

In The Matter Of:
INDIANA ENVIRONMENTAL RULES BOARD

September 14, 2022

*ACCURATE REPORTING OF INDIANA
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BEFORE THE STATE OF INDIANA
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF SEPTEMBER 14, 2022

- - -

PROCEEDINGS

before the Indiana Environmental Rules Board,
Beverly Gard, 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,
Room A, 402 West Washington Street, Indianapolis,
Indiana, on Wednesday, September 14, 2022 at
1:30 o'clock p.m.

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1 APPEARANCES:

2 BOARD MEMBERS:

3 Beverly Gard, Chairman (Zoom)
4 Katie Nelson (Zoom)
5 Carrie Kozyrski
6 Dr. Ted Niemiec (Zoom)
7 Joanne Alexandrovich
8 John Ketzenberger
9 Michael Schuler (Zoom)
10 William Etzler (Zoom)
11 Chris Horn
12 Calvin Davidson
13 Michael Chambers (Zoom)
14 Mark Wasky
15 Dan Bortner, Proxy, Department of
16 Natural Resources
17 Parvonay Stover (nonvoting)
18 Brian Rockensuess, Commissioner (nonvoting)

11 IDEM STAFF MEMBERS:

12 Christine Pedersen
13 Seth Engdahl
14 Keelyn Walsh
15 MaryAnn Stevens
16 Susan Bem
17 Jenny Acker
18 Dan Watts
19 Lori Freeman
20 Krystal Hackney
21 Corey Webb
22 Susanna Bingman
23 Paul Higginbotham
Jerry Dittmer
Nancy King
Samantha Kellam
Barry Sneed
Karla Kindrick

PUBLIC SPEAKERS:

21 Craig Williams

22 - - -

23

1 1:30 o'clock p.m.
2 September 14, 2022

3 - - -

3 CHAIRMAN GARD: Okay. Well, it's
4 1:30, so I'm going to go ahead and call the
5 meeting to order, if you have the -- do you have
6 the system worked out?

7 MS. KINDRICK: Yes, ma'am.

8 CHAIRMAN GARD: Okay. Well, I'm
9 going to go ahead and call the meeting of the
10 Indiana Environmental Rules Board of Wednesday,
11 September 14th, 2022 at 1:30 to order. We do
12 have a quorum present.

13 Let's see. I guess I need to call the
14 roll, since this is a hybrid meeting.

15 Dr. Alexandrovich?

16 DR. ALEXANDROVICH: Here.

17 CHAIRMAN GARD: Mr. Bortner?

18 MR. BORTNER: Here.

19 CHAIRMAN GARD: Mr. Chambers?

20 (No response.)

21 CHAIRMAN GARD: Mr. Davidson?

22 MR. DAVIDSON: Here.

23 CHAIRMAN GARD: Mr. Etzler?

1 (No response.)

2 CHAIRMAN GARD: Mr. Etzler?

3 (No response.)

4 CHAIRMAN GARD: Mr. Horn?

5 MR. HORN: Yes, present.

6 CHAIRMAN GARD: Mr. Ketzenberger?

7 MR. KETZENBERGER: I'm here.

8 CHAIRMAN GARD: Ms. Korynski [sic]?

9 MS. KOZYRSKI: Here.

10 CHAIRMAN GARD: I'm sorry. I'm sure

11 I don't pronounce in correctly.

12 Ms. Nelson?

13 MS. NELSON: Here.

14 CHAIRMAN GARD: Dr. Niemiec?

15 DR. NIEMIEC: Here.

16 CHAIRMAN GARD: Mr. Rulon?

17 (No response.)

18 CHAIRMAN GARD: Mr. Schuler?

19 MR. SCHULER: Here.

20 CHAIRMAN GARD: Ms. Stover?

21 MS. STOVER: Here.

22 CHAIRMAN GARD: Mr. Wasky?

23 MR. WASKY: Here.

1 CHAIRMAN GARD: And the Chair is
2 present.

3 The first thing that I want to do is
4 introduce the new Board member, John
5 Ketzenberger. He's probably known to many of
6 you, actually. He is -- heads up the Nature
7 Conservancy here in Indiana. Before that, he was
8 on television a lot, and interviewed me a lot.
9 He replaces Karen Valiquett. I will say I am
10 really pleased that John's on this Board. I
11 think he can add an awful lot to it.

12 And so, John, we welcome you, and don't
13 hesitate to ask questions as we go along.

14 MR. KETZENBERGER: Thank you. You
15 can be sure I'll have plenty of questions.

16 CHAIRMAN GARD: Okay.

17 MR. KETZENBERGER: I'm glad to be
18 here.

19 CHAIRMAN GARD: You're used to that,
20 aren't you?

21 Okay. I need Barry Sneed to cover the
22 logistics of the hybrid meeting for in-person and
23 remote participants.

1 MR. SNEED: Hi. Barry Sneed, Public
2 Information Officer with IDEM.

3 We'll be taking questions and comments
4 from the public at today's meeting. If you have
5 questions or technical issues during the
6 presentation, please use the raised-hand feature
7 or chat feature. To access the raised-hand and
8 chat feature, at the bottom of your screen,
9 depending on your device, you'll see a menu bar.
10 You may have to move your mouse or touch the
11 screen for the menu bar to pop up. In the middle
12 of that menu bar, there is a chat icon, which you
13 can click and show the chat dialogue.

14 You should also see the raised-hand
15 option. Please utilize the raised-hand option or
16 the chat feature if you have any questions or
17 comments, and you'll be called upon at the
18 appropriate time.

19 For those joining us by phone, if you have
20 a question or a comment, you can raise your hand
21 by pressing star nine, and you will be called on
22 at an appropriate time. When called upon, you
23 will need to unmute your phone by pressing star

1 six.

2 For everyone at today's meeting, please
3 identify yourself when speaking. If any members
4 of the media have joined us, please utilize the
5 chat feature or e-mail media@idem.in.gov if you
6 have any other questions. This meeting is being
7 recorded and will be posted to IDEM's Web site in
8 the next day or two.

9 With that, I'll turn everything back over
10 to Chairman Gard.

11 CHAIRMAN GARD: Thank you.

12 Does anyone have any questions of Barry
13 concerning this?

14 (No response.)

15 CHAIRMAN GARD: Okay. We're getting
16 pretty used to it.

17 Our first order of business today is
18 approval of the summary of the June 8th, 2022
19 Board meeting. Are there any additions or
20 corrections to the summary as presented?

21 (No response.)

22 CHAIRMAN GARD: If not, do I hear a
23 motion to approve?

1 DR. NIEMIEC: So moved. This is Ted
2 Niemiec.

3 CHAIRMAN GARD: Is there a second?

4 MR. DAVIDSON: Second, Davidson.

5 MS. NELSON: Second, Katie Nelson.

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

8 MR. HORN: Aye.

9 MS. NELSON: Aye.

10 DR. ALEXANDROVICH: Aye.

11 MR. BORTNER: Aye.

12 DR. NIEMIEC: Aye.

13 MR. ETZLER: Aye.

14 MR. KETZENBERGER: Aye.

15 MS. KOZYRSKI: Aye.

16 MR. CHAMBERS: Aye.

17 MR. WASKY: Aye.

18 MR. DAVIDSON: Aye.

19 MR. SCHULER: Aye.

20 CHAIRMAN GARD: Aye.

21 Those opposed, say no.

22 (No response.)

23 CHAIRMAN GARD: The minutes are

1 approved.

2 I want to call on Parvonay Stover for the
3 agency report. Comm. Rockensuess is -- has some
4 kind of conference or something today.

5 So, Parvonay, do you have a report for us?

6 MS. STOVER: Yes, absolutely.

7 Hi, everybody. Thanks, everyone, for
8 being here today. Brian apologizes that he's
9 late today. Unfortunately, he's off campus at
10 the Wetlands Task Force meeting, so he wanted to
11 make sure I expressed his apologies that he's not
12 able to be here, and he sent me in his place to
13 entertain you guys until he's able to get here,
14 so hopefully I'll be able to do that.

15 Some quick agency updates for you.
16 Obviously staffing is one of our highest
17 priorities these days, and it's one of the things
18 that Brian and I spend the most time working on.
19 We thankfully just hired a new Communications
20 Director, Allen Carter, who'll be starting with
21 IDEM on Monday. He's a former reporter and
22 currently the Communications Director for the
23 Secretary of State's Office, so I know that he's

1 going to be a really great addition to our team.

2 And since this group last met, we've also
3 hired two staff members to focus on environmental
4 justice efforts across the state. One of those
5 individuals is located in Northwest Indiana, and
6 one is here in our Central Office to serve the
7 rest of the state.

8 And those two roles are really going to be
9 focused on community engagement and serving as a
10 liaison to disadvantaged communities, so they
11 really are aware of the work that IDEM's doing
12 and get insight on how to become more involved
13 and engaged in our processes. So, again, we just
14 hired those folks in the last couple of months,
15 and we're really excited to have them on board.

16 We also recently hired Carl Wodrich to
17 serve as Deputy Assistant Commissioner of the
18 Office of Program Support, so that's the group
19 that includes that environmental stakeholder
20 engagement program, as well as recycling
21 programs, education and outreach efforts, things
22 like that. And we just stole him from the DNR,
23 and we're really happy to have his expertise on a

1 lot of the Lake Michigan programs, so he's great
2 to have on board as well.

3 And besides staffing, we've really been
4 busy lately trying to prepare for the 2023
5 legislative session coming up, and if you've ever
6 worked in the legislative world or have a lot of
7 experience there, you know that prep for next
8 session starts as soon as current session ends.
9 So, our poor Legislative Director didn't have
10 much of a break before he started having to work
11 with Programs to try and figure out what our
12 legislative needs might be for an agency.

13 One issue that we know that we're going to
14 need to pursue is revising our statute on air
15 fees, and I think this might have been an issue
16 that Brian has brought up to this body before,
17 but Title V of the Clean Air Act requires that
18 states operate air permitting programs funded
19 exclusively by the permitting fees, and that fee
20 revenue is based on emissions level and can't be
21 supplemented, unfortunately, by general funds or
22 other grant sources or things like that.

23 And emissions have been steadily declining

1 over the years, which is great for the
2 environment, but bad for us, because our funding
3 goes down, and our operating costs are not
4 decreasing at the same time, and in fact, are
5 usually going up because of increased technology
6 costs and staffing costs and things like that.

7 So, we're kind of stuck in this bad
8 position where our fee revenue is no longer
9 sufficient to run our program, which ultimately
10 is going to get us into trouble with the EPA.
11 So, we need to tweak the statute to allow us to
12 look at those air fees and eventually, you know,
13 bring that to this body, to work with you to
14 figure out how we can stabilize that revenue
15 structure.

16 And then the other thing also relates to
17 this group. We would love to tackle air
18 designations, and as you guys all know too well,
19 when an area moves from attainment to
20 nonattainment, or good to bad for air quality
21 purposes, the change is effective immediately.

22 But when the opposite happens and air
23 quality improves from nonattainment to

1 attainment, the statute requires that this body
2 adopt additional rules for that change to take
3 effect, which ends up just dragging out the
4 process for a number of months, when we don't
5 really need that to be the case. So, we would
6 love to remove that requirement that this body
7 adopt additional rules so the change can take
8 effect immediately.

9 So, we're still in early talks with the
10 Governor's Office about our legislative agenda
11 and what that process is going to look like, but
12 I kind of wanted to give a little preview of some
13 of the things that we're considering, and we'll
14 be sure to update you guys at the next meeting,
15 whatever we end up deciding on.

16 And I'm happy to answer any questions.

17 DR. ALEXANDROVICH: I have --

18 CHAIRMAN GARD: Are there any
19 questions for Parvonay?

20 DR. ALEXANDROVICH: Yes.

21 Since you're doing all of this hiring and
22 staff turnover, can you provide the Board with an
23 organizational chart when it gets kind of all

1 settled?

2 MS. STOVER: Absolutely, I would love
3 to.

4 DR. ALEXANDROVICH: Thank you.

5 CHAIRMAN GARD: I had one question
6 about some of the staffing. Have these positions
7 been vacant for a while, or are you just getting
8 permission to fill them, or what? I'm delighted
9 to see it, but --

10 MS. STOVER: So, the --

11 CHAIRMAN GARD: -- yet I'm --

12 MS. STOVER: Yeah, the positions I
13 mentioned have not been vacant for a while.
14 We -- at the last meeting, I had wanted to
15 provide an update on our new Communications
16 Director. She since resigned for another role in
17 the private sector, so we had to do a round of
18 hiring again to find a new Communications
19 Director. We've just finished up that process,
20 so we've unfortunately had a lot of turnover on
21 our Communications team, and now hopefully it's
22 settled down a little bit and we don't have to
23 spend so much time interviewing for that role.

1 The two new environmental justice
2 positions, obviously those are brand new
3 positions that we worked on with the Governor's
4 Office and State Budget Agency on getting
5 approval to even post those in the first place,
6 so they're brand new, we're kind of building them
7 from scratch, to see what the needs are and how
8 we can be most effective to communities across
9 the state.

10 And then the Deputy Assistant Commissioner
11 role, that was one that came through a vacancy.
12 Julia Wickard left the Assistant Commissioner
13 role earlier this year, which made a vacancy for
14 Bob Lugar to move up into, and we're filling
15 Bob's previous role. So, it's a lot of moving
16 parts. It's not that these have been sitting
17 vacant for a long time, it's just the process to
18 get them filled once people get promoted and move
19 around.

