

In The Matter Of:
INDIANA ENVIRONMENTAL RULES BOARD

August 11, 2021

*ACCURATE REPORTING OF INDIANA
543 PONDS POINTE DRIVE
CARMEL, INDIANA 46032
317.848.0088
accuratereportingofindiana@gmail.com*

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BEFORE THE STATE OF INDIANA
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF AUGUST 11, 2021

- - -

PROCEEDINGS

before the Indiana Environmental Rules Board,
Beverly Gard, Chairman, taken before me, Lindy L.
Meyer, Jr., a Notary Public in and for the State
of Indiana, County of Shelby, at the Indiana
Government Center North, Room N1319, 100 North
Senate Avenue, Indianapolis, Indiana, on
Wednesday, August 11, 2021 at 1:34 o'clock p.m.

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ACCURATE REPORTING OF INDIANA, LLC
543 Ponds Pointe Drive
Carmel, Indiana 46032
TELEPHONE: (317) 848-0088
EMAIL: accuratereportingofindiana@gmail.com

1 APPEARANCES:

2 BOARD MEMBERS:

3 Beverly Gard, Chairman
4 Angelique Collier (via Zoom)
5 Dr. Ted Niemiec (via Zoom)
6 Dr. Joanne Alexandrovich (via Zoom)
7 Ken Rulon
8 William Etzler (via Zoom)
9 Chris Horn (via Zoom)
10 Michael Schuler (via Zoom)
11 Calvin Davidson
12 Dan Bortner, Proxy, Indiana Department of
13 Natural Resources
14 Mark A. Wasky, Proxy, Indiana Economic
15 Development Corporation
16 Shelby Huff, Proxy, Katherine Nelson
17 Bruno Pigott, IDEM Commissioner
18 (Nonvoting)

12 IDEM STAFF MEMBERS:

13 Chris Pedersen
14 Krystal Hackney
15 Susan Bem
16 MaryAnn Stevens
17 Martha Clark Mettler
18 Eileen Hack
19 Lynette Schrowe
20 Paul Higginbotham
21 Ryan Clem
22 Karla Kindrick
23 Kevin Bump

19 PUBLIC SPEAKERS:

20 Angie Kaspenscheler
21 Craig Williams

21 - - -

22

23

1 1:34 o'clock p.m.
2 August 11, 2021

3 - - -

4 CHAIRMAN GARD: Well, I call the
5 August 11th, 2021 meeting of the Indiana
6 Environmental Rules Board to order. A quorum of
7 the Board is present, I think. Now I will ask
8 all members to introduce themselves. Some of us
9 look different than we did a year ago. So, we
10 can start down here.

11 MR. BORTNER: Dan Bortner, Director,
12 Indiana Department of Natural Resources.

13 MR. WASKY: Mark Wasky, with the
14 Indiana Economic Development Corporation.

15 CHAIRMAN GARD: I'm Beverly Gard,
16 Chair of the Rules Board.

17 MR. DAVIDSON: Calvin Davidson
18 representing Solid Waste.

19 COMM. PIGOTT: Bruno Pigott,
20 Commissioner, IDEM.

21 CHAIRMAN GARD: Okay. Those of you
22 that are virtual?

23 DR. ALEXANDROVICH: Joanne --

MR. HORN: Chris Horn, representing

1 Labor.

2 DR. ALEXANDROVICH: Joanne
3 Alexandrovich, Local Government.

4 MS. COLLIER: Angelique Collier,
5 Public Utilities.

6 DR. NIEMIEC: Ted Niemiec, Health and
7 Health Care.

8 MS. HUFF: Shelby Huff, Indiana State
9 Department of Agriculture.

10 CHAIRMAN GARD: Anybody else?

11 MR. ETZLER: Bill Etzler, Small
12 Business.

13 MR. SCHULER: Michael Schuler,
14 Construction.

15 MS. KASPENSCHALER: Angie
16 Kaspenscheler, Public Utilities.

17 CHAIRMAN GARD: Anyone else?

18 (No response.)

19 CHAIRMAN GARD: Thank you. We do
20 obviously have a quorum.

21 Ryan Clem is going to cover the logistics
22 of in-person versus the remote participants.

23 MR. CLEM: Sure. Thank you, Madam

1 Chair.

2 So, thanks for joining today. My name's
3 Ryan Clem, Director of Communications. We will
4 be taking questions and comments from the public
5 today. If there's a member of the public in the
6 room here, we have comment cards over here to
7 fill out if you would like to make a comment.

8 For those on-line, joining via Zoom, kind
9 of the regular procedure: If you have a question
10 or a technical issue, please use the raised hand
11 or chat feature.

12 For those joining us by phone, if you have
13 a question or comment, you can raise your hand by
14 pressing star nine, and you will be called upon
15 at the appropriate time, and you'll need to
16 unmute your phone, hitting star six.

17 For everyone in today's meeting, please
18 identify yourself when speaking, and I think you
19 said, too, please remove -- if you could, remove
20 your mask when speaking as well. If members of
21 the media has joined us via Zoom, utilize the
22 chat feature or e-mail media@idem --
23 media@idem.in.gov if you have questions.

1 The meeting is being recorded and will be
2 put on the IDEM Web site.

3 And with that, I'll turn it back over to
4 you.

5 CHAIRMAN GARD: Okay.

6 Do any of the members, either virtual or
7 here, have any questions for IDEM about how we do
8 this?

9 (No response.)

10 CHAIRMAN GARD: Okay. Thank you,
11 Ryan.

12 It might be -- it might not go quite as
13 fast as we normally do, but we'll do our best.
14 And it's nice to see all of you here. Some of us
15 look a little different than we did a year and a
16 half ago, and so -- and the masks kind of -- some
17 people might not be recognized.

18 The first order of business today is the
19 approval of the summary of the May 12th, 2021
20 Board meeting. Are there any additions or
21 corrections to the summary of the minutes as
22 presented?

23 (No response.)

1 CHAIRMAN GARD: If not, is there a
2 motion to approve?

3 MR. DAVIDSON: So moved.

4 CHAIRMAN GARD: Is there a second?

5 MR. BORTNER: Second, Madam Chair.

6 CHAIRMAN GARD: And this will be a
7 voice vote. Voice? Okay. All in favor, say
8 aye.

9 MS. HUFF: Aye.

10 DR. NIEMIEC: Aye.

11 DR. ALEXANDROVICH: Aye.

12 MR. BORTNER: Aye.

13 MR. ETZLER: Aye.

14 MS. COLLIER: Aye.

15 MR. HORN: Aye.

16 MR. WASKY: Aye.

17 MR. DAVIDSON: Aye.

18 MR. SCHULER: Aye.

19 CHAIRMAN GARD: Aye.

20 All that disapprove, say nay.

21 (No response.)

22 CHAIRMAN GARD: The minutes are
23 approved as presented.

1 Commissioner, will you give your report?

2 COMM. PIGOTT: A couple of things,
3 Madam Chair. First of all, the Board should
4 expect fees rulemaking to come before the Board
5 in the near future. As you know, legislation was
6 passed that allowed the Environmental Rules Board
7 to consider fee increases and require the agency
8 to come forward with a fee increase request for
9 the Board, and just this last legislative
10 session, the time frame for the agency to do so
11 was extended to 2022.

12 We will be coming to the Board with fee
13 increases for the Office of land and the Office
14 of Water Quality, badly needed fee increases, I
15 will add, and we will look forward to your
16 consideration of this request. The rulemaking
17 will be within the dollar amounts that the
18 statute allows us to request this first round.
19 And just to remind you, the agency will be
20 allowed to come to the Board every five years for
21 fee increases of no more than ten percent.

22 We'll require the agency to conduct an
23 audit to ensure that before it comes to the

1 Board, it knows what its financial situation is
2 and reports that to the Board so that a real need
3 is established before the Board receives a
4 rulemaking, and it's justifiable. So, we'll see
5 that first round coming up this year, and we're
6 looking forward to getting that in place.

