

1 BEFORE THE STATE OF INDIANA
2 ENVIRONMENTAL RULES BOARD

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5 PUBLIC MEETING OF SEPTEMBER 10, 2014

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9 PROCEEDINGS

10 before the Indiana Environmental Rules Board,
11 Beverly Gard, Chairman, taken before me, Lindy L.
12 Meyer, Jr., a Notary Public in and for the State
13 of Indiana, County of Shelby, at the Indiana
14 Government Center South, Conference Center,
15 Room A, 402 West Washington Street, Indianapolis,
16 Indiana, on Wednesday, September 10, 2014 at 1:29
17 o'clock p.m.

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21 William F. Daniels, RPR/CP CM d/b/a
22 ACCURATE REPORTING OF INDIANA
23 12922 Brighton Avenue
 Carmel, Indiana 46032
 (317) 848-0088

1 APPEARANCES:

2 BOARD MEMBERS:

- 3 Beverly Gard, Chairman
- 4 Thomas R. Anderson
- 5 Gary Powdrill
- 6 Dr. Ted Niemiec
- 7 Joanne Alexandrovich
- 8 Kelly Carmichael
- 9 Ken Rulon
- 10 William Etzler
- 11 Chris Horn
- 12 Gail Boydston
- 13 Mike Mettler, Proxy, Department of
- 14 Health
- 15 Cameron F. Clark, Director, Department of
- 16 Natural Resources
- 17 Pamela Fisher, Proxy, Indiana Economic
- 18 Development Corporation
- 19 David Bausman, Proxy, Lieutenant
- 20 Governor
- 21 Thomas W. Easterly (nonvoting)
- 22

23 IDEM STAFF MEMBERS:

- 24 Christine Pedersen
- 25 Susan Bem
- 26 Lauren Aguilar
- 27 MaryAnn Stevens
- 28 Dan Watts
- 29 Bruce Palin
- 30 Nancy King
- 31 Janet Pittman

32

PUBLIC SPEAKERS:

- 33 Jodi Perras
- 34 Bowden Quinn
- 35 Steven Peckinpaugh
- 36 Dave Menzer
- 37 Josh Trenary
- 38 Kim Ferraro
- 39 Charles Mitch

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1 1:29 o'clock p.m.
September 10, 2014

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3 CHAIRMAN GARD: The Chair is going to
4 call this meeting to order. We have a very big
5 agenda, and so we ought to get moving as quickly
6 as possible. The Chair sees a quorum. We have
7 eight voting members present. Let me ask you
8 all, as we do every meeting, to go around and
9 introduce yourselves and tell what constituency
10 you represent.

11 COMM. EASTERLY: I'm Tom Easterly,
12 the Commissioner of IDEM.

13 MR. RULON: Ken Rulon, representing
14 agriculture.

15 MR. BAUSMAN: David Bausman, Director
16 of Policy and Regulatory Affairs at ISDA, serving
17 as the Lieutenant Governor's proxy.

18 MR. CLARK: Cameron Clark, the
19 Director of the Indiana Department of Natural
20 Resources.

21 MR. METTLER: Mike Mettler, proxy for
22 the State Health Commissioner, Dr. VanNess.

23 MS. FISHER: Pam Fisher, proxy for

1 Secretary of Commerce Victor Smith.

2 MS. BOYDSTON: Gail Boydston,
3 representing manufacturing.

4 CHAIRMAN GARD: Beverly Gard, general
5 public.

6 MR. ETZLER: Bill Etzler, small
7 business.

8 MR. ANDERSON: Tom Anderson,
9 environmental.

10 MR. POWDRILL: Gary Powdrill, public
11 at large.

12 DR. NIEMIEC: Ted Niemiec, health
13 care.

14 MS. ALEXANDROVICH: Joanne
15 Alexandrovich, county government, local
16 government.

17 MR. CARMICHAEL: Kelly Carmichael,
18 utilities.

19 MR. HORN: Chris Horn, labor.

20 CHAIRMAN GARD: Thank you all.

21 The first order of business today is
22 approval of the summary of the June 11th, 2014
23 Board meeting. Are there additions or

1 corrections to the minutes as presented?

2 (No response.)

3 CHAIRMAN GARD: If no, do I hear a

4 motion to approve?

5 DR. NIEMIEC: So moved.

6 CHAIRMAN GARD: Is there a second?

7 MR. ANDERSON: Second.

8 MR. POWDRILL: Second.

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

11 MR. HORN: Aye.

12 MS. ALEXANDROVICH: Aye.

13 MR. CARMICHAEL: Aye.

14 MR. ETZLER: Aye.

15 MR. ANDERSON: Aye.

16 MR. BAUSMAN: Aye.

17 MR. POWDRILL: Aye.

18 MR. CLARK: Aye.

19 MR. METTLER: Aye.

20 DR. NIEMIEC: Aye.

21 MS. FISHER: Aye.

22 MS. BOYDSTON: Aye.

23 MR. RULON: Aye.

1 CHAIRMAN GARD: Aye.

2 Those approved say -- sorry. Motion
3 passes.

4 Commissioner, your report.

5 COMM. EASTERLY: I want to tell you
6 about three things, hopefully very quickly.

7 EPA came out with proposed designations of
8 Indiana under the annual PM2.5 standard, the
9 12-micrograms-per-cubic-meter standard, that will
10 be final at the end of this year, and for -- two
11 things affected Indiana -- well, three.

12 We have a monitor in Clark County,
13 Jeffersonville, reading 12.1. It will not read
14 12.1 by the end of the year, we don't believe,
15 and we're going to give EPA evidence that if they
16 just hold on a little bit, it will be in
17 attainment and that area should be -- well, we'd
18 say attainment, but EPA has also done two other
19 things.

20 They have disallowed a whole bunch of data
21 from Louisville, Kentucky because it didn't meet
22 QA standards. So, they're saying they don't know
23 what the air quality is down there, so we'll

1 probably be unclassifiable, which, from a
2 practical standpoint, doesn't make any
3 difference, but it's better to be able to say
4 you're in attainment.

5 And similarly, in the Chicago area,
6 Northwest Indiana, the same thing happened. EPA
7 has disallowed the last seven years of Illinois
8 data for quality assurance issues, so they don't
9 know what the air quality is in Chicago, but our
10 data clearly shows attainment, so they're
11 proposing unclassifiable for that part of the
12 state also. So, we're optimistic that they will
13 work with us to make the whole state either
14 attainment or unclassifiable. The rest of the
15 state is fine.

16 Then waters of the U.S. is an open, active
17 proposal that EPA made. The comment period
18 closes October 20th. We're working with
19 stakeholders. The rule has been widely spoken
20 against, but it has a lot of good things in it,
21 too. It actually defines more clearly what is
22 regulated and what is exempt at the federal
23 level.

1 And I think that clear exemption is a real
2 benefit to everybody because it says like your
3 farm pond that you dug is exempt, it says a ditch
4 generally is exempt, but there are some questions
5 about the wording there.

6 So, we're still talking to many
7 stakeholders about what their concerns are, to
8 try and make sure we understand them and perhaps
9 communicate them -- well, if we really agree with
10 them, we'll communicate them to EPA without
11 concerns, but I think the proposal might be
12 beneficial in the long run, particularly if a few
13 wording issues get resolved.

14 So, you know, there's been litigation for
15 decades over what is a water of the U.S. and what
16 is not, and the more we can clarify, the faster
17 people can make honest decisions on their
18 businesses and other places about what is okay to
19 do without getting any approval and what needs
20 approval, and that should lead to a better
21 environment and faster development of things.

22 And then you might have heard EPA proposed
23 just right before your last meeting but didn't

1 publish it until after, their plan to reduce
2 carbon dioxide emissions from power plants, and
3 that's a major issue that we're spending a lot of
4 time on with interested people in how Indiana
5 could possibly meet this rule and what comments
6 that we want to file, you know, to make the whole
7 process a lot better.

8 So, those are three big things on our
9 table.

10 CHAIRMAN GARD: Any questions for the
11 Commissioner from Board members?

12 (No response.)

13 CHAIRMAN GARD: Thank you,
14 Commissioner.

15 Chris Pedersen will give a rulemaking
16 update.

17 MS. PEDERSEN: Hello. My name is
18 Chris Pederson. I'm in the Rules Development
19 Branch. I just want to briefly go over some
20 rules that we anticipate may be coming before you
21 in the near future.

22 The first one is an emergency rule. It's
23 for greenhouse gases, and it's dependent on a

1 court case. It's to address state air permitting
2 requirements under the prevention of significant
3 deterioration in the Title V programs that are
4 related to greenhouse gases, and related to them
5 as far as whether or not they are used to
6 determine if a source is a major source. We are
7 waiting on the final court action on the
8 decision. Once we have that, we'll know the
9 timing of any emergency rule.

10 We also have an adoption, which would be
11 through a Section 8 notice. This is on hazardous
12 waste updates, and it's to incorporate by
13 reference certain recent hazardous waste rules
14 produced by EPA. It's necessary to maintain
15 authorization to administer the hazardous waste
16 program, and IDEM must adopt changes to remain at
17 least as stringent as the federal regulations.

18 The draft rule would include changes for
19 consistency with federal requirements. It also
20 includes some less stringent federal requirements
21 that are now available to states. This is a
22 situation where EPA has lessened their
23 requirements, and so they're allowing states to

1 adopt those. It also includes some technical
2 corrections and some federally approved
3 exclusions.

4 And another rule for preliminary adoption
5 that we hope will be coming forward soon is our
6 SO₂ emission limits. We anticipate right now
7 it'll probably be ready around January of 2015.
8 It revises or adds emission limits to address the
9 state implementation plan requirements for
10 certain sources in counties with townships that
11 are designated as nonattainment with the new
12 one-hour SO₂ standard.

13 The emission limits must demonstrate
14 compliance with the one-hour standard. It
15 removes sources and equipment that are also shut
16 down. The affected areas would include certain
17 townships in Marion County, Morgan County,
18 Daviess County, Pike County and Vigo County.

19 And then in addition, any of the rules
20 that are before you today for preliminary
21 adoption could theoretically be ready for final
22 adoption within the next few months.

23 And that's all I have for you. Do you

1 have any questions?

2 CHAIRMAN GARD: Are there any

3 questions for Chris?

4 (No response.)

5 CHAIRMAN GARD: Thank you, Chris.

6 We have six rulemakings before us today.

7 There will be public hearings prior to

8 consideration for final adoption of Rockport

9 Temporary Alternative Opacity Limit, Underground

10 Storage Tank Delivery Prohibition, and

11 Exceptional Use Waters.

12 There will also be public hearings prior

13 to consideration for preliminary adoption of

14 Stage II Vapor Recovery Systems, Electronic

15 Waste, and Satellite Manure Storage Structures.

16 There will also be a public hearing on rules that

17 do not sunset under IC 13-14-9.5, Rule Expiration

18 Process.

19 And the next thing, I want you to pay

20 special attention to. It's very important for

21 this meeting. Due to the large number of

22 rulemaking actions on today's agenda, we will be

23 placing a five-minute limit on each commenter.

1 Please adhere to this limit so that everyone has
2 the opportunity to address the Board.

3 Also, please do not repeat a previous
4 commentator's statements, but just endorse those
5 statements in your testimony. There will be a
6 timekeeper. Mr. Etzler's going to be the
7 timekeeper. And I would also encourage you to
8 limit your comments to the question at hand, not
9 questions that are outside of the jurisdiction of
10 this Board.

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

18 A written transcript of today's meeting
19 will be made. The transcript and any written
20 submissions will be open for public inspection at
21 the Office of Legal Counsel. Copies may be made
22 for the cost of copying.

23 Will the official reporter of the cause

1 please stand, raise his right hand and state his
2 name?

3 (Reporter sworn.)

4 CHAIRMAN GARD: Thank you.

5 This is a public hearing before the
6 Environmental Rules Board for rules not subject
7 to the sunset provisions under IC 13-14-9.5. In
8 accordance with IC 13-14-9.5-1.1, rules that are
9 exempt from expiration under the law and have
10 been effective for seven years are to be the
11 subject of a public notice asking for comment on
12 any of the rules listed in a public hearing
13 before the Board.

14 A notice for each affected title of the
15 Indiana Administrative Code, Titles 326, 327 and
16 329, is published in the Indiana register with a
17 request for written comments on whether any of
18 the listed rules should be reviewed under the
19 regular rulemaking process at IC 13-14-9.

20 I will now introduce Exhibits A, B and C,
21 the third -- the three notices published in the
22 Indiana Register, into the record of the hearing.

23 Thank you.

1 No written comments were received for any
2 of the rules listed in the notices. Is there
3 anyone who wishes to provide comment to the Board
4 on any of these rules at this time? If so,
5 please specify the exact citation and why you
6 believe the rules should be opened up to the
7 rulemaking process.

8 (No response.)

9 CHAIRMAN GARD: Seeing none, this
10 hearing is concluded.

11 The Board must determine whether, based on
12 comments received, it would be to direct the
13 agency to open a new rulemaking for any of the
14 rules listed as being exempt from the sunset
15 process. If the Board chooses not to ask for a
16 rulemaking, a motion should be made for no
17 further action to be taken on the rules. Is
18 there Board discussion?

19 (No response.)

20 CHAIRMAN GARD: Is there a motion for
21 no further action?

22 DR. NIEMIEC: So moved.

23 CHAIRMAN GARD: Is there a second?

1 MR. RULON: Second.

2 CHAIRMAN GARD: All in favor, say

3 aye.

4 MR. HORN: Aye.

5 MS. ALEXANDROVICH: Aye.

6 MR. CARMICHAEL: Aye.

7 MR. ETZLER: Aye.

8 MR. ANDERSON: Aye.

9 MR. BAUSMAN: Aye.

10 MR. POWDRILL: Aye.

11 MR. CLARK: Aye.

12 MR. METTLER: Aye.

13 DR. NIEMIEC: Aye.

14 MS. FISHER: Aye.

15 MS. BOYDSTON: Aye.

16 MR. RULON: Aye.

17 CHAIRMAN GARD: Aye.

18 Those opposed, say nay.

19 (No response.)

20 CHAIRMAN GARD: The motion has

21 passed.

22 This is a public hearing before the

23 Environmental Rules Board of the State of Indiana

1 concerning final adoption of amendments to the
2 rules at 326 IAC 5, Rockport Temporary
3 Alternative Opacity Limit.

4 I will now introduce Exhibit D, the
5 preliminarily adopted rules, into the record of
6 the hearing.

7 Is there someone from the Department to
8 present the rules? Susan Bem?

9 MS. BEM: My name is Susan Bem, and I
10 work in the Rule Development Branch.

11 This rulemaking is for Indiana Michigan
12 Power coal-fired electric generating station in
13 Rockport, Indiana, also located in Spencer
14 County. Its parent company is American Electric
15 Power, or AEP.

16 AEP has requested a temporary alternative
17 opacity limit, or TAOL, for Units 1 and 2 at its
18 Rockport Generating Station. IDEM is proposing a
19 TAOL that limits the exemption during start-up to
20 two hours or until the flue gas temperature
21 reaches 250 degrees Fahrenheit, whichever occurs
22 first. There is also a similar TAOL for
23 shutdown, but it's limited to 1.5 hours.

1 At preliminary adoption, a few issues were
2 addressed. One was the length of time between
3 the request in 2002 and now. There was a long
4 delay, as it was not until their Title V permit
5 came up for renewal was there a push to get the
6 TAOL SIP approved.

7 Initially, the request was under
8 subsection (e) in Article 5 for power plants that
9 already have a TAOL, and the request was revised
10 to fall under subsection (d), where a SIP
11 revision is required.

12 As the Title V permit worked its way
13 through the appeal process, the TAOL language
14 evolved to further limit the time frame the TAOL
15 could be used for, as the opacity issues improved
16 over the years.

17 Another issue at preliminary adoption was
18 opacity violations at the source. Since
19 preliminary adoption, IDEM did take another look
20 at the COMS, or continuous opacity monitoring
21 system, data at AEP Rockport, and the compliance
22 rate for the 2009-through-2013 time frame
23 is 99.81 percent. About one-third of the

1 reported exceedences were due to the
2 start-up/shutdown events, and IDEM had determined
3 that the opacity exceedences were not significant
4 enough to warrant formal enforcement action.