20 We do have a number of other positions
21 posted available for IDEM. You know, some of
22 them were more successful than others in getting
23 high-quality applicants. The Governor's Office

1 and State Personnel are working on a massive
2 salary study to compare our salaries to market
3 rate, comparing us to the private sector, other
4 public sector and nonprofit areas.

5 We're hoping once the results of that are
6 eventually released, hopefully later this year,
7 that that'll allow us to be more competitive in
8 the positions that we're posting and really
9 attract higher quality candidates. So, it's a
10 never-ending, you know, job for us, but we're
11 hopeful that we're going to get some tools
12 that'll really help us thrive in that area.

13 CHAIRMAN GARD: Well, we hope that
14 happens soon. So, thank you.

15 Now I want to call Chris Pedersen for a
16 rulemaking report.

17 MS. PEDERSEN: Good afternoon. I'm
18 Chris Pederson in the Rules Development Section
19 of the Office of Legal Counsel.

20 Before I go over the anticipated rules for
21 the next Board meeting, I'd like explain the
22 change made in the agenda for today's meeting and
23 the reason for it. The need for frequent updates

1 to the air attainment status designation tables
2 in state rule at 326 IAC 1-4, and the length and
3 complexity of the rulemaking process established
4 in Indiana statute, results in problems for
5 revisions to the designation tables, particularly
6 when the table for a particular county is open to
7 more -- in more than one rulemaking.

8 This often happens with counties that have
9 a larger number of regulated sources, and the
10 move back and forth between attainment and
11 nonattainment for various pollutants. Indiana
12 Code 13-17-3-14 requires the Board to adopt rules
13 that classify regions into attainment and
14 nonattainment areas for the regulated pollutants.
15 Since it is U.S. EPA that actually establishes
16 and advises these area classifications, the state
17 rule is done only to reflect the federal status.

18 However, due to the length of even the
19 expedited rulemaking process, this results in a
20 gap between the federal and state effective dates
21 of up to a year. The Board adopts emergency
22 rules to bridge the gap until the regular
23 rulemaking is completed and the state rule is

1 again consistent with the federal designation.
2 It is important that the Department be able to
3 efficiently issue air permits in these areas
4 using the appropriate requirements that are
5 determined by the designation of the area.

6 As you may have noticed, the counties with
7 the highest number of regulated sources and for
8 which most permits are issued are also those that
9 are most likely to develop attainment problems or
10 require rulemakings to change the designation --
11 designation status to be consistent with the
12 federal designations. This is a good example of
13 why addressing this issue as part of IDEM's
14 legislative initiative for the coming year is so
15 important.

16 As this relates to today's meeting, we
17 have removed the Lake and Porter Ozone
18 Redesignation regular rulemaking from the agenda.
19 This rule dealt with changes to designations for
20 the 2008 eight-hour ozone standard and related
21 emission reporting requirements. It is our
22 understanding that U.S. EPA is planning to
23 publish a new rule that will change the

1 designations for the 2015 eight-hour ozone
2 standard for Lake and Porter Counties within the
3 next few weeks.

4 The designations for these two standards
5 are in the same tables, and it would be difficult
6 and confusing to have two rules revising the same
7 sections very close together or running very
8 close together in the rulemaking process. So,
9 rather than trying to coordinate two separate
10 rulemakings that are revising the same sections,
11 we're going to combine them into one new rule
12 that includes all of the ozone updates for those
13 counties to be started as soon as new federal
14 rule is published.

15 Next, this will put Lake and Porter
16 Counties' ozone rulemaking on roughly the same
17 track as the Clark and Floyd County ozone
18 redesignation rulemaking, so we're going to add
19 those counties into the same rulemaking also, so
20 that there is only one rulemaking to address
21 revisions to the ozone designations. This will
22 greatly reduce the work needed for rule
23 development, and the Board will only have one

1 rule to consider.

2 In today's Board packet, we have left the
3 two emergency rules separate since they had
4 already been developed and included in the Board
5 packet. However, the Lake and Porter ozone
6 redesignation emergency rule was revised to
7 include a change to the 2015 eight-hour ozone
8 designation for a portion of Porter County that
9 has not yet been promulgated.

10 This is the reason why you have a new --
11 new documents, a new Rule Information Sheet and a
12 new draft emergency rule for that one. This is
13 reflected in the updated version of the two
14 documents that were provided in your folder today
15 and that were sent out electronically yesterday,
16 and it's in -- as I said, in your folders.

17 At the next meeting, we expect to present
18 one ozone redesignation emergency rule that
19 combines these two emergency rules and the
20 expected changes to Lake and Porter County that
21 EPA is likely to be publishing soon.

22 And then at a subsequent meeting, we will
23 present one regular expedited rulemaking which

1 will combine all of the ozone designations into
2 one rule, so that rule will cover Clark, Floyd,
3 Lake and Porter Counties all at one time. Once
4 completed, those, the emergency rules will no
5 longer be needed.

6 Several updated documents were sent
7 electronically to you this week. On Monday we
8 sent a copy of a form related to the nonrule
9 policy document on disclosure state requirements
10 for CFO approval applications that will be
11 presented later today. Yesterday we sent you the
12 revised agenda, as well as the revised Rule
13 Information Sheet and draft emergency rule for
14 Lake and Porter Ozone Redesignations emergency
15 rule.

16 And then in a separate e-mail yesterday
17 you should have received an updated list of Board
18 members and contact information. For Board
19 members participating today, you do have the hard
20 copies of those documents in your folders.

21 So, at this point, I'd like to stop and
22 see if there are any questions about what I've
23 already covered before I move on to our -- the

1 rules we anticipate for the next Board meeting.

2 CHAIRMAN GARD: So, Chris, let me
3 make sure that I understand this. The two
4 rule -- Item No. D.2. and D.3., as on the agenda,
5 we have new language for those; right? Or is
6 that -- are those the ones that we consider?

7 MS. PEDERSEN: For the emergency
8 rules on the agenda today, the Clark and Floyd
9 Emergency Rule is exactly what was sent out in
10 the original Board packet, and then --

11 CHAIRMAN GARD: Uh-huh.

12 MS. PEDERSEN: -- the -- for the Lake
13 and Porter Emergency Rule we sent out the revised
14 versions of the Rule Information Sheet and the
15 draft emergency rule yesterday. And then for
16 those in the room, they have a hard copy in their
17 folders also. So, that's the only one --

18 CHAIRMAN GARD: Okay.

19 MS. PEDERSEN: -- that's actually
20 changed since the original Board packet went out.

21 CHAIRMAN GARD: Okay.

22 MS. PEDERSEN: Okay. If there's no
23 other questions, then I'll -- yes.

1 DR. ALEXANDROVICH: It just confused
2 me a little bit when I was going over the
3 original documents about the emission reporting
4 part --

5 MS. PEDERSEN: Uh-huh.

6 DR. ALEXANDROVICH: -- because that
7 was left out of the -- it was left out of the
8 emergency rule, but it was in the other rule
9 so --

10 MS. PEDERSEN: Right. The reason for
11 that is the emergency rules are really only
12 made -- are only really done to set the
13 designation status for permitting purposes. So,
14 the emissions reporting portion was not an
15 emergency, per se, so we're going to still handle
16 that in the regular rulemaking.

17 DR. ALEXANDROVICH: Right. And I --
18 the reason why I was going to originally comment
19 on it, because the deadline was July or
20 something --

21 MS. PEDERSEN: Yes.

22 DR. ALEXANDROVICH: -- I figured we
23 could finalize that, but we might need to do that

1 for the sources that have to report.

2 MS. PEDERSEN: Yeah, we're going to
3 be looking at all of that --

4 DR. ALEXANDROVICH: Okay.

5 MS. PEDERSEN: -- but right now, if
6 the new federal rule comes out as quickly as they
7 anticipate, we will -- we'll get -- have that
8 moving pretty quickly.

9 DR. ALEXANDROVICH: Okay. Thank you.

10 MS. PEDERSEN: Uh-huh.

11 CHAIRMAN GARD: Any other questions
12 about this?

13 (No response.)

14 MS. PEDERSEN: Okay. I'll go ahead
15 and --

16 CHAIRMAN GARD: It would be nice if
17 we could get permission from EPA to just not have
18 to go through this with every one of these
19 redesignations, because I mean they make the
20 designations.

21 MS. PEDERSEN: Yeah, they -- they
22 establish the designations, and then it's Indiana
23 statute that requires us to put those into a

1 rule, so if that is able to be changed in some
2 way so that the permitting is no longer dependent
3 on that state designation being in the rule, then
4 we hope to be in a position where the permitting
5 people can just designate -- or do the permitting
6 based on the designation as soon as it's
7 effective at the federal level. So, there would
8 be no rule --

9 CHAIRMAN GARD: But to do that -- but
10 to do that, it takes the legislature to give us
11 permission to do it; correct?

12 MS. PEDERSEN: Right. Okay.

13 CHAIRMAN GARD: Okay.

14 MS. PEDERSEN: For the next Board
15 meeting, right now we're tentatively anticipating
16 that will be on November 9th of this year, and at
17 that meeting we anticipate presenting one rule
18 for final adoption that is going to be presented
19 to you today for preliminary adoption, and that
20 is Ignitable Hazardous Waste.

21 We also anticipate preliminary adoption of
22 three rules. The first is Safety-Kleen SO2. This
23 rule revises the sulfur dioxide monitoring and

1 fuel sampling process requirements for
2 Safety-Kleen Oil Recovery Company in Lake County
3 to comply with an agreed order issued by IDEM, so
4 it's basically just making changes to reflect the
5 agreed order that's already in place.

6 Next, the Definition of Solid Waste for
7 Hazardous Waste management. Because of recent
8 actions at the federal and state levels,
9 Indiana's current hazardous waste requirements
10 are inconsistent with the federal definition of
11 solid waste for the purposes of hazardous waste
12 management.

13 This rule will update the identification
14 of solid waste for the purposes of hazardous
15 waste management to be no less stringent than the
16 federal requirements, and will include
17 state-specific requirements to improve the
18 availability of information and reduce the risks
19 from the management of hazardous secondary
20 materials. And it will do this while not
21 requiring a hazardous waste facility permit if
22 the regulated entity meets certain conditions.

23 And then the third is Underground Storage

1 Tank Revisions. This rule amends portions of the
2 state underground storage tank rules to remove
3 certain state requirements that are redundant and
4 more stringent than the federal requirements,
5 reducing the costs and regulatory burdens on tank
6 owners and the Department while still protecting
7 human health and the environment.

8 The draft rule for the Underground Storage
9 Tank Rule is soon going to be posted for second
10 notice, and if it receives substantive comments
11 during the 30-day comment period, the hearing for
12 that may need to be postponed to a later meeting.

13 And then also, as I mentioned earlier, we
14 plan to have an emergency rule for the Clark,
15 Floyd, Lake and Porter Counties ozone
16 redesignations that we will continue to bring to
17 the Board until the regular rulemaking is
18 completed.

19 And that is the end of my presentation.
20 I'll be happy to answer any additional questions.

21 CHAIRMAN GARD: Any questions?

22 (No response.)

23 CHAIRMAN GARD: Okay. Thank you very

1 much, Chris.

2 MS. PEDERSEN: Uh-huh.

3 CHAIRMAN GARD: Today, we have two
4 emergency rules that the Board will be asked to
5 adopt: Clark and Floyd Counties Ozone
6 Redesignation and Lake and Porter Counties Ozone
7 Redesignation.

8 We will also have a hearing for the
9 following regular Rule Board actions: Final
10 adoption of Organic Solvent Degreasing Operations
11 Correction; Waste Tires; Municipal Solid Waste
12 Landfill Emissions; City of Angola Chloride
13 Variance Revisions; and preliminary adoption of
14 Ignitable Hazardous Waste.

15 There will be a hearing on nonexpired
16 rules in accordance with the requirement of
17 IC 13-14-9.5-1.1. There will be presentations
18 for two nonrule policy documents for Municipal
19 Solid Waste Landfills and Applicability of
20 326 IAC 8-8 and 326 IAC 8-8.1; and Disclosure
21 Statement Requirements for CFO Approval
22 Applications.

23 And finally, an update on the Citizen's

1 CHAIRMAN GARD: Thank you very much.

2 The Board will now consider adoption of
3 the emergency rule for the 2015 Eight-Hour Ozone
4 Redesignations for Clark and Floyd Counties.
5 This emergency rule incorporates current federal
6 designation.

7 Exhibit A, the draft emergency rule, will
8 be introduced now.

9 Is there someone to present the emergency
10 rule? Is it Seth Engdahl?

11 MR. ENGDAHL: Yes, that's correct.
12 I'm here.

13 Members of the Board, good afternoon. My
14 name is Seth Engdahl, and I am a rule writer in
15 the Rules Development Section of IDEM's Office of
16 Legal Counsel.

17 The emergency rule currently under
18 consideration would supersede both 326 IAC 1-4-11
19 and 326 IAC 1-4-23. These sections are comprised
20 of attainment status tables for certain air
21 pollutants in Clark Floyd Counties. The only
22 change being made is to each county's status for
23 the 2015 Eight-Hour Ozone National Ambient Air

1 Quality Standard, which is being changed from
2 marginal nonattainment to attainment. We are
3 making this change to maintain consistency with
4 the federal designation that was published in the
5 Federal Register on July 5th of this year.

