another preapproval. So, yeah, we're realistic  
8 people. Things happen. Even if you get an  
9 estimate to redo your basement, like I just did,  
10 they start working, then all of the sudden 40,000  
11 turns into 45,000, and then I want a  
12 diamond-plated toilet or whatever else it is, and  
13 things get more expensive from there. But yeah,  
14 you know, they bring you a new change order, and  
15 then I agree or I disagree, whatever it is, yeah.

16 So, sometimes you get in there -- and I  
17 think that's especially going to be the case for  
18 site investigation. You can see that happening.  
19 You -- I mean from an ISC you look at something  
20 and you think you've got a general idea of what  
21 it is, then all of the sudden you start putting  
22 more holes in the ground, and it's something  
23 completely different than what you thought;

1 right? So, I definitely see that coming in a lot  
2 more at that phase, but yes, we will have a  
3 change order process.

4 CHAIRMAN COBB: Any other questions?

5 (No response.)

6 CHAIRMAN COBB: Doug, thank you. Oh,  
7 we still have a question.

8 MR. SMITH: Just a quick question. I  
9 must have missed it, Doug. So, when does that go  
10 into effect, then, as far as doing away with  
11 milestones?

12 MR. LOUKS: That would be -- so, if  
13 the rule is adopted today, it will go to the LSA,  
14 and what's their time --

15 MS. KING: I can speak to that. Part  
16 of this is the rule that we're talking about  
17 today before the Board for final adoption.  
18 Generally speaking, after the rule is final  
19 adopted, it takes -- the Attorney General's  
20 Office has 45 days to review, the Governor's  
21 Office has 15 days, and then it becomes effective  
22 30 days after it goes to Legislative Services.  
23 So, we say -- we would have to get our transcript

1 back. So, generally speaking, it's about four  
2 months after final adoption, maybe a little bit  
3 less than that.

4 CHAIRMAN COBB: Doug, thank you very  
5 much for your presentation and enlightening us  
6 and scaring us.

7 (Laughter.)

8 CHAIRMAN COBB: Okay. The next order  
9 of business is the rulemaking action. There will  
10 be a hearing prior to the final adoption of the  
11 Excess Liability Fund Rule. The rule being  
12 considered today at this meeting is included in  
13 the Board packet and is available for public  
14 inspection at the Office of Legal Counsel, 13th  
15 floor, Indiana Government Center North. The  
16 entire Board packet is also available on the IDEM  
17 Web site at least one week prior to each Board  
18 meeting.

19 A written transcript of today's meeting  
20 will be made. The transcript and any written  
21 submissions will be open for public inspection at  
22 the Office of Legal Counsel. A copy of the  
23 transcript will be posted on the rules page of

1 the agency's Web site when it becomes available.

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

5 (Reporter sworn.)

6 CHAIRMAN COBB: Thank you.

7 Public hearing for the Financial Assure  
8 Liability Trust Fund Rule. This is a rule  
9 hearing before the Underground Storage Tank  
10 Financial Assurance Board for the State of  
11 Indiana concerning final adoption of the  
12 amendments to 328 IAC 1, concerning the Excess  
13 Liability Trust Fund.

14 I will now introduce Exhibit A, the  
15 preliminary adoption rule with IDEM's suggested  
16 changes, into the record of the hearing.

17 Is there someone from the Department to  
18 present the rule?

19 MR. WATTS: Yes. Hello. I'm Dan  
20 Watts, a rule writer for IDEM, and I'm presenting  
21 LSA Document No. 15-231 to the Board for final  
22 adoption, which proposes amendments to the rule  
23 requirements for the Excess Liability Trust Fund

1 at 328 IAC 1.

2 The rulemaking proposes to align the ELTF  
3 rule requirements with the statutory changes that  
4 were enacted by the Indiana General Assembly  
5 during the 2016 and 2017 legislative sessions.  
6 The statutory changes modified ELTF definitions,  
7 amended requirements for eligibility, claims,  
8 general eligible costs, payment and deductible  
9 limits, and clarified some statutory requirements  
10 and ELTF administrative procedures.