5 And I could -- one of the other issues was
6 the information used to develop the TAOL.
7 Initially, AEP had put -- in their 2002 request
8 had looked at their COMS data at that time to
9 develop the TAOL, but that was not the
10 information used to develop the most recent TAOL
11 that's in this proposed rule. We used more
12 recent information from 2007 through 2013.

13 Rockport is looking at other steps to
14 control emissions. They are currently installing
15 dry sorbent injection to control sulfur dioxide
16 and mercury. Activated carbon injection has been
17 in use to control mercury for upcoming standards.
18 Both of these controls could reduce opacity.

19 In the modeling for preliminary adoption,
20 IDEM did not address other sources of PM. EPA
21 had given us indication that the changes would be
22 SIP approvable, because they had already approved
23 this type of TAOL for the other power plants in

1 Indiana, and AEP Rockport would have comparable
2 or better dispersion than the other power plants
3 with a taller stack. Since the TAOL is for such
4 a narrow conservatively defined scenario, EPA did
5 not raise any flags in regards to not including
6 the other sources of PM.

7 In more recent discussions with EPA, they
8 did mention that if we wanted to characterize the
9 emissions differently, we could remodel, and we
10 have conducted modeling averaging all of the
11 different emission rates over the 24-hour
12 start-up period versus the maximum emissions as
13 if they were emitting 24/7.

14 For the 24-hour PM_{2.5} standard over a
15 five-year meteorological data time period, the
16 value is .92 micrograms per meter cubed. If you
17 add in a background of 24, the total is 24.92
18 micrograms per meter cubed. The PM_{2.5}24-hour
19 standard is 35 micrograms per meter cubed. This
20 is below the standard when modeling the
21 worst-case emission rate over the whole day, and
22 Spencer County is designated as attainment for
23 PM_{2.5}.

1 While the source may need to use the TAOL
2 in less instances as time goes on, the TAOL is
3 still needed as the ESP cannot be fully engaged
4 until the control device has reached an
5 appropriate temperature. This type of TAOL
6 already exists for similar power plants, and the
7 TAOL for AEP Rockport is more stringent than what
8 exists for the other power plants.

9 The Department requests that the Board
10 final adopt the rule as presented.

11 Thank you.

12 CHAIRMAN GARD: Any questions from
13 the Board for Susan?

14 Yes.

15 MR. POWDRILL: How is this rule
16 impacted by something I read last week that I
17 can't quote, that said EPA was becoming more
18 stringent on start-up/shutdown and maintenance
19 exceedences?

20 MS. BEM: In -- over time, EPA has
21 been revising -- you know, there's lots of
22 different categories for their rules: New source
23 performance standards, maximum achievable control

1 technology standards. And over time, they've
2 been having to go back and revise those standards
3 and make sure it's specifically stated in the
4 rules that they apply during start-up and
5 shutdown.

6 And then, you know, as you have all of
7 these standards apply during start-up and
8 shutdown and not just during normal operating
9 times, you know, that's when you start having
10 trouble complying with the standard, and that's a
11 little bit different than the SIP limits or in
12 our state opacity rules where they already
13 applied in start-up/shutdown. You know, we have
14 them applicable during all time frames, and then
15 this is an exemption for this narrow situation.

16 COMM. EASTERLY: But we might have to
17 come back at some time in the future and give you
18 another rule that meets EPA's new requirements,
19 which aren't fully defined yet.

20 MR. POWDRILL: Okay. So, this rule
21 may be -- may be changed later on, may have to be
22 changed?

23 COMM. EASTERLY: A number of rules

1 may have to, but we'll get there when we get
2 there.

3 MR. POWDRILL: Okay.

4 MS. BEM: Yes, we do have malfunction
5 rules, and sometimes we have exactly what's
6 defined as a malfunction. EPA has some proposed
7 regulations out there to address that also that
8 are somewhat related.

9 MR. POWDRILL: Thank you.

10 CHAIRMAN GARD: Any other questions
11 for Susan?

12 (No response.)

13 CHAIRMAN GARD: Thank you, Susan.

14 MS. BEM: Thank you.

15 CHAIRMAN GARD: We have -- we have
16 one appearance card, Jodi Perras, Sierra Club.

17 MS. PERRAS: Good afternoon, Madam
18 Chair, members of the Board. I am Jodi Perras,
19 Senior Campaign Representative for the Sierra
20 Club's Beyond Coal Campaign here in Indiana. I'm
21 also representing the Sierra Club's Hoosier
22 Chapter. We're a nonprofit environmental
23 organization with 7500 members in Indiana, and a

1 copy of my talking points are being distributed
2 to you all.

3 We remain opposed to the proposed
4 exemption from the opacity standards because
5 opacity is the primary method to measure
6 particulate matter emissions at Rockport. Both
7 short-term and long-term exposure to PM is -- can
8 cause serious health effects, and there are no
9 safe limits. From talking to people at these
10 plants, we know start-up and shutdown times are
11 particularly a problem for people living around
12 them.

13 The proposed exemption has not been shown
14 to be needed or justified, as the Indiana's Clean
15 Air Act SIP requires, and the rule doesn't meet
16 EPA's criteria, in our opinion, and we stand by
17 our comments. There are several reasons for
18 that, the big one being that there has been no
19 demonstration that Rockport cannot meet some kind
20 of opacity limits during start-up and shutdown.

21 Both their decade-old application and
22 IDEM's response to our comments are silent on the
23 question of IDEM needs to require Rockport to try

1 to comply with the existing limits or to show why
2 other steps, such a better maintenance of ESP's,
3 switching to cleaner start-up fuel, et cetera,
4 cannot be taken to achieve compliance. Instead,
5 they simply reiterate that the Rockport plant has
6 exceeded the opacity limits and, therefore, needs
7 an exemption.

8 But the fact they've exceeded the limits
9 doesn't demonstrate that the plant is unable to
10 meet them or to meet some kind of limit. In
11 Pennsylvania and Wisconsin, power plants are
12 required to conduct some kind of performance test
13 to show what they can meet, and then the rules
14 are designed to achieve that. We don't have that
15 here in Indiana. They just get a blanket
16 exemption for a period of time.

17 Exemptions should not be used to create
18 the illusion of compliance. Rather than working
19 to ensure that Rockport complies with these
20 limits, IDEM's proposal is to simply exempt the
21 plant from the limits during start-up and
22 shutdown. But simply exempting them from
23 pollution limits does nothing to ensure that the

1 public health benefits of those limits are being
2 achieved or that pollution is being reduced to
3 the extent practicable.

4 IDEM's statements about the ESP's not
5 being available during start-up and shutdown are
6 erroneous. IDEM claims that they cannot be
7 safely engaged until flue-gas temperature reaches
8 250 degrees, but IDEM's own application, as we
9 read it, makes clear that an ESP can achieve at
10 least 60 to 75 percent opacity removal, even
11 before it is engaged; in other words, before the
12 first ESP field is energized.

13 The simple reality is that I&M can control
14 its opacity emissions even during start-up and
15 shutdown, but they will only do so if IDEM and
16 you, the Board, require them to do so. IDEM
17 continues to rely on stale information. Their
18 application documents from I&M are more than a
19 decade old, and IDEM has failed for require them
20 to update that application or a technical support
21 document from the company.

22 While they state that they have looked at
23 more recent data in COMS, that data simply shows

1 that Rockport continues to exceed opacity
2 standards. There's no evidence that IDEM has
3 evaluated current information regarding why such
4 exceedences occur or why I&M could or could not
5 take steps at Rockport to consistently achieve
6 compliance with opacity limits.

7 So, therefore, the requirements for a TAOL
8 to protect the public from breathing dangerous,
9 unnecessary particle pollution are required by
10 the Clean Air Act and are not optional. I&M has
11 not met these requirements, and we would ask the
12 Board to send this back to the agency and require
13 I&M to make that demonstration and not to be
14 exempt completely during that start-up and
15 shutdown time, but to have to meet some kind of
16 opacity limit that is practicable.

17 I'd be happy to take any questions.

18 CHAIRMAN GARD: Are there any
19 questions for Ms. Perras?

20 MR. ANDERSON: Yes. One of the
21 questions I would have is that haven't you looked
22 at what one proposed alternative would be of
23 cleaner start-up fuel?

1 MS. PERRAS: That could be -- that
2 could be one thing that could be considered, and
3 we would like to see a demonstration of that
4 option being considered.

5 CHAIRMAN GARD: Other questions for
6 Ms. Perras?

7 (No response.)

8 CHAIRMAN GARD: Thank you.

9 MS. PERRAS: Thank you.

10 CHAIRMAN GARD: Is there anyone else
11 from the audience that wishes to make a
12 statement?

13 (No response.)

14 CHAIRMAN GARD: This hearing is
15 concluded.

16 The Board will now consider final adoption
17 of Rockport Temporary Alternative Opacity Limit.
18 Is there any further Board discussion?

19 (No response.)

20 CHAIRMAN GARD: If not, do I hear a
21 motion to finally -- for final adoption of the
22 rule as presented?

23 MR. CARMICHAEL: So moved.

1 CHAIRMAN GARD: Is there a second?

2 MR. HORN: I second the motion.

3 CHAIRMAN GARD: I'll call the roll.

4 Mr. Rulon?

5 MR. RULON: Aye.

6 CHAIRMAN GARD: Mr. Carmichael?

7 MR. CARMICHAEL: Aye.

8 CHAIRMAN GARD: Dr. Alexandrovich?

9 MS. ALEXANDROVICH: Aye.

10 CHAIRMAN GARD: Dr. Niemiec?

11 DR. NIEMIEC: Aye.

12 CHAIRMAN GARD: Mr. Powdrill?

13 MR. POWDRILL: Aye.

14 CHAIRMAN GARD: Mr. Anderson?

15 MR. ANDERSON: No.

16 CHAIRMAN GARD: Mr. Etzler?

17 MR. ETZLER: Yes.

18 CHAIRMAN GARD: Ms. Boydston?

19 MS. BOYDSTON: Yes.

20 CHAIRMAN GARD: Mr. Davidson is

21 absent.

22 Mr. Horn?

23 MR. HORN: Yes.

1 CHAIRMAN GARD: Ms. Fisher?

2 MS. FISHER: Yes.

3 CHAIRMAN GARD: Mr. Mettler?

4 MR. METTLER: Yes.

5 CHAIRMAN GARD: Mr. Bausman?

6 MR. BAUSMAN: Yes.

7 CHAIRMAN GARD: Mr. Clark?

8 MR. CLARK: No.

9 CHAIRMAN GARD: The Chair votes aye.

10 Did I -- is there anybody that I missed?

11 (No response.)

12 CHAIRMAN GARD: Okay. One, two,

13 about, four, five, six, seven -- the rule is

14 adopted twelve to two. Thank you.

15 This is a public hearing before the

16 Environmental Rules Board for the State of

17 Indiana concerning final adoption of amendments

18 to Rules 329 IAC 9-1 and 329 IAC 9-4.5,

19 Underground Storage Tank Delivery Prohibition.

20 I will introduce Exhibit E, the

21 preliminary adopted -- preliminarily adopted

22 rules with IDEM's suggested changes, into the

23 record of the hearing.

1 Is there someone from the Department to
2 present the rule? Lauren Aguilar.

3 MS. AGUILAR: You said that right.
4 That's very exciting.

5 Good afternoon, Chair Gard, members of the
6 Board.

7 Before you today are amendments to the
8 Indiana underground storage tank, or UST, Rules.
9 These are found at 329 IAC. Preliminary adoption
10 of these amendments occurred on June 10th of
11 2014. The UST rules require owners and operators
12 to install and maintain equipment to prevent
13 corrosion, overfills, spills, detect leaks, and
14 meet other performance and upgrade standards.
15 Owners are required to maintain registration of
16 their UST and maintain financial responsibility
17 for corrective action and liability to third
18 parties, including paying annual registration
19 fees.

20 When a UST owner or operator is
21 noncompliant, delivery prohibition, currently
22 Rule 4.5, may be used. The delivery prohibition
23 program is implemented at the approval of EPA and

1 at the discretion of the Commissioner of IDEM.

2 During delivery prohibition, a UST may not
3 receive further delivery of a regulated substance
4 until the UST is brought back into compliance.

5 This rulemaking amends the definitions and
6 the delivery prohibition program to incorporate
7 the 2012 Indiana General Assembly changes at
8 IC 13-23-1-2(c)(9) and IC 13-23-1-4. These
9 changes direct IDEM to fully implement the
10 federal requirements of 42 U.S.C. 6991k.

11 The state statute further instructs that
12 the Commissioner may issue a temporary order with
13 proper notice if it is determined that a UST
14 owner fails to: One, install necessary
15 equipment; two, properly operate the necessary
16 equipment; or three, fail to register or pay
17 annual registration fees. The Commissioner is
18 authorized to carry out these actions prior to
19 the Board's adoption of rules. However, this
20 authorization expires January 1st, 2015.

21 In response to discussion at preliminary
22 adoption, IDEM made the following changes to the
23 rule and considered the following issues:

1 IDEM will identify the ineligible tank in the
2 notice, and it has described this at
3 329 IAC 9-4.5-6(b)(3).

4 IDEM considered including vapor recovery
5 as a mechanism to trigger a red tag; however, the
6 authorizing legislation that I mentioned before,
7 IC 13-23-1-4 at (b)(2), clearly lists the
8 instances where a red tag may be considered, and
9 vapor recovery is not part of this list.

10 However, Stage I vapor recovery requirements at
11 326 IAC 8-4-6(b) address vapor recovery at
12 gasoline dispensing facilities, so this will not
13 go unchecked.

14 IDEM considered including a time period to
15 issue a reclassification letter. However, this
16 would decrease IDEM's flexibility to work with
17 the owner or operator during the reclassification
18 process, where documentation and reinspections
19 may be necessary. IDEM does intend to develop a
20 standard operating procedure, which would outline
21 that under normal operating procedures, and with
22 full and timely cooperation of the owner or
23 operator, IDEM should be able to provide

1 reclassification decisions within five business
2 days.
3 The amendments to 329 IAC 9-1 and 9-4.5
4 before you today will ensure IDEM complies with
5 federal requirements and that the rules continue
6 to comport with Indiana law. Having an approved
7 program benefits that -- benefits the regulated
8 community because they are not subject to both
9 federal regulations and state rules. Complying
10 with federal requirements is also important so
11 that IDEM continues to receive federal funding
12 through Subtitle I of the Solid Waste Disposal
13 Act, which authorizes federal funding to states
14 that have an approved program such as Indiana.

15 The Department requests that the Board
16 final adopt the rule as presented, and has IDEM
17 program staff available should you have any
18 questions.

19 CHAIRMAN GARD: Thank you, Lauren.

20 MS. AGUILAR: Uh-huh.

21 CHAIRMAN GARD: Are there questions
22 for Lauren?

23 (No response.)

1 CHAIRMAN GARD: Thank you. I have no
2 present -- speaker cards. Is there anyone in the
3 audience that cares to speak on this issue?

4 (No response.)

5 CHAIRMAN GARD: This hearing is
6 concluded.

7 The Board will now consider final adoption
8 of the amendments to the Underground Storage Tank
9 Delivery Prohibition Rules. Any further Board
10 discussion?

11 (No response.)

12 CHAIRMAN GARD: Motion -- is there a
13 motion to adopt IDEM's suggested changes?

14 MR. ANDERSON: So moved.

15 CHAIRMAN GARD: Is there a second?

16 MS. ALEXANDROVICH: Second.

17 CHAIRMAN GARD: Mr. Rulon?

18 MR. RULON: Yes.

19 CHAIRMAN GARD: Wait a minute. We've
20 got to go back. This is a voice vote for the
21 suggested changes. Sorry about that.

