

In The Matter Of:
INDIANA ENVIRONMENTAL RULES BOARD

November 13, 2019

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BEFORE THE STATE OF INDIANA
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF NOVEMBER 13, 2019

- - -

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, November 13, 2019 at
1:30 o'clock p.m.

- - -

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1 APPEARANCES:

2 BOARD MEMBERS:

- 3 Beverly Gard, Chairman
- 4 Ken Rulon
- 5 Karen Valiquett
- 6 Joanne Alexandrovich
- 7 Angelique Collier
- 8 R. T. Green
- 9 William Etzler
- 10 Chris Horn
- 11 Michael Schuler
- 12 Calvin Davidson
- 13 Chris Smith, Proxy, Department of
- 14 Natural Resources
- 15 Mark Wasky, Proxy, Indiana Economic
- 16 Development Corporation
- 17 Jeffrey Cummins, Proxy, Lieutenant
- 18 Governor
- 19 Bruno Pigott (nonvoting)

12 IDEM STAFF MEMBERS:

- 13 Karla Kindrick
- 14 Chris Pedersen
- 15 Matt Stuckey
- 16 Krystal Hackney
- 17 Keelyn Walsh
- 18 Nancy King
- 19 Dan Watts
- 20 Mark Derf
- 21 Clark Kirkman

19 PUBLIC SPEAKERS:

- 20 Craig Williams

21 - - -

22

23

1 1:30 o'clock p.m.
2 November 13, 2019

3 - - -

4 CHAIRMAN GARD: If I could have
5 everyone's -- if I could have everyone's
6 attention, it's 1:30. Thank you. It's 1:30, so
7 we'll go ahead and call the November 13th, 2019
8 Indiana Environmental Rules Board meeting to
9 order. A quorum is present. There aren't any
10 changes to the order of the meeting, I don't
11 think, but you -- in your folder, you'll notice
12 you've got some additions and changes from the
13 packet that was sent to you.

14 The first order of business today is the
15 approval of the summary of the August 14th, 2019
16 Board meeting, and thank you for chairing that.
17 Are there any additions or corrections to the
18 summary as presented?

19 (No response.)

20 CHAIRMAN GARD: Do I hear a motion to
21 approve?

22 MR. ETZLER: So moved.

23 MR. DAVIDSON: So moved. Second.

CHAIRMAN GARD: All in favor, say

1 aye.

2 MR. HORN: Aye.

3 MS. VALIQUETT: Aye.

4 MS. ALEXANDROVICH: Aye.

5 MR. GREEN: Aye.

6 MR. ETZLER: Aye.

7 MR. SCHULER: Aye.

8 MR. CUMMINS: Aye.

9 MR. RULON: Aye.

10 MS. COLLIER: Aye.

11 MR. WASKY: Aye.

12 MR. DAVIDSON: Aye.

13 MR. SMITH: Aye.

14 CHAIRMAN GARD: Aye.

15 Opposed, nay?

16 (No response.)

17 CHAIRMAN GARD: The minutes from

18 August 14th are approved.

19 Commissioner, you have the floor.

20 COMM. PIGOTT: Thank you, Madam

21 Chairwoman and members of the Board. First, I'd

22 just like to introduce Karla.

23 Karla, would you stand up for just a

1 minute?

2 Karla is a new administrative assistant
3 for the Environmental Rules Board. Karla's not a
4 new person in our agency. She's worked with the
5 Office of Water Quality for -- how long, Karla?
6 How many years was that?

7 MS. KINDRICK: Fourteen.

8 COMM. PIGOTT: Fourteen years, so
9 she's pretty used to an unruly group of people
10 down in the Office of Water Quality, particularly
11 the then Assistant Commissioner, who she had to
12 keep in line, and now she's been tasked with
13 keeping in line all of us here on the Rules
14 Board. She's going to do a great job, and if you
15 ever have any questions or need any assistance,
16 Karla's a great resource for us.

17 And we're just happy that you've got this
18 position, Karla. So, I just wanted to introduce
19 you to the Rules Board members first.

20 MS. KINDRICK: Thank you.

21 COMM. PIGOTT: The second thing I
22 wanted to talk about was an incident that
23 occurred in Northwest Indiana in August of this

1 year. As you may be aware, ArcelorMittal Burns
2 Harbor facility is one of the largest integrated
3 steel mills in the world, and North America for
4 sure.

5 On August 11th they had a failure of a
6 pump system in its blast furnace gas closed water
7 recycle system, which required the company to
8 draw in Lake Michigan water. It also ended up
9 ending with a discharge of cyanide into the
10 Little Calumet River, which caused a fish kill of
11 approximately 3,000 fish.

12 And IDEM and EPA -- IDEM and DNR responded
13 to this incident immediately when we had found
14 out about a fish kill on August, I believe it
15 was, 12th. We had heard that there was some
16 distressed fish on August 11th. We -- our
17 emergency responders went to the scene and
18 discovered a couple of distressed fish, but on
19 the 12th we went back and found a large number of
20 distressed fish. We did an investigation, which
21 led us to the conclusion that there was a
22 discharge of cyanide that caused the death of the
23 fish in that water body.

1 We've been going through a thorough
2 investigation process, which involved an
3 inspection by several Indiana Department of
4 Environmental Management staff, including our
5 Branch Chief in our Compliance Branch, the Deputy
6 Assistant Commissioner Bob Lugar from our Office
7 of Program Support, as well as wastewater
8 inspectors and emergency responders. So, we had
9 a team of about ten people that responded to the
10 incident and tracked down the cause of this
11 problem.

12 In addition to doing the investigation,
13 the Department had -- has met with ArcelorMittal,
14 which has acknowledged that the cyanide was the
15 cause of this, and is putting together a plan to
16 help prevent this kind of problem occurring in
17 the future. It's likely that this environmental
18 issue will result in a federal consent decree
19 with ArcelorMittal to ensure that they put in
20 place the upgrades at the facility necessary to
21 ensure that this thing doesn't happen again.

22 We've, as I mentioned, conducted an
23 inspection. U.S. EPA has also conducted an

1 inspec -- two inspections, and simultaneously
2 we've been working with U.S. Midwestern facility,
3 which is located really on the same water body.
4 If you take a boat, which I did earlier in the
5 summer, upstream on the Little Cal toward the
6 lake, you can see the outfalls for ArcelorMittal,
7 but also -- the Burns Harbor facility -- but also
8 U.S. Midwest facility.

9 And so, we've been working with U.S.
10 Midwest to talk about upgrades, because they've
11 reported several oil sheens and other discharges
12 from their facility, and I just wanted to give
13 you a brief statement that we've been working on
14 this.

15 We've issued an inspection report for the
16 ArcelorMittal facility. That inspection report
17 is fully public and on our Web site. You can go
18 to the front page of the IDEM Web site at
19 www.idem.in.gov, and the report, the full report,
20 which is 200 pages, is there, including pictures
21 and data that we collected from the facility to
22 investigate the cause of the problem. And U.S.
23 EPA's also conducted an inspection.

1 We'll be working through the terms of a
2 consent decree with them, and we're working with
3 U.S. Midwest on improvements to their facility as
4 well so that we don't have incidents occurring
5 from the -- in the Grand Cal.

6 We've heard from representatives of the
7 National Parks, the City of Portage, other
8 communities, that they wanted increased reporting
9 of these kinds of incidents, and we've talked to
10 the head of the National Parks in Northwest
11 Indiana as well as the former mayor of Portage
12 and assured them that when incidents like this
13 happen, we will contact them and be in touch with
14 them.

15 And currently, and probably always, the
16 NPDES permits that we issue require that a
17 facility that has an issue like this, especially
18 a spill, report to the agency as well as others
19 in a very short time frame, and that time frame
20 is dependent on several factors, so it could be
21 the extent of the issue, whether it's a permanent
22 exceedence or it's a spill.

23 And nonetheless, this incident was not

1 reported to the agency, the agency kind of
2 discovered it. So, we'll be talking to these
3 facilities about improving that performance, and
4 we're committed to ensuring that elected
5 officials, representatives of cities in the area,
6 are well aware when incidents like this happen,
7 so that they can take action necessary to ensure
8 the safety of the folks in their communities as
9 well if there's an incident.

10 And the reason I say that is that Portage
11 actually has a fire boat, and they were out on
12 the water in the Little Calumet River training
13 firefighters on the fire boat the day after the
14 incident, and they were very concerned that we --
15 they didn't know about it in time. If they had
16 known, they could have pulled these people out of
17 the water, kept them from going in on that day.

18 So, we're working with our partners. We
19 are working through enforcement actions in areas,
20 and we fully expect that both U.S. Steel and
21 ArcelorMittal will be cooperative in terms of
22 working through solutions to ensure this sort of
23 thing doesn't happen again.

1 And I'm happy to answer any questions.

2 CHAIRMAN GARD: Commissioner, you
3 mentioned that there was an unauthorized
4 withdrawal from Lake Michigan. Under the terms
5 of the Great Lake Compact, what -- what happens
6 with respect to that?

7 COMM. PIGOTT: Well, it wasn't a
8 discharge outside of the Lake Michigan area, so
9 the discharge occurred right back into the
10 Grand -- Little Cal --

11 CHAIRMAN GARD: Okay.

12 COMM. PIGOTT: -- which had fed right
13 back into Lake Michigan, so there wasn't an issue
14 with withdrawal from the Compact.

15 CHAIRMAN GARD: Okay.

16 COMM. PIGOTT: The issue really was
17 that typically this system was a noncontact
18 cooling water system, and it literally is not
19 supposed to come in contact with any pollutants.
20 And it's recyclable. It is used -- it's recyc --
21 or it's treated, and it goes through the system
22 again and again.

23 And because of an emergency, because of

1 the failure of this blast furnace gas closed
2 water recycled system, they have had to draw in
3 water from Lake Michigan, and then they had to
4 discharge. There was a flood, it was a bit of a
5 chaotic scene at the facility, and they normally
6 don't need to take in water for those purposes.
7 Of course, they do take in water for other
8 purposes at that facility, but that's all within
9 the terms of the Compact.

10 CHAIRMAN GARD: Uh-huh. Okay. Thank
11 you.

12 COMM. PIGOTT: You're welcome.
13 But that's my report for today.

14 CHAIRMAN GARD: Okay.
15 Any -- any questions for the Commissioner?

16 (No response.)

17 COMM. PIGOTT: Thank you.

18 CHAIRMAN GARD: Thank you. Uh-huh.
19 Chris Pedersen for rulemaking.

20 MS. PEDERSEN: Good afternoon. I'm
21 Chris Pedersen, with the Rules Development
22 Section of the Office of Legal Counsel.

23 At our next meeting we are anticipating

1 several rules. We're also anticipating the next
2 meeting will be on January 8th of 2020. At that
3 meeting, the Emergency Rule for the Vigo County
4 SO2 Redesignation and the Lake and Porter Counties
5 Ozone Reclassification will probably be brought
6 to you again. It will be presented to you today,
7 but we'll need to bring it to you probably a
8 couple more times, until the regular rulemaking
9 is completed.

10 And if preliminarily adopted today, the
11 Indiana Harbor Coke Company and Cokenergy SO2 Rule
12 might be available -- or might be ready to come
13 before you for final adoption in January.

14 And then also at the January meeting,
15 there are two rules that may be ready for
16 preliminary adoption. The first is Coal Cleaning
17 Degreasing. Sources that are operating coal
18 cleaner degreasers must currently use a low vapor
19 pressure solvent for cleaning machine parts, and
20 low solvent -- low pressure solvent can be
21 problematic for them, so this rule will allow for
22 the use of a solvent with a higher vapor pressure
23 in conjunction with an alternative control device

1 to control emissions instead of the existing
2 requirements. These amendments are consistent
3 with existing EPA rules, so that's one that we
4 would be bringing before you.

5 Another, the Transfer Station Reporting
6 Rule. This rule removes an annual reporting
7 requirement for solid waste transfer stations and
8 moves the remaining record keeping requirements
9 into a different section. The annual report is
10 something that can be viewed by IDEM staff when
11 they visit the facility, so there was no need to
12 have them send it in to the Department.

13 Also, there's a rule under a special
14 rulemaking process in the Indiana Code, it's
15 IC 13-14-9-14, which is scheduled for a
16 presentation. This is the Indianapolis Combined
17 Sewer Overflow, or CSO, Wet-Weather Limited-Use
18 Subcategory Rulemaking. This rule process is
19 specifically available for communities with
20 combined sewer overflows that develop a long-term
21 control plan and a use attainability analysis
22 that is approved by the Department. It
23 establishes a CSO wet weather limited-use

1 subcategory for the area that's identified in the
2 use attainability analysis.

3 The CWA Authority, Incorporated,
4 Indianapolis, has received approval, and this
5 rulemaking is to establish a CSO wet-weather
6 limited-use subcategory of the recreational-use
7 designation for seven stretches of water in
8 Indianapolis. The rule allows the water quality
9 based requirements established in the long-term
10 control plan be used for up to four days after a
11 CSO discharge.

12 Are there any questions about rulemaking
13 schedules before I move on to the final topic I
14 have?

15 CHAIRMAN GARD: Any questions from
16 the Board?

17 (No response.)

18 CHAIRMAN GARD: No.

19 MS. PEDERSEN: If not, in your Board
20 packet that was sent to you, there is an air
21 permitting report that is presented to you once
22 every year. That is usually in November, October
23 or November. Matt Stuckey, the Deputy Assistant

1 Commissioner of the Office of Air Quality, is
2 here to answer any questions that you may have on
3 that document.

4 CHAIRMAN GARD: That's particularly
5 good. That's a good document.

6 MS. PEDERSEN: All right.

7 CHAIRMAN GARD: Any questions from
8 the Board?

9 (No response.)