6 IDEM is requesting that the Board approve
7 this emergency rule so that affected sources can
8 be permitted under the appropriate state rule
9 while the regular rulemaking to incorporate these
10 changes into the Indiana Administrative Code is
11 completed. If adopted, permits issued under
12 source -- issued to sources in Clark and Floyd
13 Counties would be issued under Prevention of
14 Significant Deterioration pursuant to
15 326 IAC 2-2. Currently, sources are issued
16 permits under Emissions Offset pursuant to
17 326 IAC 2-3, which is more restrictive.

18 Finally, to prevent any potential
19 confusion, I would like to point out two typos in
20 the Rule Information Sheet that was sent to the
21 Board. In the "Reasons for the Rule" section, it
22 says that the redesignation was published by
23 U.S. EPA on July 5th, 2020. It should instead

1 say July 5th, 2022. The date in the "Overview"
2 section is correct. Additionally, the Rule
3 Information Sheet mentions nitrous oxides as a
4 precursor emission to ozone. It should instead
5 say oxides of nitrogen.

6 IDEM requests that the Board approve this
7 emergency rule as presented, and I'm happy to
8 answer any questions that you may have.

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

11 (No response.)

12 CHAIRMAN GARD: Okay. Thank you so
13 much, Seth.

14 Is there Board discussion?

15 (No response.)

16 CHAIRMAN GARD: Is there a motion to
17 adopt the emergency rule?

18 DR. NIEMIEC: Yes.

19 MR. ETZLER: So moved, Bill Etzler.

20 DR. NIEMIEC: Second, Ted Niemiec.

21 CHAIRMAN GARD: This is a roll-call
22 vote.

23 Mr. Wasky?

1 MR. WASKY: Yes.

2 CHAIRMAN GARD: Mr. Davidson?

3 MR. DAVIDSON: Yes.

4 CHAIRMAN GARD: Mr. Horn?

5 MR. HORN: Yes.

6 CHAIRMAN GARD: Ms. Nelson?

7 MS. NELSON: Yes.

8 CHAIRMAN GARD: Mr. Chambers?

9 MR. CHAMBERS: Yes.

10 CHAIRMAN GARD: Dr. Niemiec?

11 DR. NIEMIEC: Yes.

12 CHAIRMAN GARD: Mr. Ketzenberger?

13 MR. KETZENBERGER: Yes.

14 CHAIRMAN GARD: Ms. Koroski [sic]?

15 MS. KOZYRSKI: Yes.

16 CHAIRMAN GARD: Mr. Bortner?

17 MR. BORTNER: Yes.

18 CHAIRMAN GARD: Mr. Schuler?

19 MR. SCHULER: Yes.

20 CHAIRMAN GARD: Mr. Rulon?

21 (No response.)

22 CHAIRMAN GARD: Dr. Alexandrovich?

23 DR. ALEXANDROVICH: Yes.

1 CHAIRMAN GARD: Let's see.

2 Mr. Etzler?

3 MR. ETZLER: Yes.

4 CHAIRMAN GARD: Okay. And the Chair
5 votes aye. The vote is 13 ayes, 0 nays, so the
6 emergency rule is adopted.

7 The Board will now consider adoption of an
8 emergency rule for the 2008 Eight-Hour Ozone
9 Redesignation for Lake and Porter Counties and
10 the 2015 Eight-Hour Ozone Redesignation for
11 Porter County. This emergency rule temporarily
12 incorporates the current federal designation.

13 I'll now introduce Exhibit B, the draft
14 emergency rule, into the record of the hearing.

15 Keelyn Walsh will present the emergency
16 rule.

17 MS. WALSH: Good afternoon, members
18 of the Board. I'm Keelyn Walsh, with the Rules
19 Development Section of the Office of Legal
20 Counsel, and I'm here to present the emergency
21 rule for Lake and Porter Counties Ozone
22 Redesignations for your consideration.

23 This rule temporarily amends

1 326 IAC 1-4-46 and 326 IAC 1-4-65 to update the
2 attainment designation status of Lake and Porter
3 Counties to attainment for the 2008 eight-hour
4 ozone standard based on the final rule published
5 in the Federal Register on May 20th, 2022. This
6 rule also updates the attainment designation
7 status of the northern townships of Center,
8 Jackson, Liberty, Pine, Portage, Union,
9 Washington, and Westchester in Porter county for
10 the 2015 eight-hour ozone standard based on the
11 final rule published in the Federal Register
12 on June 14th, 2021.

13 This emergency rule will ensure that
14 affected sources are permitted under the less
15 restrictive PSD requirements in 326 IAC 2-2,
16 instead of the more restrictive Emission Offset
17 requirements in 326 IAC 2-3. Adoption of this
18 emergency rule is necessary to ensure the
19 immediate update of the attainment designation
20 status of Lake and Porter Counties and Porter
21 County townships until the regular Section 8
22 rulemaking has been completed.

23 IDEM respectfully requests that the Board

1 final adopt this emergency rule as presented, and
2 program staff and I are available to answer any
3 other -- excuse me -- any further questions you
4 may have.

5 Thank you.

6 CHAIRMAN GARD: Any questions for
7 Keelyn?

8 (No response.)

9 CHAIRMAN GARD: If not, thank you.

10 MS. WALSH: Uh-huh.

11 CHAIRMAN GARD: Is there Board
12 discussion?

13 (No response.)

14 CHAIRMAN GARD: Do I hear a motion to
15 adopt the emergency rule?

16 DR. ALEXANDROVICH: So moved.

17 CHAIRMAN GARD: Is there a second?

18 MR. DAVIDSON: Second.

19 CHAIRMAN GARD: This is a roll-call
20 vote.

21 Mr. Wasky?

22 MR. WASKY: Yes.

23 CHAIRMAN GARD: Mr. Davidson?

1 MR. DAVIDSON: Yes.

2 CHAIRMAN GARD: Mr. Davidson?

3 MR. DAVIDSON: Yes.

4 CHAIRMAN GARD: Mr. Horn?

5 MR. HORN: Yes.

6 CHAIRMAN GARD: Ms. Nelson?

7 MS. NELSON: Yes.

8 CHAIRMAN GARD: Mr. Chambers?

9 MR. CHAMBERS: Yes.

10 CHAIRMAN GARD: Dr. Niemiec?

11 DR. NIEMIEC: Yes.

12 CHAIRMAN GARD: Mr. Ketzenberger?

13 MR. KETZENBERGER: Yes.

14 CHAIRMAN GARD: Ms. Koroski?

15 MS. KOZYRSKI: Yes.

16 CHAIRMAN GARD: Mr. Bortner?

17 MR. BORTNER: Yes.

18 CHAIRMAN GARD: Mr. Schuler?

19 MR. SCHULER: Yes.

20 CHAIRMAN GARD: Dr. Alexandrovich?

21 DR. ALEXANDROVICH: Yes.

22 CHAIRMAN GARD: Mr. Etzler?

23 MR. ETZLER: Yes.

1 CHAIRMAN GARD: The Chair votes aye.
2 The total is 13 ayes, 0 nays. The emergency rule
3 is adopted.

4 Okay. This is a public hearing before the
5 Environmental Rules Board of the State of Indiana
6 concerning final adoption of amendments to rules
7 at 326 IAC 8-3-1, Organic Solvent Degreasing
8 Operations Correction.

9 I will now introduce Exhibit C, the draft
10 rule, into the record of the hearing.

11 MaryAnn Stevens will present the rule.

12 MS. STEVENS: Good afternoon, members
13 of the Board. I am MaryAnn Stevens, a rule
14 writer in the Office of Legal Counsel, Rules
15 Development Section.

16 In a rulemaking concerning cold cleaning
17 degreasing alternative, LSA Document 18-542,
18 adopted by the Board in February of 2021, an
19 exemption was created at 326 IAC 8-3-1(a)(1) for
20 degreasers that have the potential to emit fewer
21 than 15 pounds per day of volatile organic
22 compounds. The exemption text was added to be
23 consistent with similar language in

1 326 IAC 8-1-1.

2 However, the United States Environmental
3 Protection Agency has stated that this type of
4 exemption is not appropriate for degreasing, for
5 which typical exemptions are based on use, such
6 as medical cleaning, or surface area size of the
7 equipment. The exemption as stated in
8 326 IAC 8-3-1(a)(1) would lead to some units no
9 longer being regulated. Therefore, U.S. EPA has
10 indicated that the exemption is not a change that
11 can be approved.

12 This rulemaking is to remove the exemption
13 that was added to 326 IAC 8-3-1(a)(1), which will
14 provide consistency with the Indiana State
15 Implementation Plan and allow U.S. EPA to approve
16 the other changes that were made under the
17 earlier rulemaking of LSA Document 18-542
18 regarding cold cleaning degreasing alternative.

19 Therefore, IDEM asks for the Board's vote
20 for adoption of this rulemaking to remove the
21 exemption at 326 IAC 8-3-1(a)(1). If there are
22 any questions, I can provide answers, or other
23 IDEM staff members are also here to provide

1 answers.

2 CHAIRMAN GARD: Any questions for
3 MaryAnn or any other staff members concerning
4 this?

5 DR. ALEXANDROVICH: Chairman Gard, I
6 have a series of questions, Dr. Alex --

7 CHAIRMAN GARD: Okay. Yes,
8 Dr. Alexandrovich.

9 DR. ALEXANDROVICH: Like two sets.
10 One is on the facilities that might get
11 exemptions or have exemptions, and then there's
12 another set on SIP procedures, so I think I'll
13 keep them separate and start with one set. And
14 the first one is about the facilities that have
15 exemptions. So, an exemp -- before we passed the
16 last regulation, there were -- the existence of
17 the exemption was there. So, approximately how
18 many sources and what kind of sources have
19 exemptions?

20 MS. STEVENS: I think I'm going to
21 call on some Air staff members.

22 Susan?

23 Susan Bem is here. This is her expertise.

1 MS. BEM: Hi. I'm Susan Bem.

2 You asked how many sources currently have
3 exemptions, or --

4 DR. ALEXANDROVICH: That's correct,
5 and what types of sources they are.

6 MS. BEM: Well, degreasers are --
7 there's numerous degreasers throughout the state
8 at a variety of sources: Large industrial
9 sources, auto body reconditioning shops. You
10 know, it's metal solvent cleaning, so --

11 DR. ALEXANDROVICH: Okay. About how
12 many exemptions do you have?

13 MS. BEM: Well, we -- the fif -- are
14 you talking about the 15-pound-per-day exemption?

15 DR. ALEXANDROVICH: Yeah.

16 MS. BEM: And those would -- the 15
17 pounds per day would be for the very small
18 degreasers, and there -- you know, there's very
19 small auto body shops out there. There's
20 numerous numbers.

21 DR. ALEXANDROVICH: So -- okay. So,
22 you have a list of them, because the regulations
23 require approval from the Commissioner.

1 MS. BEM: Well, the ones that we
2 have -- the sources that are permitted have
3 degreasers in their permits, and then if they're
4 going to take that 15-pound-per-day exemption,
5 they have all of it written into their permit,
6 and there's record-keeping requirements
7 associated with that exemption.

8 MS. ACKER: Excuse me; if you don't
9 mind.

10 MS. BEM: Yeah -- no, go ahead.

11 MS. ACKER: I can -- I'm the Branch
12 Chief of Permitting for Air, so I can probably
13 handle those questions.

14 MS. BEM: Yeah.

15 MS. ACKER: And we'll get -- for the
16 SIP one -- we'll get you back up here for the
17 SIP. How does that sound?

18 MS. BEM: Okay.

19 MS. ACKER: There are certain
20 exemptions, so, just to be clear, that 15 pound
21 per day did not exist in Article 8-3 prior to the
22 recent rulemaking.

23 DR. ALEXANDROVICH: But it is in 8-1.

1 MS. ACKER: It is --

2 DR. ALEXANDROVICH: That's what I
3 was --

4 MS. ACKER: -- in 8-1, it's required
5 to be SIP approved if they're going to use that
6 exemption.

7 DR. ALEXANDROVICH: So, yeah, I was
8 interested in how many sources have exemptions
9 under 8-1-1.

10 MS. ACKER: None that I know of.

11 DR. ALEXANDROVICH: Interesting. So,
12 the next one was: How many facilities might be
13 automatically exempted? So, that would be like
14 very few?

15 MS. ACKER: So, you're saying under
16 this 8-3 --

17 DR. ALEXANDROVICH: Yeah.

18 MS. ACKER: -- exemption that --

19 DR. ALEXANDROVICH: Yeah.

20 MS. ACKER: -- we have to take out?

21 DR. ALEXANDROVICH: Yeah.

22 MS. ACKER: No, I think there's a lot
23 that would come in and try to argue that they are

1 less than 15 pounds a day, and therefore exempt.

2 DR. ALEXANDROVICH: Oh, okay.

3 MS. ACKER: And as Chris said, the
4 EPA has said there's not a 15-pound-per-day
5 exemption for degreasers. The intent was if you
6 go back to the CTG, there are hundreds and
7 thousands of these around the nation, and they
8 do -- at least back in the -- they added up to a
9 very large amount of VOC's through all of these
10 small incremental units, and therefore, they did
11 not feel that having an exemption was
12 appropriate.

13 There are some exemptions that -- as she
14 said -- that they're cleaning some -- not
15 pharmaceutical, but electronic components, there
16 are some NESHAP's and NSPS's that apply to cold
17 cleaning degreasers, so the very large ones,
18 they're using very hazardous materials. If a
19 cold cleaner degreaser is subject to one of the
20 federal rules, it is exempt from our rule,
21 because the federal rules are a little more
22 stringent.

23 DR. ALEXANDROVICH: Okay. That -- I

1 was curious about how many sources were already
2 exempted. So, those exempted under 8-1 are in
3 their permits, or separate?