7 Secondly, I want to indicate that, as you
8 all are aware, this past legislative session
9 legislation was passed which altered the state
10 regulated wetlands in Indiana. I just want to
11 say, "Thank you" to you, Sen. Gard, to the
12 Department of Natural Resources, for working with
13 the agency in testimony in opposition to the
14 statute. The statutory changes were made,
15 however, and the agency intends to follow through
16 with them.

17 A couple of things that we're doing. One
18 is that we're putting out a general permit as
19 required by the legislation for impact to tile
20 drainage systems, tile drainage that is allowed
21 to be impacted so long as you don't drain a
22 wetland in the process of doing so. We're
23 putting together a general permit for that that's

1 been public noticed. I think it's actually
2 effective now.

3 In addition to that, we're putting
4 together a checklist, and we've got information
5 on our joint IDEM and DNR Web site that allows
6 someone who doesn't know whether or not they need
7 to come to the agencies, both IDEM and DNR or
8 either, to run through a series of questions
9 which will help them identify whether or not they
10 need to get permits.

11 And we're excited about that. We worked
12 really hard together to put forward that tool so
13 that people could be in compliance with both the
14 new statutory requirements and the existing
15 statutory requirements regarding the impact of
16 wetlands.

17 In addition to that, because some of the
18 citizens who heard about the changes to the
19 wetland statute might not be totally familiar
20 with exactly what those changes entail, because
21 they did entail some strengthening of Class 3
22 wetlands, while allowing for exemptions for
23 municipal impacts to wetlands and some

1 agricultural impacts and allowed impacts to
2 Class 1 wetlands, there could be confusion still.

3 So, I know that the Office of Water
4 Quality has been working hard to put together
5 information, and will be working with our
6 partners in the ag community, to let them know
7 about what the changes were to the statutory
8 provisions and what they'll need to do in the
9 future.

10 You know, we recognize that the wetlands
11 statute could be confusing, especially to someone
12 what might not normally interact with our agency
13 in the agricultural community or other
14 communities. We're trying to ensure that people
15 understand what the obligations and requirements
16 are with these changes and make it as clear as
17 possible.

18 In addition to that, a Wetlands Task Force
19 is called for within the statute. That Task
20 Force has not been appointed yet, and so, I don't
21 have news about the composition of the Task Force
22 in terms of the people or when it would start.

23 So, that's my update. We're going to move

1 forward and implement the new statutory
2 requirements, and I just want to say thanks to
3 you along the way in the process, and to Dan and
4 the crew at the Department of Natural Resources.
5 We very much appreciate the work you all have
6 done.

7 And that's my report.

8 CHAIRMAN GARD: Okay. Thank you,
9 Commissioner. I have a couple of questions.

10 COMM. PIGOTT: Yes.

11 CHAIRMAN GARD: First of all, on the
12 fees, is this going to give the agency enough
13 financial resources to do your job?

14 COMM. PIGOTT: In all honesty, I
15 would say no. I would say that it is what the
16 statute allows for, but there are -- in, for
17 example, the Office of Air Quality, the way that
18 we charge fees is -- has a logic to it, but it's
19 actually hurting us right now. We charge fees to
20 facilities that correspond to the amount of
21 pollution that they emit into the environment.

22 And these facilities have done a great job
23 of coming into compliance with the federal

1 requirements, and therefore, the pollution
2 emitted from those facilities has dropped
3 dramatically, even since 2014. I was just
4 reviewing a chart this morning that showed the
5 reduction in pollution from facilities around the
6 state since 2014 air quality.

7 And while we came forward with a fee
8 increase that was passed by the Board a year or
9 two ago for air quality, the amount of reduction
10 in air pollutants has dropped so dramatically
11 that we are not going to be able to keep up in
12 terms of our stacking levels.

13 And you might ask, "Well, why is that?"
14 Well, because even though pollutants have
15 discharged, our work level hasn't decreased over
16 time. We still have to issue the same number of
17 permits, we still have to include provisions in
18 those permits that will ensure that facilities
19 continue to meet requirements, we still have to
20 inspect facilities, and those requirements have
21 not decreased over time.

22 So, we have to maintain our stacking level
23 despite the fact pollution levels have decreased

1 and our funding has decreased. So, we're in
2 discussions with U.S. EPA about that. Our
3 formula for how we charge fees -- not the amount
4 we charge, but the formula -- has got to
5 eventually change. That is -- and that is to
6 acknowledge that there's some minimum floor level
7 that the agency needs to collect in order to
8 continue its business. And we won't be doing
9 that with the current formulated structure in the
10 Office of Air Quality.

11 In the short run, yes, this biennium we'll
12 be able to meet our financing commitments, and
13 with the fee increases for Land and Water, it
14 should help a great deal. But we are looking out
15 beyond the next biennium and trying to forecast,
16 because it makes no sense to be myopic and think
17 only in terms of this year or next year, but in
18 the long run what are we going to face, and we're
19 going to need to make adjustments to our formulas
20 for air pollution control financing, and we're --
21 ultimately, we will be revisiting the topic in
22 the future.

23 CHAIRMAN GARD: Uh-huh.

1 COMM. PIGOTT: It's not great. We
2 are also, I want to acknowledge, talking with the
3 Department -- the State Budget Agency about our
4 funding and the need to adjust funding from a
5 general funding perspective.

6 (Mr. Rulon entered the room.)

7 COMM. PIGOTT: As you know, we've got
8 great news in terms of the state budget, and
9 we've met with the Governor's Office and
10 explained our financing issues. In fact, I think
11 tomorrow we are sitting down with the State
12 Budget Agency to explain where we're short, and
13 they committed to working with us to work out
14 some of those gaps as well. So, it's not all on
15 the folks that do the work to reduce pollution,
16 but spread out amongst different factors.

17 CHAIRMAN GARD: Okay. Very good.
18 Thank you.

19 MR. BORTNER: Madam Chairman, if I
20 could add to that as well, I'm sorry, the
21 Department of Natural Resources is going through
22 the same review of finances. There are a few
23 changes coming on our side as well, and to

1 Bruno's point, you know, while the state is in a
2 good fiscal position, the money that we're seeing
3 is taking care of capital needs, not operational
4 needs, and that's what those fees were intended
5 to address, those shortfalls.

6 CHAIRMAN GARD: This is all like
7 deja vu.

8 COMM. PIGOTT: It really is.

9 CHAIRMAN GARD: I remember the last
10 time they were raised very clearly.

11 Anybody else on the Board have questions
12 on the fees, then I'll go to wetlands?

13 (No response.)

14 CHAIRMAN GARD: Any virtual people?

15 (No response.)

16 CHAIRMAN GARD: No?

17 (No response.)

18 CHAIRMAN GARD: Okay. With respect
19 to the wetlands, how many wetlands do you think
20 will be impacted in a negative way?

21 COMM. PIGOTT: Well, in some
22 respects, it's a speculative question. We do
23 know this: All Class 1 wetlands could be

1 affected, and the question is just we'll do --
2 what do we expect out there in terms of all of
3 the Class 1 wetlands out there that will no
4 longer require a permit? What percentage of them
5 might not then get a permit and be impacted? And
6 we tried our best to think about that, without
7 coming up with a good solid answer, because it is
8 so speculative. An individual may choose not to
9 impact a wetland for reasons that I can't
10 anticipate.

11 So, I don't really know the answer to
12 that, and it would be pure speculation on my part
13 to suggest an acreage total in terms of what
14 impact the reduction in Class 1 or a Class 2
15 wetlands would mean essentially for the wetland
16 reduction. However, its potential is all Class 1
17 wetlands could be impacted, and they are a large
18 percentage of the wetlands that we have that are
19 state protected wetlands.

20 CHAIRMAN GARD: Are ephemeral
21 wetlands Class 1?

22 COMM. PIGOTT: Some of them are
23 Class 1, that's correct. That is correct.

1 CHAIRMAN GARD: Well, could this
2 result in destroying woods to get to the wetland?

3 COMM. PIGOTT: There -- I think,
4 depending on how the tile improvements are done,
5 it could mean impacting some of a wooded area in
6 order to get to tile improvements, and in those
7 cases for Class 3 wetlands, our most sensitive
8 wetlands, the statute requires any entity to come
9 to the agency to inform them of the work that's
10 going to be done, to ensure that those wetlands
11 are restored and the woods are restored, and that
12 there's a minimal impact. But yes, there is that
13 potential.