22 Counsel, am I on track?

23 MS. KING: Yes.

1 CHAIRMAN GARD: Okay. This is -- the
2 motion here was to adopt IDEM's suggested
3 changes.

4 MR. ANDERSON: I move to adopt the
5 changes suggested by IDEM.

6 CHAIRMAN GARD: Is there a second?

7 MR. RULON: Second.

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

10 MR. HORN: Aye.

11 MS. ALEXANDROVICH: Aye.

12 MR. CARMICHAEL: Aye.

13 MR. ETZLER: Aye.

14 MR. ANDERSON: Aye.

15 MR. BAUSMAN: Aye.

16 MR. POWDRILL: Aye.

17 MR. CLARK: Aye.

18 MR. METTLER: Aye.

19 DR. NIEMIEC: Aye.

20 MS. FISHER: Aye.

21 MS. BOYDSTON: Aye.

22 MR. RULON: Aye.

23 CHAIRMAN GARD: Aye.

1 All opposed, say nay.

2 (No response.)

3 CHAIRMAN GARD: Motion passes.

4 Sorry.

5 Motion should be made for final adoption
6 of the rule as amended.

7 MR. ANDERSON: So moved.

8 CHAIRMAN GARD: Is there a second?

9 MS. ALEXANDROVICH: Second.

10 CHAIRMAN GARD: This is roll call.

11 Mr. Rulon?

12 MR. RULON: Yes.

13 CHAIRMAN GARD: Mr. Carmichael?

14 MR. CARMICHAEL: Yes.

15 CHAIRMAN GARD: Dr. Alexandrovich?

16 MS. ALEXANDROVICH: Yes.

17 CHAIRMAN GARD: Dr. Niemiec?

18 DR. NIEMIEC: Yes.

19 CHAIRMAN GARD: Mr. Powdrill?

20 MS. FISHER: Yes.

21 CHAIRMAN GARD: Mr. Anderson?

22 MR. ANDERSON: Yes.

23 CHAIRMAN GARD: Mr. Etzler?

1 MR. ETZLER: Yes.

2 CHAIRMAN GARD: Ms. Boydston?

3 MS. BOYDSTON: Yes.

4 CHAIRMAN GARD: Mr. David -- he's

5 absent.

6 Mr. Horn?

7 MR. HORN: Yes.

8 CHAIRMAN GARD: Ms. Fisher?

9 MS. FISHER: Yes.

10 CHAIRMAN GARD: Mr. Mettler?

11 MR. METTLER: Yes.

12 CHAIRMAN GARD: Mr. Bausman?

13 MR. BAUSMAN: Yes.

14 CHAIRMAN GARD: Mr. Clark?

15 MR. CLARK: Yes.

16 CHAIRMAN GARD: The Chair votes aye.

17 The rule is adopted 14 to 0.

18 This will be a public hearing before the

19 Environmental Rules Board of the State of Indiana

20 concerning final adoption of amendments to rules

21 at 327 IAC 2, 15 and 17 concerning Exceptional

22 Use Waters.

23 I will now introduce Exhibit F, the

1 preliminarily adopted rules with IDEM's suggested
2 changes, into the record of the hearing.

3 Is there someone to represent the
4 Department and to present the rule? MaryAnn
5 Stevens.

6 MS. STEVENS: Good afternoon, members
7 of the Board. I'm MaryAnn Stevens, rule writer
8 with the Office of Legal Counsel, Rules
9 Development Branch.

10 I was here before you at the April Board
11 meeting to present LSA Document No. 13-290, the
12 Special Designations and Exceptional Use Waters
13 Rulemaking, for consideration of preliminary
14 adoption. As I explained then, this rulemaking
15 is a cleanup type rulemaking to bring the
16 administrative rules in Title 327 into adherence
17 with statutes.

18 As a review, the three purposes of this
19 rulemaking include the following: Deletion of
20 327 IAC 2-1.5-18, subsection (e), because
21 requirements of that subsection for IDEM to
22 initiate a special designation rulemaking,
23 including specifying antidegradation

1 implementation procedures for outstanding state
2 resource waters, outstanding national resource
3 waters, and any other newly established
4 designation have been fulfilled through Public
5 Law 140-2000 statute additions at IC 13-18-3-2
6 and through the antidegradation standards and
7 implementation procedures under 327 IAC 2-1.3,
8 which were adopted by the Water Pollution Control
9 Board in 2012.

10 The 2000 General Assembly addressed
11 special designations with the passage of Public
12 Law 140-2000, which provided the factors and
13 process for considering and designating water
14 bodies as outstanding state resource waters or
15 outstanding national resource waters. This
16 rulemaking adds to the administrative rules at
17 327 IAC 2-1-10 and 2-1.5-18 references to the
18 statute provisions at 13-18-3-2 that address
19 special designations of water bodies.

20 A second purpose of this rulemaking is to
21 apply the language of Public Law 78-2009 that
22 stated that exceptional use waters designated by
23 the Board before June 1st, 2009 were to become

1 outstanding state resource waters on June 1st,
2 2009. References to exceptional use waters in
3 this rulemaking before you were either removed or
4 changed to reference outstanding state resource
5 waters in several Articles of Title 327.

6 Since outstanding state resource water is
7 a classification of water established at
8 IC 13-18-3-2, subsection (b) with respect to
9 antidegradation standards, a third purpose of
10 this rulemaking is to remove outstanding state
11 recourse waters from the list of designated uses
12 in 327 IAC 2-1-3 and 327 IAC 2-1.5-5.

13 Additionally, this rulemaking will also
14 correct the list of limited use waters at
15 327 IAC 2-1.5-19, subsection (a), by deleting
16 Hoffman Ditch in St. Joseph County and including
17 it in the list of limited use waters at
18 327 IAC 2-1-11(a). This correction is necessary
19 because Hoffman Ditch in St. Joseph County is in
20 the Kankakee River drainage basin, which is not
21 in the Great Lakes System.

22 All right. You may also remember that at
23 your April meeting, during Board discussion of

1 this rulemaking, Gary Powdrill raised questions
2 concerning the definition of "endangered or
3 threatened species" as it appears in
4 327 IAC 2-1.9 and whether or not that definition
5 should match the definition of the same term in
6 our antidegradation rules. We told Mr. Powdrill
7 we would look at the definition and try to
8 reconcile the two.

9 Our office did a thorough review of every
10 location in Title 327 where that term is used.
11 It was decided to keep the existing definition of
12 "endangered or threatened species" in
13 327 IAC 2-1-9, which references the federal
14 Endangered Species Act. We have amended the
15 definition at 327 IAC 2-1-9 to reference the fact
16 that the definition of "endangered or threatened
17 species" in the antidegradation rule at
18 327 IAC 2-1.3 is different.

19 Martha Clark Mettler put together a more
20 thorough explanation of why that decision was
21 made, and it is attached to the rule information
22 sheet that you received in your packet. If you
23 have any questions about it, Martha is here

1 today, or I can help answer questions as well.

2 CHAIRMAN GARD: Are there any -- are
3 there any questions from the Board?

4 MS. STEVENS: Okay.

5 CHAIRMAN GARD: Thank you.

6 I do not have any speaker cards. Is there
7 anyone else that would like to address the Board?

8 (No response.)

9 CHAIRMAN GARD: The hearing is
10 concluded.

11 The Board will now consider final adoption
12 of amendments to rules related to Exceptional Use
13 Waters. Is there any further Board discussion?

14 (No response.)

15 CHAIRMAN GARD: We need a motion to
16 adopt IDEM's suggested changes.

17 MR. POWDRILL: So moved.

18 CHAIRMAN GARD: Is there a second?

19 MR. CARMICHAEL: Second.

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

22 MR. HORN: Aye.

23 MS. ALEXANDROVICH: Aye.

1 MR. CARMICHAEL: Aye.
2 MR. ETZLER: Aye.
3 MR. ANDERSON: Aye.
4 MR. BAUSMAN: Aye.
5 MR. POWDRILL: Aye.
6 MR. CLARK: Aye.
7 MR. METTLER: Aye.
8 DR. NIEMIEC: Aye.
9 MS. FISHER: Aye.
10 MS. BOYDSTON: Aye.
11 MR. RULON: Aye.
12 CHAIRMAN GARD: Aye.
13 Opposed, nay.
14 (No response.)
15 CHAIRMAN GARD: Motion passes.
16 We need a motion to finally adopt the rule
17 as amended.
18 MR. CARMICHAEL: So moved.
19 CHAIRMAN GARD: Is there a second?
20 MR. RULON: Second.
21 CHAIRMAN GARD: Mr. Rulon?
22 MR. RULON: Yes.
23 CHAIRMAN GARD: Mr. Carmichael?

1 MR. CARMICHAEL: Yes.
2 CHAIRMAN GARD: Dr. Alexandrovich?
3 MS. ALEXANDROVICH: Yes.
4 CHAIRMAN GARD: Dr. Niemiec?
5 DR. NIEMIEC: Yes.
6 CHAIRMAN GARD: Mr. Powdrill?
7 MR. POWDRILL: Yes.
8 CHAIRMAN GARD: Mr. Anderson?
9 MR. ANDERSON: Yes.
10 CHAIRMAN GARD: Mr. Etzler?
11 MR. ETZLER: Yes.
12 CHAIRMAN GARD: Ms. Boydston?
13 MS. BOYDSTON: Yes.
14 CHAIRMAN GARD: Mr. Horn?
15 MR. HORN: Yes.
16 CHAIRMAN GARD: Ms. Fisher?
17 MS. FISHER: Yes.
18 CHAIRMAN GARD: Mr. Mettler?
19 MR. METTLER: Yes.
20 CHAIRMAN GARD: Mr. Bausman?
21 MR. BAUSMAN: Yes.
22 CHAIRMAN GARD: Mr. Clark?
23 MR. CLARK: Yes.

1 CHAIRMAN GARD: And the Chair votes
2 aye. That is -- it passes 14 to 0. The rule is
3 adopted.

4 This is a public hearing before the
5 Environmental Rules Board for the State of
6 Indiana concerning preliminary adoption of
7 amendments to rules at 326 IAC 2 and 326 IAC 8
8 concerning Stage II Vapor Recovery Systems.

9 I will now introduce Exhibit G, the draft
10 rules, into the record of the hearing.

11 Chris Pedersen from the Department will
12 present the rule.

13 MS. PEDERSEN: Hello again. My name
14 is Chris Pederson, with the Rules Development
15 Branch.

16 Section 182(b)(3) of the Clean Air Act
17 requires a Stage II Vapor Recovery System to be
18 used at certain gasoline dispensing facilities
19 located in ozone nonattainment areas formerly
20 classified as serious, severe or extreme.

21 Stage II vapor recovery technology is installed
22 on gas pumps and is designed to control gasoline
23 vapors that can react with sunlight, nitrogen

1 oxides and other volatile organic compounds to
2 form ozone.

3 In 1994, U.S. EPA published onboard
4 refueling vapor recovery standards for capturing
5 gasoline vapor when gasoline-powered vehicles are
6 refueled. By 2006, all new gasoline-powered
7 vehicles with a gross vehicle weight rating of
8 less than 14,000 pounds were equipped with this
9 technology. U.S. EPA estimates that by the end
10 of 2012, more than 71 percent of the vehicles on
11 the road were equipped with onboard refueling
12 vapor recovery technology.

13 Section 202(a)(6) of the Clean Air Act
14 provides U.S. EPA discretionary authority to
15 revise or waive the Stage II requirements if it
16 is determined that the onboard refueling vapor
17 recovery is in widespread use since the two
18 emission control systems are redundant. On
19 May 9th, 2012, U.S. EPA made this determination.

20 Using guidance provided by U.S. EPA, IDEM
21 conducted an emissions inventory analysis to
22 develop a revision to the State Implementation
23 Plan, or SIP, to remove Stage II vapor recovery

1 requirements in the former serious ozone
2 nonattainment areas of Clark and Floyd Counties
3 and severe ozone nonattainment areas of Lake and
4 Porter Counties.

5 IDEM's widespread use analysis determined
6 that emission reductions could still be met if
7 Indiana's Stage II requirements were eliminated
8 in 2016. However, IDEM began phasing the program
9 out in 2013 through a nonrule policy document for
10 new and modified gasoline dispensing facilities.
11 Therefore, it is necessary for Indiana to account
12 for the potential loss in emission reductions
13 from the early removal of the Stage II
14 requirements for the years 2013 through 2015.

15 IDEM has prepared an antibacksliding
16 demonstration that accounts for the potential
17 loss reductions with those achieved through
18 shutdown credits and other programs that are not
19 currently accounted for in the SIP. This
20 demonstration will accompany the rule revision
21 submitted to U.S. EPA to support modification to
22 the SIP.

23 This rulemaking amends 326 IAC 2-11-2,

1 326 IAC 8-4-1, and 326 IAC 8-4-6 to remove the
2 Stage 2 vapor recovery system requirements in
3 Clark, Floyd, Lake and Porter Counties, and to
4 update information for consistency with U.S. EPA
5 guidance and the results of IDEM's analysis that
6 is specific to Indiana.

7 IDEM recommends that the Board
8 preliminarily adopt this proposed rule.

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

11 Yes.

12 MR. POWDRILL: Chris, am I safe in
13 assuming that this does not affect the tanker
14 truck secondary vapor recovery? When the tanker
15 truck dumps his load of gas into the tank, he is
16 supposed to hook up a vapor portal, and that is
17 not changed --

18 MS. PEDERSEN: Correct.

19 MR. POWDRILL: -- by this rule?

20 MS. PEDERSEN: Correct.

21 MR. POWDRILL: Okay.

22 COMM. EASTERLY: That's Stage I.

23 MS. PEDERSEN: Yeah.

1 MR. POWDRILL: Oh, that's Stage I?

2 Okay.

3 CHAIRMAN GARD: Any other questions

4 for Chris?

5 (No response.)

6 CHAIRMAN GARD: Thank you.

7 There are no speaker cards that have been

8 turned in. Does anybody from the audience want

9 to comment?

10 (No response.)

11 CHAIRMAN GARD: Hearing none, this

12 hearing is concluded.

13 Is there Board discussion?

14 (No response.)

15 CHAIRMAN GARD: I need a motion for

16 preliminary adoption of the rule.

17 MR. HORN: So moved.

18 CHAIRMAN GARD: Is there a second?

19 MR. CARMICHAEL: Second.

20 CHAIRMAN GARD: All in favor, say

21 aye.

22 MR. HORN: Aye.

23 MS. ALEXANDROVICH: Aye.

1 MR. CARMICHAEL: Aye.

2 MR. ETZLER: Aye.

3 MR. ANDERSON: Aye.

4 MR. BAUSMAN: Aye.

5 MR. POWDRILL: Aye.

6 MR. CLARK: Aye.

7 MR. METTLER: Aye.

8 DR. NIEMIEC: Aye.

9 MS. FISHER: Aye.

10 MS. BOYDSTON: Aye.

11 MR. RULON: Aye.

12 CHAIRMAN GARD: Aye.

13 Those opposed, nay.

14 (No response.)

15 CHAIRMAN GARD: The rule has been

16 preliminarily adopted.

17 This is a public hearing before the

18 Environmental Rules Board for the State of

19 Indiana concerning preliminary adoption of new

20 rules at 329 IAC 16 concerning Electronic Waste.

21 I will now introduce Exhibit H, the draft

22 rules, into the record of the hearing.

23 Dan Watts will present the rule for the

1 Department.

2 MR. WATTS: Hi. I'm -- I don't think

3 I need that. I'm a bit under the weather, so

4 sorry if I sound a little nasally.

5 Good afternoon, Chairwoman Gard, members

6 of the Board. Dan Watts. I'd like to present

7 LSA Document No. 14-19 for preliminary adoption,

8 which proposes amendments to the Electronic Waste

9 Management Rules at 326 IAC 16.

10 IDEM initiated this rulemaking to offer

11 more compliance flexibility for certain

12 requirements rather than add new requirements to

13 what is currently in the rule, and during the

14 rulemaking process, we also made other updates

15 that would improve the rules. Therefore,

16 regulated entities should not experience any

17 increased burden or costs from this rule.

18 This rule proposes -- this rule proposed

19 for preliminary adoption will do the following:

20 It will add compliance flexibility for container

21 labels, mapping requirements, and financial

22 assurance, including the option to choose from

23 three more financial assurance mechanisms to

1 comply with those requirements;
2 Make the rule more understandable by
3 eliminating confusing, unnecessary and repetitive
4 language;
5 Reorganize portions of the rule for
6 improved clarity, such as the exemption for
7 complying with this rule for small quantity
8 generators and large quantity generators;
9 And update requirements to current
10 conditions in environmental regulation.