10 MS. PEDERSEN: Thank you.

11 CHAIRMAN GARD: Thank you.

12 Today we have one emergency rule that the
13 Board will be asked to adopt, the Vigo County SO2
14 Redesignation and Lake and Porter Counties Ozone
15 Reclassification.

16 We will have hearings for the following
17 Board actions: Final adoption of Portland Cement
18 Monitoring; Title 326 CFR Update; and Title 329
19 CFR update. We'll have preliminary adoption of
20 Indiana Harbor Coke Company and Cokenergy SO2
21 Revisions; Emission Reporting; and Waste Tires.
22 We will also have also one nonrule policy
23 document presentation today on Inspection Right

1 of Access. And finally, we have a Citizen's
2 Petition for rulemaking that will be presented
3 today.

4 I'd like to ask you all out there to fill
5 out a comment card if you intend to comment on
6 any of these and give them to Karla at the table
7 if you wish to testify.

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

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

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

1 (Reporter sworn.)

2 CHAIRMAN GARD: Thank you.

3 The Board will now consider adoption of an
4 Emergency Rule to update designations for Lake
5 and Porter Counties for the 2008 Eight-Hour Ozone
6 Standard and Redesignation of two townships in
7 Vigo County to Attainment for the 2010 Primary
8 One-Hour SO₂ Standard. This Emergency Rule
9 temporarily incorporates the current federal
10 designations.

11 I will enter Exhibit A, the draft
12 Emergency Rule, into the record of the meeting.

13 Is there someone from the agency to
14 present the rule? Krystal Hackney.

15 MS. HACKNEY: Good afternoon, members
16 of the Board. My name is Krystal Hackney, and
17 I'm a rule writer in the Rules Development
18 Section within the Office of Legal Counsel.

19 This rule temporarily revises
20 326 IAC 1-4-46 and 326 IAC 1-4-65 to reclassify
21 Lake and Porter Counties for the 2008 eight-hour
22 ozone standard. Lake and Porter Counties are
23 currently classified as moderate nonattainment.

1 On August 7th, 2019, U.S. EPA reclassified these
2 counties, which are part of the Chicago
3 nonattainment area, to serious nonattainment.
4 This is due to the area's failure to meet the
5 2008 eight-hour ozone standard using the
6 monitoring data that was collected from 2015
7 through 2017 by the attainment date of July 20th,
8 2018.

9 This rule is also revising 326 IAC 1-4-85
10 to update part of Vigo County for the 2010 SO2
11 standard. Fayette and Harrison Townships,
12 located in Vigo County, were redesignated from
13 nonattainment to attainment by U.S. EPA on
14 July 8th of 2019.

15 State air permits must be issued in
16 accordance with either the designations in
17 326 IAC 1-4 or an effective emergency rule that
18 supersedes the existing state rule. This
19 emergency rule will allow affected sources to be
20 permitted under the appropriate air permitting
21 rule until the formal rulemaking is completed.

22 If adopted, this emergency rule will be
23 filed and become effective immediately for 90

1 days. IDEM requests that the Board adopt this
2 emergency rule as presented, and I'm available to
3 answer any further questions that you may have.

4 Thank you.

5 CHAIRMAN GARD: Do Board members have
6 any questions?

7 (No response.)

8 MS. HACKNEY: Thank you.

9 CHAIRMAN GARD: Thank you.
10 Is there any Board discussion?

11 (No response.)

12 CHAIRMAN GARD: Do I hear a motion to
13 adopt the emergency rule?

14 MR. RULON: So moved.

15 MR. CUMMINS: Second.

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

18 MR. HORN: Aye.

19 MS. VALIQUETT: Aye.

20 MS. ALEXANDROVICH: Aye.

21 MR. GREEN: Aye.

22 MR. ETZLER: Aye.

23 MR. SCHULER: Aye.

1 MR. CUMMINS: Aye.

2 MR. RULON: Aye.

3 MS. COLLIER: Aye.

4 MR. WASKY: Aye.

5 MR. DAVIDSON: Aye.

6 MR. SMITH: Aye.

7 CHAIRMAN GARD: Aye.

8 All opposed, nay.

9 (No response.)

10 CHAIRMAN GARD: The emergency rule is
11 adopted.

12 This is a public hearing before the
13 Environmental Rules Board of the State of Indiana
14 concerning final adoption of amendments to rules
15 at 326 IAC 3-5-1 regarding the Continuous Opacity
16 Monitoring for Portland Cement Plants.

17 I will now introduce Exhibit B, the rule
18 as preliminarily adopted with IDEM's suggested
19 changes, into the record of the hearing.

20 Keelyn Walsh will present the rule.

21 MS. WALSH: Good afternoon, members
22 of the Board. I'm Keelyn Walsh, and I'm here to
23 present Rule No. 18-364, Portland Cement

1 Monitoring, for your consideration.

2 This rulemaking updates 326 IAC 3-5 to
3 remove the continuous opacity monitoring
4 requirement in the current state rule, and gives
5 Portland Cement plants the option to use a
6 continuous parametric monitoring system, or CPMS,
7 to be consistent with federal regulations in the
8 National Emission Standards for Hazardous Air
9 Pollutants, or NESHAP, at 40 CFR 63, Subpart LLL.
10 These updates will allow Portland Cement plants
11 to operate more efficiently and reduce operating
12 costs by allowing sources to utilize existing
13 equipment to monitor emissions and ensure
14 compliance with the NESHAP.

15 This is a second final adoption of the
16 final rule that was presented to you at the May
17 Board meeting. This rule was recalled during
18 promulgation by the Attorney General's Office,
19 which identified a deficiency in the rule
20 language at 326 IAC 3-5-1(c) pertaining to IDEM's
21 process for approving sources to use the
22 alternative control method in the proposed rule.
23 The Attorney General stated that the provision

1 did not include adequate criteria for explaining
2 how the agency would make a decision to approve
3 or deny Portland Cement plants' use of the
4 alternative control method.

5 Therefore, the rule language has been
6 revised to more clearly state the conditions
7 under which the Department will grant approval
8 for Portland Cement plants to use the alternative
9 CPMS to measure particular -- particulate matter
10 emissions, as indicated in the newly added
11 language at 326 IAC 3-5-1(c)(2).

12 Additionally, new language that was added
13 in 3-5-1(b)(5) of the original final adopted rule
14 has been removed and included as part of the new
15 subdivision at 3-5-1(c)(2). These new
16 clarifications to the rule language have been
17 reviewed by the Attorney General's Office, which
18 indicated that the changes adequately address
19 their concerns.

20 In summary, this rulemaking is being
21 presented as a second final adoption of the
22 revisions to 326 IAC 3-5-1 to allow Portland
23 Cement plants the option to use a CPMS to monitor

1 emissions based on the updated federal rule, and
2 makes further revisions to 326 IAC 3-5-1(b)(5)
3 and 3-5-1(c)(2), to clarify the rule language
4 after the rule was recalled during promulgation.

5 IDEM requests that the Board final adopt
6 this rule as presented, and program staff and I
7 are available to answer any further questions you
8 may have.

9 Thank you.

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

12 (No response.)

13 CHAIRMAN GARD: Thank you.

14 I don't have any speaker cards turned in.
15 Does anybody want to speak to this rule?

16 (No response.)

17 CHAIRMAN GARD: With that, the
18 hearing is concluded. The Board will now
19 consider final adoption of amendments to
20 326 IAC 3-5-1, Portland Cement Monitoring. Is
21 there any Board discussion?

22 (No response.)

23 CHAIRMAN GARD: Do I hear a motion to

1 adopt IDEM's suggested changes?

2 MR. RULON: So moved.

3 MR. WASKY: Second.

4 CHAIRMAN GARD: All in favor, say
5 aye.

6 MR. HORN: Aye.

7 MS. VALIQUETT: Aye.

8 MS. ALEXANDROVICH: Aye.

9 MR. GREEN: Aye.

10 MR. ETZLER: Aye.

11 MR. SCHULER: Aye.

12 MR. CUMMINS: Aye.

13 MR. RULON: Aye.

14 MS. COLLIER: Aye.

15 MR. WASKY: Aye.

16 MR. DAVIDSON: Aye.

17 MR. SMITH: Aye.

18 CHAIRMAN GARD: Aye.

19 Opposed, nay.

20 (No response.)

21 CHAIRMAN GARD: The changes are
22 adopted. We need a motion to final adopt the
23 rules as amended.

1 MR. RULON: So moved.

2 MR. DAVIDSON: Second.

3 CHAIRMAN GARD: This is a roll-call
4 vote. Ms. Collier?

5 MS. COLLIER: Yes.

6 CHAIRMAN GARD: Mr. Wasky?

7 MR. WASKY: Yes.

8 CHAIRMAN GARD: Mr. Rulon?

9 MR. RULON: Yes.

10 CHAIRMAN GARD: Mr. Davidson?

11 MR. DAVIDSON: Yes.

12 CHAIRMAN GARD: Mr. Cummins?

13 MR. CUMMINS: Aye.

14 CHAIRMAN GARD: Mr. Smith?

15 MR. SMITH: Yes.

16 CHAIRMAN GARD: Mr. Schuler?

17 MR. SCHULER: Yes.

18 CHAIRMAN GARD: Mr. Horn?

19 MR. HORN: Yes.

20 CHAIRMAN GARD: Dr. Alexandrovich?

21 DR. ALEXANDROVICH: Yes.

22 CHAIRMAN GARD: Mr. Etzler?

23 MR. ETZLER: Yes.

1 CHAIRMAN GARD: Ms. Valiquett?

2 MS. VALIQUETT: Yes.

3 CHAIRMAN GARD: Mr. Green?

4 MR. GREEN: Yes.

5 CHAIRMAN GARD: And the Chair votes
6 aye. The vote is 13 to 0. The final rule is
7 adopted as amended.

8 This is a public hearing before the
9 Environmental Rules Board of the State of Indiana
10 concerning final adoption of amendments to rules
11 at 326 IAC 1 and 12, updating references to the
12 CFR.

13 I will now introduce Exhibit C, the draft
14 rules, into the record of the hearing. Keelyn
15 Walsh will present the rule.

16 MS. WALSH: Hello again. I'm Keelyn
17 Walsh, and I'm here to present Rule No. 19-382,
18 References to the Code of Federal Regulations,
19 for your consideration.

20 This rulemaking updates references to the
21 Code of Federal Regulations for air rules at
22 326 IAC 1-1-3 to the July 1st, 2018 edition.
23 Currently, the latest version of the CFR

1 contained in 1-1-3 is July 1st, 2015. Several
2 new federal regulations have been promulgated
3 since that date that are not reflected in the
4 current version of 326 IAC. Updating the
5 reference date to July 1st, 2018 will ensure that
6 326 IAC will be consistent with those regulations
7 that the Federal Government promulgated between
8 July 1st, 2015 and June 30th, 2018.

9 Additionally, this rulemaking updates the
10 reference to the CFR at 326 IAC 12-1-1 concerning
11 the exception of 40 CFR 60, Subpart TTTT from
12 incorporation by reference. U.S. EPA published
13 a final rule in the Federal Register on
14 October 23rd, 2015 that established standards of
15 emissions for carbon dioxide for new or modified
16 fossil-fuel-fired electric generating units, or
17 EGU's.

18 Subsequently, on December 20th, 2018,
19 U.S. EPA published a proposed rule in the Federal
20 Register containing amendments to the 2015 final
21 rule that removed certain requirements of the
22 emission standards for new EGU's. Therefore,
23 IDEM is proposing to exclude the October 23rd,

1 2015 federal rule in the rulemaking since the
2 proposed revisions have not yet been finalized.

3 Updating the CFR to mean the July 1st,
4 2018 edition will have a positive effect on
5 business, local government and citizens by
6 ensuring that state and federal rules are
7 consistent.

8 IDEM requests that the Board final adopt
9 this rule as presented, and program staff and I
10 are available to answer any further questions you
11 may have.

12 Thank you.

13 CHAIRMAN GARD: Any questions from
14 the Board?

15 (No response.)

16 CHAIRMAN GARD: I don't have any
17 speaker cards. Is there anyone that would like
18 to speak to this?

19 (No response.)

20 CHAIRMAN GARD: This hearing is
21 concluded. The Board will now consider final
22 adoption of amendments to 326 IAC 1 and 12,
23 Updating CFR References. Any Board discussion?

1 DR. ALEXANDROVICH: Madam Chair?

2 CHAIRMAN GARD: Yes.

3 DR. ALEXANDROVICH: I would just like
4 to go on record, again, regarding the updates
5 that it would be better if we could update
6 to 2019 rather than 2018. I know we've heard
7 this before that it's still -- it's slow, and I
8 think it's too slow. So, I just want to put that
9 out there once again.

10 CHAIRMAN GARD: Is there any way that
11 can happen, Nancy.

12 MS. KING: No, there is no way that
13 can happen.

14 (Laughter.)

15 CHAIRMAN GARD: Okay. I better not
16 ask why.

17 MS. KING: I'm happy to explain why
18 if you'd like to know.

19 CHAIRMAN GARD: Really?

20 (Laughter.)

21 MS. KING: Sure. Why not? Well, you
22 may or may not have noticed that our rulemaking
23 process is longer than evolution in and of

1 itself, so that's part of it, but as these come
2 up when they're adopted, July 1, 2018 is the most
3 recent one that we can put out there.