14 CHAIRMAN GARD: Okay. Well, thank
15 you. And a lot of people worked to change the
16 direction of the legislation as it was
17 introduced, and I took this really personal, I
18 mean I really did.

19 COMM. PIGOTT: It was a very tough --

20 CHAIRMAN GARD: Yes, it was.

21 COMM. PIGOTT: -- session in that
22 respect, and I know that the folks in our
23 wetlands area very much appreciate the work that

1 you did, that Dan Bortner did, and were pretty
2 upset about it as well. And we just really thank
3 you for all of the work you did do on this.

4 CHAIRMAN GARD: Well, you know, I
5 think back to when we wrote that stat -- statute.
6 We worked on it for almost two years, educating
7 ourselves as to what was involved, and I mean it
8 was very complex, and I just felt like the people
9 that were doing this didn't know what they were
10 doing.

11 COMM. PIGOTT: Yeah, it -- I think
12 part of the problem is the lack of information,
13 and I think we, at the agency, could do a better
14 job at educating people about wetlands, their
15 value, and I think we made some great progress,
16 but we have more work to do.

17 CHAIRMAN GARD: Uh-huh.

18 COMM. PIGOTT: I -- interestingly
19 enough, at the same time that we found that we
20 had a huge push -- and this moved quickly through
21 the legislature on the state level -- we have a
22 new administration on the federal level, which is
23 revisiting the rulemaking regarding waters of the

1 United States and our 401 Water Quality
2 Certification Rule, and all indications are that
3 those will change in the opposite direction.

4 So, it's -- we have these two regulatory
5 forces moving in different directions. I think
6 on the federal level, I could foresee a waters of
7 the United States rulemaking that could increase
8 protection of wetlands and broaden what is
9 considered a water of the United States, while at
10 the same time, here at the state, we're reducing
11 our state level protection of wetlands. It's no
12 small irony.

13 CHAIRMAN GARD: That's right.

14 Yes.

15 MR. RULON: Chairman Gard, I think
16 one thing that's -- a lot of us, like you, are
17 just shaking our heads, because this really,
18 despite the way it was sold, doesn't help
19 agriculture hardly at all, because we're still
20 governed by the Federal Government. This doesn't
21 affect our 7,000 acres. This doesn't affect
22 one-tenth of those acres.

23 CHAIRMAN GARD: Uh-huh.

1 MR. RULON: The only thing it does is
2 it helps developers get around some rules on
3 interstates, so it's just frustrating for us as
4 for you. I know we share your frustration. A
5 lot of us in agriculture, I don't -- this isn't
6 going to benefit us at all.

7 CHAIRMAN GARD: Well, I just wish
8 Farm Bureau had listened to some of their
9 members.

10 MR. RULON: They refused to listen to
11 some of their members.

12 CHAIRMAN GARD: Yes, obviously.

13 MR. RULON: But they had some
14 other -- you know, I don't know. Many of the
15 people from the soil and group in Indiana were
16 all opposed. There were a lot of -- it's a very
17 split kind of thing that was pushed through.

18 CHAIRMAN GARD: Yeah.

19 MR. RULON: I just wanted to share
20 your frustration and tell you that this -- if
21 there's any opportunity in this -- I don't know
22 if we have to do a new rulemaking or not, but it
23 does, I think, open up a rule -- all sides will

1 be affected if you start a new rulemaking; right?

2 COMM. PIGOTT: Yes.

3 MR. RULON: So, if you start --

4 COMM. PIGOTT: So, if we start a new
5 rulemaking -- I'm not sure that the statute
6 requires a rulemake -- the statutory changes
7 require that, but yeah, that -- that avenue --
8 the other -- the other unknown is whether a new
9 federal rule would change things and reduce the
10 impact of this state statute, because we have to,
11 at a minimum, meet the federal requirements.

12 MR. RULON: Exactly, yeah.

13 CHAIRMAN GARD: Well, it was amazing
14 to me the number of just lay people out there
15 that I didn't know had any interest in this at
16 all made comments to me that they couldn't
17 believe this was happening, and I was pleased
18 that the public would seem to be paying attention
19 to this.

20 COMM. PIGOTT: Yeah, that's true.

21 CHAIRMAN GARD: Okay. Anything else,
22 Commissioner?

23 COMM. PIGOTT: No. Thank you, Madam

1 Chair.

2 CHAIRMAN GARD: Any questions before
3 we move on, from virtual people?

4 (No response.)

5 CHAIRMAN GARD: Do we have any?

6 (No response.)

7 CHAIRMAN GARD: Okay. We'll move on
8 to Chris Pedersen for a rulemaking report.

9 MS. PEDERSEN: Good afternoon. I'm
10 Chris Pedersen, in the Rules Development Branch
11 of the Office of Legal Counsel.

12 Right now we tentatively expect the next
13 Board meeting to be scheduled for November 10th,
14 2021, and at that meeting there are several rules
15 that could be presented.

16 The first is a single adoption hearing for
17 Daviess and Pike County SO2 redesignations. This
18 rule revises the designation status for Veale
19 Township in Daviess County and Washington
20 Township in Pike County from nonattainment to
21 attainment for the 2010 one-hour primary sulfur
22 dioxide standard.

23 It will also update the status for the

1 remaining portions of these two counties and for
2 the rest of the state for the applicable
3 secondary SO2 standard.

4 Another rule is the Fort Wayne Combined
5 Sewer Overflow Wet Weather Limited Use
6 Subcategory rulemaking. Fort Wayne has developed
7 a long-term control plan and a use attainability
8 analysis that has been approved by the
9 Department.

10 The rulemaking will establish a combined
11 sewer overflow wet weather limited use
12 subcategory of the recreational use designation
13 for the area identified in use attainability
14 analysis. This rulemaking uses a special
15 rulemaking process in IC 13-14-9-14, and is
16 similar to the one done in January 2020 for the
17 City of Indianapolis.

18 And then in addition, the Water and Waste
19 Permit Fee Rules that Bruno described. We hope
20 to have those before you for preliminary
21 adoption. That will be two separate rulemakings.

22 That's it.

23 CHAIRMAN GARD: Thank you.

1 Are there any questions for Chris about
2 rulemaking?

3 COMM. PIGOTT: Madam Chair, if I
4 might just add, the Fort Wayne rulemaking, I hear
5 a lot of acronyms, and sometimes they just fly
6 over my head, so just as a reminder, this is all
7 about those combined sewer communities. There's
8 109 of them in the State of Indiana that every
9 time it rains they just -- they discharge raw
10 sewage into our streams.

11 And they've committed numerous dollars,
12 and I can't remember what Fort Wayne was, I think
13 it was two billion dollars. Fort Wayne was a
14 large -- 500 million or something. It doesn't
15 really matter, it was a lot. And they reduced
16 their discharges dramatically over time.

17 And really this is about those residual
18 discharges that happen only every once in a
19 while, and the question is: You know, how do we
20 ensure that they're not sent to enforcement by
21 this agency because they've gone so far to
22 eliminate nine -- 99 percent of the discharges
23 from their CSO's.

1 That one percent, well, the idea is that
2 if you do this thing we call a use attainability
3 analysis, the Environmental Rules Board could
4 pass a rule that said that there's a new water
5 quality standard every time it rains a sufficient
6 amount that protects them from being sent to
7 enforcement.

8 It's a recognition that they've done the
9 right thing, that they've completed their program
10 or are close to it, and that the raw sewage
11 that's entering our streams has been dramatically
12 reduced. And it recognizes that communities
13 around the state have done their job in terms of
14 ensuring that our waters are cleaner today than
15 they've ever been, and that this is specifically
16 raw sewage that comes from people's homes.