11 Representatives from IDEM are available to
12 answer any questions you may have for this
13 rulemaking, and the Department asks that the
14 Board preliminarily adopt this rule as presented.

15 Thank you.

16 CHAIRMAN GARD: Are there any
17 questions for Mr. Watts?

18 MS. ALEXANDROVICH: Yes.

19 What impacts on the environment do these
20 rule changes have?

21 MR. WATTS: The changes aren't going
22 to have any impacts from what currently occurs
23 with electronics waste management in the state.

1 MS. ALEXANDROVICH: Okay.

2 MR. WATTS: I mean if you'd like to
3 learn more about what those are, we have some
4 staff members here that can answer those
5 questions for you.

6 CHAIRMAN GARD: Is that sufficient?

7 MS. ALEXANDROVICH: I think so.

8 CHAIRMAN GARD: Mr. Powdrill?

9 MR. POWDRILL: Dan, just a point.

10 MR. WATTS: Yes.

11 MR. POWDRILL: On page 5,
12 section (1)(B), I believe there's a typo.

13 MR. WATTS: Really?

14 MR. POWDRILL: We don't like typos.

15 COMM. EASTERLY: No, we don't.

16 MR. WATTS: We can make a correction.

17 MR. POWDRILL: The word "changes," I
18 think, should be "changed."

19 MR. WATTS: Okay.

20 MR. POWDRILL: Do you see where I am?

21 MR. WATTS: Page 5?

22 MR. POWDRILL: Page 5 -- from our
23 packet, anyway, it's page 5, and then you go

1 down, you have five items, (1), (2), (3), (4),
2 (5), then you have (e)(1)(B).

3 MR. WATTS: Oh, yeah. Okay. I'll
4 look at it. All right. Thank you.

5 COMM. EASTERLY: We can fix that for
6 final.

7 MR. WATTS: Yeah, we'll fix that for
8 final adoption.

9 CHAIRMAN GARD: Okay. Any other
10 questions for Dan?

11 (No response.)

12 CHAIRMAN GARD: Thank you.
13 There are no speaker cards that have been
14 turned in. Is there anyone in the audience that
15 would wish to comment on this proposed rule?

16 (No response.)

17 CHAIRMAN GARD: Hearing none, the
18 hearing is concluded.

19 Any further Board discussion?

20 (No response.)

21 CHAIRMAN GARD: Is there a motion to
22 preliminarily adopt the rule?

23 MR. ANDERSON: So moved.

1 CHAIRMAN GARD: Is there a second?

2 MR. METTLER: Second.

3 CHAIRMAN GARD: All in favor, say

4 aye.

5 MR. HORN: Aye.

6 MS. ALEXANDROVICH: Aye.

7 MR. CARMICHAEL: Aye.

8 MR. ETZLER: Aye.

9 MR. ANDERSON: Aye.

10 MR. BAUSMAN: Aye.

11 MR. POWDRILL: Aye.

12 MR. CLARK: Aye.

13 MR. METTLER: Aye.

14 DR. NIEMIEC: Aye.

15 MS. FISHER: Aye.

16 MS. BOYDSTON: Aye.

17 MR. RULON: Aye.

18 CHAIRMAN GARD: Aye.

19 Those opposed, nay.

20 (No response.)

21 CHAIRMAN GARD: The rule is

22 preliminarily adopted.

23 This is a public hearing before the

1 Environmental Rules Board for the State of
2 Indiana concerning preliminary adoption of new
3 rules at 327 IAC 20 concerning Satellites Manure
4 Storage Structures.

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

7 Lauren Aguilar from the Department will
8 present the rule.

9 MS. AGUILAR: Good afternoon again,
10 Chairwoman Gard, members of the Board.

11 Indiana statute IC 13-18-10.5 states a
12 person may not, after June 30th, 2011, start:
13 One, construction of a satellite manure
14 structure; or two, expansion of a satellite
15 manure storage structure that increases manure
16 containment capacity without obtaining prior
17 approval of the Department.

18 Indiana statute further defines a
19 satellite manure storage structure, or SMSS for
20 short, as a building, lagoon, pad, pit, pod, or
21 tank that is not located at a livestock or
22 poultry product area, otherwise known as a CFO,
23 and is designed to store at least one million

1 gallons of manure or 5,000 cubic yards of manure.

2 To comport with Indiana statute, IDEM has
3 before you today new rules for satellite manure
4 storage structures to be found at a new article,
5 327 IAC 20. The rules will require owners and
6 operators to meet certain standards for the
7 construction, operation and maintenance of these
8 structures. These standards are based on
9 national engineering standards as well as current
10 standards for similar manure storage structures
11 found at confined feeding operations, which have
12 been regulated since 1971.

13 These new rules before you will ensure
14 IDEM comports with Indiana law. Furthermore,
15 assuring that an SMSS is properly designed,
16 constructed and maintained will reduce the
17 potential of any harm to human health via
18 impaired water quality.

19 Improperly designed, constructed or
20 maintained structures can pose a threat to water
21 quality and human health through spills or
22 excessive seepage of manure that can enter
23 underlying aquifers or surface water and

1 contaminate drinking water supplies or destroy
2 aquatic life.

3 The Department requests that the Board
4 preliminarily adopt these rules as presented, and
5 has IDEM program staff available should you have
6 any questions.

7 Thank you.

8 CHAIRMAN GARD: Are there -- are
9 there questions for Lauren concerning the
10 proposed rule?

11 (No response.)

12 CHAIRMAN GARD: Thank you, Lauren.

13 MS. AGUILAR: Uh-huh.

14 CHAIRMAN GARD: We have a few
15 speakers that have signed up to speak. I will
16 remind you that there is a five-minute limit on
17 testimony.

18 Mr. Bowden Quinn?

19 MR. QUINN: Thank you, Madam Chair,
20 members of the Board. I'm Bowden Quinn. I'm
21 Conservation Director for the Sierra Club,
22 Hoosier Chapter.

23 We submitted comments on the proposed rule

1 and as well signed on to the comments submitted
2 by the Hoosier Environmental Council, and those
3 were distributed to you Monday, I believe, so I
4 hope you've had a chance to review those, so I
5 will not spend a lot of time repeating that.

6 What this basically comes down to is a big
7 disagreement between us and IDEM that these
8 satellite manure structures, which are
9 potentially isolated away from public roads, away
10 from public view, we believe they should have
11 stronger restrictions than a manure storage
12 structure that is on an operating farm.
13 Certainly the people that are working on the farm
14 will be able to supervise and see what's
15 happening in that lagoon that usually members of
16 the public would also be able to observe.

17 We heard a report recently that a kayaker
18 on a river in the eastern part of the state came
19 upon a load of manure right on the side of a
20 river, far from any public road, and if hadn't
21 been for that kayaker, that manure, in a big
22 storm, could have run right into that river. So,
23 we cannot be sure that these satellite manure

1 structures will be carefully scrutinized by the
2 operator, and so we believe that there should be
3 stronger restrictions on these satellite
4 structures than are required for those on
5 confined feeding operations.

6 And some examples of that is we think
7 there should be more free board, rather than two
8 feet, it should be three feet, and a particular
9 issue for me is I do not understand the thinking
10 behind having a 300-foot buffer from a sinkhole,
11 and yet measuring that buffer from the sinkhole
12 itself, when these sinkholes could be acres in
13 circumference.

14 So, that -- it seems to me the buffer
15 should be from the top of the sinkhole.
16 Otherwise, it doesn't matter if it's 300 feet or
17 500 feet, if it's a slope, if that structure
18 goes, if that manure goes, it's straight down
19 into the sinkhole and into the ground water.

20 So, I just ask that the Board consider
21 whether you agree with IDEM's position that there
22 should be no difference between a storage
23 structure that is on an operating farm and one

1 that could be far away from anybody being able to
2 observe it.

3 Thank you very much.

4 CHAIRMAN GARD: Bowden, I have a
5 question. Do we know where that load of manure
6 was from that was found on the banks of the
7 river?

8 MR. QUINN: I don't think we know
9 where it's from. I think they're assuming it
10 came from Ohio, but I don't think we know.

11 CHAIRMAN GARD: So -- so, it didn't
12 come directly from an overflowing lagoon or
13 anything like that?

14 MR. QUINN: I don't believe so.

15 CHAIRMAN GARD: Okay. Thank you.
16 Any -- any questions for Bowden?

17 MR. ANDERSON: I guess a question
18 on -- do you know -- have any examples or know
19 what other states have done, especially about the
20 geologic question, the sinkhole question?

21 MR. QUINN: No, I'm afraid I don't.
22 I haven't researched other states.

23 MR. ANDERSON: I think that would be

1 helpful at some point to see if there's an
2 alternative to your suggestion about the slope
3 being a critical barrier and not the actual
4 sinkhole itself.

5 MR. QUINN: Uh-huh.

6 CHAIRMAN GARD: Are there other
7 questions for Mr. Quinn?

8 (No response.)

9 CHAIRMAN GARD: Thank you.

10 MR. QUINN: Thank you.

11 CHAIRMAN GARD: Steve Peckinpaugh?

12 MR. PECKINPAUGH: Good afternoon. My
13 name is Steve Peckinpaugh, and I am a resident of
14 Henry County, residing with my wife at 4160 West
15 County Road 750 North, Middletown, Indiana.
16 Currently, I am a member of the study committee
17 formed by the county that is working on possible
18 changes to the confined feeding ordinance in
19 Henry County. I am, however, here today
20 representing myself in this matter.

21 From my research into problems associated
22 with confined feeding operations, it has become
23 apparent to me that a strong Board enacting

1 strong rules is necessary to protect all of the
2 citizens of Indiana, and that the proposed rules
3 that are in the ordinance today are too weak.
4 Satellite storage facilities pose the same risk
5 as the feeding operations with respect to
6 Indiana -- Indiana's precious water supply, which
7 is, in my opinion, the key to Indiana's economic
8 future.

9 This is especially true of the ground
10 water resources in rule areas, where we humans
11 consume our water straight from the ground.
12 Therefore, financial security for damage to
13 neighboring wells seems to be a rational
14 companion to the state's existing protection for
15 well depletion by industrial ag operations.

16 Setbacks of a thousand feet from
17 residential and public property lines are also a
18 necessary component of ensuring water quality
19 when it comes to these types of structures, as
20 well as the ability of property owners to use
21 their property as they would be necessary -- or
22 would seem to be necessary for them.

23 Public notice and public hearings on the

1 construction of these facilities is also
2 essential, given that these storage facilities
3 are treated as farm ponds in most county
4 ordinances, allowing their true reason for
5 construction to be hidden from neighbors before
6 they are put to use. In a democracy, it is
7 essential for the public to know these things,
8 which can have an impact on their lives and be
9 able -- and that they be able to articulate their
10 concerns in an open forum such as a hearing.

11 The construction of any structure holding
12 manure must also be banned from flood plains and
13 other areas which may see a seasonable high water
14 table, due to the danger these pose for runoff of
15 the stored manure.

16 In conclusion, I would say this to the
17 Board: Your strong action on this issue will be
18 welcomed by many in the rural areas of Indiana.

19 Thank you again for allowing me to speak
20 today.

21 CHAIRMAN GARD: Thank you.

22 Are there any questions for

23 Mr. Peckinpaugh?

1 (No response.)

2 CHAIRMAN GARD: Thank you.

3 MR. PECKINPAUGH: Thank you.

4 CHAIRMAN GARD: Dave Menzer.

5 MR. MENZER: Good afternoon, Madam

6 Chair, members of the committee. Thank you all

7 for the opportunity to speak today. My name's

8 Dave Menzer, and I'm here representing both the

9 Downstream Project, which is a project of the

10 Citizens Action Coalition Education Fund, as well

11 as my own neighborhood association, which I've

12 chaired now for 12 years. I live here on the

13 northwest side of Indianapolis, at 4928 Coburn

14 Avenue.

15 And I come today -- we've signed onto

16 written comments which have been submitted to you

17 all, which I hope you've had a chance to review,

18 so I will try not to be redundant, for the sake

19 of time. I would like to echo the fact that we

20 feel this rule is grossly inadequate in terms of

21 protecting the public health and our drinking

22 water supplies, particularly the drinking water

23 of rural areas, people that rely on well water.

1 The potential for these satellite manure storage
2 facilities to contaminate ground water, people's
3 drinking water, is real, and it has happened in
4 other states. We saw a disaster in
5 North Carolina probably more than a decade ago,
6 when they had significant flooding, and just in
7 the past month, we saw over in Ohio, with Lake
8 Erie, a toxic algae bloom that essentially
9 threatened and cut off the drinking water supply
10 to more than 400,000 Ohio residents.

11 Right now, Indiana is a dumping ground for
12 waste coming from Ohio. We've seen news stories
13 recently on this issues, and basically what we're
14 doing is we're setting up a rule that may enable
15 Ohio and other states to ship their waste to
16 Indiana and dump on us in much the same way we've
17 experienced out-of-state trash and that whole
18 debate 20-some years ago. And so, we think we
19 need stronger rules here, and the current
20 proposed rule is inadequate.

21 I mentioned I chair my neighborhood
22 association. We organized and formed around
23 pushing to get sewers and getting connected to

1 city sewer. We're on septic systems -- excuse
2 me -- septic systems, they were failing, they
3 were over 50 years old. The City of Indianapolis
4 is under a consent decree by EPA to spend more
5 than three million dollars to clean up those
6 combined sewer overflows.

7 And yet despite the five or six thousand
8 dollars I just paid to connect my house to city
9 sewer and hoping to see those efforts reduce the
10 amount of E. Coli and waste that they have in our
11 waterways throughout the state, we have high
12 E. Coli levels in almost every body of water in
13 the state currently.

14 You know, it seems counterproductive to me
15 for us to, in turn, through this rule, allow a
16 million-gallon-plus storage facility in a flood
17 plain, a flood plain where we've seen, you know,
18 record weather events in recent years. We know
19 that these urban lagoons do fail, they do crack,
20 and during a heavy rain event, there would be
21 nothing to stop them from overflowing.

22 Yes, sir, you have a question?

23 MR. ETZLER: You have one minute.

1 MR. MENZER: Oh, one minute; okay.

2 Well, I'll wrap up then.

3 But basically we think this is
4 counterproductive to, you know, what many urban
5 areas are already doing to try to clean up our
6 waterways. We're inviting out-of-state waste in,
7 and we're very concerned that the rule does not
8 protect the public health.

9 I'll just lastly mention we do believe
10 that there should be good character provisions in
11 the rule, so that if someone has had a history of
12 a bad actor, that should be known; they perhaps
13 should be denied one of these facilities; and
14 they should be licensed, bonded and insured.
15 What's to stop an owner or operator from going
16 bankrupt and walking away? Then we have a mess
17 for the taxpayers to pay for and clean up.

18 With that, I'll -- I think my time's
19 probably up. Thank you, members of the
20 committee, for this chance to --

21 CHAIRMAN GARD: Are there any
22 questions for Mr. Menzer?

23 (No response.)

1 CHAIRMAN GARD: Thank you.

2 MR. MENZER: Thank you.

3 CHAIRMAN GARD: Commissioner, I do
4 have a question. He mentioned the good-character
5 provisions, and I remember we went through
6 developing lots of those a few years ago. Is
7 there anything in -- in any of our statutes that
8 would allow the good-character provisions that we
9 enacted to apply in this case?

10 COMM. EASTERLY: Nancy's the expert.
11 We believe no. In fact, that's in our response
12 to comments, or I think. Good character only
13 applies to very limited things, and she can tell
14 us which ones they are.

15 MS. KING: Thank you, Commissioner.

16 I believe the good character that we
17 were -- had been asked about pertains to the
18 confined feeding operation regulations. Those
19 are specific to the CFO regulations and were not
20 carried over in statute to the satellite manure
21 storage structure authority that was provided to
22 the agency to approve those, and also to the
23 agen -- to the Board to adopt rules on that.