4 I don't know if you remember a couple of
5 years ago -- I believe you were on the Board at
6 that point, Dr. Alexandrovich -- we were trying
7 to update, I think it was, something in our
8 Confined Feeding Rules, and we had gone through a
9 process where there had been an update in between
10 preliminary and final adoption, and so, we
11 thought, "Well, we should be able to pick that
12 up. There's no reason that folks aren't
13 notified, because this is what we're talking
14 about, things like that."

15 We had a real issue with the Attorney
16 General about that, because what we had noticed
17 at that point in time was this particular set of
18 federal regulations. So, there was that
19 difficulty with them as far as people having the
20 appropriate notice for adopting something as
21 large as this, understanding that when we're
22 updating the references, it's because we have
23 references dotted throughout our regulations.

1 And in that situation, within the regs it
2 will say essentially language is -- unless it
3 specifically matches another date within a
4 specific regulation, we're updating everything to
5 this particular version. So, that requires folks
6 to go through and make sure that there aren't
7 specific things in the earlier incorporation in
8 certain aspects of the rules that they want to
9 retain.

10 So, it's more difficult than just updating
11 every time something new comes out, because we
12 have to review the rules to make sure that we
13 aren't creating an unintentional conflict. So,
14 the timing of when the federal reg is published
15 versus when we update them, the logistical
16 difficulties have to do with the length of time
17 it takes us to do rulemaking, our notice
18 requirements, and making sure that we are
19 updating to the most current version that
20 everyone wants to use within our programs,
21 because we don't always update every single thing
22 every single year. That's not how it works.

23 So, that's the process that we follow. It

1 does have to do -- you're absolutely right, it's
2 slow. I wish, and many is the time that I've
3 been asked "Why can't we just say, 'Use the most
4 recent version for everything'?" We can't.

5 Under Indiana law, we have to do a date certain
6 when we incorporate something by reference, and
7 that way people know what version they're using.

8 But it does make it difficult when we have
9 older regs that we haven't touched in a while,
10 and they have documents or guidances or whatever
11 that we might be referencing that are quite old,
12 because it makes it difficult for people to get
13 to them.

14 So, there's that aspect of it that it
15 makes sense from a practical standpoint to say,
16 "Well, you should use the most recent version."
17 But the reality is you have to know what version
18 you're using -- what version is being enforced
19 and what version you, as a person who is required
20 to follow these rules, what version you are being
21 essentially judged on by whoever regulates you.
22 So, that's part of the reason that it -- it's a
23 little funky. I admit it's funky.

1 DR. ALEXANDROVICH: Well, it's got
2 three years in.

3 MS. KING: Slow and sure.

4 CHAIRMAN GARD: Do we -- do you have
5 to present updates like this at OMB, too, and get
6 their approval?

7 COMM. PIGOTT: Yes.

8 MS. KING: Oh, yes.

9 COMM. PIGOTT: In fact, all of our
10 rules go to OMB --

11 CHAIRMAN GARD: I thought it was
12 something like that.

13 COMM. PIGOTT: -- for approval, and
14 that's a slow process as well.

15 MS. KING: Yeah, I didn't go there.

16 COMM. PIGOTT: No, you didn't.

17 (Laughter.)

18 MR. STUCKEY: You skipped that
19 altogether.

20 CHAIRMAN GARD: Okay. Any further
21 questions?

22 (No response.)

23 CHAIRMAN GARD: Do I hear a motion to

1 final adopt rules -- the rules as presented?

2 MR. DAVIDSON: So moved.

3 MR. SMITH: Second.

4 CHAIRMAN GARD: This is a roll-call

5 vote.

6 Ms. Collier?

7 MS. COLLIER: Yes.

8 CHAIRMAN GARD: Mr. Wasky?

9 MR. WASKY: Yes.

10 CHAIRMAN GARD: Mr. Rulon?

11 MR. RULON: Yes.

12 CHAIRMAN GARD: Mr. Davidson?

13 MR. DAVIDSON: Yes.

14 CHAIRMAN GARD: Mr. Cummins?

15 MR. CUMMINS: Aye.

16 CHAIRMAN GARD: Mr. Smith?

17 MR. SMITH: Yes.

18 CHAIRMAN GARD: Mr. Schuler?

19 MR. SCHULER: Yes.

20 CHAIRMAN GARD: Mr. Horn?

21 MR. HORN: Yes.

22 CHAIRMAN GARD: Dr. Alexandrovich?

23 DR. ALEXANDROVICH: Yes.

1 CHAIRMAN GARD: Mr. Etzler?

2 MR. ETZLER: Yes.

3 CHAIRMAN GARD: Ms. Valiquett?

4 MS. VALIQUETT: Yes.

5 CHAIRMAN GARD: Mr. Green?

6 MR. GREEN: Yes.

7 CHAIRMAN GARD: And the Chair votes
8 aye. It's 13 - 0. The rule is adopted.

9 This is a public hearing before the
10 Environmental Rules Board of the State of Indiana
11 concerning preliminary adoption of amendments to
12 rules at 329 IAC 1-1, 7.1, 10, 11 and 13,
13 updating references to the CFR.

14 I will now introduce Exhibit D, the draft
15 rules, into the record of the hearing.

16 Krystal Hackney will present the rule.

17 MS. HACKNEY: Hello again. My name
18 is Krystal Hackney.

19 So, this rule will update certain waste
20 rules in Title 329 to the July 1st, 2017 version
21 of the Code of Federal Regulations. This will
22 provide updated federal requirements to regulated
23 entities, with the exception of those printed on

1 or after July 1st, 2017. This rulemaking revises
2 the date associated with the CFR citations and
3 corrects incorporation by reference language as
4 needed.

5 Revisions are made to the CFR references
6 in 329 IAC 1, which is the General Provisions;
7 329 IAC 7.1, which is the Priority Ranking System
8 for Hazardous Substances Response Sites;
9 329 IAC 10, which is the Solid Waste Land
10 Disposal Facilities; 329 IAC 11, which is the
11 Solid Waste Processing Facilities; and
12 329 IAC 13, which is the Used Oil Management,
13 unless a previous edition is identified in a
14 specific rule.

15 In addition, 329 IAC 3.1-2 concerning
16 requests for information under the hazardous
17 waste rules is being repealed because the
18 requirements can be found in statute and this
19 rule is no longer used by the Department. Aside
20 from the repeal in 329 IAC 3.1-2, this rule does
21 not make any changes to the Hazardous Waste Rules
22 in 329 IAC 3-1.

23 This rule also includes administrative

1 revisions to ensure compliance with rule drafting
2 guidelines, and for opportunities to streamline,
3 simplify, and clarify existing language.

4 IDEM requests that the Board preliminarily
5 adopt this rule as presented. I'm available to
6 answer any further questions that you may have.

7 CHAIRMAN GARD: Any questions from
8 Board members?

9 (No response.)

10 CHAIRMAN GARD: I don't have any
11 speaker cards. Anybody wants to speak to the
12 rule?

13 (No response.)

14 CHAIRMAN GARD: The hearing is
15 concluded. The Board will now consider final
16 adoption of amendments to 329 IAC 1, 7.1, 10, 11
17 and 13, Updated CFR References. Board
18 discussion?

19 (No response.)

20 CHAIRMAN GARD: Motion to adopt the
21 final rule as presented?

22 MR. SMITH: So moved.

23 CHAIRMAN GARD: Is there a second?

1 MR. DAVIDSON: Second.

2 CHAIRMAN GARD: This is a roll-call.

3 Ms. Collier?

4 MS. COLLIER: Yes.

5 CHAIRMAN GARD: Mr. Wasky?

6 MR. WASKY: Yes.

7 CHAIRMAN GARD: Mr. Rulon?

8 MR. RULON: Yes.

9 CHAIRMAN GARD: Mr. Davidson?

10 MR. DAVIDSON: Yes.

11 CHAIRMAN GARD: Mr. Cummins?

12 MR. CUMMINS: Aye.

13 CHAIRMAN GARD: Mr. Smith?

14 MR. SMITH: Yes.

15 CHAIRMAN GARD: Mr. Schuler?

16 MR. SCHULER: Yes.

17 CHAIRMAN GARD: Mr. Horn?

18 MR. HORN: Yes.

19 CHAIRMAN GARD: Dr. Alexandrovich?

20 MS. ALEXANDROVICH: Yes.

21 CHAIRMAN GARD: Mr. Etzler?

22 MR. ETZLER: Yes.

23 CHAIRMAN GARD: Ms. Valiquett?

1 MS. VALIQUETT: Yes.

2 CHAIRMAN GARD: Mr. Green?

3 MR. GREEN: Yes.

4 CHAIRMAN GARD: The Chair votes aye.

5 The rule is adopted 13 to 0.

6 This is a public hearing before the
7 Environmental Rules Board of the State of Indiana
8 concerning preliminary adoption of amendments to
9 rules at 326 IAC 7-4.1 regarding SO2 emission
10 limitations for coke oven facilities at Indiana
11 Harbor Coke Company and Cokenergy.

12 I will now present Exhibit E, the draft
13 rules, into the record of the hearing.

14 Dan Watts will present the rule.

15 MR. WATTS: Good afternoon,
16 Chairwoman Gard, members of the Board. I'm Dan
17 Watts of the Rules Development Section. I'm
18 presenting LSA Document No. 19-388 for
19 preliminary adoption.

20 This rulemaking revises 326 IAC 7.1 --
21 7. -- I'm sorry. The rulemaking revises
22 326 IAC 7-4.1 concerning sulphur dioxide
23 emissions limitations for Indiana Harbor Coke

1 Company and Cokenergy. These revisions address
2 requirements of a federal consent decree that was
3 agreed upon in October 2018 by the affected
4 businesses, the State of Indiana, and at Federal
5 Government. The affected businesses also
6 requested specific revisions to the state rules
7 in letters sent to IDEM in December 2018.

8 The rulemaking will amend the applicable
9 rule requirements to be consistent with
10 requirements of the consent decree. After the
11 completion of the rulemaking, Indiana will submit
12 requests to U.S. EPA for approval of the
13 revisions into the Indiana State Implementation
14 Plan.

15 The main amendments in the rulemaking are
16 updates to the annual bypass venting limits for
17 coke oven gases, including when heat recovery
18 steam generated retubing is implemented, and the
19 requirement for a permanent flow monitor at the
20 affected facilities. The rulemaking also
21 includes technical corrections and clarifications
22 to the existing rule language that do not have a
23 substantive effect on the application of the

1 rules.

2 Representative from IDEM are available to
3 answer questions you may have for this
4 rulemaking, and the Department respectfully
5 requests that the Board preliminarily adopt this
6 rule so IDEM's rule requirements can be
7 consistent with the requirements of the federal
8 consent decree and to satisfy the requests of the
9 affected businesses.

10 Thank you.

11 CHAIRMAN GARD: Any questions for
12 Dan?

13 MR. ETZLER: I have one.

14 CHAIRMAN GARD: Yes.

15 MR. WATTS: Yes.

16 MR. ETZLER: Dan, I just know -- I
17 noticed that there's an annual limitation on
18 discharge --

19 MR. WATTS: Uh-huh.

20 MR. ETZLER: -- and then there's a
21 daily.

22 MR. WATTS: Yes.

23 MR. ETZLER: Go ahead. I'll let

1 you --

2 MR. WATTS: Yeah, do you want me to
3 explain the difference between the annual and
4 daily?

5 MR. ETZLER: I understand, because I
6 was in the wastewater business, so --

7 MR. WATTS: Okay.

8 MR. ETZLER: -- but I just wanted to
9 make sure that that was correct, because you
10 crossed out the annual in that last paragraph --
11 well, I guess in paragraph (d) --

12 MR. WATTS: Paragraph (b)?

13 MR. ETZLER: -- 1-8.

14 MR. WATTS: Yeah. The --

15 MR. ETZLER: And I assume that's
16 because it's covered in the other section, where
17 you talk about the maximum annual being --

18 MR. WATTS: Yeah. In paragraph (b),
19 in 7-4.1-8(b)(3), we crossed out the annual
20 limitation because they are described in the
21 added (c) and (d). Those are the new annual
22 limitations based on the consent decree, and
23 those differ from the daily -- daily limitations,

1 24-hour basis, because it's added together.
2 Basically you can vent 19 percent of the coke
3 oven gases on a 24-hour basis, but over the
4 course of the year, it has to be these annual
5 limits.

6 MR. ETZLER: And I assume that that
7 daily limit is because that may be when they're
8 doing work and emissions may be higher rather
9 then -- or is it just you can go up to 19 percent
10 whether you're working on the updates, upgrades,
11 whatever?

12 MR. WATTS: That's my assumption as
13 well. The details of these facilities -- Mark,
14 is it possible, or will you be able to answer?

15 MR. DERF: Mark Derf. I'm the
16 Section Chief of Technical Support. We had to
17 develop some way to model these facilities. So,
18 I understand that there's charges within these
19 ovens, so there is a variation in the emissions
20 that go through that, so I think the daily limit
21 will kind of limit those emissions during
22 charges.

23 MR. ETZLER: Okay. Thank you.

1 MR. DERF: You're welcome.

2 MR. ETZLER: My second questions,
3 more directed to you, Commissioner, probably, do
4 we do this for every consent decree that ever
5 comes down, or --

6 COMM. PIGOTT: No.

7 MR. ETZLER: -- is this specific to
8 air rules?

9 COMM. PIGOTT: Well, this is specific
10 to this facility.

11 MR. ETZLER: Well, I realize that
12 it's specific to this facility.

13 COMM. PIGOTT: But not generally in
14 terms, for example, of water. As you know,
15 there's not always something so specific in
16 rules, but it's my understanding for this
17 facility, in this case, this was the agreed-upon
18 course that we would do it. But typically for a
19 lot of consent decrees, we don't embed consent
20 decree requirement in our rule language.