4 MS. ACKER: If they're exempted by
5 the rule outside of the 15 pounds per day because
6 they're subject to a NESHAP or they are an
7 electronic cleaner, or they're using a VOC less
8 than one percent by weight of their cleaning
9 solution, we will document that in the technical
10 support document. That is why the rule is not in
11 their permit.

12 DR. ALEXANDROVICH: Okay. Thank you.

13 MS. ACKER: You're welcome.

14 DR. ALEXANDROVICH: Now, my SIP
15 questions. And actually, I was hoping that the
16 Commissioner was here, because some years ago I
17 asked Comm. Easterly how many outstanding SIP
18 approvals we had under our rules. So, I don't
19 know, but this one is also one of those SIP --
20 needs for SIP approvals. So, under what
21 circumstances does IDEM send proposed rules to
22 EPA for review? Because one would have thought
23 they might have caught that before. And how many

1 SIP approvals might be outstanding? And in the
2 Commissioner's document, his determination,
3 findings and determination, mention that sources
4 would know that the exemption was not SIP
5 compliant, but how would they know?

6 MS. BEM: Well, and 8-3 is one of our
7 SIP-approved rules, and then as MaryAnn mentioned
8 earlier, we modified this rule in 2021 and we
9 submitted that rule for SIP approval, and as part
10 of that approve -- or review process by EPA, this
11 issue was identified. And once this rulemaking's
12 complete, EPA will be able to move forward with
13 the SIP approval.

14 Source -- EPA, you know, once they approve
15 something, it gets codified into the Code of
16 Federal Regulations, and so, sources can check to
17 see what rules are SIP approved and if this state
18 rule is part of the Indiana SIP.

19 And then you also asked how many other
20 rules are not -- or are in the SIP approval
21 process?

22 DR. ALEXANDROVICH: Yeah.

23 MS. BEM: You know, we meet with EPA

1 regularly. We probably have --

2 MS. PEDERSEN: Six to eight, maybe.

3 MS. BEM: -- six to eight rulemakings
4 that they're actively reviewing.

5 MS. ACKER: Over 18 months.

6 DR. ALEXANDROVICH: Okay. So,
7 every -- so, there is a process. Once you submit
8 a rule, you submit it to EPA for approval, and
9 then that goes into the Federal Register?

10 MS. BEM: Uh-huh, once we submit it
11 to EPA for approval, they have 18 months to act
12 on it, and once they actually approve it, it is
13 recognized with a Federal Register notice, and it
14 shows the effective date of that SIP approval.

15 DR. ALEXANDROVICH: Okay. All right.
16 So, I'm just kind of thinking that the sources
17 who might have wanted to take the exemption
18 wouldn't know that they -- it was not SIP
19 approved.

20 MS. BEM: Right.

21 DR. ALEXANDROVICH: That was kind of
22 my point.

23 MS. BEM: Yeah. And there is a table

1 in the CFR that shows --

2 MS. ACKER: They are -- I'm sorry I'm
3 interrupting you. They are aware -- this is our
4 tag team -- because as soon as EPA came back and
5 said, "We are not going to approve this rule with
6 the 15-pound-per-day exemption in there," we
7 immediately shared that with the entire staff, we
8 reached out to consultants and let consultants
9 know that.

10 We have had companies that have come in
11 wanting to utilize that, and we have warned them,
12 "It is on our state books, it is not federally
13 approved, we really can't let you use that rule,
14 and if you do insist, you're opening yourself up
15 to federal action." So, so far, nobody has taken
16 advantage of that rule, because we've been able
17 to explain to them why they need to just let it
18 go.

19 DR. ALEXANDROVICH: Okay. It just
20 seemed that it was like horses and carts, and why
21 EPA didn't review it before.

22 MS. ACKER: The cogs don't always fit
23 together neatly, but we really try to work

1 together to make sure that we are getting the
2 word out, and in this situation, I can tell you I
3 am not aware of a single company that has been --
4 that has utilized that rule, because we very
5 quickly became aware of the EPA stance on it, and
6 very quickly allowed sources to know that no, we
7 couldn't use it, reached out to the consultants
8 to let the consultants know what the status was
9 on the rule, and to this point, I am not aware of
10 any sources that have had that -- utilized that
11 rule to get out of 8-3.

12 DR. ALEXANDROVICH: Okay. One final
13 thing: Is there -- so, is there a table in the
14 CFR for all of our SIP-approved rules?

15 MS. BEM: Right. Yeah, that's what I
16 was just going to add. There -- once EPA does
17 approve, there is a portion of the CFR where
18 there's a table, and you can look at all of the
19 rule citations in order to see what's in the SIP
20 and what's been approved.

21 DR. ALEXANDROVICH: Can you send me
22 that citation, please?

23 MS. BEM: Uh-huh, yeah. I don't know

1 what it is off the top of my head, but maybe
2 Chris does.

3 MS. PEDERSEN: It's 40 CFR 81.315.
4 And I will tell you that it is not completely up
5 to date, but it's at least a good start, and if
6 you have any questions about it, feel free to
7 give me a call, because I'm trying to maintain a
8 more current version.

9 DR. ALEXANDROVICH: Great. Thank
10 you.

11 CHAIRMAN GARD: Any other questions?

12 DR. ALEXANDROVICH: I'm done.

13 MR. DAVIDSON: I have a couple, Chair
14 Gard. I'll be brief.

15 I appreciate everybody's depth the
16 knowledge, because I'm traditionally a land
17 quality guy, not these air things, so I tend not
18 to ask a lot. But it did seem like a broad
19 applicability compared to where it had been,
20 but -- so, the exemption, do people -- you
21 mentioned there are thousands of these out there,
22 which is a fair statement, maybe an
23 underestimate, but do those people realize

1 they're operating under an exemption if they're
2 just a small parts place or some small auto body?
3 Do they realize they're living under an exemption
4 that's going away? And how would we educate
5 that?

6 MS. ACKER: Well, so, one thing, up
7 until 2021, that exemption didn't exist; okay?
8 There is a requirement -- CTAP reaches out. You
9 know, they're aware that companies that have
10 small parts degreasers that may not need any
11 other air permit, if they have it, they still
12 have to comply with Article 8-3. And so, CTAP's
13 aware of that. They've done a lot of outreach to
14 these types of communities, organizations, to
15 make sure that the car -- car dealers, people are
16 aware of this and comply with it.

17 Like they said, the exemption came into
18 play in 2021. I don't think a small company
19 would be aware that it came on the books and just
20 voluntary decided to go, you know, comply -- say,
21 "I'm not subject to it anymore." The larger
22 companies that did see that and wanted to try to
23 get out from underneath complying with 8-3 on

1 that exemption, again, we were fortunate EPA was
2 very quick in making the determination that they
3 would not approve that in our SIP, so we were
4 able to reach out to the companies as permits
5 came in and reach out to consultants and say,
6 "You can't use it."

7 MR. DAVIDSON: Fair enough. Thanks.
8 I think it's a good example where Indiana tried
9 to work with sources.

10 MS. ACKER: Thank you.

11 MR. DAVIDSON: Uh-huh. Thank you.

12 CHAIRMAN GARD: Any other questions?

13 (No response.)

14 CHAIRMAN GARD: Well, thank you very
15 much, those staff members that worked on this.

16 Are there any speaker cards?

17 MS. KINDRICK: No, ma'am.

18 CHAIRMAN GARD: Well, the hearing is
19 concluded. The Board will now consider final
20 adoption of amendments to Rules 326 IAC 8-3-1,
21 Organic Solvent Degreasing Operations Correction.

22 Is there any Board discussion?

23 (No response.)

1 CHAIRMAN GARD: Okay. Hearing none,
2 do I hear a motion to adopt the rules as
3 presented?

4 MR. ETZLER: So moved, Bill Etzler.

5 CHAIRMAN GARD: Is there a second?

6 MR. HORN: Chris Horn, second.

7 CHAIRMAN GARD: This is a roll-call
8 vote.

9 Mr. Wasky?

10 MR. WASKY: Yes.

11 CHAIRMAN GARD: Mr. Davidson?

12 MR. DAVIDSON: Yes.

13 CHAIRMAN GARD: Mr. Horn?

14 MR. HORN: Yes.

15 CHAIRMAN GARD: Ms. Nelson?

16 MS. NELSON: Yes.

17 CHAIRMAN GARD: Mr. Chambers?

18 MR. CHAMBERS: Yes.

19 CHAIRMAN GARD: Dr. Niemiec?

20 DR. NIEMIEC: Yes.

21 CHAIRMAN GARD: Mr. Ketzenberger?

22 MR. KETZENBERGER: Yes.

23 CHAIRMAN GARD: Mr. Ketzenberger --

1 MR. KETZENBERGER: Yes.

2 CHAIRMAN GARD: -- unmute your --

3 Ms. Kryzoski [sic]?

4 MS. KOZYRSKI: Yes.

5 CHAIRMAN GARD: Ms. Koroski?

6 MS. KINDRICK: She said yes.

7 CHAIRMAN GARD: I think you have your

8 mute --

9 MS. KOZYRSKI: Yes; I'm sorry.

10 CHAIRMAN GARD: Mr. Bortner?

11 MR. BORTNER: Yes.

12 CHAIRMAN GARD: Mr. Schuler?

13 MR. SCHULER: Yes.

14 CHAIRMAN GARD: Dr. Alexandrovich?

15 DR. ALEXANDROVICH: Yes.

16 CHAIRMAN GARD: Mr. Etzler?

17 MR. ETZLER: Yes.

18 CHAIRMAN GARD: The Chair votes aye.

19 It's 13 ayes, 0 nays. The rule is adopted.

20 This is a public hearing before the
21 Environmental Rules Board of the State of Indiana
22 concerning final adoption of amendments to rules
23 at 329 IAC 15, Waste Tires.

1 I will now introduce Exhibit D, the rule
2 as preliminarily adopted with IDEM's suggested
3 changes, into the record of the hearing.

4 Dan Watts will present the rule.

5 MR. WATTS: Good afternoon,
6 Chairwoman Gard and members of the Board. I'm
7 Dan Watts of the Rules Development Section, and
8 I'm presenting LSA Document 17-279 for final
9 adoption.

10 IDEM is proposing extensive amendments to
11 329 IAC 15, which has not been significantly
12 revised since it was originally adopted over 20
13 years ago. The rulemaking updates the existing
14 waste tire management requirements based on
15 compliance and enforcement situations encountered
16 over the years, and adds new requirements for the
17 legitimate use of waste tires.

18 Since preliminary adoption, IDEM has made
19 many amendments, which you'll see underlined, due
20 to comments from the Office of Management and
21 Budget during their review of the draft rule
22 language for the fiscal impact analysis approval.
23 These amendments were necessary for IDEM to

1 obtain this fiscal approval, and the changes
2 include -- oh, sorry. The amendments were
3 necessary to get the approval and then move
4 forward to final adoption.

5 And the changes include reducing
6 repetition of statutory requirements and
7 definitions; fully listing out the information
8 required on forms, applications and reports;
9 clarification of requirements for registration
10 and changes to financial assurance; addition of
11 specific ascertainable standards for requirements
12 that might be overly general; and other changes
13 to address inaccurate language, make corrections,
14 and improve wording throughout the rules.

15 IDEM has also made other changes since
16 preliminary adoption based on comments from the
17 Board and input from waste tire program staff
18 during the preliminary adoption. The proposed
19 alterative design and compliance standards at
20 15-3-17.5 were deleted because the current waste
21 tire management standard already include some
22 limited compliance flexibility to accomplish that
23 goal.

1 The waste tire facility fee requirements
2 were amended or repealed in a separate rulemaking
3 that the Board has already adopted that
4 comprehensively addressed the solid waste fees.
5 Changes to the financial assurance requirements
6 specify the types of surety bonds available to
7 regulated entities. And for the preapproved
8 legitimate use requirements, IDEM has added a
9 blanket exemption for uses of less than 100 PTE's
10 and basic management standards to prevent threats
11 to public health and the environment.

12 So, while these changes are extensive,
13 IDEM does not anticipate a significant fiscal
14 impact, because the majority of changes do not
15 add new requirements or compliance costs.
16 Instead, they clarify or streamline the existing
17 requirements at the request of OMB or IDEM
18 program staff. Some regulated entities may
19 experience cost savings with the proposed
20 compliance alternatives or the option for
21 legitimate use of waste tires. IDEM has also
22 reached out to registered facilities during the
23 comment periods and did not receive any comments

1 or feedback on the amendments.

2 Representatives from IDEM are available to
3 answer questions you may have for this
4 rulemaking. The Department respectfully requests
5 the Board adopt these proposed updates and
6 improvements to the waste tire management rules.

7 Thank you very much.

8 CHAIRMAN GARD: I have a question.

9 MR. WATTS: Uh-huh.

10 CHAIRMAN GARD: It's hard to believe
11 it's been 20 years. This was Rep. Wolkins and my
12 initiative in the General Assembly, the original
13 rule, and it was originally passed because of so
14 many abandoned piles of tires and fires and
15 mosquitoes and everything that waste tires bring
16 on.

17 Are you seeing fewer waste tire fires? I
18 know that once they start, they're really very
19 difficult to deal with. Are -- over the 20
20 years, has what we did worked?

21 MR. WATTS: Well, it has, I think --

22 Lori, you can talk more about that.

23 Every time there's a big fire it seems to

1 pop up in the news, which doesn't seem that
2 common.