17 So, I'm looking forward to that use
18 attainability analysis coming forward because --
19 partly because, as you know, there's been a
20 petition that's been submitted to this Board that
21 says, "Well, why don't you adopt water quality
22 criteria for 2012?" And we've been engaged in
23 discussions with a group of stakeholders, and

1 continue those discussions to this date.

2 But this very rulemaking is really a good
3 path to ensure that we accomplish what those
4 entities are looking to accomplish, and that's
5 all I wanted to be able to explain just now. And
6 it's -- every time we go through these things,
7 it's kind of complicated, and I just wanted to
8 remind you of what we're talking about.

9 CHAIRMAN GARD: Well, this is really
10 what the legislation intended to happen --

11 COMM. PIGOTT: That's right.

12 CHAIRMAN GARD: -- because that very,
13 very small increment of overflow that gets into
14 the system, the cost of getting rid of that could
15 exceed the cost of everything else they've done
16 to get it up there. It's outrageous. And so,
17 this is -- this is what was being meant, and
18 that's why, with the other group, I had trouble
19 understanding why they had gone to a rule like
20 this.

21 COMM. PIGOTT: And I think part of
22 the -- what should help is watching communities
23 come forward and through this process and being

1 successful and going through it, because you're
2 right, this is what this legislation that you
3 passed would accomplish, and I'm pretty proud of
4 the work that was done in the legislature to
5 accomplish that and the work that our staff did
6 helping the legislature come up with a solution.

7 CHAIRMAN GARD: Okay. Thank you.

8 Any before she leaves, any questions of
9 Chris?

10 (No response.)

11 CHAIRMAN GARD: Any virtual
12 questions?

13 (No response.)

14 CHAIRMAN GARD: Okay.

15 Today we will have hearings for the
16 following Board actions: Final adoption of the
17 BP Temporary Alternative Opacity Limitations; the
18 Solid Waste Financial Assurance; Satellite Manure
19 Storage Structure Reference Updates; and Metals
20 Criteria. A hearing on nonexpiring rules in
21 accordance with the requirements of
22 IC 13-14-9.5-1.1. We do this every year or so.
23 We will also have one Nonrule Policy Document

1 presentation today on Community Involvement.

2 As a reminder, if you wish to testify in
3 any of today's hearings, please fill out a
4 comment card and give it to Karla Kindrick at the
5 sign-in table.

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

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

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

23 (Reporter sworn.)

1 CHAIRMAN GARD: Thank you.

2 This is a public hearing before the
3 Environmental Rules Board of the State of Indiana
4 concerning final adoption of amendments to rules
5 at 326 IAC 5-1-8 regarding Alternative Opacity
6 Limitations for BP.

7 I will now introduce Exhibit A, the
8 preliminarily adopted rule, into the record of
9 the hearing.

10 Krystal Hackney will present the rule.

11 MS. HACKNEY: Good afternoon, members
12 of the Board. My name is Krystal Hackney, and I
13 am a rule writer in the Rules Development Section
14 within the Office of Legal Counsel.

15 This rulemaking amends 326 IAC 5
16 concerning temporary alternative opacity
17 limitations for BP Products North America, Inc.,
18 Whiting Refinery located in Lake County, Indiana,
19 Source ID 089-00453. The amendments of the
20 opacity limitations during startup, shutdown, and
21 hot standby events will only positively impact
22 the source. BP Whiting Refinery benefits by
23 reducing the risk of fire or explosion from

1 operation of the electrostatic precipitator
2 control device during these unique operating
3 scenarios.

4 BP Whiting Refinery's fluidized catalytic
5 cracking units are subject to temporary
6 alternative opacity limitations under
7 326 IAC 5-1-3 that generally apply to boilers
8 when building a new fire, or shutting down, as
9 identified in the current Title V operating
10 permit. This rulemaking increases worker safety
11 by allowing the two fluidized catalytic cracking
12 units to have a temporary alternative opacity
13 limitation during this nonroutine events.

14 IDEM has reviewed available information to
15 establish a temporary alternative opacity
16 limitation that will ensure that the temporary
17 alternative opacity limitations will not impact
18 maintenance or the National Ambient Air Quality
19 Standards. To remain compliant during this
20 rulemaking, BP Whiting Refinery requested a
21 variance from 326 IAC 5-1-3 during startup,
22 shutdown, and hot standby events. This rule was
23 preliminarily adopted by the Board on May 12th,

1 2021.

2 IDEM requests that the Board final adopt
3 this rule as presented. I am available if you
4 have any further questions.

5 COMM. PIGOTT: And Madam Chair -- and
6 Krystal, thank you for your presentation -- I do
7 want to say, reading through this stuff, it's
8 extremely complex. If you understand exactly
9 this fire and boiler and stuff -- I'll be the
10 first to admit I don't, and that it's confusing,
11 but it's really interesting. And really, the big
12 point here, if I'm not mistaken, is, look, you
13 have these pollution control limits in place, but
14 at certain times they could cause an explosion or
15 fire --

16 MS. HACKNEY: Correct.

17 COMM. PIGOTT: -- under the right
18 circumstances, and everybody acknowledges that,
19 even U.S. EPA. So, we're going to change these
20 limits during this place, and it's a mysterious
21 magical process. I'm glad there are people at BP
22 that know what they're doing, and I think it's
23 the right thing to do, these temporary opacity

1 limits, even though I've never really seen this
2 in operation, and will be the first to
3 acknowledge that.

4 So, thank you for working on this, and
5 thanks, all of air quality, for understanding
6 what I clearly do not.

7 MS. HACKNEY: Thank you.

8 CHAIRMAN GARD: Any questions for
9 Krystal?

10 MR. DAVIDSON: Krystal --

11 MR. RULON: Krystal -- go ahead.

12 MR. DAVIDSON: -- should we expect
13 more of these, since we have so much from other
14 refineries?

15 MS. HACKNEY: Not at this time. To
16 my understanding, it is site specific, and if
17 they come, they come, but we can't really expect
18 them or anticipate them until it's necessary and
19 needed.

20 COMM. PIGOTT: And they're for
21 specific units, if I'm not mistaken.

22 MS. HACKNEY: Correct.

23 COMM. PIGOTT: And we don't have a

1 bunch of refineries around that engage in this,
2 so I don't think we'll see a lot of it. But it
3 does make sense to do this for worker safety, and
4 just the population. Oh, and the fact that
5 National Ambient Air Quality Standards will not
6 be affected by this is important to remember.
7 We're not decreasing the standards by setting
8 this temporary opacity limit.

9 MS. HACKNEY: That's correct.

10 CHAIRMAN GARD: Ken, did you have --

11 MR. RULON: I just -- reading through
12 it, is there someplace where we're going to keep
13 track of how often they're claiming startup and
14 shutdown? And we're not going to let them claim
15 there's startup all day long; right? There's
16 some sort of a limit on that? I had trouble
17 finding it, is what I'm saying.

18 MS. HACKNEY: Yes.

19 Susan?

20 Susan Bem can testify to this.

21 MS. BEM: Susan Bem, with the Office
22 of Air Quality.

23 COMM. PIGOTT: Susan, do you want to

1 stand up so that Lindy can hear you?

2 MS. BEM: Uh-huh.

3 Yeah, they need to keep track of all of
4 their startup-shutdown-malfunction time frames
5 that they report back to the Department. And I
6 just was going to add earlier when Krystal
7 mentioned, there's still some control devices
8 being in operation. They're going to continue to
9 operate the site loads as part of their new
10 limit. I mean they're pretty infrequent
11 occurrences.

12 MR. RULON: Thank you.

13 CHAIRMAN GARD: Any other questions?

14 (No response.)

15 CHAIRMAN GARD: Any virtual
16 questions?

17 (No response.)

18 CHAIRMAN GARD: Okay. Do we have
19 anyone that has signed the speaker card to
20 testify?

21 MS. KINDRICK: No.

22 CHAIRMAN GARD: Is there anyone
23 virtually that wants to testify?

1 MR. CLEM: I don't see anyone.

2 CHAIRMAN GARD: Okay. If not, this
3 hearing is concluded.

4 The Board will now consider final adoption
5 of amendments to 326 IAC 5-1-8, BP Temporary
6 Alternative Opacity Limitations.