21 MR. ETZLER: So --

22 COMM. PIGOTT: We may extract it,
23 perhaps.

1 MR. ETZLER: -- if ever the consent
2 decree gets satisfied, we have to go back and
3 change the rule again?

4 COMM. PIGOTT: Well, that's a good
5 question, and I'd ask Dan.

6 Do you know whether we'd have to, or can
7 we just --

8 MR. WATTS: If the consent decree is
9 satisfied, would we have to change the rule?

10 COMM. PIGOTT: Yeah.

11 MR. WATTS: Well, first of all, what
12 I can say about this particular consent decree is
13 it has specific language in it requesting updates
14 to the state rule sections, so that's one of the
15 reasons we had to go in here and change these
16 particular state rule sections, and I don't think
17 we included a copy of the entire consent decree
18 in the Board packet, because so little of the
19 consent decree is actually related to --

20 MR. ETZLER: I understand that.

21 MR. WATTS: -- the functions of this
22 Board and rulemaking, but it's in there, if you
23 really want to go and look at it.

1 COMM. PIGOTT: No, but I think the
2 question that Board Member Etzler is asking is
3 whether or not we will -- at the end of some
4 process, whether it's the end of the consent
5 decree or whenever they're done implementing
6 their changes, whether we'll need to go back and
7 do another rulemaking and extract this language.
8 And maybe Matt or Mark can help address that
9 question, because I don't know the answer to
10 that, but it is clear that in this case they
11 wanted this in our rules.

12 MR. STUCKEY: Matt Stuckey, Deputy
13 Assistant Commissioner, Office of Air Quality.
14 Yeah, it -- air is a little bit different, but in
15 this case, the consent decrees that the Feds are
16 entering into and IDEM's intervening on, these
17 have been made permanently enforceable.

18 So, we already have conditions in our
19 State Implementation Plan that are -- that these
20 rules revise that were originally determined to
21 be permanently enforceable, and they agreed to
22 revise those based on this settlement. So, those
23 now have to be adjusted in order to make them

1 permanently enforceable moving forward.

2 So, the consent decree, when it's done,
3 when they've satisfied all of the requirements,
4 these conditions will live on. That's the
5 purpose of putting them into the rule, because
6 otherwise, if the consent decree goes away, so,
7 too, do the limits. Does that make sense?

8 COMM. PIGOTT: So, what you're saying
9 is that these conditions are permanent
10 conditions, they're not meant to expire --

11 MR. STUCKEY: Yes.

12 COMM. PIGOTT: -- while the consent
13 decree will expire?

14 MR. STUCKEY: Right.

15 COMM. PIGOTT: Because it's embedded
16 in the rule, they --

17 MR. STUCKEY: Right.

18 COMM. PIGOTT: -- will be enforced
19 for as long as this rule is --

20 MR. STUCKEY: Until there's a -- you
21 know, potentially a future settlement, perhaps,
22 where they've modeled and showed that a different
23 method would still satisfy and protect the NAAQS.

1 MR. ETZLER: So, I'll take it one
2 more step. If I come in and say I want to site a
3 new plant to do exactly what they're doing, is
4 this the rule that I live up to?

5 COMM. PIGOTT: No.

6 MR. STUCKEY: No. So, the limits
7 that are already in our State Implementation Plan
8 are specific to that source, so any new source
9 would have to go through the new process.

10 MR. ETZLER: Okay.

11 MR. STUCKEY: Does that help?

12 MR. ETZLER: Thank you.

13 MR. WATTS: Is there --

14 CHAIRMAN GARD: Any other questions?

15 (Discussion off the record.)

16 CHAIRMAN GARD: Okay. I have no
17 speaker cards again. Anyone wish to speak to
18 this rule?

19 (No response.)

20 CHAIRMAN GARD: The hearing is
21 concluded. The Board will now consider
22 preliminary adoption of amendments to rules at
23 326 IAC 7-4.1 regarding SO2 emission limitations

1 for coke oven facilities at Indiana Harbor Coke
2 Company and Cokenergy. Any further Board
3 discussion?

4 (No response.)

5 CHAIRMAN GARD: I need a motion to
6 preliminarily adopt the rules.

7 MR. DAVIDSON: So moved.

8 MR. CUMMINS: Second.

9 CHAIRMAN GARD: All in favor, say
10 aye.

11 MR. HORN: Aye.

12 MS. VALIQUETT: Aye.

13 MS. ALEXANDROVICH: Aye.

14 MR. GREEN: Aye.

15 MR. ETZLER: Aye.

16 MR. SCHULER: Aye.

17 MR. CUMMINS: Aye.

18 MR. RULON: Aye.

19 MS. COLLIER: Aye.

20 MR. WASKY: Aye.

21 MR. DAVIDSON: Aye.

22 MR. SMITH: Aye.

23 CHAIRMAN GARD: Aye.

1 Those opposed, nay.

2 (No response.)

3 CHAIRMAN GARD: The rules are
4 preliminarily adopted.

5 This is a public hearing before the
6 Environmental Rules Board of the State of Indiana
7 concerning preliminary adoption of amendments to
8 rules at 326 IAC 2-6-1 regarding Emissions
9 Reporting Requirements for Certain Sources in
10 Clark, Floyd, LaPorte and Dearborn Counties.

11 I will now introduce Exhibit F, the draft
12 rules, into the record of the hearing.

13 Keelyn Walsh will present the rule.

14 MS. WALSH: Good afternoon once
15 again. I'm Keelyn Walsh, and I'm here to present
16 Rule No. 19-409, Emissions Reporting Revisions,
17 for your consideration.

18 On June 4th, 2018, U.S. EPA designated
19 Clark and Floyd Counties as nonattainment for the
20 2015 eight-hour ozone standard as a portion of
21 the Louisville, Kentucky-Indiana nonattainment
22 area. Areas are designated as nonattainment if
23 the measured concentrations of one or more of the

1 six criteria pollutants set by U.S. EPA under the
2 Clean Air Act exceed the National Ambient Air
3 Quality Standards, known as NAAQS, or contribute
4 significant amounts of pollutants to an area that
5 measures air quality that does not meet the
6 NAAQS.

7 In accordance with Clean Air Act
8 requirements, each state with an ozone
9 nonattainment area must revise its State
10 Implementation Plan to require sources with
11 volatile organic compounds or nitrogen dioxide
12 emissions greater than 25 tons per year to submit
13 an annual statement of actual emissions to
14 U.S. EPA.

15 Therefore, this rulemaking will amend
16 326 IAC 2-6-1 to include Clark and Floyd Counties
17 under this requirement to ensure that state rules
18 are consistent with federal regulations. This
19 rulemaking will also remove LaPorte County and
20 Lawrenceburg Township in Dearborn County from the
21 annual emission statement requirements, as both
22 of these counties have demonstrated attainment of
23 the ozone NAAQS and have been redesignated to

1 attainment.

2 IDEM requests that the Board preliminarily
3 adopt this rule as presented, and program staff
4 and I are available to answer any further
5 questions you may have.

6 Thank you.

7 CHAIRMAN GARD: Any questions from
8 Board members?

9 (No response.)

10 CHAIRMAN GARD: I don't have any
11 speaker cards. Anybody want to speak to the
12 rule?

13 (No response.)

14 CHAIRMAN GARD: If not, this hearing
15 is concluded. The Board will now consider
16 preliminary adoption of amendments to rules at
17 326 IAC 2-6-1 regarding Emissions Reporting
18 Requirements at Certain Sources in Clark, Floyd,
19 LaPorte and Dearborn Counties.

20 (Comm. Pigott left the room.)

21 CHAIRMAN GARD: Is there any Board
22 discussion?

23 (No response.)

1 CHAIRMAN GARD: I need a motion to
2 preliminarily adopt the rules.

3 MR. CUMMINS: So moved.

4 MR. DAVIDSON: Second.

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

7 MR. HORN: Aye.

8 MS. VALIQUETT: Aye.

9 MS. ALEXANDROVICH: Aye.

10 MR. GREEN: Aye.

11 MR. ETZLER: Aye.

12 MR. SCHULER: Aye.

13 MR. CUMMINS: Aye.

14 MR. RULON: Aye.

15 MS. COLLIER: Aye.

16 MR. WASKY: Aye.

17 MR. DAVIDSON: Aye.

18 MR. SMITH: Aye.

19 CHAIRMAN GARD: Aye.

20 Opposed, nay.

21 (No response.)

22 CHAIRMAN GARD: The rules are
23 preliminarily adopted.

1 This is a public hearing before the
2 Environmental Rules Board of the State of Indiana
3 concerning preliminary adoption of amendments to
4 rules at 329 IAC 15 regarding Waste Tire
5 Management.

6 I will now introduce Exhibit G, the draft
7 rules, into the record of the hearing.

8 Dan Watts will present the rule.

9 MR. WATTS: Good afternoon again.
10 Dan Watts, and I am presenting LSA
11 Document 17-279 for preliminary adoption.

12 IDEM is proposing extensive amendments to
13 the Waste Tire Rules, because the rules have not
14 been significantly revised since they were
15 originally adopted over 20 years ago, and I'll
16 attempt to summarize those revisions. In
17 general, the rulemaking updates the existing
18 waste tire management requirements at 329 IAC 15,
19 and adds new requirements for the legitimate use
20 of waste tires.

21 The changes to the existing rules include
22 the incorporation of recent statutory changes,
23 updates to reflect current conditions in the

1 waste tire management industry, enhancements to
2 the accountability and safety of waste tire
3 management, the addition of compliance
4 alternatives, updates to final assurance
5 requirements, amendments to outdated or
6 repetitive requirements, and general improvements
7 to the rule language. The goal of these
8 revisions is to improve the clarity, accuracy,
9 organization, flexibility, and administration of
10 the rules while still ensuring safe management of
11 waste tires.

12 The rulemaking also includes the addition
13 of a regulatory framework for the legitimate use
14 of waste tires. These proposed requirements
15 allow the reuse of waste tires in a commercially
16 valuable application, establish regulatory detail
17 and transparency for legitimate use, and allow
18 flexibility for innovative legitimate uses that
19 may arise in the future. And these requirements
20 provide a compliance alternative while still
21 ensuring safe, accountable management of waste
22 tires intended for or used in a legitimate use.

23 IDEM would also like to inform the Board

1 about a correction to Section 53 of the draft
2 rule for an administrative error in the original
3 Board packet. The draft rule omitted the section
4 heading for Section 329 IAC 15-5-7 on page 42.
5 IDEM sent an electric version to the Board
6 members that includes the correct section
7 heading, and a copy of the section with the
8 correct heading is included in your folder today.
9 Because the section heading is for reference
10 purposes and not a part of the draft rule
11 language, this correction has no effect on the
12 draft rule proposed for preliminary adoption.

13 And while these proposed changes are
14 extensive, IDEM does not anticipate a significant
15 financial impact from these changes because the
16 majority of changes are nonsubstantive in nature
17 and legitimate use is an optional compliance
18 alternative, not mandatory. In fact, some
19 regulated entities may experience cost savings
20 with the proposed compliance alternatives, such
21 as combined registration for stationary and
22 mobile waste tire processors, abbreviated
23 operational requirements for mobile waste tire

1 processors --

2 (Comm. Pigott returned.)

3 MR. WATTS: -- elimination of standby
4 trust funds under certain conditions for certain
5 financial assurance requirements, and legitimate
6 use of waste tires rather than disposal of waste
7 tires.

8 Representatives from IDEM are available to
9 answer questions you may have for this
10 rulemaking, and the Department respectfully
11 requests that the Board preliminarily adopt these
12 proposed updates and improvements to the waste
13 tire management requirements.

14 Thank you.

15 CHAIRMAN GARD: Are there any
16 questions? Yes.

17 MR. DAVIDSON: Thank you, Madam
18 Chair.

19 Dan, thanks. If I could direct your
20 attention to 15-6-3, the legitimate uses.

21 MR. WATTS: 15-6-3?

22 MR. DAVIDSON: So, I'll go ahead
23 while everybody's finding their way there to

1 generally ask that in, I guess, getting down to
2 the uses for waste -- and I appreciate that we've
3 broadened -- I think we've broadened our ability
4 to look at considering that these can be
5 legitimately used --

6 MR. WATTS: Uh-huh.

7 MR. DAVIDSON: -- but I'm curious, on
8 the second page of that, at the top of page 50 --

9 MR. WATTS: Yeah.

10 MR. DAVIDSON: -- nos. (8), (11)
11 and (12), specifically identified as they can be
12 used to restrain a tarp or a cover, can be used
13 at the racetrack, and they can be used in bedding
14 in dairy freestall barns as long as they have
15 been altered to prevent the accumulation of
16 water.

17 I just wonder why those are the only three
18 applicable uses without asking for Departmental
19 approval. There are a lot of other -- we see
20 tires used in a lot of places, and so I'll give
21 you an example, and I'll cut to the quick.

22 So, in item 2 or 3, I think, you can use
23 them at the playground, we can crumb these ties

1 up and we can use them at the playground, but if
2 they have a whole tire at the playground as a
3 swing, it's not in compliance, even if it's been
4 altered in a way not to accumulate water, because
5 if water -- because it's not one of those three,
6 unless they come and ask.