1 That's one of the reasons that good character was
2 not included within these rules.

3 CHAIRMAN GARD: Uh-huh. But there's
4 nothing else in any other --

5 MS. KING: There are no general
6 good-character requirements. The good-character
7 requirements that we do have, related to solid
8 and hazardous waste, are very specific, and --

9 CHAIRMAN GARD: Uh-huh.

10 MS. KING: -- they're specifically
11 laid out in statute, so there are no general
12 requirements for us to -- to require good
13 character as a general, overall rulemaking
14 process without specific statutory authority.

15 CHAIRMAN GARD: Okay.

16 MR. ANDERSON: Would that be the same
17 with financial assurance?

18 COMM. EASTERLY: Yes.

19 MS. KING: I believe that's also the
20 case. Generally when financial assurance is
21 required, it's specifically laid out in statute.
22 I could -- in these -- with these questions, I
23 could also request to talk to the Attorney

1 General's Office to make sure that I'm speaking
2 correctly on that, but that has always been my
3 understanding.

4 CHAIRMAN GARD: Okay. Any other
5 questions?

6 MR. CLARK: I do.

7 CHAIRMAN GARD: Yes.

8 MR. CLARK: Nancy, just to make
9 sure -- I should know this, but to make sure I'm
10 hearing you correctly, that because the enabling
11 legislation, if you will, does not require the
12 good character or financial agility or
13 regulations or --

14 MS. KING: Assurance, yes, uh-huh.

15 MR. CLARK: -- the ability of who
16 would create them, we are prohibited from doing
17 so?

18 MS. KING: We don't have the
19 authority to put them in the rule. That -- when
20 the Attorney General reviews our rules, they look
21 at what the enabling statutes require for the
22 rulemaking. This rulemaking mandate -- or
23 actually it's a "may" in the statute, is broad

1 and general. It does not lay out a list of "you
2 can do this, you can't do that."

3 But in previous instances pertaining to
4 good character, when it was suggested, for
5 example, that that be in the confined feeding
6 operation regulations, the statute had to be
7 amended in order to allow us to do that. We had
8 originally had confined feeding operation
9 regulations prior to that time, and several years
10 ago now -- Sen. Gard, you may be able to speak to
11 when that was -- the good-character requirements
12 were then put into the statute and the Board
13 given authority to put those into the
14 regulations.

15 So, we -- it's not statutorily prohibited
16 that we do it, but we don't have the independent
17 authority to require it in the rule.

18 MR. CLARK: And that's by opinion of
19 the A.G.?

20 MS. KING: That's correct. That was
21 on another matter. I've not specifically spoken
22 to them about this specific matter, but I can
23 inquire about that from them.

1 MR. CLARK: Okay.

2 CHAIRMAN GARD: I think that was
3 about five years ago. It could be six, five or
4 six years ago.

5 MS. KING: Yeah, it's -- yeah,
6 somewhere in that area, I do believe.

7 MR. RULON: I think that you've got
8 to get a new opinion, then, or a pass from
9 the A.G.

10 CHAIRMAN GARD: It would be
11 interesting to know what the --

12 MS. KING: I will inquire and see if
13 I can get --

14 MR. RULON: Particularly if --

15 MS. KING: -- get some more specific
16 information on that.

17 MR. RULON: If enabling legislation
18 in general, as you describe it -- I mean, you
19 know, apparently in a similar instance they said
20 you can't do it. It seems to me that --

21 CHAIRMAN GARD: It doesn't say they
22 can't do it. It just doesn't give them the
23 direct --

1 MR. CLARK: Well, the authority to do
2 it. So -- but if we have general language in the
3 enabling legislation, that seems to me like it
4 might be a signal from the legislators, given
5 some broader authority, that if they had specific
6 provisions in the enabling --

7 CHAIRMAN GARD: I'm not sure that's
8 right. That -- this is actually my legislation
9 that we're doing this today because of.

10 COMM. EASTERLY: Every time the
11 Commissioner tries to make up new requirements,
12 some lawsuit tells me that I need authority.

13 CHAIRMAN GARD: I think, you know --
14 and I might be wrong, but I think to do financial
15 assurance on this might take legislative action
16 first.

17 MS. KING: I would be happy to
18 discuss this with the Attorney General's Office
19 and see if I can get some more specific
20 information, and I'll provide that to you Board
21 members.

22 CHAIRMAN GARD: Uh-huh.
23 Are there any other questions before we

1 move on?

2 MR. RULON: Chairman Gard, we've
3 heard about flood plains two or three times
4 already. I wonder if Christine -- because the
5 way I read the rule, you can't do it without
6 getting special exemptions. I wonder if
7 Christine would address this a little bit about
8 what the rules are about flood plains, what the
9 rule says about flood plains.

10 CHAIRMAN GARD: Would that be Chris
11 or --

12 COMM. EASTERLY: Let's let Bruce do
13 it, not Chris, would be best.

14 MR. RULON: I'm sorry.

15 MR. PALIN: I'm not Christine --

16 (Laughter.)

17 MR. PALIN: -- just for the record.

18 MR. POWDRILL: We noticed.

19 MR. PALIN: I'm Bruce Palin, the
20 Assistant Commissioner of the Office of Land
21 Quality.

22 And you're correct, the way the rule is
23 written requires specific protections to be in

1 place if you're going to construct within a
2 hundred-year flood plain, and to make sure that
3 it doesn't get inundated by a hundred-year flood
4 generally requires at least two feet of
5 construction above the hundred-year flood plain
6 level in order to protect the structure.

7 MR. RULON: Okay. Thank you.

8 CHAIRMAN GARD: Okay. Any other
9 questions before we move on?

10 (No response.)

11 CHAIRMAN GARD: Josh Trenary.

12 MR. TRENARY: Chairwoman Gard,
13 members of the committee, good afternoon. My
14 name is Josh Trenary. I'm with the Indiana Pork
15 Advocacy Coalition.

16 I sent comments on this rule back in May,
17 along with some other organizations. I sent a
18 follow-up yesterday to all of your e-mails, which
19 is getting passed around now. The written copy
20 you see right now had a couple of other
21 organizations sign onto the comments.

22 I also wanted to mention one more
23 organization that I'm representing -- well, in

1 respect to your time today, we're trying to
2 coordinate all of our testimony into one -- one
3 presentation today, so today I'll be speaking on
4 behalf of the Indiana Pork Advocacy Coalition,
5 the Indiana Soybean Alliance, the Indiana Corn
6 Growers Association, Indiana Farm Bureau, and the
7 Indiana Dairy Producers.

8 We thank the Board for consideration of
9 all of our comments that we've submitted during
10 this process. We think it's important to note
11 that farmers and our organizations have supported
12 the regulation of satellite manure structures
13 since the public discussion began on this years
14 ago.

15 Manure is a valuable nutrient for crop
16 production. It's an environmentally safe
17 fertilizer, and it needs to be stored and applied
18 properly, and we recognize that. The use of
19 satellite structures allows crop farmers to
20 obtain and store manure in an environmentally
21 safe manner, where runoff and spills are limited.

22 It gives the crop producer a great degree
23 of flexibility for when they're going to land

1 apply manure, which means it gives livestock
2 producers a great deal of flexibility for selling
3 to other crop farmers so that crop farmers can
4 use this as an alternative to petroleum-based
5 commercially available fertilizers. We believe
6 that these structures are a positive improvement
7 in the management of manure in an engineered and
8 controlled system, and we urge the adoption of
9 this rule.

10 Before we comment specifically on proposed
11 rule language, I want to address some concerns
12 that have been raised this week by some opposed
13 to the use of satellite structures. Contrary to
14 a lot of the statements that have been made,
15 these don't solely apply to structures built for
16 manure coming in from out of state.

17 When we first started talking about
18 satellite structures a few years ago, there were
19 a few that were put in place utilized by Indiana
20 crop farmers to take manure from Indiana farms.
21 Since the discussions began, I know one or two
22 other ones that have been built -- I'm not sure
23 exactly -- but it's by no means something that's

1 trying to lay the groundwork for manure coming in
2 from out of state. If anything, it makes it
3 harder to bring manure in and store it from out
4 of state because it requires prior approval to
5 build a structure like this.

6 Let's see. Many of the concerns that have
7 been raised about specific provisions in the rule
8 have also been raised recently in discussions
9 about the confined feeding operation rules. The
10 CFO rules are based upon scientific standards and
11 engineering practices that are protective of the
12 environment, and IDEM incorporates strict
13 construction standards for manure storage
14 structures into the confined feeding operation
15 rules.

16 So, for consistency, when this discussion
17 started, we have urged from the beginning for
18 IDEM to adopt standards that were identical to
19 the CFO rule for construction of satellite manure
20 storage structures, even though -- and I want to
21 make this clear, that the risk for satellite
22 structures is less since there is no continuous
23 flow of manure to these facilities.

1 This isn't a manure storage structure on
2 the production site of a CFO. It's not directly
3 connected to the manure production of a barn. A
4 producer has a choice to sell the manure, and the
5 crop farmer that's building one of these things
6 has a choice whether or not to put manure in the
7 structure. If the structure is not performing
8 correctly, he doesn't have to haul manure to the
9 structure. It's a much different situation than
10 when one's on the site of a farm.

11 The end result, upon adoption, will be a
12 permitted structure built to the standards of a
13 continuous flow structure in the confined feeding
14 operation rule, although it will have no direct
15 connection to a livestock facility.

16 We want to thank IDEM for its efforts in
17 drafting this proposed rule and considering our
18 concerns as the rule was revised. While there
19 are a few things in the rule that could be
20 slightly revised to make it more clear, there's
21 one provision that still stands out --

22 Yeah. I'm sorry?

23 MR. ETZLER: You've got one minute.

1 MR. TRENARY: One provision that
2 stands out, even after we've reviewed the
3 response to comments. It's about compliance with
4 local zoning laws at 20-4-1(b)(8). Zoning
5 approvals and other state requirements must be
6 dealt with separately and independently from the
7 IDEM approval process. In many cases, the
8 individual won't be able to show compliance with
9 local zoning laws because they won't have yet
10 been through the process. They might be seeking
11 variances or special exceptions from the county,
12 or the county might require that the applicant at
13 the county level get their state approvals before
14 proceeding.

15 To address this concern so that IDEM can
16 still ensure that local approvals are met before
17 construction begins, but to allow a crop farmer
18 looking to build one of the facilities can still
19 get the state approval, show the state approval
20 to the county for that approval process, we
21 suggest a compromise where IDEM could issue
22 approval without documentation that all local
23 zoning laws have been complied with, but with the

1 assurance that they will be.

2 In 20-5-7, a requirement could be added
3 that notice prior to construction should -- could
4 include documentation that all local zoning
5 requirements have been met. An applicant that's
6 got its approval that wants to build a facility
7 has to notify IDEM two days ahead of
8 construction. Include a requirement in that
9 provision saying that -- to provide documentation
10 that all local approvals have been met at that
11 time. That would take care of our -- of the
12 timing issue on our end, and IDEM would still be
13 able to guarantee that local approval's been met
14 before they break ground.

15 That's all I have for you today. Thanks
16 for considering my comments. I appreciate your
17 time.

18 CHAIRMAN GARD: Are there questions
19 for Josh?

20 (No response.)

21 CHAIRMAN GARD: Thank you.

22 MR. TRENARY: Thank you.

23 MR. CLARK: Chairman Gard, if I could

1 just add --

2 CHAIRMAN GARD: Yes.

3 MR. CLARK: -- the suggestion at the
4 end of the presentation with regard to dealing
5 with the zoning requirements is a common-sense
6 approach.

7 CHAIRMAN GARD: Thank you.

8 Kim Ferraro?

9 MS. FERRARO: Thank you, Madam
10 Chairman, members of the Board. My name is Kim
11 Ferraro. I'm staff attorney and Director of
12 Water Policy at the Hoosier Environmental
13 Council.

14 We did submit public comments to IDEM over
15 the summer. I think those have been distributed
16 to you. I believe I e-mailed also those comments
17 to you over the last couple of days, and I hope
18 that you had an opportunity to review those. I
19 did prepare a presentation that Bowden is passing
20 out. It's going to be more than five minutes, so
21 I will cut it really short and just highlight
22 some of the things that I think are critical in
23 the rule that need to be addressed by the members

1 of the Board.

2 Specifically, two things that I'll start
3 off with that were raised by other comments is
4 the good-character provision and the financial
5 assurance provision, and also the issue of
6 whether or not these facilities can be located in
7 karst terrain, sandy soils, et cetera, and what
8 the rule specifically says about that, which we
9 believe should be changed.

10 The imple -- with respect to the
11 good-character and financial assurance issues, I
12 think that it is prudent that the Board is
13 concerned about that. If you look at the
14 implementing legislation, it is very broad and
15 general. It gives IDEM the discretion with
16 respect to whether or not to implement these
17 rules. We're happy that IDEM is doing the
18 rulemaking. It's certainly necessary.

19 Given that broad discretion and broad
20 latitude, there is absolutely no prohibition
21 within the implementing legislation that would
22 prevent a good-character provision. In fact, all
23 throughout this rule you see all sorts of things

1 that would impose what could be argued as takings
2 or property infringements, permitting
3 requirements, certifications, et cetera, that are
4 not in any way addressed in the implementing
5 legislation but are nevertheless in this rule.

6 So, in my humble attorney opinion, I don't
7 see that there would be any reason why good
8 character and financial assurance could not be
9 included, but I'm certainly glad that further
10 investigation and a question to the Attorney
11 General is being considered on those points.

12 Secondly, with respect to what the rule --
13 the proposed rule says with respect to flood
14 plains in karst terrains, et cetera, that can be
15 found in Section 5 of the proposed rule, under
16 design and construction. It's 327 IAC 20-5-1,
17 and I'm sorry, I guess it was Mr. Mettler, you
18 pointed out -- maybe I'm wrong. Mr. Clark, you
19 pointed out that Section 1 does say that a CEMS
20 must not be located except as provided in
21 subsection (b) in karst terrain or in
22 hundred-year flood plains except as provided in
23 subsection (c).

1 Well, those subsections then go on to say
2 that the Commissioner may approve location of
3 CEMS in those very sensitive areas, just with the
4 additional information being provided by the
5 applicant about various site-specific conditions.

6 While that's great, it is not a
7 bright-line prohibition against constructing and
8 allowing millions of gallons,
9 football-field-sized lagoons, in these very
10 sensitive areas known to have direct contact with
11 ground water and surface waters, and it's, quite
12 frankly, an unconscionable disregard for
13 environment and public health, for people who
14 live in rural communities and rely on well water
15 for their drinking water.

16 So, I really hope that this provision in
17 particular gets a hard look by members of the
18 Board in a way that is tightened, that makes this
19 very clear that we are not going to allow these
20 sorts of facilities to be constructed in these
21 sensitive areas.

22 So, turning to my presentation, and I,
23 again, am not going to go through the whole

1 thing, but if you have time, what this does is it
2 highlights all of the comments and puts in
3 pictures, it gives a little context about what
4 we're talking about here, and so I hope that it
5 is useful to members of the Board when you're
6 considering the very specifics of this rule.

7 One, on page one, this is the Stated
8 Purpose of the Rule, which is a great purpose.
9 It's to prevent excessive seepage into aquifers
10 and surface water, and contaminating drinking
11 water. That is quite reasonable when you go to
12 the next page and see what these things look
13 like. That's what in excess of a million gallons
14 of liquid manure looks like.

15 In manure -- one minute; okay. So, this
16 is going to make the distinction for you as well.
17 Go to page three, the definition of manure, which
18 is adopted in the proposed rule through the CFO
19 rule, is not just animal poop. It's also parlor
20 wash water, it is old drinking water, it is raw
21 milk, it's blood, it's afterbirth, it's
22 detergents. It is all kinds of stuff that is a
23 lot more harmful than just even human waste.

1 We also know that manure can be 150 -- I'm
2 sorry -- 110 times more concentrated and polluted
3 than human waste, and we would never consider
4 allowing human waste to be stored and managed in
5 this way.