11 The statutory changes also created  
12 inconsistencies between the ELTF statutes and the  
13 ELTF rules, and this rulemaking mainly intends to  
14 address those inconsistencies. The proposed rule  
15 amendments include deletion, modification and  
16 addition of rule language and requirements,  
17 changes to definitions and statutory references,  
18 and amendments to rule requirements that are  
19 repetitive or conflicting with the ELTF statutory  
20 requirements.

21 IDEM has proposed some rule changes since  
22 the preliminary adoption of the rulemaking as a  
23 result of comments that were received during the

1 preliminary adoption hearing, and these comments  
2 and proposed changes are included in the Board  
3 packet.

4 IDEM decided to delete the proposed  
5 definition of "cost effectiveness" at  
6 328 IAC 1-1-3.2 because IDEM agrees with the  
7 commenter's suggestion that the definition is  
8 vague and does not clarify IDEM's procedures for  
9 determining cost effectiveness, and actually may  
10 add confusion to the matter.

11 Also in response to comments, IDEM has  
12 combined 328 IAC 1-3-1-1(c) and (d) to clarify  
13 requirements for situations in which multiple  
14 parties claim reimbursement for the same activity  
15 at the same incident.

16 And IDEM also recognizes that certain  
17 provisions of Title 328 could benefit from more  
18 extensive revision than what is proposed in the  
19 rulemaking, as we have received multiple comments  
20 that address matters beyond the proposed  
21 amendments. IDEM plans to address these  
22 additional amendments in a subsequent rulemaking,  
23 because the main focus of this rulemaking is to

1 align the rule requirements with the recent  
2 statutory changes. IDEM prefers to accomplish  
3 this goal as soon as possible rather than further  
4 delay adoption through a more comprehensive and  
5 prolonged rulemaking.

6 IDEM understands that this Board does not  
7 adopt rulemaking very often, so myself and other  
8 representatives from IDEM are here to answer  
9 questions you may have for the rulemaking or the  
10 rulemaking process in general. The Department  
11 respectfully requests that the Board finally  
12 adopt the rule as presented.

13 Thank you.

14 CHAIRMAN COBB: Thank you, Dan.

15 I've got two speakers. First will be  
16 Chris Braun.

17 MR. BRAUN: Good afternoon, members  
18 of the Board. Chris Braun, on behalf of the  
19 IPCA.

20 I rise in support of the adoption of these  
21 changes. As we indicated before, we thought IDEM  
22 did an excellent job of tracking the legislative  
23 language. They were responsive to comments

1 received by people after they had put out for  
2 comment the proposed rulemaking. We think this  
3 brings more streamline and more consistency  
4 within -- between the statute, and this  
5 rulemaking will enhance the process, and as Doug  
6 Louks was saying earlier, it'll help bring more  
7 essentially, we think, both on behalf of the  
8 applicant's side and the owner/operators as well  
9 as from IDEM's side in having a clear  
10 understanding as to what's required going forward  
11 to utilize the ELTF fund.

12 So, with that, I'm happy to answer any  
13 questions, but we fully support and embrace the  
14 changes here.

15 CHAIRMAN COBB: Thank you.

16 MR. BRAUN: Thank you.

17 CHAIRMAN COBB: Thank you, Chris.

18 The next public comment, Om -- I would  
19 massacre the last name, so I --

20 MR. NARLA: Narla.

21 CHAIRMAN COBB: I'm sorry?

22 MR. NARLA: Narla.

23 CHAIRMAN COBB: Narla; okay. Thank

1 you.