7 Is there any further Board discussion?

8 (No response.)

9 CHAIRMAN GARD: Virtual?

10 (No response.)

11 CHAIRMAN GARD: None? Then I need a
12 motion for final adoption of the rules as
13 presented.

14 MR. RULON: So moved.

15 MR. DAVIDSON: Second.

16 CHAIRMAN GARD: Okay. I have a
17 little different -- a little different sheet
18 here, which is actually a nice thing.

19 Mr. Wasky?

20 MR. WASKY: Yes.

21 CHAIRMAN GARD: Mr. Schuler?

22 MR. SCHULER: Yes.

23 CHAIRMAN GARD: Mr. Rulon?

1 MR. RULON: Yes.

2 CHAIRMAN GARD: Dr. Niemiec, Zoom?

3 DR. NIEMIEC: Yes.

4 CHAIRMAN GARD: Ms. Huff, for --

5 MS. HUFF: Yes.

6 CHAIRMAN GARD: Mr. Horn?

7 MR. HORN: Yes.

8 CHAIRMAN GARD: Mr. Etzler?

9 MR. ETZLER: Yes.

10 CHAIRMAN GARD: Mr. Davidson?

11 MR. DAVIDSON: Yes.

12 CHAIRMAN GARD: Ms. Collier?

13 MS. COLLIER: Yes.

14 CHAIRMAN GARD: Mr. Bortner?

15 MR. BORTNER: Yes.

16 CHAIRMAN GARD: Dr. Alexandrovich?

17 DR. ALEXANDROVICH: Yes.

18 CHAIRMAN GARD: And the Chair votes
19 aye. The vote is 12 yes, zero nays. The
20 amendments to 326 IAC 5-1-8 are adopted for final
21 adoption. Thank you all.

22 This is a public hearing before the
23 Environmental Rules Board of the State of Indiana

1 concerning final adoption of amendments to rules
2 at 329 IAC 10, 11.5, 11.6 and 11.7, Solid Waste
3 Financial Assurance Rules.

4 I will now introduce Exhibit B, the rule
5 as preliminarily adopted with IDEM's suggested
6 changes, into the record of the hearing.

7 And I think Chris Pederson is going to
8 stand in for Dan Watts.

9 MS. PEDERSEN: Good afternoon,
10 members of the Board. I'm Chris Pedersen, from
11 the Rules Development Branch.

12 This rule makes updates and corrections to
13 address issues in the Solid Waste Facility
14 Financial Assurance Rules across different
15 articles in Title 329. The main amendments in
16 this rulemaking include: Providing additional
17 compliance flexibility for regulated entities;
18 improving IDEM's administration of financial
19 assurance requirements; resolving inconsistencies
20 between various financial assurance rules;
21 revising outdated requirements; and correcting
22 errors in the rule language.

23 Since the draft rule was preliminarily

1 adopted, IDEM has made a few changes to the
2 proposed rule requirements, including:
3 Clarifying the requirements for the establishment
4 of a standby trust fund if the financial
5 assurance amount is over \$20,000 for all
6 facilities that use a surety bond or letter of
7 credit options under the same permittee, owner,
8 or operator; and correcting and clarifying rule
9 language.

10 Representatives from IDEM are available to
11 answer any questions you have about this
12 rulemaking.

13 The Department requests that the Board
14 final adopt this rule as presented with the
15 amendments.

16 CHAIRMAN GARD: Are there any
17 questions for Chris concerning the rule and the
18 amendments?

19 (No response.)

20 CHAIRMAN GARD: Any virtual
21 questions?

22 (No response.)

23 CHAIRMAN GARD: Okay. Are there any

1 speaker cards submitted?

2 MS. KINDRICK: No, ma'am.

3 CHAIRMAN GARD: This hearing is
4 concluded.

5 The Board will now consider final adoption
6 of amendments to 329 IAC 10, 11.5, 11.6 and 11.7,
7 Solid Waste Financial Assurance Rules.

8 Is there Board discussion?

9 (No response.)

10 CHAIRMAN GARD: Any virtual
11 discussion?

12 (No response.)

13 CHAIRMAN GARD: Then I need a motion
14 to adopt IDEM's suggested changes.

15 MR. BORTNER: So moved, Madam Chair.

16 CHAIRMAN GARD: Is there a second?

17 MR. DAVIDSON: Second.

18 CHAIRMAN GARD: This is a roll-call
19 vote. This is on the amendments.

20 Mr. Wasky?

21 MR. WASKY: Yes.

22 CHAIRMAN GARD: Mr. Schuler?

23 MR. SCHULER: Yes.

1 CHAIRMAN GARD: Mr. Rulon?

2 MR. RULON: Yes.

3 CHAIRMAN GARD: Dr. Niemiec?

4 DR. NIEMIEC: Yes.

5 CHAIRMAN GARD: Ms. Huff?

6 MS. HUFF: Yes.

7 CHAIRMAN GARD: Mr. Horn?

8 MR. HORN: Yes.

9 CHAIRMAN GARD: Mr. Etzler?

10 MR. ETZLER: Yes.

11 CHAIRMAN GARD: Mr. Davidson?

12 MR. DAVIDSON: Yes.

13 CHAIRMAN GARD: Ms. Collier?

14 MS. COLLIER: Yes.

15 CHAIRMAN GARD: Mr. Bortner?

16 MR. BORTNER: Yes.

17 CHAIRMAN GARD: Dr. Alexandrovich?

18 DR. ALEXANDROVICH: Yes.

19 CHAIRMAN GARD: The Chair votes aye.

20 The vote is 12 yes, zero no, to adopt the
21 amendments.

22 Is there a motion to final adopt the rule
23 as amended?

1 MR. DAVIDSON: So moved.

2 CHAIRMAN GARD: Is there a second?

3 MR. RULON: Second.

4 CHAIRMAN GARD: Final adoption as

5 amended.

6 Mr. Wasky?

7 MR. WASKY: Yes.

8 CHAIRMAN GARD: Mr. Schuler?

9 MR. SCHULER: Yes.

10 CHAIRMAN GARD: Mr. Rulon?

11 MR. RULON: Yes.

12 CHAIRMAN GARD: Dr. Niemiec?

13 DR. NIEMIEC: Yes.

14 CHAIRMAN GARD: Ms. Huff?

15 MS. HUFF: Yes.

16 CHAIRMAN GARD: Mr. Horn?

17 MR. HORN: Yes.

18 CHAIRMAN GARD: Mr. Etzler?

19 MR. ETZLER: Yes.

20 CHAIRMAN GARD: Mr. Davidson?

21 MR. DAVIDSON: Yes.

22 CHAIRMAN GARD: Ms. Collier?

23 MS. COLLIER: Yes.

1 CHAIRMAN GARD: Mr. Bortner?

2 MR. BORTNER: Yes.

3 CHAIRMAN GARD: Dr. Alexandrovich?

4 DR. ALEXANDROVICH: Yes.

5 CHAIRMAN GARD: The Chair votes aye.

6 The amended rule is adopted with 12 yeses, zero
7 noes.

8 This is a public hearing before the
9 Environmental Rules Board of the State of Indiana
10 concerning final adoption of amendments to rules
11 at 327 IAC 20, Manure -- Satellite Manure Storage
12 Structure Reference Updates.

13 I will now introduce Exhibit C, the
14 preliminarily adopted rule, into the record of
15 the hearing.

16 Krystal Hackney will present the rule.

17 MS. HACKNEY: Good afternoon again.
18 My name is Krystal Hackney. I'm a rule writer in
19 the Rules Development Section within the Office
20 of Legal Counsel.

21 This rulemaking updates certain references
22 throughout the Satellite Manure Storage Structure
23 Rule at 327 IAC 20 for the United States

1 Department of Agriculture, Natural Resources
2 Conservation Services Conservation Practice
3 Standards for consistency with the requirements
4 found in the Confined Feeding Operations Rule
5 at 327 IAC 19.