6 So, I know that I've wasted all of my time
7 and I've not gotten to any of the pages in this
8 presentation, but I hope that I've highlighted
9 some of our primary concerns. Towards the end,
10 we also -- I would also like the Board to
11 consider some of the permitting specifics that
12 would take into account that there are multiple
13 users of a CEMS, not just the owner-applicant,
14 and we should be requiring more information about
15 those users as well as allowing -- or requiring
16 mandatory public notice and comment for folks who
17 would be impacted.

18 Thank you.

19 CHAIRMAN GARD: Are there any
20 questions for Ms. Ferraro?

21 (No response.)

22 CHAIRMAN GARD: Okay. Thank you.

23 That is all of the people that signed up

1 to speak. Is there anyone in the audience that
2 did not sign a presentation form that would wish
3 to comment?

4 Yes. Introduce yourself and tell who you
5 represent.

6 MR. MITCH: My name is Charles Mitch.
7 I'm a resident of Bartholomew County. I live at
8 3210 Grove, G r o v e, Parkway in Columbus,
9 Indiana.

10 I also want to note that I am involved as
11 an unpaid volunteer leader with the local Sierra
12 Club down in that area, and partly with that
13 involvement, I'm concerned about issues of clean
14 air, clean water, healthy soil, which is what
15 prompts me to take interest in the proceedings
16 today. And I want to thank the Chairman and
17 thank the Board for allowing me to briefly make
18 some comments.

19 As I look at the previous record that was
20 made available from the proceedings so far, one
21 thing that I wanted to try and understand better
22 and comment on is the distinctions that are being
23 made in the statutory authority of IDEM in regard

1 to this rule. I see in several places there are
2 some distinctions being made that's already come
3 up today with regard to the good-character
4 provision and the -- under Indiana Code 13-15 is
5 what the Department so far has been citing as its
6 authority regarding permitting.

7 As I understand, this just regards
8 permitting for emissions and control and disposal
9 of pollutants and waste. I think that's
10 relevant, because in some cases the manure may
11 well be a pollutant and a waste and a harmful
12 toxic substance, but in other cases, clearly the
13 manure is being stored for actual application on
14 the fields, and in that case I think it is
15 appropriate and it should be considered statutory
16 authority as part of this rulemaking of the
17 sections of 13-18-10, the control of confined
18 feeding operations.

19 I think there's a number of -- I've
20 already heard, it's encouraging -- it's
21 encouraging that there is going to be some review
22 with the Attorney General's Office regarding that
23 statutory authority. I think that goes broader

1 than just the good-character clauses. I think
2 that the good-character clauses are important.
3 There are also other aspects concerning
4 manure testing. There's no provisions that I saw
5 in the proposed rule here regarding manure
6 testing that is required under 13-18-10, that is
7 needed for establishing proper agronomic rates of
8 application, so I think that, in itself, is a
9 good example why statutory authority under
10 13-18-10 and implementation -- excuse me --
11 implementation needs to be brought into this
12 rule. 13-18-10 also has more stringent
13 requirements. It's quite specific about not
14 storing manure in a hundred-year flood plain.
15 So, it -- in a variety of reasons, it's
16 unclear why there should be weaker rules for a
17 satellite storage manure system, which is what we
18 would have with the rule as proposed today, than
19 we would get under -- under authority from
20 13-8-10 -- 18-10. So, for all of those reasons
21 it needs to be brought in.
22 I'd also cite just a matter of simple
23 logic. I'm not a lawyer. I don't know where

1 these numbers come from, but since the statute
2 for -- the statute behind this rulemaking is
3 13-18-10.5. That sounds like 13-18-10 ought to
4 be involved, so it's a mystery to me why the
5 13-15 is the authority, not 13-18-10. So, I
6 would urge the Board to resolve that, to bring in
7 13-18-10, or to explain -- provide an explanation
8 why that's not part of this.

9 I just want to wrap up, deal with another
10 point. We've heard some comments about the
11 financial responsibility. It's not clear how to
12 bring in statutory authority for that. I think
13 it's appropriate. It should be there. I know in
14 the public notice here, there was a request for
15 comments on the financial, the fiscal impacts of
16 construction.

17 And I think as part of that, it should
18 also be considered what would be the fiscal
19 impacts of cleaning up spills in the event that
20 this rule is not implemented. So, I think that's
21 another way of bringing in fiscal concerns, that
22 there may well be impacts there, a financial
23 impact on the state, of having to clean up messes

1 if we don't have stringent enough rules.

2 And then with that, I'll stop. Thank you.

3 CHAIRMAN GARD: Thank you.

4 Are there any questions for the witness?

5 (No response.)

6 CHAIRMAN GARD: Thank you. Is there

7 anyone else that wants to speak to the proposed

8 rule?

9 (No response.)

10 CHAIRMAN GARD: Okay. Is there any

11 Board discussion concerning the proposed rule?

12 (No response.)

13 CHAIRMAN GARD: I have -- before we

14 go on, I have a couple of questions that I

15 just -- I think I know the answer to. I think

16 there are some others that may have some of the

17 same questions, but does anybody know exactly how

18 many off-site manure storage lagoons we have? I

19 keep hearing two, then I hear three. Is it --

20 MR. PALIN: All answers are correct.

21 (Laughter.)

22 MR. PALIN: There are -- there are

23 two facilities that we are aware of.

1 CHAIRMAN GARD: Uh-huh.

2 MR. PALIN: We do not have -- and I
3 believe they were both constructed actually
4 before the statute was changed to require
5 approval for those, so we do not have the
6 specifications to know exactly how large they
7 were or how they were constructed, but --

8 CHAIRMAN GARD: Uh-huh.

9 MR. PALIN: -- there are two rather
10 sizable lagoons that were kind of the ones that
11 prompted the need for -- to fill the gap in the
12 statute to regulate these. There is a third
13 facility that was constructed, but it was to hold
14 manure from an already existing confined --

15 CHAIRMAN GARD: Uh-huh.

16 MR. PALIN: -- feeding operation, and
17 so we notified them we considered that an
18 expansion of their existing operation and not a
19 satellite manure storage structure, which is one
20 of the clarifications that's in the rule, that if
21 you're a confined feeding operation and you're
22 building one of these in a different location,
23 it's still a part of your operation and has to be

1 permitted under those regulations as opposed to
2 the satellite manure regulations.

3 CHAIRMAN GARD: Uh-huh. Now, the
4 existing ones, assuming this rule or a more
5 strict or a less strict one -- assuming something
6 is adopted into rulemaking, will those existing
7 ones then have to comply with that, or are they
8 grandfathered out?

9 MR. PALIN: That's --

10 CHAIRMAN GARD: As far as the
11 management of those lagoons, wouldn't they fall
12 under the new rules?

13 MR. PALIN: The rule primarily deals
14 with the construct -- design and construction.

15 CHAIRMAN GARD: Uh-huh.

16 MR. PALIN: There are --

17 CHAIRMAN GARD: But it also --

18 MR. PALIN: -- a few operational
19 things in there.

20 CHAIRMAN GARD: Yeah, it says
21 operational.

22 MR. PALIN: Right. That's a good
23 legal question that I may have to turn to one of

1 our attorneys as to whether we can bring those
2 existing facilities in, and I don't know if we
3 have to bring --

4 MS. KING: We can.

5 MR. PALIN: We can?

6 MS. KING: Yes.

7 MR. PALIN: Okay.

8 Yes, we can.

9 (Laughter.)

10 CHAIRMAN GARD: Yes, you can what;
11 bring in --

12 MR. PALIN: We can -- as far as the
13 operational requirements, they may be
14 grandfathered for the construction issues or
15 design or setback types of issues, but for
16 ongoing operational requirements, apparently we
17 can bring those in.

18 CHAIRMAN GARD: Well, what if -- what
19 if they present themselves with a real structural
20 flaw? What authority would IDEM have then as far
21 as letting them continue the operation, making
22 them retrofit their structure?

23 MR. PALIN: It would probably depend

1 on the circumstances. I mean if it was something
2 that we thought represented an imminent threat to
3 have a release, I think that we probably could
4 address that through some of our statutory
5 authorities.

6 CHAIRMAN GARD: Uh-huh.

7 MR. PALIN: But I think we'd have to
8 be able to demonstrate that they represented that
9 type of a threat.

10 CHAIRMAN GARD: Yes.

11 MR. PALIN: I don't think we could
12 just go back and say, "Well, you've got to
13 reconstruct." Because we don't have the
14 specifications of how it was constructed, I don't
15 think we can actually go back and make them
16 reconstruct it.

17 CHAIRMAN GARD: Yeah. You know -- I
18 guess, you know, my concern in this -- and we got
19 into this years ago with confined feeding -- if
20 there's somebody that really has a deficient
21 structure, it just doesn't seem right that they
22 can continue to operate that structure, whereas
23 the new structures now have much enhanced

1 requirements.

2 MR. PALIN: Yes. And I can think of
3 at least one example of a confined feeding
4 operation where we had that set of circumstances.

5 CHAIRMAN GARD: Right.

6 MR. PALIN: And as a deterioration
7 [sic] and a concern that there would be a
8 disastrous release because it wasn't being
9 maintained properly --

10 CHAIRMAN GARD: Uh-huh.

11 MR. PALIN: -- and we're able to take
12 actions on that.

13 CHAIRMAN GARD: Uh-huh. These
14 structures, primarily, do -- the existing ones,
15 do they serve a confined feeding operation near
16 them, or their own, or -- I know --

17 MR. PALIN: I.

18 CHAIRMAN GARD: -- we do get some out
19 of state, and unfortunately, interstate commerce
20 allows that.

21 MR. PALIN: Yes.

22 CHAIRMAN GARD: Do you know the
23 source of the --

1 MR. PALIN: I don't know
2 specifically. My understanding is they're
3 receiving it from multiple sources of manure
4 generation. Some of them may be regulated CFO's,
5 some of them may be smaller than CFO's and not
6 regulated by us at all. And the out-of-state
7 waste or out-of-state manure issue has really
8 been related to solid manure as opposed --

9 CHAIRMAN GARD: Right.

10 MR. PALIN: -- to liquids.

11 CHAIRMAN GARD: Uh-huh.

12 MR. PALIN: And the way that the
13 rules are written, the way the statute gave us
14 authority, it has to be over 5,000 cubic yards or
15 more, and many of the types of facilities that
16 we've investigated have been just much smaller
17 than that.

18 CHAIRMAN GARD: Uh-huh. I know with
19 out-of-state solid waste, there are affidavits
20 that have to be submitted and waste
21 characterization and some of that, I think, to
22 some degree. I mean at least there are
23 affidavits on the source and so forth, aren't

1 there?

2 MR. PALIN: There is record keeping

3 that's required at the receiving facilities on

4 where that waste came from, yes.

5 CHAIRMAN GARD: Is anything like that

6 in play for this kind of waste?

7 MR. PALIN: We've not included that

8 in these regulations as far as any reporting of

9 sources of --

10 CHAIRMAN GARD: Uh-huh.

11 MR. PALIN: -- manures coming into

12 the facilities. That's not been a part of this.

13 CHAIRMAN GARD: I don't think that's

14 a bad idea myself, but at least it lets you know

15 whether it's in state or out state and -- you

16 know.

17 MR. PALIN: Right.

18 CHAIRMAN GARD: I mean we hear about

19 these problems, but we really don't have any idea

20 how big the problem is, or if it's just a

21 talked-about problem that really isn't a problem.

22 MR. PALIN: Well, and one of the

23 issues I know with the out-of-state manure coming

1 in as solids got addressed when the State

2 Chemist's Office --

3 CHAIRMAN GARD: Right.

4 MR. PALIN: -- was given authority to

5 do rules to regulate land application of manure.

6 CHAIRMAN GARD: Uh-huh.

7 MR. PALIN: And so, now they actually

8 have been involved with -- and actually, I think

9 the one example that was given of the manure on

10 the banks of the river, when it was brought to

11 their attention, they got the material relocated.

12 CHAIRMAN GARD: Uh-huh.

13 MR. PALIN: Because it fell under

14 their requirements, it was from an out-of-state

15 CFO, which is not regulated under our

16 regulations, but it is regulated with theirs as

17 far as the proper application of that manure.

18 CHAIRMAN GARD: Uh-huh. Right.

19 Okay. I think that's all I have.

20 Does anybody else have any questions?

21 Yes, Dr. Alexandrovich.

22 MS. ALEXANDROVICH: Yeah. I'm just

23 wondering why the possibility of building in a

1 hundred-year flood plain or karst got into the
2 rule in the first place.

3 MR. PALIN: Uh-huh. Essentially
4 everything that's in this rule is identical to
5 what's in the existing confined feeding operation
6 rules.

7 MS. ALEXANDROVICH: Okay.

8 MR. PALIN: And there's already
9 allowances in the CFO rules for siting in those
10 type of areas.

11 (Dr. Niemiec departed.)

12 MR. PALIN: However, it does require
13 additional information be provided and additional
14 consideration on the part of the agency in
15 reviewing those and making sure that there are
16 the protections put in place to prevent releases
17 to those more sensitive environmental areas.

18 MS. ALEXANDROVICH: My other question
19 has to do with the maintenance, "The operator
20 shall inspect the SMSS for compliance one time
21 each month." That does seem a little bit
22 infrequent --

23 MR. PALIN: Uh-huh.

1 MS. ALEXANDROVICH: -- not
2 necessarily because of failure of the facility,
3 but, you know, there's a tampering that could
4 occur. Did that come from the CAFO rule as well,
5 the once-a-month inspections?

6 MR. PALIN: No, actually the CFO rule
7 requires a weekly --

8 MS. ALEXANDROVICH: Weekly?

9 MR. PALIN: -- inspection, and the
10 reasoning, I think, for making it less frequent
11 for these types of facilities was alluded to in
12 earlier comments, in that the CFO's are often
13 connected to the manure production, so the animal
14 production is going directly into the unit, so
15 you have -- constantly having manure added to the
16 storage unit at the facilities.

17 The satellite facilities, they have a
18 great deal of control over when they add manure
19 to it, that are there adding the manure and
20 making sure that they're not getting above their
21 free board levels, and that essentially the types
22 of issues or concerns you have with maintaining
23 the stability is making sure that trees aren't

1 growing up in the berms, that they're being mowed
2 and things of that nature, that a one-month
3 frequency seemed to be adequate to ensure that
4 was being taken care of. So, that was the
5 reasoning behind that.

6 MS. ALEXANDROVICH: Maybe we could
7 possibly add language that at least once a month
8 and any time an operator is on-site, if not more
9 frequently, to inspect -- you know, do a
10 maintenance inspection.

11 CHAIRMAN GARD: Okay.

12 MS. ALEXANDROVICH: It seems like one
13 month -- once a month is maybe -- you know, we
14 have security people 24/7 everywhere else. So,
15 that's my comments.

16 (Dr. Niemiec returned.)

17 CHAIRMAN GARD: Any other questions,
18 comments, from Board members?

19 DR. NIEMIEC: I do have one.

20 CHAIRMAN GARD: Yes.

21 DR. NIEMIEC: One quick question is:
22 Can Bruce or another expert from IDEM explain --
23 basically briefly compare and contrast how these

1 are handled as far as the rules and how those
2 structures on a CAFO or CFO are handled?
3 Basically just the highlights of the differences,
4 and then the likelihood that the differences will
5 diverge even more over time.

6 CHAIRMAN GARD: Uh-huh.

7 Bruce?

8 MR. PALIN: As far as the
9 construction and design requirements, they're
10 identical. The -- as far as the permitting, I
11 believe we've incorporated the same type of
12 public notice requirements into these rules as
13 applied to the CFO's. So, up through the
14 construction -- or design, approval and
15 construction of the facilities, it's identical to
16 the confined feeding operation requirements.

17 Where there is -- where it diverges as far
18 as the similarities is in more the operation.
19 CFO's have records they have to maintain for land
20 application of their manure, and records that
21 they maintain to show they have adequate acreage
22 for land applying the manure they generate. The
23 satellite manure facilities are not -- do not

1 have that type of requirement placed on them.
2 The -- there's a marketing and
3 distribution aspect or allowance under the CFO
4 rules that if you provide your manure to someone
5 else, then that CFO that generated it is no
6 longer responsible for keeping records of how
7 that manure is land applied.