7 There are a bunch of examples. I quickly
8 thought of a lot of places, boat docks, I mean
9 there are a lot of places tires get used.
10 Wouldn't it be easier to make that broad and just
11 say, "As long as you alter it in a way that it
12 doesn't accumulate water"?

13 MR. WATTS: Well, let's see. I
14 believe that we have -- there's somewhere in our
15 legitimate use requirements that sort of
16 specify -- no, it doesn't look like it.

17 MR. DAVIDSON: I couldn't find it
18 other than you have to come ask, and I know we're
19 trying to implement --

20 MR. WATTS: I understand what you're
21 saying.

22 MR. DAVIDSON: -- broader language,
23 but innovation has always outran legislation, I

1 think.

2 MR. WATTS: Yeah.

3 MR. DAVIDSON: So, let's take a stab
4 at that, if we could, because I think there's a
5 hole there between the intention of allowing
6 these to be used and a whole bunch of people
7 being all at once out of compliance.

8 MR. WATTS: Well, one of the concerns
9 we have with these preapproved uses is putting
10 too many, you know, requirements on them and
11 making it too burdensome to do these common
12 preapproved uses, and so that might be why we did
13 not add that caveat regarding the accumulation of
14 water.

15 You know, we do require that all of these
16 do not pose a threat to human health and the
17 environment, but that really does not specify
18 altering for the accumulation of water, so I can
19 understand when you're coming from there. We can
20 make note of that as something to consider for
21 final adoption of this rulemaking.

22 MR. DAVIDSON: And if you would, I'd
23 just consider, too, because if you read into it,

1 it falls back on the folks in that business that
2 are providing the tires to the playgrounds. They
3 might be providing mulch, but if they're also
4 providing a stack of tires for the kids to play
5 on, they could be chased for -- you see what I'm
6 getting -- you know what I'm talking about?

7 MR. WATTS: Yeah.

8 MR. DAVIDSON: Because they supplied
9 them, and if it's not a legitimate use, then it's
10 going to come back on them, which is
11 ultimately -- I know you guys aren't in the
12 business of the siting of county parks or
13 anything like that, but that's where we're
14 running and we'll fall.

15 MR. WATTS: And I think one of the
16 reasons that we specified it for these particular
17 uses is that they are going to focus on using a
18 whole tire rather than a cut-up tire, whereas
19 like playground mulch -- well, you know, I
20 remember playing on tire swings when I was in
21 elementary school, and that's one of the reasons
22 we came to add that phrase for those particular
23 uses, but it's --

1 MR. DAVIDSON: They still have other
2 uses, too, not just for old tires.

3 COMM. PIGOTT: Will do.

4 CHAIRMAN GARD: Okay. Any other
5 questions?

6 (No response.)

7 CHAIRMAN GARD: I have no speaker
8 cards. Is there anybody that wishes to speak to
9 the rule?

10 (No response.)

11 CHAIRMAN GARD: If not, this hearing
12 is closed. The Board will now consider
13 preliminary adoption of amendments to the rules
14 at 329 IAC 15 regarding waste tire management.
15 Any further Board discussion?

16 (No response.)

17 CHAIRMAN GARD: Do I have a motion to
18 preliminarily adopt the rules?

19 MR. CUMMINS: So moved.

20 CHAIRMAN GARD: Is there a second?

21 MR. ETZLER: Second.

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

1 MR. HORN: Aye.

2 MS. VALIQUETT: Aye.

3 MS. ALEXANDROVICH: Aye.

4 MR. GREEN: Aye.

5 MR. ETZLER: Aye.

6 MR. SCHULER: Aye.

7 MR. CUMMINS: Aye.

8 MR. RULON: Aye.

9 MS. COLLIER: Aye.

10 MR. WASKY: Aye.

11 MR. DAVIDSON: Aye.

12 MR. SMITH: Aye.

13 CHAIRMAN GARD: Aye.

14 Opposed, nay.

15 (No response.)

16 CHAIRMAN GARD: The rules are

17 preliminarily adopted.

18 We will now have a presentation on a
19 nonrule policy document regarding Inspection
20 Right of Access. Nancy King will provide the
21 rule on the NPD process, and the document will be
22 presented to the Board by Clark Kirkman of IDEM's
23 Office of Legal Counsel.

1 MS. KING: Thank you, Madam Chair,
2 members of the Board. I just wanted to give a
3 real brief overview on presentation of a nonrule
4 policy document. They don't happen very often.
5 We have several new Board Members, and I want to
6 give you the opportunity to ask any questions you
7 may have before Clark gets up and presents it.

8 Basically under Indiana Code 13-14-1-11.5,
9 it speaks to how the agency can use a nonrule
10 policy document. It's a document that
11 interprets, supplements, or implements a statute
12 or a rule. It's not intended to supplant the law
13 and have the force and effect of law. It
14 essentially explains how we are interpreting the
15 law.

16 And so, what we are required to do is
17 develop that draft nonrule policy document, have
18 it available for public comment for at least 45
19 days. We publish it on our Web site. We are
20 required to provide to the Board any comments
21 we've received, and I believe we got one comment
22 that you all got in your Board packet.

23 We are then required to present the

1 nonrule policy document to the Board in its
2 either original or revised form. We are not
3 required to revise the document based on comments
4 received; however, the point is to improve the
5 document. So, if we do make those changes, we
6 explain those to you. The document itself, once
7 we present it to the appropriate Board, it
8 becomes effective 30 days after that.

9 So, with that, I will ask if you have any
10 questions on the process prior to me introducing
11 Clark to speak to you on the nonrule policy.

12 CHAIRMAN GARD: Any questions for
13 Nancy?

14 (No response.)

15 MS. KING: All right. I will ask
16 Clark Kirkman to come up and provide you with the
17 policy.

18 Thank you.

19 CHAIRMAN GARD: Okay. Clark.

20 MR. KIRKMAN: Good afternoon. My
21 name is Clark Kirkman. I'm an attorney in IDEM
22 OLC, and I'm here to talk about the nonrule
23 policy document regarding Inspection --

1 Inspectors' Right of Access.

2 You know, IDEM OLC has received pretty
3 frequent questions from IDEM inspectors related
4 to issues that were discussed in the NPD on the
5 scope of their access rights, how to implement
6 their access rights. And then in 2018, OLC
7 actually conducted a training for their
8 inspectors on their access rights.

9 But following that, we decided to go ahead
10 and produce this nonrule policy document, and in
11 so doing, we got feedback from all of the
12 different IDEM programs in -- you know, in
13 crafting it and making it the best it can be.

14 The primary purpose of this nonrule policy
15 document is simply to notify the public, to give
16 inspectors something easy to direct skeptical
17 facility operators or anyone who is receiving an
18 IDEM inspector on our rights, and give -- you
19 know, put that out there on the IDEM Web site.

20 There was a specif -- one specific concern
21 that OLC had heard from other -- from the
22 programs regarding a proliferation of having
23 inspectors requesting to sign no-liability

1 waivers, which IDEM instructs its inspectors not
2 to do.

3 And then recently we have seen that a lot
4 of these logs that inspectors are being asked to
5 sign were actually in our electronic, and they
6 would contain these no-liability waivers. And
7 so, whereas back some years ago, IDEM inspectors
8 could cross that language out. When it's in an
9 electronic format, it's not as easy to do.

10 So, we wanted to beef that up and give
11 facilities across the state an understanding of
12 what IDEM inspectors' rights are and how we're
13 going to -- how we ask them not to ask our
14 inspectors to sign no-liability waivers.

15 Other purposes that you might have seen in
16 the document included making sure that we're
17 getting access granted by people that have
18 control over the facility and how -- and also
19 just reciting how IDEM will view a denial of
20 access.

21 As Nancy noted, we did receive one set of
22 comments, and I'll just briefly discuss how we
23 handled those. There were three comments

1 contained in that set. The first one, we did
2 incorporate the spirit of it by eliminating
3 certain references to the word "inspector" and
4 just calling it a credential, which was actually
5 defined in the document, so that sort of just was
6 almost a typographical error.

7 The second comment concerned
8 confidentiality, preserving confidentiality on
9 the part of the inspectors. IDEM viewed that
10 comment as beyond the scope of this access NPD.
11 However, I'll note that there's a agency-wide
12 effort -- there's a work group right now --
13 specifically for developing guidance on
14 preserving confidentiality. So, that work is
15 being done, but for this NPD, we felt it to be
16 beyond the scope.

17 And for comment three, we did move 6.14
18 into the list of the other fourth amendment
19 exceptions in 6.13, which did make sense, so we
20 did go ahead and address that comment.

21 With that, I'll ask if anyone has any
22 questions.

23 MS. ALEXANDROVICH: My packet came

1 with two copies. Is there one I should -- could
2 it be a little bit different?

3 MR. KIRKMAN: It might be that you
4 have the red line and the clean. There was a
5 revised one, and then I created a red line to
6 show the changes that were made from the initial
7 one that had been posted a few months back, from
8 which we then received the comment.

9 DR. ALEXANDROVICH: Okay.

10 MR. ETZLER: I have a question, Madam
11 Chair.

12 CHAIRMAN GARD: Yes.

13 MR. ETZLER: Has the agency met with
14 much resistance when inspectors go out on sites?

15 COMM. PIGOTT: Well, I think that,
16 Clark, you mentioned that the issue wasn't
17 resistance as much as it was signing the
18 liability; is that correct?

19 MR. KIRKMAN: Yeah. I mean I'm not
20 in the best position to discuss how many denials
21 we get, although there are times when denials do
22 happen, and those are considered a breach of a
23 permit. You know, it's built into the permit

1 that you're required to give access.

2 MR. ETZLER: Right.

3 MR. KIRKMAN: But yet -- but when
4 facilities are -- it has been frequent that
5 facilities will ask our inspectors to sign
6 no-liability waivers, which we -- you know, IDEM
7 has a policy against them doing that, for obvious
8 reasons.

9 CHAIRMAN GARD: What happens if you
10 need to access an area where the activity is
11 really proprietary information?

12 MR. KIRKMAN: Well, I mean there
13 certainly -- I mean if there is an inspect -- you
14 know, a reason to inspect, then, you know, that
15 is built into whatever regulated -- whatever
16 they're working with, but I mean they -- I'm
17 sorry; what's the question again?

18 COMM. PIGOTT: It's about whether or
19 not -- if an inspector goes into a facility and
20 goes into an area that has some confidential
21 business information in it, some -- and doesn't
22 maybe take a photo, but understands what is going
23 on -- because you mentioned the photo issue.

1 MR. KIRKMAN: And there -- and again,
2 those policies, which we have, but they are being
3 updated for -- to basically account for new ways
4 that we store information, you know, digital
5 storage, stuff like that, but, you know, facility
6 operators are -- they have the option to request
7 that certain things be made confidential, and
8 there's, you know, statutes to that effect, you
9 know, construction --

10 COMM. PIGOTT: So, Clark, just for
11 clarity's sake, because I think the question's a
12 really good one, typically a facility doesn't see
13 the inspection report until it's released to the
14 facility. Is it at that time that the facility
15 would make a claim that the inform -- certain
16 information in the inspection report could be
17 confidential business information, and it would
18 be -- would it be at that time that we would then
19 go through or process of making a determination
20 as to whether it really was, and therefore
21 whether it could be extracted from the report?

22 I think that's when that occurs. If it's
23 a photo, if it's a document, if it's a narrative

1 that explains a process that's confidential, we
2 would extract that provision, if we made the
3 determination that legally it met that
4 requirement, from the inspection report before
5 issuing it as a final inspection report; is that
6 correct?

7 MR. KIRKMAN: Well -- and facilities
8 actually are entitled to get a preliminary report
9 on the day of the inspection if they -- if
10 someone -- if the owner is there to receive that
11 oral report, and they can make those claims at
12 that point. I'd have to go back to the statute
13 to review. Again, that's beyond the scope of
14 this --

15 COMM. PIGOTT: Yeah.

16 MR. KIRKMAN: -- specific NPD --

17 COMM. PIGOTT: Yeah.

18 MR. KIRKMAN: -- on the time line of
19 when they would make those requests, but
20 certainly before things are made public.

21 COMM. PIGOTT: So, it does have an
22 opportunity -- if you're an inspector, you go
23 into the facility, you do an examination of a

1 facility, typically what we try to do is sit down
2 with the entity, the environmental person at the
3 facility, and say, "Here's what we found." And
4 it's an oral report much of the time. Sometimes
5 our inspectors leave a brief, one-page document.

6 But then they go back to the office or
7 wherever and comprise the inspection report. At
8 that time, when a supervisor's looking at it, and
9 if claims are made that don't include that in
10 there, then we'll evaluate that and make a
11 determination.

12 MR. KIRKMAN: Yeah.

13 COMM. PIGOTT: And that is the
14 typical big issue. There are stor -- legion of
15 stories in our agency about denial of access,
16 about a guy who's saying, "Don't come onto my
17 property or I'll shoot you." You know, that's
18 not a typical situation. You know, most
19 regulated facilities fully understand that there
20 are inspections, but there are these signatures
21 and the liability stuff that comes into the play.

22 CHAIRMAN GARD: Uh-huh. Thank you.

23 Any other questions?

1 MR. SCHULER: Yes, ma'am.

2 CHAIRMAN GARD: Yes.

3 MR. SCHULER: Are the inspections --
4 when they originate, is it usually notified, or
5 is it just -- you know, do they tell them about
6 it, is it just day of, or is this part of annual
7 review time? What's the origin of the
8 inspections?

9 MR. KIRKMAN: I think that they come
10 in different shapes and sizes, but I don't think
11 typically you get a whole lot of notice, because
12 you don't want to give the facility the
13 opportunity to -- you know, to gussy the place
14 up.