2 MR. NARLA: I am Om Narla, with  
3 Golars Environmental. We are an environmental  
4 remediation firm.

5 I wanted to bring to your attention some  
6 information about IDEM and the rulemaking and  
7 some -- the changes they are trying to make. If  
8 you all remember, back in 2010, IDEM -- there was  
9 a third party that was actually doing all of the  
10 claim reviews and technical reviews, and then  
11 IDEM took it over, and then they started doing  
12 all the reviews internally.

13 And we see that from that time, the delay  
14 in reviews have gone up significantly. Recently,  
15 in 2017, we had a project, as you all know, a new  
16 investigation, you cannot get paid. It takes a  
17 year and a half to get paid, minimum, if you  
18 do -- if you follow every rule, you get paid in  
19 one and a half years.

20 But now, with this, what they have done is  
21 we have actually had -- the first approval had  
22 taken almost a year to get it approved, just the  
23 first approval. Now we have second approval,

1 third phase, fourth phase, several phases of  
2 drilling to be done to get to a stage where we  
3 can get paid.

4 So, please -- please be -- this is what  
5 happens is, when it's a large corporation like  
6 Speedway, they can afford this. When it's a  
7 small business, they can't afford this, and this  
8 is causing a lot of trouble for people.

9 And also, what we have observed is since  
10 Amy came in last year, I think the ELTF -- she  
11 was focusing heavily on ELTF, and everything has  
12 come down to 30 days, 45 days, and again, they  
13 have come back to 120 days again. That's current  
14 data that I have in the last 10, 15 days.

15 But what I'm trying to bring to your  
16 attention is, maybe IDEM is not staffed enough.  
17 Maybe they need more staff to -- I'm not assuming  
18 or I'm not concurring it. Is IDEM action causing  
19 the delay in the cleanups, or is that causing the  
20 cleanup to expand in different areas? So, if  
21 there is an investigation, you leave it for one  
22 year, two years, just like that, and not do any  
23 cleanup, and that's going to spread. Is that

1 increasing the cost?

2 So, I want you guys to -- I want you as a  
3 Board to look into other aspects of why this --  
4 why these costs are happening, and please look  
5 into this.

6 Thank you very much.

7 CHAIRMAN COBB: Thank you.

8 Is there anybody else that would like to  
9 speak?

10 (No response.)

11 CHAIRMAN COBB: Okay. Nobody else.  
12 Then this hearing is now concluded. The Board  
13 will consider final adoption of the Excess  
14 Liability Trust Fund Rule. The Board will now  
15 consider the final adoption of 328 IAC 1, the  
16 Excess Liability Trust Fund Rule.

17 Board discussion?

18 (No response.)

19 CHAIRMAN COBB: Any questions,  
20 comments?

21 MR. NAVARRE: No.

22 CHAIRMAN COBB: Okay. I would accept  
23 a motion to adopt IDEM's suggested rules changes.

1 MR. FORSTER: I make the motion that  
2 we accept the rule as proposed.

3 CHAIRMAN COBB: Okay. Is there a  
4 second?

5 MR. NAVARRE: I'll second it.

6 CHAIRMAN COBB: Okay. A second. Can  
7 we have a voice count? Kim?

8 MS. LOGAN: Aye.

9 MS. KING: Pardon me.

10 CHAIRMAN COBB: I'm sorry.

11 MS. KING: Essentially what we need  
12 to do, just so that we're clear for purposes of  
13 our promulgation packet, the first motion --  
14 because there were suggested changes to the  
15 preliminarily adopted rule, we need to make --  
16 the Board needs to adopt those suggested changes  
17 first. That's what the voice vote is for, and  
18 then the second motion that the Board --

19 CHAIRMAN COBB: Okay. I'm sorry.

20 MS. KING: -- should make -- that's  
21 okay. It happens. You guys don't do enough  
22 rulemaking, but sometimes I actually have to tell  
23 the Environmental Rules Board this, so I'm used

1 to jumping in.