3 MS. FREEMAN: Sure.

4 My name's Lori Freeman. I'm the
5 Compliance Branch Chief in the Office of Land
6 Quality.

7 There are fewer tire fires, I believe.
8 The fires that we tend to see now tend to be more
9 localized to shredding operations, and they're
10 caught fairly quickly and extinguished fairly
11 quickly, although they are still a significant
12 problem at those facilities and often require
13 multiple fire departments to respond, because
14 they're usually in smaller towns, where several
15 fire departments will be responding.

16 And there seems to be fewer abandoned
17 piles of tires out in the Indiana landscape
18 because we have waste tire processors and
19 facilities to take them now.

20 Does that answer your question?

21 CHAIRMAN GARD: Yeah, it does. It's
22 just -- I'm just curious if it did work, and it
23 sounds likes these amendments to the rule are

1 warranted, so thank you very much.

2 MS. FREEMAN: You're welcome.

3 CHAIRMAN GARD: Any other Board
4 Members have questions?

5 DR. ALEXANDROVICH: I do, Chairman
6 Gard. It's Joanne.

7 CHAIRMAN GARD: Yes.

8 DR. ALEXANDROVICH: I have questions
9 on three different pages of the rule.

10 MR. WATTS: Okay.

11 DR. ALEXANDROVICH: On page 3 of 54,
12 it looks like you're adding new reporting
13 requirements for local governments and waste
14 management districts to notify IDEM about a tire
15 amnesty day.

16 MR. WATTS: Yeah.

17 DR. ALEXANDROVICH: So, I'm like
18 wondering why that's necessary, because they
19 would be -- they have to use the regulated
20 transporters and tire people, tire processor.
21 And -- okay. If we agree to this in there, are
22 you guys going to reach out to these local
23 governments and solid waste management districts

1 to let them know they have these new reporting
2 requirements?

3 MS. PEDERSEN: Lori?

4 MR. WATTS: Lori?

5 MS. FREEMAN: I believe the plan is
6 to reach out to them. The waste tire amnesty day
7 was added via statute as an option, and it was
8 never incorporated into the rules, and so, we
9 want to make sure that they understand that they
10 still need to -- the things they need to comply
11 with in order not to create any problems and
12 issues.

13 DR. ALEXANDROVICH: So, the statute
14 requires that the amnesty day is to report to you
15 guys?

16 MS. FREEMAN: The statute allows for
17 an amnesty day that didn't previously exist, and
18 we are asking so we can assist them, to make sure
19 that they have no issues with those tires and
20 those -- those facilities.

21 DR. ALEXANDROVICH: Okay. My next
22 question, on 10 of 54, is a matter of curiosity,
23 and this is old text, the existing rule, that the

1 Department oversees contracts with waste tire
2 processing operators?

3 MS. FREEMAN: We do when we hire them
4 for tire cleanups of open dumps in the state.

5 DR. ALEXANDROVICH: Okay. Okay. And
6 then my last one, and this is -- this is
7 definitely not the least, on page 48, there's the
8 deletion of requiring the prevention of
9 accumulation of water. That, to me, seems
10 inappropriate, given the fact that wet tires are
11 happy mosquito grounds.

12 MS. FREEMAN: I think that's because
13 it was added as a general requirement to all of
14 these preapproved conditions, that they have to
15 make sure that they don't hold water.

16 MR. WATTS: Yeah, can I talk about
17 that?

18 MS. FREEMAN: Yes.

19 It's up now in Section 15-6-3(a)(3) on
20 page 47, "Waste tires must be altered to prevent
21 the accumulation of water."

22 DR. ALEXANDROVICH: Okay. I guess
23 that was --

1 MR. WATTS: Well, 48 is where -- I
2 thought you were talking about 47.

3 MS. FREEMAN: She was talking on
4 page 48, and that was deleted from page 48
5 because a general requirement for all the
6 preapproved uses to not hold water was added
7 to --

8 DR. ALEXANDROVICH: Okay.

9 MS. FREEMAN: -- it on page 47.

10 DR. ALEXANDROVICH: Okay. Thank you.
11 I missed that.

12 MS. FREEMAN: Not a problem.

13 COMM. ROCKENSUESS: And
14 Dr. Alexandrovich, to your original question,
15 we're going to reach out and educate, yeah.

16 DR. ALEXANDROVICH: Yeah, because
17 it's doubtful that they knew that this rule was
18 up and that, you know, next time they have the
19 plan, they're like, "Uh-oh."

20 COMM. ROCKENSUESS: Yeah.

21 DR. ALEXANDROVICH: Thank you.

22 COMM. ROCKENSUESS: We will.

23 MR. WATTS: Any other questions?

1 CHAIRMAN GARD: Any other?

2 (No response.)

3 CHAIRMAN GARD: So, thank you, Dan.

4 Are there any speaker cards?

5 MS. KINDRICK: No, ma'am.

6 CHAIRMAN GARD: Any more questions
7 from the Board?

8 (No response.)

9 CHAIRMAN GARD: Hearing none, the
10 Board will now consider final adoption of
11 amendments to rules at 329 IAC 15, Waste Tires.
12 Board discussion?

13 (No response.)

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

16 MR. DAVIDSON: So moved.

17 CHAIRMAN GARD: Is there a second?

18 DR. ALEXANDROVICH: Second.

19 MR. HORN: So moved, Chris Horn.

20 CHAIRMAN GARD: Okay. This is a
21 roll-call vote.

22 Mr. Wasky?

23 MR. WASKY: Yes.

1 CHAIRMAN GARD: Mr. Davidson?

2 MR. DAVIDSON: Yes.

3 CHAIRMAN GARD: Mr. Horn?

4 MR. HORN: Yes.

5 CHAIRMAN GARD: Ms. Nelson?

6 MS. NELSON: Yes.

7 CHAIRMAN GARD: Mr. Chambers?

8 MR. CHAMBERS: Yes.

9 CHAIRMAN GARD: Dr. Niemiec?

10 DR. NIEMIEC: Yes.

11 CHAIRMAN GARD: Mr. Ketzenberger?

12 MR. KETZENBERGER: Yes.

13 CHAIRMAN GARD: Ms. Koroski?

14 MS. KOZYRSKI: Yes.

15 CHAIRMAN GARD: Mr. Bortner?

16 MR. BORTNER: Yes.

17 CHAIRMAN GARD: Mr. Schuler?

18 MR. SCHULER: Yes.

19 CHAIRMAN GARD: Dr. Alexandrovich?

20 DR. ALEXANDROVICH: Yes.

21 CHAIRMAN GARD: And the Chair votes
22 aye. The vote is 13 ayes, 0 nays. I'm sorry; I
23 lost my place. Zero nays. The rule is -- the

1 amendments to the rule are adopted.

2 Okay. Now, we need to have a motion to
3 final adopt the rules as amended, previous rules,
4 the amendments. And this is a roll-call vote.
5 We need a motion.

6 DR. ALEXANDROVICH: So moved.

7 MR. BORTNER: So moved, Madam Chair,
8 Bortner.

9 CHAIRMAN GARD: Is there a second?

10 DR. ALEXANDROVICH: Second.

11 MR. BORTNER: Second.

12 CHAIRMAN GARD: Roll call.

13 Mr. Wasky?

14 MR. WASKY: Yes.

15 CHAIRMAN GARD: Mr. Davidson?

16 MR. DAVIDSON: Yes.

17 CHAIRMAN GARD: Mr. Horn?

18 MR. HORN: Yes.

19 CHAIRMAN GARD: Ms. Nelson?

20 MS. NELSON: Yes.

21 CHAIRMAN GARD: Mr. Chambers?

22 MR. CHAMBERS: Yes.

23 CHAIRMAN GARD: Dr. Niemiec?

1 DR. NIEMIEC: Yes.

2 CHAIRMAN GARD: Mr. Ketzenberger?

3 MR. KETZENBERGER: Yes.

4 CHAIRMAN GARD: Ms. Koroski?

5 MS. KOZYRSKI: Yes.

6 CHAIRMAN GARD: Mr. Bortner?

7 MR. BORTNER: Yes.

8 CHAIRMAN GARD: Mr. Schuler?

9 MR. SCHULER: Yes.

10 CHAIRMAN GARD: Dr. Alexandrovich?

11 DR. ALEXANDROVICH: Yes.

12 CHAIRMAN GARD: Mr. Etzler?

13 MR. ETZLER: Yes.

14 CHAIRMAN GARD: The Chair votes aye.

15 We have 13 ayes and 0 nays. The rule -- final
16 rule is adopted.

17 This is a public hearing before the
18 Environmental Rules Board of the State of Indiana
19 concerning final adoption of 326 IAC 8-2 --
20 8-8.2, Municipal Solid Waste Landfill Emissions.

21 I will now introduce Exhibit E, the
22 proposed rule, into the record of the hearing.

23 Keelyn Welsh -- or Walsh -- will present

1 the rule.

2 MS. WALSH: Hello again. I'm Keelyn
3 Walsh, and I'm here to present Rule No. 22-109,
4 Municipal Solid Waste Landfill Emissions Update,
5 for your consideration.

6 On May 21st, 2021, U.S. EPA published a
7 final rule at 40 CFR 62, Subpart triple O, that
8 requires states to submit plans implementing
9 the 2016 municipal solid waste landfills emission
10 guidelines. Indiana is currently operating under
11 state rules that implemented the federal new
12 source performance standards at 40 CFR 60,
13 Subpart triple W, and emission guidelines for
14 municipal solid waste landfills at 40 CFR 60,
15 Subpart two C, that U.S. EPA promulgated on
16 March 16th, 1996.

17 While U.S. EPA's intention was for the
18 2021 federal plan to replace the existing 2016
19 approved state plan, the federal rules for
20 the 2016 emission guidelines did not repeal
21 40 CFR 60, Subpart triple W that Indiana's state
22 rules rely on. Consequently, the municipal solid
23 waste landfills in Indiana are now subject to

1 both the federal plan at 40 CFR 62, Subpart
2 triple 0 [sic], as well as the 1996 emission
3 guidelines in state rules, which creates
4 conflicting requirements for Indiana sources.

5 This rulemaking will repeal 326 IAC 8-8
6 and 326 IAC 8-8.1, and add a new rule at
7 326 IAC 8-8.2, to incorporate 40 CFR 62, Subpart
8 triple 0 [sic] for municipal solid waste
9 landfills into state rules. The incorporation by
10 reference also includes the updated federal
11 language published on February 14th, 2022 in the
12 Federal Register.

13 Once approved by U.S. EPA, the federal
14 plan will no longer be in effect in Indiana,
15 which will remove the conflicting federal and
16 statement requirements. IDEM is also addressing
17 this conflict with a Nonrule Policy Document in
18 the interim until this rulemaking is final and
19 effective, and that is also being presented to
20 you today.

21 IDEM respectfully requests that the Board
22 final adopt this rule as presented, and program
23 staff and I are available to answer any further

1 questions that you have.

2 Thank you.

3 CHAIRMAN GARD: Any questions?

4 (No response.)

5 CHAIRMAN GARD: Thank you, Keelyn.

6 Are there any speaker cards?

7 MS. KINDRICK: No, ma'am.

8 CHAIRMAN GARD: The hearing is
9 concluded. The Board will now consider final
10 adoption of 326 IAC 8-8.2, Municipal Solid Waste
11 Landfill Emissions.

12 Is there Board discussion?

13 (No response.)

14 CHAIRMAN GARD: Is there a motion to
15 adopt the rules as presented?

16 MR. WASKY: So moved.

17 CHAIRMAN GARD: Is there a second?

18 MR. DAVIDSON: Second.

19 CHAIRMAN GARD: This is roll call.

20 Mr. Wasky?

21 MR. WASKY: Yes.

22 CHAIRMAN GARD: Mr. Davidson?

23 MR. DAVIDSON: Yes.

1 CHAIRMAN GARD: Mr. Horn?

2 MR. HORN: Yes.

3 CHAIRMAN GARD: Ms. Nelson?

4 MS. NELSON: Yes.

5 CHAIRMAN GARD: Mr. Chambers?

6 MR. CHAMBERS: Yes.

7 CHAIRMAN GARD: Dr. Niemiec?

8 DR. NIEMIEC: Yes.

9 CHAIRMAN GARD: Mr. Ketzenberger?

10 MR. KETZENBERGER: Yes.

11 CHAIRMAN GARD: Ms. Koroski?

12 MS. KOZYRSKI: Yes.

13 CHAIRMAN GARD: Mr. Bortner?

14 MR. BORTNER: Yes.

15 CHAIRMAN GARD: Mr. Schuler?

16 MR. SCHULER: Yes.

17 CHAIRMAN GARD: Dr. Alexandrovich?

18 DR. ALEXANDROVICH: Yes.

19 CHAIRMAN GARD: Mr. Etzler?

20 (No response.)

21 CHAIRMAN GARD: Mr. Etzler?

22 (No response.)

23 CHAIRMAN GARD: Bill, unmute.

1 (No response.)

2 CHAIRMAN GARD: Mr. Etzler?

3 MR. ETZLER: Yes.

4 CHAIRMAN GARD: Thank you.

5 The Chair votes aye. 13 ayes, 0 nays.

6 The rule is adopted.

7 This is a public hearing before the
8 Environmental Rules Board of the State of Indiana
9 concerning final adoption of amendments to rules
10 at 327 IAC 2-1.5-17, City of Angola Chloride
11 Variance Revisions.

12 I will now introduce Exhibit F, the rule
13 as preliminarily adopted with IDEM's suggested
14 changes, into the record of the hearing.