15 COMM. PIGOTT: So, it's -- and that's
16 correct. There are some circumstances where we
17 do notify in advance if certain programs -- our
18 clean community program and other -- the ESP
19 program, where one of the benefits, because they
20 are going above and beyond the environmental
21 requirements and have a great compliance record,
22 we may notify some of those folks in advance of
23 coming out to do an inspection. But our typical

1 inspection generally does not provide advance
2 warning to the facility, so that we see what the
3 person who's working at the site sees and
4 nothing's altered.

5 MR. SCHULER: Is not signing the
6 liability waiver going to put that business in
7 any more risk if the inspector -- I mean is there
8 just an accident plan or something like that? Is
9 that -- what's the --

10 MR. KIRKMAN: Well, I mean, of
11 course, it -- yeah, it would shift the liability.
12 They're -- you know, if our inspector's injured
13 on-site, we would want the liability for that
14 injury to be with the facility and not with the
15 state. That's the purpose of making sure that
16 our inspectors do not sign those no-liability
17 waivers.

18 MR. DAVIDSON: Is there a way to do
19 that such that if it's the inspector's error that
20 caused the --

21 MR. KIRKMAN: Well, they'd have to
22 have safety barriers while he's there, and if
23 it's his error -- well, I think that would go to

1 a specific case and the facts of the case.

2 MR. DAVIDSON: I think that's why
3 some people are looking for that out. They're
4 not trying to be -- they're going to end up with
5 liability for their operations, but the
6 inspector's there, and I know I don't want to
7 chase it. It's a document, so it's going to be
8 on-site. But that's why some people are chasing
9 that today, because the angry widow then sues the
10 site instead of the employer regardless of who
11 was at fault.

12 COMM. PIGOTT: Gotcha. You know,
13 we're -- I mean it is a state policy that we are
14 not going to give up our -- I mean that we'll
15 just sign away liability, but I understand the
16 point.

17 MR. RULON: Just a couple of quick
18 concerns. I mean they inspected our CAFO three
19 or four times or something, and we're given one
20 or two days' notice, and the inspectors are
21 there. Our bigger concerns, though, on a
22 liability waiver for an error is with the
23 infectious disease problems.

1 If an IDEM inspector brings this disease
2 and destroys your entire industry, I mean -- so,
3 we can rationally be saying, "No, you can't
4 enter," not because we have anything to hide or
5 we're worried about liability, but we don't know
6 where you've been and we don't know that you're
7 as educated as like someone else is on that, and
8 that's why I mentioned in here --

9 MR. KIRKMAN: No, it's not --

10 COMM. PIGOTT: But there is -- I
11 mean -- and I'm sorry for interrupting, if you
12 want to go ahead.

13 MR. KIRKMAN: Oh, I just would note
14 that there is a specific nonrule policy document
15 related to those biosecurity issues.

16 MR. RULON: Oh, okay.

17 MR. KIRKMAN: So, that -- that does
18 exist. And in fact, I've looked at it when I was
19 taking a first crack at this, just to -- you
20 know --

21 MR. RULON: Okay.

22 MR. KIRKMAN: -- there is maybe a
23 little bit about the language from that NPD in

1 this NPD.

2 MR. RULON: Okay.

3 COMM. PIGOTT: That's exactly right,
4 so -- and then the inspectors are trained, the
5 CAFO inspectors, so that -- and we're very aware
6 of those issues, because that is an important --
7 a very important point.

8 MR. RULON: Thank you.

9 CHAIRMAN GARD: Any other questions?

10 MS. COLLIER: I have a question about
11 the --

12 CHAIRMAN GARD: Yes.

13 MS. COLLIER: -- prohibition on
14 photocopying credentials.

15 MR. KIRKMAN: Uh-huh.

16 MS. COLLIER: I was just curious
17 about why that is, because, you know, some
18 regulated facilities, they photocopy
19 identification for security purposes, for those
20 visitors' security purposes, so that if there's
21 some sort of an emergency or evacuation-type
22 situation, they know for certain who is
23 on-site --

1 MR. KIRKMAN: Uh-huh.

2 MS. COLLIER: -- for example, and
3 they find that their handwriting wasn't great or
4 something like that. So, I was just curious
5 about why that prohibition is there.

6 MR. KIRKMAN: So, that -- that's an
7 agency policy, and I believe that the main
8 purpose behind it is honestly just to prevent
9 counterfeiting, to prevent counterfeiting
10 credentials.

11 And Comm. Pigott, if you --

12 COMM. PIGOTT: No, I think that's
13 right. I think that it's about the misuse of the
14 credential that is presented, and the off-chance
15 that someone decided, "Well, we'll just take that
16 credential and use it and impersonate that
17 inspector." And, of course, we're not opposed to
18 signing in to a facility so that people are aware
19 of us. I don't know -- I don't remember whether
20 there's any -- it's just been a little while
21 since I've read through this. Now, opposed to if
22 they said, "We want to take a photo of the
23 inspector before the inspector goes out," so

1 that, for security purposes, we know --

2 MR. KIRKMAN: And that does -- the
3 NPD doesn't speak to that, so I would -- based on
4 the NPD, I would say that would be okay. I mean
5 the main thing is just to -- we don't want the
6 inspectors to be harassed, so we don't -- you
7 know, we definitely don't want them to give them
8 their driver's license, and then we don't want,
9 you know, our credentials to be easily misused,
10 so -- but a picture itself, I don't think, would
11 be a problem.

12 MS. COLLIER: Okay. Thank you.

13 CHAIRMAN GARD: Any other questions?

14 (No response.)

15 CHAIRMAN GARD: Okay. That ends that
16 discussion if there's no more questions, and now
17 we'll move on to the Citizen's Petition. Today
18 the Board is being presented with a Citizen's
19 Petition relating to the adoption of the 2012
20 Federal Recreational Water Quality Criteria.

21 Nancy King will give an overview of the
22 citizen petition process, after which Mr. Craig
23 Williams, the Wastewater Superintendent from

1 Angola, will speak to the Board about the purpose
2 of the petition. The Board will then take the
3 petition under advisement and provide a
4 determination on the merit of the petition at the
5 next regularly scheduled Board meeting.

6 Nancy.

7 MS. KING: Thank you, Madam Chair.

8 As you all saw in your Board packet, I
9 provided just a real brief sort of one-pager on
10 the process that we followed in the past for
11 citizen's petitions. Again, because we have
12 several new Board members and these come up
13 somewhat infrequently, I just wanted to give you
14 the opportunity to ask any questions pertaining
15 to the process that you might have before the
16 presentation of it.

17 As our Chair said, generally what we do is
18 once we receive the petition -- and oftentimes
19 the first time we see it is at a Board meeting.
20 I believe this is the first time we've received
21 it electronically and were able to get it out to
22 you prior to the Board meeting actually
23 occurring, so this process sort of relates to how

1 we've done that in the past.

2 What we're required to do is make sure
3 that it meets the basic minimum requirements of
4 the statute, has the number of signatures, all of
5 those that are duplicates, those kinds of things,
6 and then also -- it's a pretty basic standard --
7 if we haven't had a hearing on it within the past
8 six months and it's something the Board
9 determines is something that's viable for us to
10 have a hearing on.

11 Then generally what we've done in the
12 past, we've handled it a few different ways. In
13 certain cases where we had some citizen's
14 petitions related to very specific things --
15 there was one down in Floyd's Knob several years
16 ago, for example. We had one of our Board
17 members go down there to have, I believe, two
18 hearings actually in that area and report back to
19 the Board, because it was more convenient for
20 folks that were affected by that to have the
21 hearing in that area.

22 We also have them as part of Board
23 meetings or outside of Board meetings. There are

1 a number of ways that the Board can choose to go
2 on this if they determine that we want to have a
3 hearing on a particular topic. So -- and that's
4 not part of the past in statute, but again, I
5 just wanted to make sure that if anybody had any
6 questions about this process, that we were happy
7 to answer prior to it being presented to you,
8 with the actual meat about what this particular
9 petition is about.

10 CHAIRMAN GARD: Any questions?

11 (No response.)

12 CHAIRMAN GARD: I think we've had two
13 petitions in probably the last seven years.

14 MS. KING: Yeah, I was looking. We
15 had two right together in, I believe it was,
16 2015, and before that, so we may have had, within
17 the past ten years, possibly maybe four, five,
18 something like that, on various different topics,
19 and they've all been handled slightly differently
20 based on what the subject was, so --

21 CHAIRMAN GARD: Uh-huh. Okay. Thank
22 you.

23 Let's hear from Mr. Craig Williams,

1 Superintendent from Angola, on the purpose of the
2 petition.

3 MR. WILLIAMS: Madam Chair, Board,
4 Comm. Pigott, on behalf of the citizens of
5 Angola, Mishawaka, Rensselaer, Columbia City,
6 New Haven, Peru, Huntington and many others who
7 cannot be here today, I want to thank you for the
8 opportunity to present this petition, requesting
9 the Board direct Comm. Pigott and his staff to
10 develop an Indiana-appropriate version of
11 the 2012 EPA Recreational Water Quality Criteria.

12 A little history. In 1994, the EPA issued
13 a combined sewer overflow control policy, a
14 policy that would ultimately provide the
15 framework for historic expenditures in
16 communities across the U.S., including those in
17 Indiana.

18 At the time, EPA staff identified
19 regulatory certainty as one of the primary goals.
20 Communities would develop plans to meet the
21 state's required level of control, the state
22 regulatory agencies would review and approve
23 those plans, and once those plans were completed

1 and the results were verified by the state
2 agencies, the community could be assured
3 compliance with the CSO policy.

4 In 1995, Angola city leaders began
5 developing new community plans to remove storm
6 water from the sanitary sewers to comply with
7 this policy. In 2004, IDEM approved Angola's CSO
8 long-term control plan. They defined even more
9 projects that would allow it to meet the required
10 level of control and comply with the CSO policy.
11 By the end of 2019, Angola, a community of about
12 8500 residents, had spent -- had completed all of
13 the projects in our community, at a cost of more
14 than twelve million dollars.

15 Post-construction monitoring and a
16 comprehensive audit conducted by IDEM verified
17 that our effort had resulted in our ability to
18 meet the required level of control.
19 Approximately -- we call it a ten-year one-hour
20 storm, or 1.67 inches of rain falling over the
21 course of an hour. Plan, do, verify and comply,
22 a regulatory certainty.

23 In 2014, IDEM notified Angola that with

1 the completion of our long-term control plan and
2 approved post-construction monitoring audit, the
3 terms of our permit were changing. Combined
4 sewer overflows would now be considered
5 prohibitive discharges, and IDEM could use
6 enforcement discretion to determine if we've
7 complied with the CSO policy.

8 So much for regulatory certainty, from our
9 view. We played by the rules, we demonstrated
10 our ability to meet and substantially exceed the
11 metrics that IDEM and Angola had mutually agreed
12 to in 2004, and now we're faced with what we feel
13 are shifted goalposts. As demonstrated by the
14 number -- the number of communities in support of
15 this petition, we feel that Angola is not alone
16 in this.

17 We do, however, feel that regulatory
18 certainty is possible. Back in 1994, when the
19 policy was developed, EPA acknowledged that
20 successful implementation included two parts:
21 One, significant investment by utilities or
22 communities to complete sewage operation, and
23 wastewater treatment improvements. The current

1 level of expenditures by an Indiana community is
2 difficult to quantify, but the total cost by all
3 Indiana CSO communities was estimated to be
4 around four billion dollars.

5 Two, modifying the national water quality
6 standards to accommodate the CSO discharges we
7 created we knew would remain. Even from the
8 beginning, EPA and IDEM staff recognized that
9 once communities had completed the CSO long-term
10 control plans, CSO's would still occur during
11 certain wet weather events. Although not
12 specifically developed to address CSO discharges,
13 the 2012 criteria is based on the best science,
14 the latest information, and a concern for public
15 health and safety.

16 Now, we believe that this criteria is an
17 appropriate and defensible vehicle to provide
18 Indiana CSO communities regulatory certainty.
19 Ohio has already adopted a version of this
20 criteria, and Wisconsin will soon adopt similar
21 criteria. Adopting an appropriate version of
22 the 2012 criteria will provide regulatory
23 certainty to over 100 CSO communities throughout

1 the state, and ensure that future investments in
2 wastewater construction are not wasted on
3 extraordinarily expensive projects with little to
4 no environmental benefit while ignoring other
5 critical construction needs in our communities.

6 I want to thank Comm. Pigott and the
7 Office of Water Quality staff, Paul Higginbotham,
8 Jerry Dittmer, and a number of others who have
9 diligently worked with the Indiana Water
10 Environment Association's Government Affairs
11 Committee, and a number of others over the last
12 four years, to find a working solution. Their
13 efforts have provided the building blocks toward
14 a revised rule.

15 But we believe that a lack of impetus on
16 the agency's part has caused this effort to
17 stall. It's not a criticism of Office of Water
18 Quality staff. In fact, it's our understanding
19 that OWQ staff recently attended a national
20 two-day workshop facilitated by EPA in
21 Washington, D.C., focusing on this very issue,
22 regulatory certainty. So, this is not an issue
23 just in Indiana, but nationwide.

1 Indiana, IDEM, has the tools at hand to
2 provide much needed regulatory certainty to CSO
3 communities. We are confident that much of the
4 groundwork has already been laid by OWQ staff.
5 Our request is that the Board provide a defined
6 direction and time frame to IDEM to drive this
7 effort to completion.