8 And so, it was kind of a similar thought
9 process that these satellite manures are
10 receiving manures from multiple operations that
11 are no longer then responsible for that manure,
12 and that the application or marketing of that
13 material is then not subject to the same kind of
14 record keeping, and the inspections, I guess, is
15 another good example where there is a difference.

16 DR. NIEMIEC: Okay. Related to that,
17 under 327 IAC 20-1-1, section (1)(c), my question
18 is whether this is considered ambiguous as
19 written, because it states that if the owner or
20 operator of a regulated CAFO or CFO deposits any
21 manure from their own CAFO or CFO to a storage
22 structure also under their control shall not be
23 considered an SMSS.

1 Now, possibly the intent of this is that
2 if that is the sole source of that manure, that
3 might be what this is intended to state.
4 However, the way it's written, it looks as though
5 as long as they deposit any manure, it will be
6 considered under their operations, even if they
7 accept manure from multiple other sources.

8 So, perhaps the question is: Does this
9 need to be restated that if the manure in a
10 structure is from their operation, it shall be
11 considered part of their operation, as opposed to
12 stating whether any manure in there comes from
13 them?

14 MR. PALIN: The intent with that
15 clarification was that if you're a CFO and you're
16 going to construct -- or own and construct a
17 satellite manure facility that's going be for the
18 use from your facility, then that's an expansion
19 of your confined feeding operation, and it has to
20 be permitted under those CFO rules.

21 DR. NIEMIEC: Okay.

22 MR. PALIN: We have situations where
23 third parties who do not own a CFO but may

1 build -- a crop farmer, for example, who may
2 build a storage unit on their property to receive
3 from a single or multiple confined feeding
4 operations, and once that -- if they're a third
5 party and not connected to the CFO, then that's
6 where these rules would come in, to apply to
7 those.

8 So, we're trying to clarify if it was --
9 whether it was an expansion of an existing CFO
10 operation, and it really goes to the ownership
11 and operation of that lagoon, kind of determines
12 is it a satellite manure structure, because that
13 person's not associated with or not the same
14 individual that has the CFO, or is it an
15 expansion of a CFO because it is the same person
16 that owns and operates that satellite manure --

17 DR. NIEMIEC: And that's because --
18 you're stating that if it is considered part of
19 the CFO operation, the requirements are generally
20 a bit more stringent, including following
21 inspections and application and so forth?

22 MR. PALIN: Then they'd be under the
23 CFO rules, and everything under those rules would

1 apply.

2 DR. NIEMIEC: Okay. Thank you.

3 MR. POWDRILL: To follow up on that
4 question, then, if a CFO owner builds one of
5 these -- I can't call it a satellite because it
6 isn't, it's a continuation of his process.

7 MR. PALIN: Right.

8 MR. POWDRILL: Can he then accept
9 manure from other sources?

10 MR. PALIN: He can, yes.

11 MR. POWDRILL: Okay.

12 MR. PALIN: But he would be permitted
13 under his CFO permit --

14 DR. NIEMIEC: Yes.

15 MR. PALIN: -- because he is -- it is
16 an expansion of his facility, but if he wanted to
17 add, he could do that on his own farm now. If he
18 has a lagoon for his manure and he wanted to
19 bring somebody else's manure and add to it, he
20 could do that, and -- but he'd still be subject
21 to the CFO regulations.

22 MR. POWDRILL: Okay.

23 COMM. EASTERLY: I want to go back --

1 MR. POWDRILL: That was my question.

2 COMM. EASTERLY: -- and amplify that.

3 If they're not under our rule, they're pretty

4 much under the State Chemist's manure applica --

5 well, actually it's nutrient application rules.

6 It's not just manure, it's all fertilizers. So,

7 one or the other, they're regulated on that.

8 MR. RULON: Chairman Gard, I have

9 just one other question.

10 CHAIRMAN GARD: Yes.

11 MR. RULON: There are two or three

12 pretty good sized lagoons that have been built as

13 part of co-generation facilities, where they're

14 generating electricity.

15 MR. PALIN: Right.

16 MR. RULON: And the byproducts become

17 actually also fertilizer, but they have manure --

18 they're a mixed source.

19 MR. PALIN: Right.

20 MR. RULON: There are all kinds of

21 stuff in there to make that work. Would those

22 facilities be impacted by -- or covered by this,

23 or are they still just going to be out there

1 floating in the wind?

2 MR. PALIN: Actually, they would be
3 covered under a different rule that this Board
4 passed, the -- for the biomass registration
5 program.

6 MR. RULON: Okay.

7 MR. PALIN: And so, we do have a
8 couple of facilities that do have those types of
9 storage facilities, but they're regulated under a
10 different solid -- under our solid waste
11 regulations, we have a registration program for
12 biomass digesters, and those are covered under
13 those and would not be covered by this.

14 MR. RULON: Okay. The technical
15 requirements are pretty similar?

16 MR. PALIN: Pretty much. It's the
17 same staff I have reviewing all of it, so it's --

18 MR. RULON: Yeah.

19 MR. PALIN: -- the same -- pretty
20 much the same requirements apply.

21 MR. RULON: Okay.

22 CHAIRMAN GARD: Do you currently have
23 any pending applications?

1 MR. PALIN: We -- no, not that I'm
2 aware of.

3 CHAIRMAN GARD: Okay.

4 MR. PALIN: We don't have any pending
5 applications.

6 CHAIRMAN GARD: Are there -- yes.

7 MR. METTLER: I have a few questions.
8 Along that line, do you foresee more of these
9 coming along?

10 MR. PALIN: The possibility exists.
11 We haven't heard a great deal of clamor of people
12 wanting to construct these, but it does become a
13 way to manage manure, particularly with some of
14 the other regulations we've applied to be more
15 stringent on the application to frozen and
16 snow-covered ground. Having a storage unit like
17 this to take the manure to, to be able to store
18 it in and not have to apply it becomes kind of an
19 attractive alternative, but we've not heard a
20 great deal of clamor for building these.

21 MR. METTLER: And then are any of
22 those existing ones in karst areas or a floodway?

23 MR. PALIN: No, not that I'm aware

1 of.

2 MR. METTLER: And would you see a
3 problem if this rule had stricter setbacks than
4 the CFO rules?

5 MR. PALIN: It'd just be an
6 inconsistency situation, but as far as from my
7 perspective, no, I don't.

8 MR. METTLER: Right. I mean it's a
9 different kind of a satellite facility. And then
10 lastly, just knowing what kind of setbacks sewage
11 treatment lagoons have, which is this, and I read
12 IDEM's comment -- or a response to a comment
13 related to that, and I didn't know if you could
14 expand on that, because it seems to me, and also
15 based on what Ms. Ferraro said, that there could
16 be a case for --

17 MR. PALIN: Uh-huh.

18 MR. METTLER: -- a similar setback,
19 so it's pretty good.

20 MR. PALIN: I mean essentially we --
21 the setbacks that we have in the CFO rules -- and
22 the CFO program started back in the mid '70's,
23 and granted, there's been rule revisions and some

1 changes to some of the setback requirements, but
2 our perspective was that these essentially are
3 the same types of lagoons that we would permit at
4 a confined feeding operation, and so it seemed
5 that applying the same setback requirements to
6 those as to the -- at the farms made sense, and
7 that's why we just duplicated them and made them
8 exactly the same.

9 MR. METTLER: But the IDEM's response
10 is more along the line of what type of waste it
11 is compared to a sewage treatment lagoon, and
12 that's why the -- why it didn't make as much
13 sense to have as great a setback for a sewage
14 treatment lagoon as for a CFO lagoon, based on
15 the type of sewage -- the type of wastewater.

16 MR. PALIN: Yeah. I'm not -- I'd
17 have to look at that comment a little closer to
18 recollect the thought process there, but the --
19 like I say, historically, they've been regulated
20 under different regula -- sets of regulations --

21 MR. METTLER: Yeah, right.

22 MR. PALIN: -- that have kind of come
23 up separately --

1 MR. METTLER: Uh-huh.

2 MR. PALIN: -- and have been adequate
3 as far as the -- providing the protections and
4 what have you for those types of facilities in
5 the past.

6 MR. METTLER: Okay.

7 CHAIRMAN GARD: Are there any other
8 questions for Bruce?

9 (No response.)

10 CHAIRMAN GARD: You know, it might be
11 helpful if I gave you a little bit to my
12 recollection. Some of this all kind of runs
13 together a little bit about the legislative
14 background on this. We were dealing with some
15 revisions to state laws concerning confined
16 feeding operations. We were putting in place
17 some more stringent things into the statute.
18 Also the State Chemist's Office was given
19 direction by the General Assembly to deal with
20 application rates and so forth of spreading
21 manure on fields and that sort of thing.
22 So, the -- actually the agriculture
23 industry came to the General Assembly and said,

1 "There aren't many of these, but we think -- we
2 can see a problem if they aren't regulated," and
3 there were essentially no regulations. And so,
4 this is the result of the agriculture community
5 coming to the General Assembly and saying, "We
6 think we need rules on this." So --

7 Yes.

8 MR. RULON: Just a couple of other
9 comments, Chairman Gard. A couple of things. I
10 kind of sense that there's this fear we're going
11 to be overflowed by Ohio's manure, and to put
12 that in perspective, this is extremely expensive
13 to truck these products, so you want to use them
14 as close to the source as possible, and that's
15 not really been talked about in anyone's
16 testimony.

17 So, the idea that you're going to be able
18 to truck a product from Northwestern Ohio to
19 South Central Indiana is just not economically
20 feasible at all, so -- but the purpose of the
21 structure would make a tremendous amount of
22 sense. I think most of us in agriculture would
23 argue that -- like if you have so many big

1 CAFO's, you should require they'd all have one,
2 because when you get into problems is when
3 something goes wrong, and this actually becomes a
4 tremendous buffering capacity in our industry.
5 It's another reason we wanted to be regulated, so
6 we wouldn't just have somebody pushing dirt up
7 and calling the site a product.

8 And the second thing I think is probably
9 important to appreciate in terms of the financial
10 performance, anyone that builds this is going to
11 be dedicating about a quarter of a million
12 dollars' worth of farmland, and turning it into a
13 satellite manure storage just has tremendously --
14 actually negative value, because you have to bury
15 it and clean it up if you close it.

16 So, I mean the people that are going to
17 build these are going to be doing this as part of
18 a pretty well managed system to capture the value
19 of the manure, and so, again, I think it's really
20 good to regulate that so it's done well and done
21 right, but the people that are going to build it
22 are going to have quite a bit of -- quite of bit
23 of skin in the game, as our President would say,

1 when they start, because you can't build them on
2 a four-acre plot.

3 So, I just wanted to help people
4 understand the economics behind why the
5 structures make some sense and why we think they
6 should be regulated.

7 And also, by the rules, it should be
8 pretty similar, because the same people are going
9 to build -- it's just certain companies that
10 build these types of lagoons, so it's nice to be
11 consistent so they're all done the same way, and
12 I am sure over time IDEM learns where to look for
13 failures and how to get in front of failures
14 before they happen.

15 So, thank you.

16 CHAIRMAN GARD: Any other comments or
17 questions from Board members?

18 (No response.)

19 CHAIRMAN GARD: If the Board
20 determines that they want to preliminarily adopt
21 this rule, it will not probably come back to this
22 Board until at least January, at the earliest,
23 and it could be later than that. You know, there

1 are obviously a number of considerations from
2 testimony that will need to be considered into a
3 final product, and so it won't be -- our next
4 meeting would probably be November, but this will
5 not be on that agenda. This will not be until
6 sometime after the first of the year.

7 So, is -- is there a motion as to anyone
8 moving forward with this? Do we have a motion
9 for preliminary adoption?

10 MR. BAUSMAN: So moved.

11 CHAIRMAN GARD: Is there a second?

12 MS. ALEXANDROVICH: Second.

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

15 MR. HORN: Aye.

16 MS. ALEXANDROVICH: Aye.

17 MR. CARMICHAEL: Aye.

18 MR. ETZLER: Aye.

19 MR. ANDERSON: Aye.

20 MR. BAUSMAN: Aye.

21 MR. POWDRILL: Aye.

22 MR. CLARK: Aye.

23 MR. METTLER: Aye.

1 DR. NIEMIEC: Aye.

2 MS. FISHER: Aye.

3 MS. BOYDSTON: Aye.

4 MR. RULON: Aye.

5 CHAIRMAN GARD: Aye.

6 Any opposed, say nay.

7 (No response.)

8 CHAIRMAN GARD: Okay. The Board has

9 moved to preliminarily adopt the rule. I think

10 you can expect to see some changes in the final

11 version. I would encourage Board members to

12 provide additional input to IDEM if they have

13 thoughts as this moves along.

14 The next item on the agenda is -- goes

15 back to the June meeting. At the June meeting,

16 the Board was presented two citizen petitions for

17 rulemaking. The first petition is a request to

18 amend the definition of "interference" related to

19 interference at a publicly owned treatment works.

20 The definition is found at 327 IAC 5-17-11.

21 The second petition is a request to adopt

22 rules to set forth the process for the

23 development and implementation of a comprehensive

1 statewide climate action plan. We will not be
2 taking testimony today on the petitions. This is
3 strictly a determination as to whether or not we
4 move forward with a hearing.

5 In accordance with the statute governing
6 citizen rulemaking petitions, IC 13-14-8-5, the
7 Board must decide whether a public hearing shall
8 be held on each petition. That statute requires
9 the following: First, that the written proposal
10 is supported by a statement of reasons; that the
11 proposal is accompanied by a petition signed by
12 at least 200 people; that the proposal is not
13 plainly devoid of merit; that the proposal does
14 not deal with a subject on which a hearing was
15 held within the previous six months of the
16 submission of the proposal.

17 IDEM's Office of Legal Counsel has
18 determined that each petition was signed by at
19 least 200 people, and that each proposal is
20 supported by a statement of reasons.

21 Additionally, the Environmental Rules Board has
22 not held a hearing in the past six months prior
23 to June 2014 on either of the topics presented by

1 the petition.

2 Therefore, what the Board must determine
3 today is whether each proposal meets the, quote,
4 not plainly devoid of merit, unquote, standard.
5 If that standard is met in the eyes of the Board,
6 the law requires that we give notice and hold a
7 hearing on the proposal. The proposal of the
8 hearing would be for the Board to receive
9 testimony on the proposal and then decide what,
10 if any, action should be taken on that proposal.
11 So, today's vote is simply to decide if it is not
12 plainly devoid of merit and should go to a
13 hearing.

14 As to the first proposal related to the
15 definition of "interference" under 327 IAC 5, is
16 there Board discussion?

17 MS. ALEXANDROVICH: Madam Chair?

18 CHAIRMAN GARD: Yes.

19 MS. ALEXANDROVICH: Could we get a
20 better definition of "not plainly devoid of
21 merit"?

22 CHAIRMAN GARD: Nancy?

23 MS. KING: There are no definition of

1 "not plainly devoid of merit." Therefore, it
2 is -- basically, it comes down to a dictionary
3 definition. So, basically, if this Board
4 determines that the subject matter that has been
5 brought before them -- and we have two petitions,
6 unusually enough, but for either one of them, if
7 the Board determines that there is some kind of
8 merit, that it's of interest to the Board, or
9 it's something that the Board wants to hear more
10 about from the folks who are interested in
11 providing that information, then it has merit.

12 The Board then -- whether it's devoid of
13 merit is not necessarily that the Board wants to
14 move forward with some kind of action. Again,
15 the statute is open ended. The devoid-of-merit
16 vote or decision only says that the Board wants
17 to hear more about that particular petition.

18 COMM. EASTERLY: I'm confused.

19 (Laughter.)

20 MR. RULON: Tom, clarify that, will
21 you?

22 MS. ALEXANDROVICH: I guess my other
23 part for that would be, under -- I mean stuff

1 that the -- we can do under air regulations or
2 land regulations or water regulations. If it's
3 beyond that, would that be -- you know, that's
4 not in our bailiwick, so --

5 CHAIRMAN GARD: In that -- at this
6 point, I think it's a judgment call on your part.
7 As we hear more testimony, we -- I wasn't here to
8 hear the testimony in June. I've read the
9 petitions, but so you want to comment any more on
10 that?