15 Krystal Hackney will present the rule.

16 MS. HACKNEY: Good afternoon, members
17 of the Board. I'm sorry. My name is Krystal
18 Hackney, and I'm a rule writer in the Rules
19 Development Section within the Office of Legal
20 Counsel. I am here to present Rule No. 22-110
21 for the City of Angola's chloride variance limits
22 concerning the monthly average and the daily
23 maximum limits.

1 This rulemaking brings the chloride
2 variance limits up to date with the current NPDES
3 permit. This update is required as part of the
4 water quality standards variance process under
5 327 IAC 5-3-4.1(m) and reflects the variance
6 limits for chloride that were recently approved
7 in 2021.

8 This rule was preliminarily adopted by the
9 Board on June 8th, 2022. Other than minor
10 grammar corrections throughout the rule, no
11 substantial changes were made between preliminary
12 adoption and today's hearing.

13 IDEM requests that the Board final adopt
14 this rule as presented. Program experts and I
15 are available to answer any further questions
16 that you may have.

17 Thank you.

18 CHAIRMAN GARD: Are there any
19 questions for Krystal?

20 (No response.)

21 CHAIRMAN GARD: Thank you, Krystal.

22 Do we have any speaker cards?

23 MS. KINDRICK: No, ma'am.

1 CHAIRMAN GARD: This hearing is
2 concluded. The Board will now consider final
3 adoption of amendments to rules at
4 327 IAC 2-1.5-17, City of Angola Chloride
5 Variance Revisions.

6 Is there Board discussion?

7 (No response.)

8 CHAIRMAN GARD: Is there a motion to
9 adopt IDEM's suggested changes?

10 MR. ETZLER: So moved, Bill Etzler.

11 CHAIRMAN GARD: Is there a second?

12 MS. KOZYRSKI: Second.

13 CHAIRMAN GARD: This is a roll-call
14 vote.

15 Mr. Wasky?

16 MR. WASKY: Yes.

17 CHAIRMAN GARD: Mr. Davidson?

18 MR. DAVIDSON: Yes.

19 CHAIRMAN GARD: Mr. Horn?

20 MR. HORN: Yes.

21 CHAIRMAN GARD: Ms. Nelson?

22 MS. NELSON: Yes.

23 CHAIRMAN GARD: Mr. Chambers?

1 MR. CHAMBERS: Yes.

2 CHAIRMAN GARD: Dr. Niemiec?

3 DR. NIEMIEC: Yes.

4 CHAIRMAN GARD: Mr. Ketzenberger?

5 MR. KETZENBERGER: Yes.

6 CHAIRMAN GARD: Ms. Koroski?

7 MS. KOZYRSKI: Yes.

8 CHAIRMAN GARD: Mr. Bortner?

9 MR. BORTNER: Yes.

10 CHAIRMAN GARD: Mr. Schuler?

11 MR. SCHULER: Yes.

12 CHAIRMAN GARD: Dr. Alexandrovich?

13 DR. ALEXANDROVICH: Yes.

14 CHAIRMAN GARD: Mr. Etzler?

15 MR. ETZLER: Sorry; I'm on mute.

16 Yes.

17 CHAIRMAN GARD: The Chair votes aye.

18 We have 13 ayes, 0 nays. The suggested changes
19 are adopted.

20 Is there a motion to adopt the final rules
21 as amended?

22 MR. DAVIDSON: So moved.

23 DR. NIEMIEC: Niemiec is seconding

1 this. Thanks.

2 CHAIRMAN GARD: Okay. Roll call.

3 Mr. Wasky?

4 MR. WASKY: Yes.

5 CHAIRMAN GARD: Mr. Davidson?

6 MR. DAVIDSON: Yes.

7 CHAIRMAN GARD: Mr. Horn?

8 MR. HORN: Yes.

9 CHAIRMAN GARD: Ms. Nelson?

10 MS. NELSON: Yes.

11 CHAIRMAN GARD: Mr. Chambers?

12 MR. CHAMBERS: Yes.

13 CHAIRMAN GARD: Dr. Niemiec?

14 DR. NIEMIEC: Yes.

15 CHAIRMAN GARD: Mr. Ketzenberger?

16 MR. KETZENBERGER: Yes.

17 CHAIRMAN GARD: Ms. Koroski?

18 MS. KOZYRSKI: Yes.

19 CHAIRMAN GARD: Mr. Bortner?

20 MR. BORTNER: Yes.

21 CHAIRMAN GARD: Mr. Schuler?

22 MR. SCHULER: Yes.

23 CHAIRMAN GARD: Dr. Alexandrovich?

1 DR. ALEXANDROVICH: Yes.

2 CHAIRMAN GARD: Mr. Etzler?

3 MR. ETZLER: Yes.

4 CHAIRMAN GARD: The Chair votes aye.

5 We have 13 ayes, 0 nays. The final rule is
6 adopted as amended.

7 This is a public hearing before the
8 Environmental Rules Board of the State of Indiana
9 concerning preliminary adoption of amendments to
10 rules at 329 IAC 3.1-6-1, Identification of
11 Ignitable Hazardous Waste.

12 I will now introduce Exhibit G, the draft
13 rule, into the record of the hearing.

14 Dan Watts will present the rule.

15 MR. WATTS: Good afternoon,
16 Chairwoman Gard and members of the Board. I am
17 presenting LSA Document 22-216 for preliminary
18 adoption.

19 This rulemaking amends the hazardous waste
20 rules in 329 IAC 3.1 with the incorporation by
21 reference of a recent federal rule that updates
22 the standards for the identification of ignitable
23 liquid hazardous waste. Because the rulemaking

1 only includes federal requirements without
2 additional state requirements, IDEM is using the
3 abbreviated rulemaking process authorized under
4 IC 13-14-9-7, which bypasses the first notice of
5 comment period.

6 The rule requirements include modernized
7 test methods for making hazardous waste
8 determinations for ignitable liquid waste. The
9 main changes provide compliance flexibility in
10 testing ignitable liquid waste and eliminate the
11 requirements to use mercury-containing
12 thermometers. Because the rulemaking provides
13 additional compliance options, affected entities
14 are not required to use these updated test
15 methods and still can use the legacy test
16 methods. However, the undated test methods are
17 lower cost to administer over time and have
18 environmental benefits compared to the current
19 test methods.

20 This rule also is a component of
21 administering an authorized state hazardous waste
22 program, in which IDEM must maintain requirements
23 that are consistent with and no less stringent

1 than the federal hazardous waste requirements.
2 In this case, the federal rules proposed for
3 adoption are neither more nor less stringent than
4 current requirements, but offer compliance
5 options with potential cost savings for regulated
6 entities.

7 Representatives from IDEM are available to
8 answer any questions you may have, and the
9 Department respectfully requests that the Board
10 preliminarily adopt this rule so Indiana's
11 authorized hazardous waste program can be
12 consistent with current federal hazardous waste
13 rules for the affected waste streams.

14 Thank you.

15 CHAIRMAN GARD: Any questions for
16 Dan?

17 (No response.)

18 CHAIRMAN GARD: Thank you, Dan.

19 Are there any speaker cards?

20 MS. KINDRICK: No, ma'am.

21 CHAIRMAN GARD: Well, this hearing is
22 concluded. The Board will now consider
23 preliminary adoption of amendments to rules at

1 329 IAC 3.1-6-1, Identification of Ignitable
2 Hazardous Waste.

3 Any more Board discussion?

4 (No response.)

5 CHAIRMAN GARD: Is there a motion to
6 adopt the rules as presented?

7 MR. ETZLER: So moved, Bill Etzler.

8 CHAIRMAN GARD: Is there a second?

9 DR. ALEXANDROVICH: Second.

10 MS. NELSON: Second by Katie Nelson.

11 CHAIRMAN GARD: Mr. Wasky?

12 MR. WASKY: Yes.

13 CHAIRMAN GARD: Mr. Wasky?

14 MR. WASKY: Yes.

15 CHAIRMAN GARD: Mr. Davidson?

16 MR. DAVIDSON: Yes.

17 CHAIRMAN GARD: Mr. Horn?

18 MR. HORN: Yes.

19 CHAIRMAN GARD: Ms. Nelson?

20 MS. NELSON: Yes.

21 CHAIRMAN GARD: Mr. Chambers?

22 MR. CHAMBERS: Yes.

23 CHAIRMAN GARD: Dr. Niemiec?

1 DR. NIEMIEC: Yes.

2 CHAIRMAN GARD: Mr. Ketzenberger?

3 MR. KETZENBERGER: Yes.

4 CHAIRMAN GARD: Ms. Koroski?

5 MS. KOZYRSKI: Yes.

6 CHAIRMAN GARD: Mr. Bortner?

7 MR. BORTNER: Yes.

8 CHAIRMAN GARD: Mr. Schuler?

9 MR. SCHULER: Yes.

10 CHAIRMAN GARD: Dr. Alexandrovich?

11 DR. ALEXANDROVICH: Yes.

12 CHAIRMAN GARD: Mr. Etzler?

13 MR. ETZLER: Yes.

14 CHAIRMAN GARD: The Chair votes aye.

15 We have 13 ayes, 0 nays. The motion to adopt the
16 rules as presented is adopted.

17 This is a public hearing before the
18 Environmental Rules Board of the State of Indiana
19 concerning the review of rules that do not expire
20 under IC 13-14-9.5-1.1. Every year IDEM is
21 required to publish a list of rules that have
22 been effective for seven years but not subject to
23 expiration because they are necessary for a

1 federally designated program or to receive or
2 maintain federal funding.

3 This year, notices were published for the
4 air rules in Title 326 and the waste rules in
5 Title 329. A 30-day comment period was provided
6 for each notice. No comments were received.

7 I will now introduce Exhibit A [sic], the
8 list of rules in Title 326 that do not expire,
9 and Exhibit 1 [sic], the list of rules in
10 Title 329 that do not expire under
11 IC 13-14-9.5-1.1 into the record of the hearing.

12 At this time, is there anyone who would
13 like to comment on any of the rules listed in
14 either notice?

15 (No response.)

16 CHAIRMAN GARD: Board members have
17 any question? You know, we go through this every
18 year.

19 (No response.)

20 CHAIRMAN GARD: Are there any speaker
21 cards?

22 MS. KINDRICK: No, ma'am.

23 CHAIRMAN GARD: Is there anybody else

1 that wishes to speak on this rule?

2 (No response.)

3 CHAIRMAN GARD: The hearing is
4 concluded. The Board must determine, based on
5 comments received, whether to direct the agency
6 to open a new rulemaking for any of the rules
7 that are listed in the notices. If the Board
8 chooses not to ask for a rulemaking, the motion
9 should be made for no further action to be taken
10 on the rules.

11 Is there Board discussion?

12 (No response.)

13 CHAIRMAN GARD: I need a motion for
14 either no further action on listed rules or to
15 direct the agency to begin a rulemaking on a
16 specific listed rule.

17 MR. ETZLER: I make a motion for no
18 further action, Bill Etzler.

19 CHAIRMAN GARD: Is there a second?

20 MR. HORN: I second that motion,
21 Chris Horn.

22 CHAIRMAN GARD: Roll call.

23 Mr. Wasky?

1 MR. WASKY: Yes.

2 CHAIRMAN GARD: Mr. Davidson?

3 MR. DAVIDSON: Yes.

4 CHAIRMAN GARD: Mr. Horn?

5 MR. HORN: Yes.

6 CHAIRMAN GARD: Ms. Nelson?

7 MS. NELSON: Yes.

8 CHAIRMAN GARD: Mr. Chambers?

9 MR. CHAMBERS: Yes.

10 CHAIRMAN GARD: Dr. Niemiec?

11 DR. NIEMIEC: Yes.

12 CHAIRMAN GARD: Mr. Ketzenberger?

13 MR. KETZENBERGER: Yes.

14 CHAIRMAN GARD: Ms. Koroski?

15 MS. KOZYRSKI: Yes.

16 CHAIRMAN GARD: Mr. Bortner?

17 MR. BORTNER: Yes.

18 CHAIRMAN GARD: Mr. Schuler?

19 MR. SCHULER: Yes.

20 CHAIRMAN GARD: Dr. Alexandrovich?

21 DR. ALEXANDROVICH: Yes.

22 CHAIRMAN GARD: Mr. Etzler?

23 MR. ETZLER: Yes.

1 CHAIRMAN GARD: The Chair votes aye.
2 We have 13 ayes, 0 nays. The motion for no
3 further action is adopted.

4 Now we have a Nonrule Policy Document
5 presentation. The presentation will be on the
6 Nonrule Policy Document by Ronnie Yeates of
7 IDEM's Office of Air Quality regarding Municipal
8 Solid Waste Landfills and Applicability of
9 326 IAC 8-8 and 326 IAC 8-8.1.

10 MR. YEATES: Good afternoon. First,
11 I'd like to mention that this -- during the
12 public notice posting, this Nonrule Rule Policy
13 Document draft did not receive any comments.

14 The purpose of this Nonrule Policy
15 Document is to explain IDEM's intentions with
16 regard to enforcement and enforcement discretion
17 during the interim time that landfills are
18 subject to the duality of rules, as was mentioned
19 before, with the NSPS subpart three W and the new
20 federal plan, which was ex -- which was effective
21 June of last year, found at 40 CFR 62, Subpart
22 three O.

23 This policy applies to any municipal solid

1 waste landfill subject to the Indiana rules
2 currently at 326 IAC 8-8 or 8-8.1, and also
3 con -- currently subject to the current federal
4 plan emission guidelines at 40 CFR 62, Subpart
5 three O.