8 I appreciate your time, and would be happy
9 to answer any questions you have.

10 CHAIRMAN GARD: Are there questions?

11 MR. DAVIDSON: I have one.

12 CHAIRMAN GARD: Yes.

13 MR. DAVIDSON: Did I understand you
14 to say that your discharge permit, your NPDES
15 permit, which is legally enforceable, now has --
16 I don't know if we did this or who did it, but
17 now you can -- discretion can be applied about
18 whether or not you're -- is that -- did we do --
19 is that a question for you, or --

20 COMM. PIGOTT: So, when you have a
21 permit, any violation of the permit, the agency's
22 action and reaction to a violation is at the
23 agency's discretion. So, for example, if a

1 facility discharges a pollutant, you know, a very
2 small amount over what is permitted in the
3 permit, the agency can look at that and say:
4 "Well, it's a one-time event, it's not a
5 repeatable thing."

6 We're going to talk to the facility. The
7 facility's going to make some corrections or do
8 something, or it's already fixed, and therefore,
9 our discretion is that we're not going to
10 automatically send that entity to enforcement.
11 What we'll do is make a determination.

12 And there are certain communities or
13 certain entities that have problems that occur on
14 a regular basis and that throw them into what we
15 call significant noncompliance, and when they
16 fall into significant noncompliance, then we
17 generally work on putting together an agreed-upon
18 approach to resolve the problem that is
19 documented in the agreed order with stipulated
20 penalties to fix the problem.

21 So, yeah, we operate on a regular basis
22 every day by using our discretion as to whether
23 we will send a community or an entity to

1 enforcement over a permit violation, a fairly
2 typical part of our process.

3 MR. RULON: That was a lot better
4 answer than your predecessor.

5 COMM. PIGOTT: Oh.

6 MR. DAVIDSON: Yeah, I remember you
7 and I having a similar issue. It think it felt
8 similar, at least, when you talked about finding
9 the strike zone.

10 COMM. PIGOTT: Yeah.

11 MR. DAVIDSON: I seem to remember
12 that on another citizen petition.

13 COMM. PIGOTT: Yeah, that's right.

14 MR. DAVIDSON: So, I just wanted to
15 know about "Where's the strike zone?"

16 COMM. PIGOTT: Yeah.

17 MR. DAVIDSON: And I can appreciate
18 that -- it sounds like, if I'm hearing you right,
19 a little better definition of where can we live
20 safely, because, as you know, discretion can
21 change as --

22 COMM. PIGOTT: Absolutely.

23 MR. RULON: -- leadership may change.

1 COMM. PIGOTT: Absolutely.

2 MR. DAVIDSON: So, I hear you from a
3 level of comfort, of being able to go home at
4 night. The second question, if I may, is --

5 CHAIRMAN GARD: Uh-huh.

6 MR. DAVIDSON: -- and this was
7 mentioned earlier, I think by Chris, about
8 designated some limited use water, which I think
9 goes back to part of your presentation just
10 recently. So, if we get into -- if part of that
11 fallout is limited use, when some of these things
12 happen, engaging this limited use that, will we
13 have to do that on each one of them? For the
14 City of Indianapolis, are all of these
15 communities that are CSO communities, when they
16 have these events, are we going to all hear --

17 COMM. PIGOTT: Mr. Davidson, I think
18 what you mean -- because limited use is a
19 specific term in our rules. When we're talking
20 about things is a use attainability analysis, and
21 the CSO wet weather -- you may be referring to
22 the wet weather use designation, and as you know,
23 the last time we had a Board meeting, I gave a

1 presentation about that.

2 MR. DAVIDSON: Yes, I remember.

3 COMM. PIGOTT: Indianapolis has come
4 forward, we've approved their use attainability
5 analysis, which will provide the protection and
6 certainty they need to ensure that they don't go
7 to enforcement when they have a discharge beyond
8 the strict -- the strict requirements of both the
9 permit and the federal consent decree.

10 So, what we're talking about is two
11 separate approaches to providing that certainty.
12 One is this petition, which would have the agency
13 put in place a 2012 criteria, and the other is
14 the use attainability analysis followed by the
15 wet weather use designation.

16 And the community would come to us when
17 they felt that they wanted that protection under
18 the use attainability analysis, not every time
19 they have a discharge, and it would be renewed
20 once every five years, just as it is for an NPDES
21 permit to be issued today.

22 So, there are differences in the
23 approaches. I think both approaches aim to

1 provide certainty to the communities that have
2 worked so hard, as Craig's community has, to
3 ensure that they meet the requirements with the
4 plans that they agreed to put in place at the
5 beginning of the process of determining how far
6 they actually had to go.

7 And I'm really proud to point out that
8 Angola has done a tremendous job and met the
9 terms of their long-term control plan, and
10 communities around the state are in the process
11 of implementing those plans and have agreed, 99.9
12 percent of them, to do fixes that will have a
13 dramatic improvement in water quality. And we
14 sure appreciate and understand that desire for
15 certainty, and we're just talking about different
16 approaches to get to that point.

17 MR. DAVIDSON: Thanks for the
18 clarification on terms. Sorry I misspoke.

19 COMM. PIGOTT: No, not at all.

20 MR. DAVIDSON: You guys are the
21 experts about that stuff. But it would be on a
22 five-year, you said?

23 COMM. PIGOTT: So, that's with the

1 use attainability analysis and --

2 MR. DAVIDSON: Okay.

3 COMM. PIGOTT: -- the CSO wet weather
4 use designation process I talked about at the
5 last meeting.

6 MR. DAVIDSON: So, not in every --

7 COMM. PIGOTT: It's not every time it
8 rains, no. We'd be here every day.

9 MR. DAVIDSON: Well, and your staff
10 would be -- I'm sure they would get to you before
11 we did.

12 COMM. PIGOTT: Yes, they would, yes,
13 indeed.

14 MR. RULON: Well, having read this,
15 is the RWQC relaxing the standards from the use
16 attainability analysis standard? Does this
17 standard relax -- I just see a really beautiful
18 clinical ad in about 12 months if you loose --
19 reduce the standards. And I'm concerned about
20 the use -- I can't tell if this reduced them or
21 not.

22 COMM. PIGOTT: This changes the
23 criteria in some communities as a result, and I

1 argue that they don't have to do as much as they
2 agreed to in -- when they agreed to put in place
3 improvements in their wastewater systems, and
4 there are certain communities that are still
5 working through the -- to achieve what they
6 agreed to through federal consent decrees in
7 other ways to dramatically reduce raw sewage
8 going straight into people rivers and creeks.

9 CHAIRMAN GARD: Well, that was going
10 to be my question or comment. Those people that
11 have been -- had the process and really gotten in
12 here, and they've pretty much finished theirs,
13 did it under the old -- old statute -- our rules.
14 But we're changing them, we're giving these
15 slower people a break; is that fair to say?

16 COMM. PIGOTT: Well, one could argue,
17 for example, Indianapolis is going to discharge
18 perhaps two or four times a year and hasn't
19 argued for a change in the criteria, but if they
20 had, maybe they would have been able to take
21 advantage of this and then do less in order to
22 abide by it and be within compliance terms. So,
23 some could argue that, and I don't -- and so, a

1 change in the standard, depend -- you know, the
2 Devil is in the detail always with these
3 rulemakings. How effective a change in the
4 criteria would be in terms of providing surety to
5 a community depends very much on the details of
6 how those criteria are put in place.

7 CHAIRMAN GARD: Uh-huh.

8 COMM. PIGOTT: And that's why the
9 agency's taking time to make -- to consider this,
10 because it's not a matter of changing just a few
11 words and updating criteria. It really does
12 depend on "Well, where do you sample? When do
13 you sample?" And depending on how the agency
14 came out on these issues could provide a great
15 benefit or could provide no benefit --

16 CHAIRMAN GARD: Uh-huh.

17 COMM. PIGOTT: -- to a community that
18 was hoping that it would provide protection and
19 surety.

20 CHAIRMAN GARD: Uh-huh.

21 COMM. PIGOTT: And certainly there
22 are those that would like to use a change in
23 criteria to argue that they wouldn't have to do

1 as much as they agreed to do in the first place.

2 CHAIRMAN GARD: Uh-huh.

3 MR. WILLIAMS: Chairman Gard, would
4 it be okay if I speak to that as well?

5 CHAIRMAN GARD: Yes, certainly.

6 MR. WILLIAMS: Thank you.

7 One of the -- and correct me if you feel
8 I'm out of line on any of this, Comm. Pigott.
9 The primary concern with CSO discharges is
10 related -- generally related to elevated levels
11 of bacteria, which the 2012 criteria specifically
12 addresses. And at the risk of overly simplifying
13 a 70-page EPA document, the 2012 criteria
14 incorporates two measures. One is a geometric
15 mean, and the second is a statistical threshold
16 value in establishing values that protect the
17 designated uses of primary contact recreation.

18 The statistical threshold value provides
19 for a ten-percent exceedence of in-stream
20 criteria, and again, this is based on more recent
21 epidemiological studies, more recent science.
22 And in our position, this -- in this case, the
23 ten-percent exceedence is not -- would not be

1 applied as a level of control. So, it wouldn't
2 be applied to reduce a community's requirement to
3 complete projects, but instead, a measure of
4 compliance after they had received a fully
5 implemented and approved long-term control plan.

6 It would be a vehicle to address that the
7 community has achieved compliance and now, as
8 long as there's a method, and again, as
9 Comm. Pigott said, the Devil's in the details, I
10 don't know exactly how it would look, but
11 post-compliance, this may provide a vehicle to
12 demonstrate compliance, provide that regulatory
13 certainty that communities are looking for.

14 CHAIRMAN GARD: Okay. Any other
15 questions? Yes.

16 MS. COLLIER: Yes. It sounds like
17 there's been discussion between petitioners and
18 IDEM, and I was just wondering: Can we hear
19 IDEM's view on this potential rulemaking and why
20 this hasn't happened already?

21 COMM. PIGOTT: Well, in general
22 terms, I think Nancy laid out the process in
23 terms of with a petition, how the process is

1 supposed to work.

2 Do you want to talk a little bit about
3 that again, and then I can --

4 CHAIRMAN GARD: She will.

5 MS. KING: I will.

6 COMM. PIGOTT: -- talk a little bit
7 about our discussions.

8 MS. KING: I would say that this
9 is -- yeah, part of what would happen -- I mean
10 basically this isn't a hearing, but that's not --
11 that's neither here nor there. Basically, if we
12 were to have a hearing, for example, you know,
13 the agency would explain why we didn't
14 immediately jump on the 2012 when we did, or go
15 into the detail of why the step -- all of this is
16 great, but we also have a statute that says this
17 and that, that that's what started this whole
18 process many years ago, those kinds of things.

19 So, when we would have a hearing, if the
20 Board determines that a hearing is what you would
21 like to do, then the agency can explain its
22 process or, you know, our thoughts on a
23 particular issue related to it, and -- because

1 this is something that has -- as pointed out, has
2 been discussed extensively with Office of Water
3 Quality and the affected communities.

4 You know, one of the things we've done in
5 the past as relates to a citizen's petition is --
6 it was actually for another water rule, the
7 definition of interference, for those of you who
8 may remember that, and it was Bill Beranek that
9 brought that to us -- we had sort of a little
10 work group, where folks from both sides kind of
11 sat down and talked about the issues and put
12 something together to discuss with the Board, and
13 then the Board at that point in time made a
14 determination that gave direction as to what they
15 would like to do.

16 So, we're not really hemmed in as far as
17 what you can do with these ideas when a citizen's
18 petition comes to you, and you're able to provide
19 some kind of guidance based on the information
20 you'll hear, not just from the agency, but from
21 those affected entities. So, that's one of the
22 ways that we've handled a similar type of
23 situation in the past.

1 MS. COLLIER: Thank you so much for
2 your help.

3 CHAIRMAN GARD: Any other questions?

4 MS. ALEXANDROVICH: I have a few.

5 Mr. Williams, can I ask you?

6 MR. WILLIAMS: Yes.

7 DR. ALEXANDROVICH: I have lots of
8 questions on this, so I'll try to keep them
9 short. I tried to understand what you guys were
10 asking for. So, one question is: Would you like
11 the use attainability analysis procedure to go
12 away, or -- or simply change the bacterial
13 criteria numbers in that use attainability
14 analysis?

15 MR. WILLIAMS: So, Angola -- Angola
16 is in a different -- sort of in a different
17 category than Indianapolis in the way that we
18 approach our CSO long-term control plan. And
19 while I think that applying for a use
20 attainability analysis may be possible, it was
21 never a path that we anticipated going.

22 In 2004, when we developed our CSO
23 long-term control plan, the goalpost was to fully

1 capture and treat the one-year one-hour storm.
2 We went the extra mile and we are able to fully
3 capture and treat the ten-year one-hour storm,
4 which is a higher level of control, with the
5 understanding that any wet weather events that
6 exceeded that ten-one would be considered a -- at
7 the time the discussion was force majeure.

8 And in the interim, EPA has changed its
9 position on force majeure. That's not an
10 acceptable standard to them. And you know, no
11 fault of the Office of Water Quality staff, some
12 of those goalposts were changed above their
13 heads; right?

14 And so, that's when that language changed
15 to enforce -- prohibited discharge and
16 enforcement discretion. Our feeling is that that
17 doesn't provide the long-term regulatory
18 certainty we're looking for.

19 Now, I don't have any issue with the
20 position that Comm. Pigott and his staff take on
21 enforcement discretion today, but I don't know in
22 five years or ten years from now who's going to
23 be Governor or who's going to be Commissioner,

1 and don't know what that means to the community
2 that has spent a lot of time and effort in trying
3 to comply. And so, that's why we're trying to
4 look at a different -- as Comm. Pigott mentioned,
5 sort of two different routes. Does that help?