6 The alignment of these two rules will
7 eliminate confusion for interested parties and
8 provide consistency in the design and
9 construction of future manure storage structures.
10 Aligning the Satellite Manure Storage Structure
11 Rule with the Confined Feeding Operations Rule by
12 updating these references will ensure that future
13 regulated sources are held to the same standards
14 for the same activities across state rules.

15 IDEM staff have implemented the updated
16 standards for sources permitted under the
17 Confined Feeding Operations Rule at 327 IAC 19.
18 The update to the Natural Resources Conservation
19 Services Conservation Practice Standard 313
20 requires additional engineering considerations
21 and adds a minor expense to the permitted source.

22 There have not been any complaints
23 regarding these expenses from current combined

1 feeding operations permit holders. The minor
2 costs are from the soil strength standards and
3 soil suitability standards for backfill.

4 IDEM expects that the added cost to be
5 negligible and all other -- or excuse me -- all
6 of the other updates made in this rulemaking do
7 not impose any additional requirements. This
8 rule was preliminarily adopted by the Board on
9 May 12th, 2021.

10 IDEM requests that the Board final adopt
11 this rule as presented. I am available to answer
12 any further questions that you may have.

13 Thank you.

14 CHAIRMAN GARD: Does the Board have
15 any questions?

16 (No response.)

17 CHAIRMAN GARD: Any virtual
18 questions?

19 (No response.)

20 CHAIRMAN GARD: Are there any speaker
21 cards?

22 MS. KINDRICK: No, ma'am.

23 CHAIRMAN GARD: This hearing is

1 concluded.

2 The Board will now consider final adoption
3 of amendments to 327 IAC 20, Satellite Manure
4 Storage Structure Reference Updates.

5 Any Board discussion?

6 (No response.)

7 CHAIRMAN GARD: We need a motion to
8 final adopt the rules as presented.

9 MR. ETZLER: So moved, Bill Etzler.

10 CHAIRMAN GARD: Is there a second?

11 MR. DAVIDSON: Second.

12 MR. HORN: So moved, Chris Horn.

13 CHAIRMAN GARD: All right. Final
14 adoption, roll call.

15 Mr. Wasky?

16 MR. WASKY: Yes.

17 CHAIRMAN GARD: Mr. Schuler?

18 MR. SCHULER: Yes.

19 CHAIRMAN GARD: Mr. Rulon?

20 MR. RULON: Yes.

21 CHAIRMAN GARD: Dr. Niemiec?

22 DR. NIEMIEC: Yes.

23 CHAIRMAN GARD: Ms. Huff?

1 MS. HUFF: Yes.

2 CHAIRMAN GARD: Mr. Horn?

3 MR. HORN: Yes.

4 CHAIRMAN GARD: Mr. Etzler?

5 MR. ETZLER: Yes.

6 CHAIRMAN GARD: Mr. Davidson?

7 MR. DAVIDSON: Yes.

8 CHAIRMAN GARD: Ms. Collier?

9 MS. COLLIER: Yes.

10 CHAIRMAN GARD: Mr. Bortner?

11 MR. BORTNER: Yes.

12 CHAIRMAN GARD: Dr. Alexandrovich?

13 DR. ALEXANDROVICH: Yes.

14 CHAIRMAN GARD: The Chair votes aye.

15 The rule is finally adopted with 12 yeses and
16 zero nays.

17 MR. RULON: Chairman Gard, if I could
18 just throw into the mix on this that this is a
19 classic case of what makes Indiana a great place
20 to live, because you've anticipated a problem
21 that's going to be here in the future, because
22 we're going to be forced to move this stuff
23 around to get the maximum nutrient value over

1 different areas, and I just don't think people in
2 this room would appreciate that companies are
3 going to be involved in that.

4 This is so important to know what the
5 rules are, and forcing them to have the same
6 rules as the rest of the industry is really very
7 well done. So, I think all of this -- I'd just
8 like to say thank you for doing this before it
9 becomes an issue.

10 CHAIRMAN GARD: That's true. Yeah,
11 thank you for that comment.

12 This is a public hearing before the
13 Environmental Rules Board of the State of Indiana
14 concerning final adoption of amendments to rules
15 at 327 IAC 2-1-6 and 327 IAC 2-1.5-8 regarding
16 Metals Criteria.

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

20 MaryAnn Stevens will present the rule.

21 MS. STEVENS: Good afternoon, members
22 of the Board. I'm MaryAnn Stevens, a rule writer
23 in the Office of Legal Counsel, Rules Development

1 Branch, representing LSA Document 14-58 regarding
2 Aquatic Life and Human Health Ambient Water
3 Quality Criteria for Metals.

4 This rulemaking proposes revisions to
5 Indiana's aquatic life and human health ambient
6 water quality criteria for specific metals to
7 reflect updates based on the most recent science
8 and national recommended water quality criteria
9 developed by the United States Environmental
10 Protection Agency pursuant to section 304(a) of
11 the Clean Water Act.

12 Section 304(a) requires U.S. EPA to
13 develop criteria for ambient water quality that
14 reflect the latest scientific knowledge on the
15 impact of pollutants on human health and aquatic
16 life. Under the Clean Water Act, states are
17 responsible for periodically reviewing and
18 revising their water quality standards, which
19 include water quality criteria.

20 Water quality criteria are amounts of
21 constituents that, when met in ambient waters,
22 protect human health and aquatic life. Water
23 quality criteria apply to Indiana water bodies

1 themselves and do not impose any requirements or
2 costs on any specific entity. A state's water
3 quality criteria are subject to U.S. EPA
4 approval, and if a state deviates from U.S. EPA's
5 recommended water quality criteria, the state
6 must explain why.

7 Based on the latest scientific knowledge
8 and IDEM's careful review and consideration,
9 proposed aquatic life and human health ambient
10 water quality criteria under this rulemaking may
11 become more or less stringent than existing
12 criteria. The change to a criterion is based on
13 the latest scientific research reflected in the
14 National Recommended Water Quality Criteria.

15 Selenium is the criterion that has
16 generated the most concern from the regulated
17 community. IDEM's Office of Water Quality held
18 numerous meetings with regulated stakeholders and
19 U.S. EPA regarding selenium. As a result of
20 these discussions, IDEM developed and proposed a
21 less stringent selenium site-specific criterion
22 for areas outside of the Great Lakes System where
23 sturgeon and paddlefish, which are the species

1 most sensitive to selenium's impacts do not
2 occur.

3 IDEM has also developed draft
4 implementation guidance and continues to work
5 with stakeholders to develop other tools for
6 implementing selenium criterion elements.

7 The proposed rule that was preliminarily
8 adopted by the Board on November 18, 2020 was
9 posted in the Indiana Register with a third
10 comment period of twenty-one days. Two comment
11 letters were submitted. IDEM's responses to the
12 comments can be read in the Third Notice Response
13 to Comments document provided with the rule
14 documents prepared for this hearing to consider
15 final adoption.

16 IDEM believes the proposed rule has
17 fulfilled its goal of updating to the National
18 Recommended Water Quality Criteria for the
19 various metals criteria that IDEM intended to
20 revise in this rulemaking. Therefore, IDEM asks
21 for the Board's vote of approval in final
22 adoption.

23 If there are any questions, I can provide

1 answers, and we have technical staff from the
2 Office of Water Quality who can provide more
3 specific answers as well.

4 CHAIRMAN GARD: Are there any
5 questions from Board Members concerning the rule?

6 (No response.)

7 CHAIRMAN GARD: Any virtual
8 questions?

9 (No response.)

10 CHAIRMAN GARD: So, I guess not. Any
11 speaker cards submitted?

12 MS. KINDRICK: No, ma'am.

13 CHAIRMAN GARD: Okay. This hearing
14 is concluded.

15 The Board will now consider final adoption
16 of amendments to rules at 326 IAC 2-1-6 and
17 327 IAC 2-1.5-8 concerning Metals Criteria.

18 Any further Board discussion?

19 (No response.)