2 CHAIRMAN COBB: Oh, okay.

3 MS. KING: But -- and actually I'm  
4 your Board Counsel, so I'm more allowed to jump  
5 in on this than the --

6 CHAIRMAN COBB: And I'm a rookie  
7 doing this anyway; right? So --

8 MS. KING: That's -- well, you know,  
9 Mark Ehrman just left you hanging, Greg.

10 CHAIRMAN COBB: Okay.

11 MS. KING: So, at the point that then  
12 the motion to final adopt rule as amended will be  
13 the one where we take a roll-call vote.

14 CHAIRMAN COBB: Okay.

15 MS. KING: So, that way, the AG's  
16 Office will not call me on the 44th day and have  
17 a problem with our rule.

18 CHAIRMAN COBB: Oh, we'll take a  
19 voice count. All in favor, say aye.

20 MS. SMITH: Aye.

21 MR. FORSTER: Aye.

22 MR. NAVARRE: Aye.

23 MR. PRASAD: Aye.

1 MS. LOGAN: Aye.

2 CHAIRMAN COBB: Aye.

3 Opposed?

4 (No response.)

5 CHAIRMAN COBB: Okay.

6 MS. KING: And then the second  
7 motion.

8 CHAIRMAN COBB: Then the second  
9 motion, motion should be made to final adopt the  
10 rules as amended. Is there a motion for that?

11 MR. FORSTER: So moved.

12 CHAIRMAN COBB: Second?

13 MR. NAVARRE: (Raised hand.)

14 CHAIRMAN COBB: Now I get to do my  
15 roll call.

16 Kim?

17 MS. LOGAN: Aye.

18 CHAIRMAN COBB: You haven't changed  
19 your mind? Okay.

20 Kim?

21 MR. FORSTER: Aye.

22 CHAIRMAN COBB: Amy?

23 MS. SMITH: Aye.

1 CHAIRMAN COBB: I vote aye.

2 Tom?

3 MR. NAVARRE: Aye.

4 CHAIRMAN COBB: Sanka?

5 MR. PRASAD: Aye.

6 CHAIRMAN COBB: Okay. The vote has  
7 been unanimous.

8 Now we move to Open Forum. Is there  
9 anyone who wishes to address the Board today?

10 Chris.

11 MR. BRAUN: Yeah. Thank you, members  
12 of the Board and Greg. Again, Chris Braun, on  
13 behalf of the IPCA.

14 I'd like to go back and touch on some of  
15 the things that were reviewed by Amy and Doug and  
16 some of the others. Obviously for reasons that  
17 go beyond this Board or the consulting community  
18 or owners or operators, the legislative change  
19 last year on taxes has had a dramatic impact  
20 already, and Greg, you've already picked up on  
21 that.

22 You can see that we're on a pace right now  
23 for this year to have about 46 million dollars of

1 revenue. We're on pace to have about 60 million  
2 dollars of claims paid. So, we're working right  
3 now at 14-million-dollar negative going forward.  
4 And I don't want to -- well, I'm going to be the  
5 canary in the coal mine right now, because the  
6 reality is that we all need to adjust to the new  
7 reality.

8           And this is a good time to sort of take  
9 stock also, and there's been a lot of great  
10 things that have occurred out of the ELTF fund,  
11 and the folks from IDEM shared with me this past  
12 week, we've had over 8600 sites in the State of  
13 Indiana cleaned up, which is fantastic and that's  
14 a combination of owners and operators,  
15 consultants, IDEM, all working together to  
16 achieve those results, which is fantastic.

17           But we've got -- with revenue down 20  
18 percent, and that's going to continue on because  
19 the gas tax is in place, if we -- we have to  
20 collectively work together to come up with a way  
21 to reduce costs, and you've heard the numbers.

22           I'll do it a slightly different way than  
23 what Doug did. You know, our doughnut states

1 around us, the average cleanup cost for Kentucky  
2 is 77,000, and these are based on 2016 numbers;  
3 for Ohio, it's 109,000; Illinois, 168, and we're  
4 at 375. I mean we're more than twice our sister  
5 states around us, the national average, and I'm  
6 not here to throw anybody under the bus as to  
7 why, but the reality is we've got to all move  
8 forward and be flexible, to figure out ways to  
9 reduce time and cost associated with these.