11 MS. KING: Well, I will just say, to
12 clarify, again, we've had very few of these, and
13 so the issue hasn't come up specifically, but I
14 think that when you're looking at what the
15 statute speaks to about citizens petitions, you
16 look at the general purpose, which is: If there
17 isn't a rule on a particular subject matter that
18 citizens, 200 of them, think is something that
19 the Board should do, the statement of reasons
20 that is supposed to be provided with that
21 citizens petition is supposed to give you
22 basically why they think that this Board has the
23 authority or this Board is the board that should

1 hear this issue.

2 Simply saying that something is not devoid
3 of merit is not also saying IDEM move forward
4 with a rulemaking. The Board may decide that
5 something has merit, and what that basically is,
6 is then, by statute, you're required to set a
7 hearing on that subject matter.

8 So, having a hearing on the subject
9 matter, after that, whatever the Board decides to
10 do -- it can be for IDEM to do a study on
11 something; it can be to say, "This is something
12 that the legislature should look at"; it can be
13 any number of things. The statute is completely
14 silent on that.

15 So, simply saying that there is merit to a
16 particular proposal is not the same as
17 automatically saying, "There will be a rule on
18 that particular proposal." I don't know if
19 that's helpful, but really the statute is silent
20 on it, and this is -- in my 22 years, may be the
21 fifth petition, and I might be fudging one there,
22 that we've had before. So, it really is not
23 something that's very common.

1 CHAIRMAN GARD: Yes.

2 MS. ALEXANDROVICH: Thank you.

3 MR. ANDERSON: I've probably -- of
4 the five, I've probably had something to do with
5 the first three.

6 (Laughter.)

7 MS. KING: And you might be fudging
8 one of those, too.

9 MR. ANDERSON: Probably, but my
10 question would be: My understanding would be
11 this hearing could be held outside of the Board
12 meeting. It could be held at a -- basically
13 there's not any requirements for how that would
14 be handled or when it --

15 MS. KING: No, that is correct, and
16 in fact, in the past, I believe the most recent
17 one that we had, a former Board member -- it was
18 about a specific issue related to some water
19 issues in the southern part of the state, and one
20 of the Board members volunteered to be the
21 hearing officer and held several public hearings
22 in, I think, three or four different areas of the
23 state and then reported back to the Board.

1 Previous ones, we have had the entire
2 Board just say, "Well, we'll have it as part of a
3 Board meeting." I believe we also had one that
4 we adjourned the Board meeting, but had the
5 hearing with the full Board there after the
6 proper -- the Board meeting proper. So, we've
7 done it -- the few times we've done it, we've
8 done it a little bit different each time. So,
9 you can --

10 CHAIRMAN GARD: My personal opinion
11 is: I'm not particularly interested in the
12 hearing officer. I think I would prefer that the
13 whole Board hear the arguments rather than have
14 one person report back. You know, certainly you
15 all can disagree, and that's fine, but those are
16 just my thoughts on that.

17 Yes.

18 MR. ETZLER: In the instance of this
19 first petition, there is already language
20 currently in rules?

21 COMM. EASTERLY: Yes, there is, but
22 it's not the language that the petition wants.

23 MR. ETZLER: Okay. So, this one

1 clearly, there -- if the Board made the decision
2 because there is something in rule today, that we
3 could look at this as having merit, and have a
4 hearing to determine whether we need to move
5 forward with a change?

6 COMM. EASTERLY: Yes, you could.

7 MR. ETZLER: Okay.

8 CHAIRMAN GARD: In a hearing, the
9 opposition to the petition may also have the
10 opportunity to speak as well, I would assume.

11 COMM. EASTERLY: I don't know, and
12 that's awkward when the opposition is us.

13 (Laughter.)

14 MR. RULON: Chairman Gard, I think
15 that makes a good point, though, because they
16 have the technical expertise, because when I hear
17 that petition, I honestly have no idea of the
18 merits, and if people think that we should look
19 at it, then IDEM needs to have three to six
20 months to prepare, as the petitioner, and have --
21 develop some facts together for us. That would
22 be helpful to me.

23 CHAIRMAN GARD: Well, the

1 Commissioner is a member of this Board and has
2 every right to be able to voice his opinion to
3 the Board, as far as I'm concerned. He doesn't
4 get a vote.

5 (Laughter.)

6 COMM. EASTERLY: So, it's a
7 legitimate question, whether that should be an
8 "or" or an "and." We have reasons why we think
9 it's proper now, the petitioners have reasons why
10 they think it's not proper.

11 CHAIRMAN GARD: Uh-huh.

12 Any other questions from the Board?

13 (No response.)

14 CHAIRMAN GARD: Okay. Is there a
15 motion to hold a hearing on the --

16 Yes.

17 MR. POWDRILL: I propose a motion
18 that we -- since it appears that the petition
19 meets all of those proposals that are listed
20 here, that we hold a hearing and that the Board
21 approve the petition to move forward.

22 CHAIRMAN GARD: And this is the first
23 petition --

1 MR. POWDRILL: The first --

2 CHAIRMAN GARD: -- on the Board

3 agenda?

4 MR. POWDRILL: -- petition, correct.

5 CHAIRMAN GARD: Is there a second?

6 MR. RULON: Second.

7 CHAIRMAN GARD: All in favor, say

8 aye.

9 MR. HORN: Aye.

10 MS. ALEXANDROVICH: Aye.

11 MR. CARMICHAEL: Aye.

12 MR. ETZLER: Aye.

13 MR. ANDERSON: Aye.

14 MR. BAUSMAN: Aye.

15 MR. POWDRILL: Aye.

16 MR. CLARK: Aye.

17 MR. METTLER: Aye.

18 DR. NIEMIEC: Aye.

19 MS. FISHER: Aye.

20 MS. BOYDSTON: Aye.

21 MR. RULON: Aye.

22 CHAIRMAN GARD: Aye.

23 All opposed, say nay.

1 (No response.)

2 CHAIRMAN GARD: The Board will hold a
3 hearing on the first proposal.

4 The climate action plan --

5 MS. KING: Excuse me, Chairman Gard.

6 I just wanted to explain, the handouts that I
7 provided for you are an errata on the climate
8 action plan that the petitioners had asked to
9 provide to the Board, so that was the two
10 handouts that I just provided to you. I
11 apologize for interrupting.

12 (Discussion off the record.)

13 CHAIRMAN GARD: Nancy, I don't think
14 you gave me that.

15 MS. KING: I did.

16 COMM. EASTERLY: She handed it out a
17 minute ago.

18 MS. KING: Yeah, I gave it to you.

19 COMM. EASTERLY: They look like this.

20 CHAIRMAN GARD: We got one.

21 COMM. EASTERLY: But I haven't read
22 them yet either.

23 MS. KING: I have extras if you need

1 an extra one.

2 (Discussion off the record.)

3 CHAIRMAN GARD: Is there Board
4 discussion on the second, dealing with climate
5 action plan?

6 MR. CARMICHAEL: Let me preface this
7 by saying that I think discussion and debate
8 around climate is important statewide. However,
9 I question the jurisdiction of this Board. My
10 personal feeling is that the request here is for
11 requiring the development and implementation of a
12 comprehensive statewide climate action plan.

13 If I understand my role right, we're
14 supposed to address rulemaking in the state,
15 environmental rulemaking. However, requiring the
16 development and implementation of a comprehensive
17 statewide climate action plan seems to be more in
18 the jurisdiction of the state legislature.

19 CHAIRMAN GARD: Are there -- are
20 there other comments or thoughts?

21 MR. CLARK: I would second that. As
22 I read through this, I'm not sure what role we
23 ultimately would play in the creation of a plan,

1 and arguably, as we go through the rulemaking,
2 the impact on the environment is -- is taken into
3 consideration each time we do approve rules. And
4 so, a plan, I think, is outside of our
5 jurisdiction, but it's not to say we don't take
6 into consideration impacts to the environment in
7 what we do.

8 CHAIRMAN GARD: Uh-huh.

9 Are there other thoughts that Board
10 members would like to share?

11 MR. BAUSMAN: I guess I would concur
12 with that as well, as far as just looking at --
13 and I appreciate counsel's direction as far as
14 the class -- definition of "merit" goes. I think
15 even if there is, and the importance of climate,
16 I don't know if there's merit to what the Board
17 can actually do on this as well as far as moving
18 forward, so --

19 CHAIRMAN GARD: Mr. Rulon?

20 MR. RULON: I just want to say, I
21 thought the presentation was really good. It's
22 great to see young people involved in this
23 discussion, and the reason I supported the first

1 proposal, it actually addresses a specific issue
2 where people think that the current rules don't
3 protect the environment enough, and we can look
4 at it specifically.

5 If these young people have a specific rule
6 that they want to come back and talk about us
7 changing or amending that helps get to a cleaner
8 climate, that seems more like our role. But just
9 doing the whole plan, I don't think we're
10 qualified or authorized to go there.

11 CHAIRMAN GARD: Okay. Thank you.

12 Any other comments from Board members?

13 MR. ANDERSON: You know, I -- again,
14 I appreciate the information that has been
15 presented. I'm not sure how it leads to a
16 proposed rule that we really have any authority
17 to deal with. I think that even the handout
18 today speaks a lot to the statutory authority --

19 CHAIRMAN GARD: Uh-huh.

20 MR. ANDERSON: -- which, you know,
21 not just to pump the issue to the legislature,
22 but it seems to be more appropriate that -- in a
23 forum to develop a policy, and then should we be

1 able to have a policy that we could look at
2 specific rules that could implement that policy.
3 But it seems really difficult to take the general
4 idea and to put it into a rule for us to deal
5 with.

6 On the other hand, I understand that they
7 have met the requirements of the petition with
8 the amount -- you know, it's not devoid of merit
9 and there are 200 signatures, and I know that
10 beyond that, then it's kind of vague on what this
11 hearing, you know, would be held for.

12 CHAIRMAN GARD: Uh-huh.

13 MR. ANDERSON: So, I see -- you know,
14 again, I don't see that we have a role in that,
15 but I see them meeting the requirements to have
16 the public hearing on it, so I don't know what
17 that result would be.

18 DR. NIEMIEC: Would it be possible
19 that if we had a hearing on this, as part of a
20 regular meeting, for example, we might then, just
21 as a Board, direct IDEM to prepare a response to
22 this or a report on this or a summary, that they
23 then could --

1 CHAIRMAN GARD: You know, we're a
2 rulemaking board, and so I suppose we could. I
3 think it's rather unprecedented.

4 DR. NIEMIEC: It seems that way. As
5 I look at this, a lot of this is very subjective
6 as I look at the entire --

7 CHAIRMAN GARD: Uh-huh.

8 DR. NIEMIEC: -- changes. I would
9 give some examples here, but it's --

10 CHAIRMAN GARD: Uh-huh.

11 DR. NIEMIEC: -- probably not the
12 best --

13 CHAIRMAN GARD: Well, you know, I do
14 know that --

15 DR. NIEMIEC: -- use of our time.

16 CHAIRMAN GARD: -- the current
17 administration is working on an energy policy,
18 which I think outlines of it have been presented
19 to some groups. I don't think they've released
20 the entire energy policy, and as we know, energy
21 policy will have a direct bearing on the climate
22 change issue. So, I know that's coming out from
23 the administration in the reasonably near future,

1 and certainly we have all of the things coming
2 from the U.S. EPA right now that are intended to
3 relate to the climate change issue. Those, to
4 me, seem -- the Governor's Office and U.S. EPA
5 seem to me to be appropriate bodies to address
6 those things. I just don't know that we have the
7 capacity here.

8 DR. NIEMIEC: And though, in IDEM
9 looking at it and then preparing a report,
10 perhaps the conclusion of IDEM might be that they
11 would respond to this group and ask them to
12 please contact their legislators about it or
13 something to that effect. That might be the more
14 probable outcome.

15 CHAIRMAN GARD: Well, and as IDEM,
16 you know, assuming that some form of the new U.S.
17 EPA rules go into effect, IDEM's going to have to
18 prepare -- now, if I'm saying something wrong,
19 Commissioner, please say something.

20 COMM. EASTERLY: Oh, no, I'm
21 listening.

22 CHAIRMAN GARD: But you're going to
23 have to -- you're going to have to create the

1 State Implementation Plan --

2 COMM. EASTERLY: Yes.

3 CHAIRMAN GARD: -- and find out how

4 you're going to deal with all of those things,

5 how the state's going to meet those standards,

6 which are geared to climate change. So, it's not

7 like the state isn't looking at this.

8 COMM. EASTERLY: We're concerned

9 about that. I'm concerned about Dr. Niemiec -- I

10 can never pronounce your name -- his thing,

11 because if you direct me to do a report, well, A,

12 I don't actually have any people to do it, but

13 let's pretend that we take people off of

14 something else to do it. What's our response

15 based on? Is it based on our opinions versus the

16 opinions in the petition? Is it based on --

17 there will be some evidence that we can bring on

18 different issues. I'm just not sure what to do.

19 There's many things that are on our plate that we

20 would like to do on many issues, and it always

21 comes down to a resource issue.

22 MS. BOYDSTON: I guess on a related

23 note, if I go back to Nancy's pointing out to us

1 that we have the qualifications met, I'm
2 wondering if we really do, because on the very
3 first statement, it says any person may present
4 written proposals for the adoption and amendment
5 or repeal of a rule, but I don't see the proposed
6 rule in this. I see more of the idea for policy,
7 and policy is mentioned often in here. So, we're
8 not a policy-making body, so I'm not sure
9 skipping past the first statement was -- makes
10 sense to me.

11 So, I also think about, as I learn all of
12 the state and legislative activities, we have two
13 other plans that I think are in the works right
14 now, or have been recently acted upon in the
15 state, and they didn't come here, so I'm trying
16 to understand how these decisions were made. So,
17 the water plan that was shared Friday isn't
18 coming here, and the recycling activities went to
19 the legislature.

20 So, it seems like we have three different
21 kinds of similar activities going different
22 places, and it should be pretty clear as to how
23 those things happen, rather than us trying to

1 figure that out here.

2 MR. BAUSMAN: Madam Chair, I just
3 would like to add, too, I think with that, the
4 concerned precedence, that this Board would then
5 become a policy board, and there would be
6 established precedent that further petitioners
7 could then, if they disagreed with an action of
8 the executive branch or the legislature, that it
9 would come to this Board, and to me, I don't
10 think that would serve the process very well in
11 that endeavor.

12 CHAIRMAN GARD: Thank you.

13 DR. NIEMIEC: To clarify what I had
14 said earlier, basically it looks like a lot of
15 these are suggested subject of changes to the
16 Indiana Code is what I was saying.

17 CHAIRMAN GARD: Uh-huh. And
18 that's --

19 DR. NIEMIEC: Things in the Indiana
20 Code aren't ideal in many different ways.

21 CHAIRMAN GARD: And if it's Indiana
22 Code, that is the purview of the General
23 Assembly.

1 DR. NIEMIEC: Right. So, perhaps
2 that should be --

3 MS. BOYDSTON: That's what I was
4 saying, yeah.

5 CHAIRMAN GARD: Are there any other
6 comments?

7 (No response.)

8 CHAIRMAN GARD: Do I hear a motion to
9 hold a hearing on this proposal?

10 (No response.)

11 CHAIRMAN GARD: Hearing none, we will
12 not move forward. Thank you.

13 Okay. I think we -- we're down to the
14 next meeting, November 12th, assuming that we
15 have rules that are ready to be on the agenda,
16 and as I said, the one concerning lagoons won't
17 be on the agenda until well after -- sometime
18 after the first of the year. Don't hesitate to
19 talk to IDEM.

20 This is an open forum. Is there anyone
21 that wishes to address the Board?

22 (No response.)

23 CHAIRMAN GARD: Hearing none, we are

1 adjourned.

2 Thank you all.

3 - - -

4 Thereupon, the proceedings of
5 September 10, 2014 were concluded
6 at 3:43 o'clock p.m.

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1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Wednesday, September 10, 2014 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.

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15 My Commission expires October 27, 2016.

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