20 CHAIRMAN GARD: Is there a motion to
21 adopt IDEM's suggested changes?

22 MR. RULON: So moved.

23 CHAIRMAN GARD: Is there a second?

1 MR. DAVIDSON: Second.

2 CHAIRMAN GARD: Roll call. This is
3 on the amendments to the rule.

4 Mr. Wasky?

5 MR. WASKY: Yes.

6 CHAIRMAN GARD: Mr. Schuler?

7 MR. SCHULER: Yes.

8 CHAIRMAN GARD: Mr. Rulon?

9 MR. RULON: Yes.

10 CHAIRMAN GARD: Dr. Niemiec?

11 DR. NIEMIEC: Yes.

12 CHAIRMAN GARD: Ms. Huff?

13 MS. HUFF: Yes.

14 CHAIRMAN GARD: Mr. Horn?

15 MR. HORN: Yes.

16 CHAIRMAN GARD: Mr. Etzler?

17 MR. ETZLER: Yes.

18 CHAIRMAN GARD: Mr. Davidson?

19 MR. DAVIDSON: Yes.

20 CHAIRMAN GARD: Ms. Collier?

21 MS. COLLIER: Yes.

22 CHAIRMAN GARD: Mr. Bortner?

23 MR. BORTNER: Yes.

1 CHAIRMAN GARD: Dr. Alexandrovich?

2 DR. ALEXANDROVICH: Yes.

3 CHAIRMAN GARD: And the Chair votes
4 aye. The amendments to the Metals Criteria Rule
5 have been adopted, 12 to 0.

6 The Board will now consider final adoption
7 of amendments to rules at 326 IAC --
8 326 IAC 2-1-6 and 327 IAC 2-1.5-8 concerning
9 Metals Criteria.

10 Any further discussion?

11 (No response.)

12 CHAIRMAN GARD: This is roll -- we
13 need an amendment to adopt the rule as amended.

14 MR. DAVIDSON: So moved.

15 CHAIRMAN GARD: Is there a second?

16 MR. BORTNER: So moved.

17 CHAIRMAN GARD: Second? Okay. This
18 will be a roll-call vote on final adoption.

19 Mr. Wasky?

20 MR. WASKY: Yes.

21 CHAIRMAN GARD: Mr. Schuler?

22 MR. SCHULER: Yes.

23 CHAIRMAN GARD: Mr. Rulon?

1 MR. RULON: Yes.

2 CHAIRMAN GARD: Dr. Niemiec?

3 DR. NIEMIEC: Yes.

4 CHAIRMAN GARD: Ms. Huff?

5 MS. HUFF: Yes.

6 CHAIRMAN GARD: Mr. Horn?

7 MR. HORN: Yes.

8 CHAIRMAN GARD: Mr. Etzler?

9 MR. ETZLER: Yes.

10 CHAIRMAN GARD: Mr. Davidson?

11 MR. DAVIDSON: Yes.

12 CHAIRMAN GARD: Ms. Collier?

13 MS. COLLIER: Yes.

14 CHAIRMAN GARD: Mr. Bortner?

15 MR. BORTNER: Yes.

16 CHAIRMAN GARD: Dr. Alexandrovich?

17 DR. ALEXANDROVICH: Yes.

18 CHAIRMAN GARD: And the Chair votes
19 aye. The Metals Criteria Rule has been adopted
20 as amended, 12 yes, zero nays.

21 COMM. PIGOTT: Madam Chair?

22 CHAIRMAN GARD: Yes.

23 COMM. PIGOTT: May I just for a

1 moment thank Martha Clark Mettler and Eileen Hack
2 of our staff, who are here at the meeting? Both
3 of these folks worked, I don't know, seven years
4 on this rulemaking.

5 MS. METTLER: A new record for me.

6 COMM. PIGOTT: Yeah. And innumerable
7 meetings with our friends in the coal industry,
8 worked very hard to fashion compromises that
9 would be effective in the use of specific
10 situations where paddlefish or the other fish
11 that was mentioned, sturgeon, were not in the
12 waters.

13 And I just want to thank them for their
14 persistence, their inclusion of all of the
15 stakeholders and the work that's been done. I
16 think, as a result, in taking our time, these
17 criteria are better for it, and sometimes
18 patience, even though that patience requires
19 years, is worth it. So, thanks to both of you
20 and the work that you've done on this rulemaking.

21 CHAIRMAN GARD: I don't think you all
22 quite made the record, though, of the longest
23 rulemaking.

1 COMM. PIGOTT: No, that's true.

2 MS. METTLER: No, I meant that was
3 the shortest one for me.

4 (Laughter.)

5 MS. METTLER: I did antideg and
6 groundwater, the long version.

7 CHAIRMAN GARD: This is a public
8 hearing before the Environmental Rules Board of
9 the State of Indiana concerning the review of
10 rules that do not expire under IC 13-14-9.5-1.1.
11 Every year IDEM is required to publish a list of
12 rules that have been effective for seven years
13 that are not subject to expiration because they
14 are necessary for a federally delegated program
15 or to receive or maintain federal funding.

16 This year notices were published for the
17 air rules in Title 326 and water rules in Title
18 327. A 30-day comment period was provided for
19 each notice. No comments were received.

20 I will now introduce Exhibit E, the list
21 of rules in Title 326 that do not expire, and
22 Exhibit F, the list of rules in Title 327 that do
23 not expire under IC 13-14-9.5-1.1, into the

1 record of the hearing.

2 At this time, is there anyone who would
3 like to comment on any of the rules listed in
4 either notice?

5 (No response.)

6 CHAIRMAN GARD: Are there any speaker
7 cards presented on this?

8 MS. KINDRICK: No, ma'am.

9 CHAIRMAN GARD: None? Okay.
10 Are there any virtual people that want to
11 speak on it?

12 MR. CLEM: No.

13 CHAIRMAN GARD: No? Okay. If not,
14 this hearing is concluded.

15 The Board must determine, based on
16 comments received, whether to direct the agency
17 to open a new rulemaking for any rules that are
18 listed in the notices. If the Board chooses not
19 to ask for a rulemaking, a motion should be made
20 for no further action to be taken on the rules.

21 So, any comment on this?

22 (No response.)

23 CHAIRMAN GARD: Well, we need a

1 motion to -- for either no further action on the
2 rules or to direct the agency to begin a
3 rulemaking on a specific listed rule. Is there a
4 motion?

5 MR. RULON: A quick question for
6 Bruno, if I may, just --

7 CHAIRMAN GARD: Yes.

8 MR. RULON: -- are there any of these
9 rules that you would like to initiate a
10 rulemaking on to improve them?

11 COMM. PIGOTT: At this point, no,
12 there's not one that we're thinking of needing a
13 change. Thank you for asking, though.

14 MR. RULON: Then I would move that we
15 take no action.

16 CHAIRMAN GARD: Is there a second?

17 MR. WASKY: Second.

18 CHAIRMAN GARD: This is a voice vote.
19 All in favor, say aye?

20 MS. HUFF: Aye.

21 DR. NIEMIEC: Aye.

22 DR. ALEXANDROVICH: Aye.

23 MR. BORTNER: Aye.

1 MR. RULON: Aye.

2 MR. ETZLER: Aye.

3 MS. COLLIER: Aye.

4 MR. HORN: Aye.

5 MR. WASKY: Aye.

6 MR. DAVIDSON: Aye.

7 MR. SCHULER: Aye.

8 CHAIRMAN GARD: Aye.

9 Those opposed, no.

10 (No response.)

11 CHAIRMAN GARD: Well, I hear no noes,
12 so it's -- the motion is approved by acclamation.

13 We will now have a presentation on a
14 Nonrule Policy Document regarding Community
15 Involvement by Lynette Schrowe of IDEM's Office
16 of Land Quality.