10 You know, in the private sector, insurance  
11 companies look at it -- like they'd look at this  
12 fund and they'd come up with a reasonable and  
13 necessary number, and oftentimes they come up  
14 with unit costs. And as Doug has already  
15 indicated, it's one thing to have sort of hourly  
16 rates and labor rates, but if you don't put a cap  
17 on those, you know, someone may come in and  
18 submit a corrective action plan that takes, you  
19 know, 18 hours to put together, and the next guy  
20 does one for 104 hours.

21 We've got such a wide divergence, even in  
22 quarterly groundwater sampling, where we may have  
23 to go to a unit cost at so much per well as to

1 what we're going to allow, but we're going to  
2 have to come up and work collectively together.  
3 The owners and operators, it's -- ultimately it's  
4 their liability.

5           You know, this fund has worked well since  
6 it came on during the '90's. There's been over a  
7 billion dollars spent on cleanups. But first and  
8 foremost, this fund is for financial  
9 responsibility to satisfy a Federal requirement.  
10 We have to have the fund.

11           We're on a pace right now that -- while  
12 the actuarial study said, under the previous  
13 funding we had, under the gasoline arrangement we  
14 had, it'd be 2026. We're on a pace right now  
15 that within the next 60 months we're going to run  
16 bone dry. And this happened back in 2005, and at  
17 that time, remember, we added the gas to diesel.  
18 Well, we don't have any more buttons to push as  
19 it relates to gallonage we're not capturing.

20           So, the reality is we have to drive costs  
21 down, and if that means coming up with -- in  
22 addition to the efficiency and the things that  
23 Doug and his staff are trying to do, we've got --

1 on the owner and the consultant side, we have got  
2 to reduce costs. And we've got to look at a  
3 number of things here.

4 One number that jumped out at me is wasn't  
5 discussed today, but I heard about it separately,  
6 is that of the, you know, roughly 50 million in  
7 claims we paid last year, 12 million was for  
8 quarterly sampling, and one thing -- and I'll  
9 give you an example of a site, and I discussed  
10 this with Amy and Doug and others recently. It  
11 was for Herdrich Petroleum, and Herdrich got sued  
12 in 1994 for a site in Richmond. Litigation  
13 ensued. We got the case settled in early 1997.

14 That site, since that -- it's now 2018.  
15 That site's still submitting quarterly reports.  
16 They haven't heard from IDEM since 2004. This is  
17 an example where, if a site is not effectuating  
18 change, if you're just doing quarterly sampling  
19 and the needle's not moving much, we need to come  
20 up with a mechanism to shut those things down.

21 I think one of the things that's causing  
22 our costs to go up is we have a lot of long-tail  
23 cleanups. You know, if the national average

1 is 155, that should be the goal for every site,  
2 and if there's a reason for it, because of site  
3 conditions or whatever, then we also need to  
4 figure out not only the number, but also the  
5 time, and what can we do to accelerate the time  
6 period from when a site gets reported to IDEM  
7 till the ISC gets submitted and approved.

8           You know, the quarterly sampling that  
9 occurs from the time you discover -- or you do an  
10 ISC to the time get CAP approval, all you're  
11 doing is going back out there and saying, "Yep,  
12 you're still contaminated." You know, nothing's  
13 changed. There's been no remediation or anything  
14 else.

15           And then once you get beyond -- and  
16 there's been a lot of discussion about liability.  
17 Consultants are not qualified to evaluate  
18 liability. That's a legal question for lawyers  
19 to evaluate. But we have a significant liability  
20 issue where we have off-site contamination.

21           And, you know, one proposal is that we  
22 divide up the 2.5 million dollars that's out  
23 there for claims right now, and we put one-half

1 in for first-party expenses for cleanup and the  
2 other half for third-party expenses, and --  
3 because we have too many sites that are now  
4 running into the seven-figure amount for  
5 cleanups.