6 The rule -- the state rules currently at
7 326 IAC 8-8 and 8-8.1 incorporate the New Source
8 Performance Standard, Subpart three W by
9 reference, which creates a duality, in that the
10 landfills are also subject to this new federal
11 plan at 40 CFR 62, Subpart three O.

12 Until the rulemaking is completed, upon
13 the effective date of this Nonrule Policy
14 Document, IDEM is not intending to enforce the
15 requirements of the NSPS Subpart three W, which
16 have to be put into the Title V operating
17 permits, which are in the current state rules.

18 This policy will remain in effect until
19 180 days after the effective date of the
20 rulemaking, when 326 IAC 8-8.2 replaces the two
21 existing rules.

22 Thank you.

23 CHAIRMAN GARD: Any questions?

1 (No response.)

2 CHAIRMAN GARD: Thank you.

3 We will now have a presentation on a
4 Nonrule Policy Document by Corey Webb of IDEM's
5 Office of Land Quality regarding disclosure
6 statement required for CFO approval applications.

7 MR. WEBB: Good afternoon, members of
8 the Board. I'm Corey Webb, Deputy Assistant
9 Commissioner for the Office of Land Quality at
10 IDEM. I've got with me Susanna Bingman, with our
11 Office of Legal Counsel. I'm going to give a
12 brief overview of what this is all about, this
13 NPD, and then Susanna's going to fill in some of
14 the blanks for some of the specifics.

15 Under Indiana's Disclosure Law,
16 IC 13-18-10-1.4, individuals or entities applying
17 for approval to operate a confined feeding
18 operation are required to disclose prior alleged
19 violations of environmental laws in their
20 application if certain conditions exist. This
21 requirement applies specifically in instances
22 where the responsible party applying for CFO
23 approval determines that prior material

1 violations exist, and that those prior material
2 violations present a substantial endangerment to
3 human health or the environment.

4 While this Disclosure Law is not new and
5 while IDEM has never denied a CFO application due
6 to issues with an applicant's disclosure, the
7 agency has received questions in the past with
8 regard to certain undefined statutory terms used
9 in the Disclosure Law. The intent of this NPD is
10 simply to provide clarity in that regard to both
11 the industry and to the public, and to reduce any
12 regulatory uncertainty associated with those
13 terms or IDEM's interpretation of the law.

14 IDEM incorporated feedback from the
15 industry and also implemented revisions to the
16 disclosure section of the CFO application in
17 order to provide consistency with the NPD, and
18 during the public comment period, we also did not
19 receive any public comments for this.

20 MS. BINGMAN: Good afternoon,
21 everyone. My name is Susanna Bingman. I'm an
22 attorney with IDEM's Office of Legal Counsel, and
23 as Corey mentioned, I'm here to give an overview

1 of this NPD, the main goal of which is to clarify
2 three terms in the Disclosure Law.

3 The first is "senior management official."
4 So, for a CFO applicant that is a business
5 entity, each responsible party of that entity has
6 to undergo their own disclosure review.

7 "Responsible party" is defined in the Disclosure
8 statute, and that definition includes any senior
9 management official of the applicant.

10 The NPD explains that "senior management
11 official" means any person with the highest level
12 of management authority and who is responsible
13 for the day-to-day tasks of managing the
14 business. For LLC's in particular, because those
15 tend to be the most common type of entity that we
16 receive applications from, IDEM clarified that
17 not all members of an LLC are necessarily senior
18 management officials, because that question has
19 come up before in the past.

20 The second term is "material violation."
21 A responsible party only needs to disclose
22 material violations under the Disclosure Law. In
23 the NPD, IDEM interprets "material violation" to

1 mean an alleged violation resulting in an
2 administrative, civil or criminal enforcement
3 action. It also clarifies that IDEM violation
4 letters on their own usually don't amount to a
5 material violation, and again, that's an issue
6 that has come up in the past.

7 And the last term is "substantial
8 endangerment." A responsible party only needs to
9 disclose material violations that present a
10 substantial endangerment to human health or the
11 environment. In the NPD, IDEM interprets
12 "substantial endangerment" to mean a reasonable
13 cause for concern that the public or environment
14 may be exposed to risk of harm, and the NPD also
15 lists a number of factors to help an applicant
16 determine whether a substantial endangerment was
17 present for a particular violation. And this
18 interpretation in the NPD is consistent with how
19 other IDEM programs define "substantial
20 endangerment."

21 So, in addition to defining these three
22 terms, the NPD also gives a general description
23 of the disclosure process, including IDEM's role

1 in that process. It also addresses a conflict
2 between two sections of the Disclosure Law
3 regarding whether a disclosure statement is
4 required if a responsible party's only violations
5 are older than five years.

6 So, the NPD clarifies that a disclosure
7 statement is required for all material
8 violations, but the disclosure statement
9 submitted in the application does not need to
10 include a description of violations that are
11 older than five years. And we think this
12 interpretation does a good job of harmonizing
13 these two sections in the Disclosure Law.

14 So, that's all I have, and I'm happy to
15 answer any questions you may have.

16 CHAIRMAN GARD: Any questions?

17 (No response.)

18 CHAIRMAN GARD: Thank you very much.

19 MS. BINGMAN: Thank you.

20 CHAIRMAN GARD: Now we're going to
21 discuss the Citizen's Petition. This is --
22 again, who's going to present an update on what's
23 happening with your work group?

1 MR. HIGGINBOTHAM: Paul Higginbotham,
2 and --

3 CHAIRMAN GARD: Bill?

4 MR. HIGGINBOTHAM: -- Craig Williams
5 is here as well.

6 COMM. ROCKENSUESS: Paul Higginbotham
7 is coming up.

8 CHAIRMAN GARD: Okay.

9 MR. HIGGINBOTHAM: Madam Chairwoman,
10 I appreciate you having us here today, and Board
11 members, good afternoon. I mentioned Craig
12 Williams is here as well, representing the
13 petitioners.

14 Following up on our last Board meeting,
15 where we kind of gave a brief update, we are
16 continuing to meet. We've met two times since
17 the last Board meeting. At that time, we were
18 discussing how we were going down this new path
19 that's evolved, and we're going down this new
20 evolution of utilizing our state statute as it
21 relates to wet weather subcategory rulemaking and
22 the UAA pro -- Use Attainability Analysis
23 process.

1 So, that's -- we're still having the
2 discussions along those lines, and the focus was
3 a streamlined UAA process for the smaller
4 communities in the state, so they would have to
5 necessarily do the same level of technical
6 modeling and the resources that some of the
7 larger communities have that they do, that still
8 achieve the requirements of the Use Attainability
9 Analysis.

10 So, that's the path we've been going down.
11 We've been making some good process [sic] on
12 that, and -- but then we got thrown a curve ball
13 just recently a little bit. We were -- EPA has
14 not yet approved the Fort Wayne wet weather
15 subcategory rulemaking, so we've been wondering
16 why that has been held up.

17 So, we've been in the process of just
18 starting discussions with them to see what
19 additional concerns or questions that they may
20 have as it may relate to the Fort Wayne, because
21 what comes from that, we want to make sure that
22 our work group also addresses those issues before
23 we go then with a streamlined approach. So,

1 that's kind of where we're at, at the moment.

2 And Craig, do you want to speak on behalf
3 of the petitioners?

4 CHAIRMAN GARD: Well, I have a
5 question, Paul, as he's coming up.

6 MR. HIGGINBOTHAM: Yes, ma'am.

7 CHAIRMAN GARD: With the small
8 communities that you're talking about, with the
9 streamlined process, will the end result still
10 have to be the same wet water quality that was
11 under the original statute and the rules?

12 MR. HIGGINBOTHAM: Yes, the end
13 result would be the same -- the same approach,
14 we'd come to the Board and actually have that
15 rulemaking done through the Board, which we think
16 if the water quality standards change, that would
17 be sent to EPA.

18 But what we're trying to do is that the
19 mechanism to get to that rulemaking is the Use
20 Attainability Analysis, and it can be pretty
21 involved, if it needs to be, but we're trying to
22 make sure that we're working with the petitioners
23 on it.

1 Again, I say "small community." I'm not
2 defining it. I'm just saying something less than
3 the ten largest communities in the state that we
4 currently have that are doing this process.

5 So, yes, it would -- the end result would
6 be the same, coming to the Board, and the process
7 would be the same, but we're trying to make it
8 more efficient for these communities to be able
9 to do the Use Attainability Analysis approach.

10 CHAIRMAN GARD: Okay. Well, I just
11 really would be very reluctant to agree to
12 lowering the water quality -- water quality state
13 of the -- that they would have to meet.

14 The other thing that concerns me a little
15 bit: How many small communities have completed
16 their CSO under the original regulations?

17 MR. HIGGINBOTHAM: So, the ones we
18 have right now, you know, there's 109 CSO
19 communities in the State of Indiana. About 18 of
20 those did complete sewer separations, that was
21 their long-term control plan, so that left the
22 remainders. We have 26 communities in the State
23 of Indiana, including the top ten, which are also

1 in the federal consent decrees, that have to do a
2 Use Attainability Analysis and do a wet weather
3 rulemaking as part of their consent decree
4 requirements and/or other enforceable state
5 agreed judgments or agreed orders.

6 And then we have roughly 60-plus
7 communities that are doing the design storm
8 approach, which is a high level of control, like
9 the Angola situation, which Craig has dealt with,
10 where they are. It's the enforcement discretion
11 issue for those communities, meaning if they meet
12 their level of control, then we utilize our
13 enforcement discretion if they have a discharge
14 above their level of control, which is a
15 ten-year-one-hour storm event.

16 So, 26 right now for sure have to do Use
17 Attainability Analysis and rulemaking. The
18 others can if they so choose to do that approach,
19 and that's the group that we're trying to figure
20 out how to -- if they want to do that, they
21 choose to do that, how can we make that process
22 more efficient for the communities, for the
23 agency, as well as for the Board.

1 CHAIRMAN GARD: Well, I just -- you
2 know, there's a little bit of fairness in here,
3 those that have completed it under the original
4 rule and statute, and then now to change it so
5 that some others can do it more cheaply. I mean
6 I'm -- I hope we work it out, but it just seems
7 to me to be a little bit unfair.

8 MR. HIGGINBOTHAM: And I totally
9 apolo -- I apologize if I may have
10 miscommunicated. They would not be allowed to do
11 anything -- there's -- the requirement is still
12 having to meet the requirements of the Use
13 Attainability Analysis as laid out in the Clean
14 Water Act. They have to meet that. It's just
15 can they meet it in a way that's more cost
16 effective to them?

17 Because even in the situations about --
18 when it comes to cost, we look at cost for all
19 communities when they do their long-term control
20 plans, because we push them to burden -- to a
21 high level burden before they can do something
22 less. So, all of these communities are dealing
23 with a significant cost to their communities in

1 doing their long-term control plan projects.

2 So, again, if I misspoke, I apologize, and
3 they would still be held to the rigor of a Use
4 Attainability Analysis process, because if we did
5 not do that, then EPA would not approve the
6 rulemaking even if the Board approved it. So,
7 they're not getting off; we're just trying to
8 make it more efficient. So, I apologize for that
9 miscommunication.

10 CHAIRMAN GARD: Well, no, you didn't
11 misspeak. I just want to make sure that I
12 understood it, and I appreciate your explanation.

13 Any -- any other questions for him?

14 (No response.)

15 MR. HIGGINBOTHAM: And I don't know
16 if -- I think Craig would like to speak on behalf
17 of the petitioners.

18 CHAIRMAN GARD: Okay.

19 MR. WILLIAMS: Just real quick, I'll
20 follow up with Paul. We do continue to work with
21 the agency and appreciate that opportunity.

22 On behalf of the petitioners, we do have
23 some concern about some of the issues that it

1 sounds like EPA Region V may be having with
2 Fort Wayne's UAA application. This is one of the
3 concerns that we have in moving multiple
4 communities through this process.

5 We are still working with the -- with Paul
6 and his work group on the focused UAA process, to
7 see -- you know, try to bring something to
8 completion, and certainly appreciate their
9 accommodation with that, but do recognize that
10 this -- I think this addresses some of our
11 concerns, sort of validates some of our concerns
12 we have with this process.

13 MR. HIGGINBOTHAM: And just to that
14 point, I'll do the counterpoint --
15 point/counterpoint. I can understand. We, too,
16 have the concerns with the process and things
17 that are happening right now, and we're hoping to
18 work those out.

19 But I can say that if there's concerns on
20 behalf of EPA as it relates to Fort Wayne, who's
21 getting down to like four overflows in a typical
22 year, and they're having issues with that, there
23 is absolutely no way EPA will allow for the

1 implementation of the 2012 criteria to address
2 this issue, because that can allow up to 36
3 overflows in a year.

4 So -- so, while we work through this
5 process, this is still -- in my opinion, from a
6 regulator, it's still going to happen a lot
7 sooner than EPA allowing a 2012 criteria approach
8 that would allow more overflows in a typical
9 year. So, that's something to keep in mind as
10 well.

11 CHAIRMAN GARD: When do you think you
12 all will be to the point that we'll see a rule
13 and put this thing to bed?

14 MR. HIGGINBOTHAM: Well, that's a
15 good question, Chairwoman Gard. We're hoping --
16 we hoped a year ago; right? So, it's something
17 that we're going to continue, because regardless
18 of what the Board does with this petition,
19 regardless of that, we still have to continue to
20 meet with the petitioners and the folks on the
21 petition group as well, just to continue to work
22 through this process and figure it out because of
23 some of these issues that are -- that have come

1 up with Fort Wayne.