6 DR. ALEXANDROVICH: Yeah, yes, it
7 does, but then maybe I can get a little bit --
8 I've read this carefully, tried to. Was there a
9 benefit-cost analysis done on this to come up
10 with the 71 million dollars or 60 million dollars
11 in savings, and how, by not making these changes,
12 the communities are in a competitive
13 disadvantage?

14 MR. WILLIAMS: So, with surrounding
15 states -- Ohio and Wisconsin, I think, were
16 specifically identified -- EPA Region V has given
17 the states sort of their own arena to work
18 within. Our concern is that because Ohio and
19 Wisconsin are -- they've adopted this criteria --
20 again, the criteria wasn't developed specifically
21 to address combined sewer overflows, but we
22 believe that it can be a vehicle that can provide
23 that regulatory certainty to communities that

1 meet a certain level of control.

2 Our concern is that without that
3 definition in Indiana, Indiana's water quality
4 criteria, that future administrations may decide
5 that that enforcement discretion doesn't provide
6 the protection to a community in Indiana. Now,
7 in the event that in 2025, let's say, that we
8 have -- it doesn't meet scrutiny, and so we're
9 going to have to commit to additional
10 infrastructure improvements.

11 Cities like Angola, we have -- in 2010, we
12 had met the -- all of the projects that we've
13 stated we were going to do, and began a process
14 to demonstrate compliance. But that didn't stop
15 us from continuing to separate sewers and pull
16 storm water inlets out to find defects that maybe
17 were allowing groundwater in. We haven't stopped
18 our efforts.

19 Our concern is the specter of having
20 acquired, you know, a defined list of things that
21 the agency requires us to do. Those projects we
22 feel that we're done, and those are in the past.

23 DR. ALEXANDROVICH: So, the

1 60-million-dollar figure comes from what could be
2 expended; is that what they're thinking?

3 MR. WILLIAMS: I would have to
4 revisit -- is that one of the -- that's for a
5 community. Is that for --

6 COMM. PIGOTT: Mishawaka.

7 MS. ALEXANDROVICH: Mishawaka.

8 MR. WILLIAMS: I -- unfortunately, I
9 am not an expert on Mishawaka's --

10 MS. ALEXANDROVICH: Okay.

11 MR. WILLIAMS: -- system. We were --
12 anticipated having a representative from
13 Mishawaka here today, but unfortunately he was --
14 he is sick.

15 MS. ALEXANDROVICH: Okay. Then one
16 last question. I think I heard what you -- when
17 you were speaking, you said there was some kind
18 of draft rule language that was discussed between
19 IDEM and the various communities and the water
20 trade entities?

21 MR. WILLIAMS: We have -- we have --
22 the Indiana Water Environment Association, which
23 is a state organization comprised of wastewater,

1 municipalities and consulting engineers, and
2 professional agencies who are interested in
3 working with communities on water quality items,
4 have come to the Office of Water Quality to say,
5 "Listen, we feel that this is a vehicle that
6 provides regulatory certainty."

7 I know that they've been very willing to
8 work with us on trying to develop language that
9 would provide the agency the ability to bring
10 that to EPA for their approval, but also provide
11 the regulatory certainty for communities. But
12 again, I think, because -- as a regulated entity,
13 I have a little bit different outlook, a little
14 bit more desire to get to that point than
15 maybe -- IDEM has a lot of things on their plate.
16 And so, we've talked about some things. I think
17 some draft language has been thrown around, but
18 never anything that was really set in stone.

19 Is that a fair assessment?

20 COMM. PIGOTT: Yeah, I would say that
21 there's not draft -- typically when you see a
22 rule and there's draft language, there's a whole
23 rule worked out, but -- certainly there's 2012

1 criteria that EPA has out there, but there hasn't
2 been pen to paper, and specifically about a rule
3 that's put forward. And typically that happens
4 at second notice of rulemaking.

5 So, I wouldn't say that we have a real
6 draft set of language. And there -- I think from
7 the agency's perspective, there would be a lot of
8 things that would need to be thought through
9 before real solid language could be put together.

10 DR. ALEXANDROVICH: Oh, I guess I
11 have one last question. You know, I used to
12 think the air rules were complicated, so when I
13 go through some of these water rules -- so, I'm
14 not -- I'm not sure where this discretion is in
15 the rule, so --

16 COMM. PIGOTT: Well, first of all, I
17 think that's --

18 MS. ALEXANDROVICH: -- that's what --
19 where we would be working on?

20 COMM. PIGOTT: I just want to say
21 thank you for saying that.

22 (Laughter.)

23 COMM. PIGOTT: It validates all of

1 the water people in the room, and it's too bad
2 Matt Stuckey and Keith aren't here to hear that
3 water rules are pretty tough to understand.

4 MR. WILLIAMS: Try being a Great
5 Lakes discharger.

6 COMM. PIGOTT: Yeah, that's right.
7 There's a lot -- a myriad of complicated rules
8 out there. Certainly this is -- the whole kit
9 and caboodle's part of it.

10 Enforcement discretion is something the
11 agency exercises in air, land and water, on a
12 regular basis. I don't know if it's set out in
13 statute, but --

14 MS. KING: It's statutory.

15 COMM. PIGOTT: -- it must be
16 somewhere.

17 MS. KING: It's statutory.

18 COMM. PIGOTT: It's statutory.

19 MS. KING: "The agency may."

20 COMM. PIGOTT: Yeah. So, the
21 Commissioner has the ability to say, "Look, we're
22 not going to enforce because you didn't submit
23 your DMR this year, because guess what? You

1 don't have a facility." It would be ridiculous.
2 And the agency needs that kind of wiggle room to
3 provide some common-sense solutions to
4 situations. So, the agency has long held the
5 ability to say, "You know what? It might be a
6 violation, but I'm not going to do an enforcement
7 action over that."

8 And oftentimes facilities like Craig's, if
9 he ever had a problem in Angola, I just know that
10 tomorrow he'd fix it. Before we got to an
11 inspection report that was completed, he would be
12 all over it and would have it done. So, it's
13 really necessary for the agency to be able to
14 exercise that kind of discretion.

15 DR. ALEXANDROVICH: I guess I'm just
16 confused that the discretion occurs in other
17 places, other than enforcement of the bacterial
18 standards.

19 COMM. PIGOTT: Oh, yes, it does. It
20 occurs --

21 DR. ALEXANDROVICH: So -- and that's
22 what you're talking about also?

23 MR. WILLIAMS: Yes.

1 COMM. PIGOTT: Yeah, it occurs in
2 the -- and really, it is the communities, that
3 "Hey, they're exercising their discretion today,"
4 but tomorrow, you know, an inspector comes and
5 looks and says, "Oh, Craig, man, that's a
6 violation. You're going straight to
7 enforcement," and that's the last thing that they
8 want to have happen when the last inspector, you
9 know, said, "I get it," and Craig said, "We're
10 going to fix it today," and right in front of the
11 guy he corrects it and it's done. Now, that's
12 the kind of enforcement discretion that's really
13 vital.

14 MR. WILLIAMS: And --

15 COMM. PIGOTT: You're looking for
16 certainty is all you're looking for.

17 MR. WILLIAMS: And the -- as it
18 stands, there's a lot of subjective evaluation of
19 that, because when we're talking about wet
20 weather, when we're talking about combined sewer
21 overflows, when we're talking things like
22 antecedent conditions, "Did it rain in the
23 past 72 hours, and how hard did it rain?" some of

1 those things are relatively easy to quantify.

2 But what about when the snow melted?

3 Well, that actual -- that creates a flow going to
4 our facility. In March, when there's two and a
5 half feet of snow on the ground and it's
6 drizzling and the snow is melting, the flows to
7 our facility increase. How do we quantify the
8 1.67 inch per hour in that event? We can't,
9 because we don't know how fast the snow's
10 melting. We don't even really know exactly how
11 much water is in that three foot of snow that's
12 been plowed to the side of the curb over the last
13 two months.

14 And again, Office of Water Quality staff
15 have been fantastic in working with us on that,
16 and they understand that situation. Our concern
17 is that ten years from now, I don't have any way
18 to know that somebody who sits in Comm. Pigott's
19 chair is going to share that same view.

20 MR. SMITH: And I'd just say that's
21 kind of the Catch 22 of being a regulator is that
22 you want to have that flexibility, but also at
23 the very same time --

1 MR. WILLIAMS: Understood.

2 MR. SMITH: -- people want certainty.
3 So, not all nails need to be hammered. You know,
4 that's the hard part of it is trying to have it
5 as specific as possible, but leaving the ability
6 to not have to put the hammer down on somebody
7 who made an inadvertent error or a minor
8 infraction. So, it's something we all deal with.

9 COMM. PIGOTT: And I will say the
10 agency has long recognized the desire for
11 certainty on the part of communities, and has
12 worked with communities to try to come to this
13 kind of result where there is certainty at the
14 end, which is why in 2005 Nancy and other people
15 worked to get legislation passed that allowed for
16 the agency to create a wet weather water quality
17 standard.

18 You know, when a community has completed,
19 as Craig's has, the work that they promised to do
20 under enforceable terms, they have an opportunity
21 to apply for this standard, which acknowledges
22 that, you know, there are just some times when it
23 rains so hard that you're going to have

1 discharges from these pipes. And that standard
2 is in place today, and any community can apply to
3 have coverage for that standard for a certain
4 time period after a rain event.

5 And the agency has been willing to process
6 these -- the requests for the standard to be put
7 in place. Unfortunately, EPA hasn't been all
8 that thrilled with the use attainability analysis
9 and this wet weather water quality standard that
10 I talked about at the last meeting, in the past.

11 Today, EPA is much more willing to
12 entertain the allowance for the agency to pass
13 rules that allow for establishing a wet weather
14 water quality standard for communities that have
15 done what they've promised to do, and signed on
16 the dotted line, what they promised to do under
17 their long-term control plans.

18 And so, we have a way to accomplish that
19 surety today. It's in place. We're going
20 through it. You'll be voting on the first use
21 attainability analysis in January for the City of
22 Indianapolis. What this is is an alternative
23 approach to that standard.

1 So, what we're doing is saying, "There are
2 two different ways to accomplish this goal of
3 surety," and the agency is all on board, because
4 we recognize that the communities around the
5 state, all 109 of them, have done a yeoman's job
6 of putting together the money to make
7 improvements in their wastewater systems.

8 We just want to make sure then that once
9 they're done, they have an option for moving
10 forward with surety, and that it's in place in
11 the CSO wet weather use subcategory. There's
12 certainly this other approach, but I think there
13 are a lot of questions that need to be considered
14 before that rulemaking could take place. I mean
15 they're very detailed, and so, that's the reason
16 it's taking some time for us to move forward.

17 CHAIRMAN GARD: Well, this -- this is
18 going to be somewhat of a lengthy process. We're
19 not going to get this done overnight.

20 MR. WILLIAMS: Uh-huh.

21 CHAIRMAN GARD: And the decision --
22 just to kind of recap, the next step we have in
23 January is to make a determination if this

1 petition has merit or is devoid of merit. And if
2 we decide it has merit, then there's public
3 hearings scheduled. We also make the
4 determination if we want a working group, we
5 bring stakeholders together, and through a
6 recommendation to bring back -- there's several
7 ways we can do it.

8 So, it's going to take some work, and that
9 legislation in 2005 was probably the most
10 difficult that I had in all of those years. It
11 was very difficult. You know, you eventually
12 reach the point of diminishing returns in what
13 amount of money you invest, and gosh, we talked
14 about that for two months before we figured it
15 out. And so, this -- this is going to be
16 interesting, I think. So, you all have a little
17 homework to do between now and January to really
18 build into this and see what you think about it.

19 Any other questions?

20 (No response.)

21 CHAIRMAN GARD: Well, thank you for
22 making the trip down here.

23 MR. WILLIAMS: Thank you for hearing

1 us.

2 CHAIRMAN GARD: Thank you.

3 Okay. This is an Open Forum. Is there
4 anyone that wishes to address the Board today on
5 anything?

6 (No response.)

7 CHAIRMAN GARD: Well, the next
8 meeting of the Environmental Rules Board is
9 tentatively set for January the 8th, 2020 at 1:30
10 in Conference Room A, Government Center South.
11 Hopefully we won't have a snowstorm as we did
12 this time. The meeting date is tentative and
13 subject to change, particularly in lieu of the
14 weather. So, we'll keep you advised about that.

15 So, is there a motion to adjourn?

16 MR. CUMMINS: So moved.

17 CHAIRMAN GARD: Is there a second?

18 MS. COLLIER: Second.

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

21 MR. HORN: Aye.

22 MS. VALIQUETT: Aye.

23 MS. ALEXANDROVICH: Aye.

1 MR. GREEN: Aye.

2 MR. ETZLER: Aye.

3 MR. SCHULER: Aye.

4 MR. CUMMINS: Aye.

5 MR. RULON: Aye.

6 MS. COLLIER: Aye.

7 MR. WASKY: Aye.

8 MR. DAVIDSON: Aye.

9 MR. SMITH: Aye.

10 CHAIRMAN GARD: Aye.

11 We are adjourned. Thank you.

12 - - -

13 Thereupon, the proceedings of
14 November 13, 2019 were concluded
at 3:25 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, November 13, 2019 in this matter
8 and transcribed by me.

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

14
15 My Commission expires August 26, 2024.
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23

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