6 And there could be an appropriate site  
7 that does warrant that, but not as a matter of  
8 routine. And we need to get sites that are back  
9 down more to our sister states that -- because if  
10 we don't, we're all going to be, in about 60  
11 months, sitting here with no money to spend. And  
12 all of the sudden insurance rates are going to go  
13 up for the owners and operators because they  
14 don't have a financial responsibility mechanism  
15 that they can rely upon. Sites are not going to  
16 get cleaned up. This state is not fond of tax  
17 increases, and so the thought of trying to have a  
18 tax increase or even a user increase for this  
19 fund is not palatable.

20 So, I think, we've got our work cut out  
21 for us going forward. I think there's a lot of  
22 good ideas, there's a lot of talent in this  
23 industry that we can come together and work on

1 this, but it -- I'm telling you right now, this  
2 is a major issue.

3 And no one in this room was responsible  
4 for the tax increase last year, but the reality  
5 is our revenues are dropping precipitously, and  
6 if we're now on pace for 46 million dollars a  
7 year, we have got to reduce our overall costs  
8 below 46 million dollars.

9 And I would be open to joining a work  
10 force or task force with IDEM, with the  
11 consulting community, owners and operators,  
12 because this is something that we can't wait six  
13 months or a year to begin to dig in. We may have  
14 to embrace the legislative changes next year that  
15 would include things that set unit costs or  
16 breaking out the dollars that are available or  
17 other things.

18 So, I just want to, first of all, thank  
19 everyone for the work they've done to this point  
20 and the great work to be done by IDEM. Getting  
21 things electronic, getting data available is  
22 helpful. It helps make more -- for more informed  
23 decision making.

1           But I would encourage the Board to  
2 continue to exert its leadership in getting a  
3 task force together so that they can report back  
4 to you at the next FAB meeting, whenever you  
5 decide to set that, that we could come up with  
6 some concrete proposals either through a new  
7 rulemaking or through legislative proposals that  
8 we would take to the legislature next year.

9           And much like this rulemaking today, I  
10 think if we can bring all of the stakeholders  
11 together and get their input and come up with  
12 consensus -- that means everybody's got to give  
13 something -- I think we can come up with  
14 something that would be very worthwhile and  
15 something we could all support, so that going  
16 into next year, we know that there's a solution  
17 in the offing that won't take place until, at the  
18 earliest, probably July 1st of next year, but at  
19 least we can approach the legislature with some  
20 solutions.

21           So, with that, I'll stop, and I'm happy to  
22 answer any questions you've got. But otherwise,  
23 I'll sit down.

1 Thank you.

2 CHAIRMAN COBB: Thank you, Chris.

3 Is there anybody else that would like to  
4 address the Board?

5 (No response.)

6 CHAIRMAN COBB: Okay. I guess I'll  
7 take a motion adjourn.

8 MR. FORSTER: Motion to adjourn.

9 CHAIRMAN COBB: Second?

10 MS. LOGAN: Second.

11 CHAIRMAN COBB: All in favor?

12 MS. SMITH: Aye.

13 MR. FORSTER: Aye.

14 MR. NAVARRE: Aye.

15 MR. PRASAD: Aye.

16 MS. LOGAN: Aye.

17 CHAIRMAN COBB: Aye.

18 All opposed?

19 (No response.)

20 CHAIRMAN COBB: Thank you all.

21 - - -

22 Thereupon, the proceedings of  
23 March 8, 2018 were concluded  
at 2:30 o'clock p.m.

23 - - -

CERTIFICATE

I, Lindy L. Meyer, Jr., the undersigned Court Reporter and Notary Public residing in the City of Shelbyville, Shelby County, Indiana, do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me on Thursday, March 8, 2018 in this matter and transcribed by me.

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

My Commission expires August 26, 2024.