2 I think we'll know more after we have --
3 we've had some discussions with EPA and Fort
4 Wayne together, trying to work through that and
5 find out what exactly the concerns may be related
6 to --- is there additional information that's
7 needed? Is there some timing issue that's a
8 problem? So, we're hoping in the next couple of
9 months at least to have finalized some
10 discussions between Fort Wayne and EPA so we know
11 the path forward and what the next steps are.

12 But in the meantime, you know, as long as
13 the petitioners are willing to meet and discuss,
14 be it the UAA process or be it the petition that
15 they've submitted or something in between, you
16 know, we're willing to do that as the agency to
17 try to work through this, because it is a
18 complicated issue, and it can be costly, as Craig
19 has pointed out. So, we, too, want to make sure
20 we get the most efficient process put into place
21 that we can.

22 CHAIRMAN GARD: Well, for instance,
23 if we -- if we had a motion, say, at our next

1 meeting to deny the petition, you all would still
2 continue to meet and work to resolve this issue;
3 correct?

4 MR. HIGGINBOTHAM: Yes, because we
5 have to, because of these things that come up.
6 We -- it's something -- before, in the past --
7 you know, we're now getting to the point in
8 these -- the implementation of these long-term
9 control plans to where we're getting close to the
10 end of some of them, and some are done, like
11 Angola, like Craig's situation in Angola.
12 They're done.

13 But now we're getting closer to some of
14 these other ones being completed, so we have to
15 get the point of, "Okay. Now permits are going
16 to start changing in Attachment A's," and we have
17 to make sure that we know how to draft that up as
18 it relates to the wet weather subcategory
19 rulemaking or be it some other mechanism.

20 So, yes, we're going to continue to work
21 with these folks as much as we can to get
22 something resolved.

23 CHAIRMAN GARD: Okay.

1 Are there -- are there other questions for
2 either the petitioners or the staff?

3 DR. ALEXANDROVICH: Guess what? I
4 have a question. Thirty-six overflows using the
5 other standard; could you explain --

6 MR. HIGGINBOTHAM: Okay.

7 DR. ALEXANDROVICH: -- that?

8 MR. HIGGINBOTHAM: Okay. And I'll
9 let him speak, and then --

10 MR. WILLIAMS: I'll --

11 MR. HIGGINBOTHAM: Let me go, and
12 then --

13 MR. WILLIAMS: Then I'll wrestle with
14 that.

15 MR. HIGGINBOTHAM: Yeah, we're going
16 to do point/counterpoint.

17 So, I can't speak for them, but this is
18 my interpretation of their initial presentation
19 of -- the 2012 criteria allows a ten-percent
20 allowance for, you know, noncompliance,
21 basically, outside the limits, for percent -- ten
22 percent samples.

23 My interpretation is the petitioners are

1 wanting to apply time to -- this is samples that
2 actually apply time, so ten percent of the time.
3 So, say, for instance -- so, 365 -- 365 days in a
4 year, ten percent of 365 is 36, so, in theory,
5 you can have 36 days with a CSO in CSO discharge
6 and be in compliance with that interpretation.

7 DR. ALEXANDROVICH: Yeah, that's not
8 the way I read the rule.

9 MR. HIGGINBOTHAM: Right. No, I --
10 but that's -- for it to work for a CSO program,
11 that's how you would have to.

12 DR. ALEXANDROVICH: I thought --

13 MR. HIGGINBOTHAM: There's no other
14 way to read that.

15 DR. ALEXANDROVICH: -- the deal was
16 you were lowering E. Coli and then the averaging
17 period of that. That was the difference in the
18 standard.

19 MR. WILLIAMS: And so -- so, from the
20 petitioners, our -- our interpretation -- our
21 desire would be -- first of all, high level of
22 control is the post-construction monitoring of a
23 CSO plan, so a community completes their

1 long-term control plan, tells IDEM, "Hey, we're
2 done," IDEM establishes -- they complete a review
3 of that community's long-term control plan, and
4 that cri -- that criteria that we're talking
5 about wouldn't be in place until they -- until
6 IDEM verifies that that community's long-term
7 control plan has been achieved.

8 And so, it provides a compliance pathway
9 post-long-term control plan, not beforehand. And
10 so, there's no way that Paul's crew would approve
11 a long-term control plan post-construction
12 monitoring evaluation if they were still having
13 10, 20, CSO's.

14 So, in the technical realm, Paul's right,
15 but you have to achieve that milestone first of
16 completing your long-term control plan
17 post-construction monitoring. And so, there's --
18 there's -- the struggle, I think, is trying to
19 figure out how to make that work in the rule, and
20 that's -- that's, I think, the area where we've
21 had problems.

22 COMM. ROCKENSUESS: I think that
23 would deviate from the adoption of the 2018 REC

1 criteria, though, if we're just going to adopt
2 the 2018 REC criteria that doesn't have a CSO
3 overlay in it. So, we would have to modify that
4 rule to implement what Craig just -- what Craig
5 just explained.

6 MR. HIGGINBOTHAM: Yeah, it's
7 really --

8 DR. ALEXANDROVICH: It's a mess.

9 MR. HIGGINBOTHAM: It's tough.

10 COMM. ROCKENSUESS: It's pukid.

11 CHAIRMAN GARD: Commissioner?

12 COMM. ROCKENSUESS: Yes.

13 CHAIRMAN GARD: Give some thought,
14 you and your staff, to the Board -- if you would
15 approve of me submitting a motion to deny the
16 commission -- the petition, but also a resolution
17 requesting that this work group continue working
18 to resolve the issues. I hate to have that
19 petition hanging out there. I don't want to
20 lower the water quality standard, which is what
21 that petition, if we followed it, would do. Give
22 some thought to going ahead and denying the
23 petition, but a resolution -- having them go

1 ahead and work this out.

2 COMM. ROCKENSUESS: Okay.

3 CHAIRMAN GARD: And if anybody thinks
4 that's a terrible idea, let me know.

5 DR. ALEXANDROVICH: Not a terrible
6 idea, but I do have a question about our current
7 standard. I don't know the history of where we
8 came up with our E-coli numbers that, you know,
9 put IDEM ahead of the game, not just, you know,
10 bacteria, so, you know, how our number -- you
11 know, it's definitely differences on level and
12 averaging, so where did we come up with our
13 number?

14 MR. HIGGINBOTHAM: I'm going to ask
15 Jerry Dittmer, our Branch Chief, to come up and
16 maybe give you some background on that. Jerry --
17 this is Jerry Dittmer, who's our Branch Chief
18 over our permits group, which the CSO program
19 falls under Jerry's Branch.

20 MR. DITTMER: Thank you, Board
21 members.

22 Your question is about our existing E-coli
23 criteria. They were based on a 1986 study that

1 EPA did that correlated swimmers' exposure at
2 beaches to different incident levels of sickness
3 or illness, intestinal distress, caused by
4 water-borne pathogens.

5 And they looked at different organisms and
6 which correlated better in actual human illness
7 to the amounts of bacteria they were sampling.
8 And through that study, that's how they came up
9 with the 1986 recommendation of 125 E. Coli
10 monthly average as a geometric mean, and then in
11 a swimming beach setting, a daily maximum
12 single-sample value of 235 count.

13 So, that's what ours was originally based
14 on, and Indiana moved fairly quickly to adopt
15 that, and we took those recommendations literally
16 as far as the daily maximum, which early on led
17 to some implementation problems when we applied
18 that directly to wastewater discharges.

19 And so, we made some amendments later on
20 to the E. Coli criteria related to allowing ten
21 percent of samples to exceed the daily maximum
22 from wastewater plants, just because E-coli
23 varies with sampling. So, the original basis is

1 the 1986 EPA epidemiological study on swimming
2 exposures.

3 DR. ALEXANDROVICH: Thank you.

4 MR. DITTMER: Uh-huh.

5 MR. HIGGINBOTHAM: Thanks, Jerry.

6 CHAIRMAN GARD: Okay. Any other
7 questions from anyone?

8 (No response.)

9 CHAIRMAN GARD: Do either of you all,
10 the petitioner or the staff, have any more
11 comments?

12 MR. WILLIAMS: I -- no, we do not.

13 MR. HIGGINBOTHAM: We do not. Thank
14 you.

15 CHAIRMAN GARD: Okay. Thank you very
16 much.

17 Is there anybody else out there in the
18 audience that needs to address this?

19 (No response.)

20 CHAIRMAN GARD: Okay. This is the
21 Open Forum. Is there anybody out there that
22 wishes to address the Board today? You can be
23 out there or you can be on the Internet, either

1 one.

2 (No response.)

3 CHAIRMAN GARD: Okay. If not, the
4 next meeting of the Environmental Rules Board
5 is tentatively set for November the 9th, 2022
6 at 1:30, Conference Room A, Indiana Government
7 Center South. It's a tentative date and subject
8 to change, so we'll keep you updated as -- if
9 there is a change.

10 Thank you all. It's been kind of a long
11 meeting, we had a lot to do, but we got a lot
12 done.

13 Is there a motion to adjourn -- well,
14 first of all, should I ask you, Commissioner,
15 since you weren't here at the beginning, do you
16 have anything to say?

17 COMM. ROCKENSUESS: I think Par
18 covered most of it. I apologize for being tardy.
19 I was at the Wetland Task Force meeting, and we
20 were final adopting our report. It should be
21 coming out in the next month or so, so I look
22 forward to seeing that finished product. And I'm
23 really proud of the group of stakeholders that

1 got together to study this issue and then put out
2 that report.

3 So, that's about it. Thank you.

4 CHAIRMAN GARD: Okay.

5 Anybody else on the Board have a comment
6 or anything?

7 (No response.)

8 CHAIRMAN GARD: Okay. Is there a
9 motion to adjourn?

10 DR. NIEMIEC: So moved. This is Ted
11 Niemiec.

12 CHAIRMAN GARD: Is there a second?

13 DR. ALEXANDROVICH: Second.

14 CHAIRMAN GARD: Okay. All in favor,
15 say aye.

16 MR. HORN: Aye.

17 MS. NELSON: Aye.

18 DR. ALEXANDROVICH: Aye.

19 MR. BORTNER: Aye.

20 DR. NIEMIEC: Aye.

21 MR. ETZLER: Aye.

22 MR. KETZENBERGER: Aye.

23 MS. KOZYRSKI: Aye.

1 MR. CHAMBERS: Aye.

2 MR. WASKY: Aye.

3 MR. DAVIDSON: Aye.

4 MR. SCHULER: Aye.

5 CHAIRMAN GARD: Aye.

6 Opposed, nay.

7 (No response.)

8 CHAIRMAN GARD: We are adjourned.

9 Thank you all very much. We've gotten a lot done
10 today.

11 - - -
12 Thereupon, the proceedings of
13 September 14, 2022 were concluded
14 at 3:19 o'clock p.m.
15 - - -

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1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Wednesday, September 14, 2022 in this matter
8 and transcribed by me.

9
10
11 _____
12 Lindy L. Meyer, Jr.,
13 Notary Public in and
14 for the State of Indiana.

15 My Commission expires August 26, 2024.

16 Commission No. NP0690003
17
18
19
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21
22
23

[<p>adding (1) 60:12</p>	<p>79:13</p>	<p>99:23;100:2,8</p>	<p>97:9</p>
[sic] (8) 4:8;33:14;54:3; 69:2,8;82:7,9;93:11	<p>addition (3) 10:1;56:10;90:21</p> <p>additional (7) 13:2,7;27:20;78:2, 13;93:19;101:6</p>	<p>afternoon (11) 16:17;30:13;34:17; 38:12;55:5;72:16; 77:15;85:10;87:7; 88:20;92:11</p>	<p>allowance (1) 103:20</p> <p>allowed (2) 49:6;97:10</p> <p>allowing (2) 100:7;108:20</p>	<p>apologies (1) 9:11</p> <p>apologize (4) 97:9;98:2,8;110:18</p> <p>apologizes (1) 9:8</p>
A	<p>Additionally (1) 32:2</p>	<p>again (9) 10:13;14:18;18:1; 52:1;68:2;90:5; 91:22;95:1;98:2</p>	<p>allows (2) 61:16;103:19</p>	<p>Applicability (3) 28:19;50:19;85:8</p>
abandoned (2) 58:14;59:16	<p>additions (1) 7:19</p>	<p>agency (12) 9:3,15;11:12;15:4; 29:19;39:3;83:5,15; 88:7;96:23;98:21; 101:16</p>	<p>along (2) 5:13;93:2</p>	<p>applicant (3) 89:4,9;90:15</p>
abbreviated (1) 78:3	<p>address (5) 19:20;56:13;100:1; 109:18,22</p>	<p>agenda (6) 13:10;16:22;18:18; 21:12;22:4,8</p>	<p>alterative (1) 56:19</p>	<p>applicants (1) 15:23</p>
able (9) 9:12,13,14;18:2; 25:1;46:12;48:16; 52:4;95:8	<p>addressed (1) 57:4</p>	<p>ago (3) 45:16;55:13; 100:16</p>	<p>altered (1) 62:20</p>	<p>applicant's (1) 88:6</p>
above (1) 96:14	<p>addresses (3) 91:1;93:22;99:10</p>	<p>agree (2) 60:21;95:11</p>	<p>alternative (2) 38:17;39:18</p>	<p>application (5) 87:20;88:5,16; 91:9;99:2</p>
absolutely (3) 9:6;14:2;99:23	<p>addressing (2) 18:13;69:16</p>	<p>agreed (4) 26:3,5;96:5,5</p>	<p>alternatives (1) 57:20</p>	<p>applications (5) 21:10;28:22;56:8; 87:6;89:16</p>
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