17 I didn't pronounce that right. How do you
18 pronounce it?

19 MS. SCHROWE: It's Schrowe.

20 CHAIRMAN GARD: Schrowe?

21 MS. SCHROWE: Good afternoon, members
22 of the Board. My name is Lynette Schrowe, and
23 I'm with the Office of Land Quality in the

1 Remediation Services Branch, and today we are
2 moving forward with the Community Involvement
3 Plan, or CIP.

4 Initially, we wanted to create a document
5 that could reach across all of OLQ's remediation
6 programs and that includes leaking tanks, the
7 voluntary remediation program, state cleanup, and
8 leaking tanks. This document is intended to be
9 proactive in its approach, and it's designed to
10 ensure that all of our affected communities are
11 made aware and kept apprised of activities in
12 their area. The CIP also insures that all OLQ
13 programs will have a consistent approach to
14 community involvement.

15 We started out using VRP's 2001 Nonrule
16 Policy Document as our jumping-off point, and we
17 built out from there. So, at this point, the CIP
18 is developed as three phases, each phase building
19 upon the next, based upon the complexity and the
20 information associated with that particular
21 project.

22 One thing that we wanted to ensure was
23 that community involvement is not a one-time

1 event, that we continue this process throughout
2 the life span of the project.

3 And more importantly, by implementing the
4 CIP, we are ensuring that communities are kept
5 informed before complications arise due to that
6 lack of information. The document's also
7 beneficial in that it also provides our
8 stakeholders with clear, concise and consistent
9 direction as far as what our expectations are for
10 their involvement.

11 CHAIRMAN GARD: Any questions from
12 the Board members?

13 (No response.)

14 CHAIRMAN GARD: Virtual questions?

15 (No response.)

16 CHAIRMAN GARD: Thank you, Lynette.

17 MS. SCHROWE: You're welcome.

18 CHAIRMAN GARD: Now we have an update
19 on the citizens petition. I don't know who's
20 going to present that.

21 MR. CLEM: I believe it's Paul.

22 COMM. PIGOTT: Well, I think Craig is
23 on electronically, and I see his camera in the

1 distance.

2 Paul, isn't Craig going to give an update?

3 Craig, are you going to do an update?

4 MR. HIGGINBOTHAM: I think Craig is
5 going to go first.

6 COMM. PIGOTT: Okay.

7 Craig?

8 MR. WILLIAMS: Yes. Can you hear me?

9 CHAIRMAN GARD: Yes.

10 COMM. PIGOTT: Yes.

11 MR. WILLIAMS: Thank you so much.

12 Just a very quick update for the Board.

13 We have held, I think, three or four meetings
14 with IDEM on the Water Quality staff in trying to
15 hash out some of the concerns that both sides
16 have on what we've brought in our petition to the
17 Rules Board. We've made excellent progress.

18 We have submitted quite a bit of
19 documentation to the agency, and they are
20 currently working on developing some options
21 internally, I believe, to assess that. I think
22 the petitioners are hoping or are optimistic that
23 possibly by the next Environmental Rules Board

1 hearing, we -- both sides may be at a place we
2 can come together with the preliminary
3 information for the Board to help as we move
4 through this process.

5 One thing I did want to just touch on,
6 based on the conversation earlier on the UAA
7 discussion, we certainly acknowledge that the UAA
8 is available for Indiana communities, but we
9 don't believe that it is the best option. The
10 UAA -- I think, at best, the UAA process is an
11 exception option for a community that does not
12 comply with the EPA's '94 CSO control policy.

13 A couple of things that we have concern
14 about -- and we would be happy to go into depth
15 with this at the next meeting if the Board so
16 desires, but a couple of the things that we see
17 that UAA is problematic for a number of Indiana
18 communities, is that communities that did not
19 initially tend to develop a plan that would end
20 with the UAA.

21 The initial consultant hearing this
22 documentation, water quality modeling are
23 estimated to be in the range of two hundred to

1 four hundred thousand dollars, and easily another
2 two or three hundred thousand dollars would be
3 required of communities whose model has not been
4 developed or would need to be overhauled. So,
5 there's a significant expense element there for
6 communities that it's anticipated being able to
7 comply with this, so this policy as anticipated
8 by the EPA.

9 One of the other places we feel that the
10 UAA approach may not be sufficient is Nonpolicy
11 Document Water 003 states that if a UAA is
12 denied, full CSO elimination is required without
13 regard to any type of analysis. So, that
14 obviously would mean a very difficult position
15 where they were to request a UAA, but it was
16 denied, basically all options, alternatives, are
17 shut off to them.

18 And finally, IDEM's current, most recent
19 triennial review identified a very broad priority
20 to initiate rulemaking, and I quote, to remove
21 the limit use waters classification and waters
22 classified for limited use, 327 IAC 2 and 2-1
23 and 1.5. This seems to indicate to us that one

1 of the agency's priorities is to eliminate all
2 limited use classifications, which would include
3 the CSO wet weather limited use subcategories.

4 My intention was not to jam up the
5 conversation here today, but I just wanted to
6 clarify that for the Board, that we recognize UAA
7 is the viable option for some communities, but
8 that for a number of Indiana communities, we
9 don't feel that it is.

10 We do look forward to hopefully being able
11 to come to the Board at the next meeting and
12 hopefully have a unified position with IDEM on a
13 process forward, and I would be willing to try to
14 field any questions that you have.

15 CHAIRMAN GARD: I do have a question.
16 Is your position a position that is -- was taken
17 by essentially the operators of this stormwater
18 system, waste water systems, or was it something
19 that was presented to operators by their
20 engineers?

21 MR. WILLIAMS: I can only speak for
22 Angola. Angola's participation, decision to
23 participate with this effort, was because Angola

1 went down a pathway to comply with a very
2 stringent removal of CSO's to meet the quality
3 design in order to fully capture and treat those
4 from a ten-year one-hour storm. But the
5 anticipation that once we completed those
6 improvements and demonstrated that we could
7 comply with that, that any -- any CSO events
8 beyond that would be -- at the time it was
9 considered force majeure or act of God.

10 A lot of things -- a lot of things have
11 shifted in that 20-year interim while Angola was
12 implementing its plan, and when we came out the
13 other side, when we implemented our program,
14 instead of being in compliance with the CSO
15 policy, we found ourselves to be in a place where
16 our CSO's were identified as being prohibited,
17 and forced a discussion.

18 As we've talked before, we have the utmost
19 confidence in the agency today that they
20 recognize our efforts, and that we are -- we have
21 met the intents and purposes of the CSO policy,
22 but the way -- the way it is worded, we are --
23 basically we have to defend every CSO event, that

1 we've met that level of control, as opposed to
2 being able to document that we've completed a
3 huge investment in our infrastructure, the two
4 years documenting plans, and received essentially
5 a "Yes," we have met that goal, and now this is
6 taking place.

7 And so, this isn't anything that was
8 initiated by our engineers. This is more -- this
9 is from our operation, from our community, who
10 felt that what we anticipated, we've been
11 compliant, and at the end, the project has been
12 taken away from us. We're simply trying to find
13 a way to find regulatory certainty for our
14 community that we meet and will continue to meet
15 the expectations of the CSO policy.

16 CHAIRMAN GARD: Thank you.

17 Is there anybody else that wishes to give
18 their version of an update?

19 Yeah.

20 MR. CLEM: Dr. Alexandrovich had her
21 hand up.

22 CHAIRMAN GARD: Okay.

23 Yes, Dr. Alexandrovich?

1 DR. ALEXANDROVICH: Yeah, I just have
2 one question, about the -- I didn't quite follow
3 it -- that there's some movement to remove the
4 limited use classification?

5 COMM. PIGOTT: Yeah, thank you,
6 Dr. Alexandrovich for raising that. There's a
7 limited use category for -- and that -- while
8 that's being -- we're talking about that, that
9 has nothing to do with the wet weather limited
10 use standard, and therefore, it has nothing to do
11 with, and nor are we at all implying or
12 positioning ourselves to eliminate the wet
13 weather subcategory that Craig is talking about.

14 In fact, we had plans to keep it. As I
15 mentioned earlier, we worked very hard to
16 establish that and to pass it and get EPA
17 approval on it. It's not going away, and the
18 agency in no way has any indication, and nor has
19 it said anywhere that it would eliminate that CSO
20 established category. So, I just want that to be
21 very clear for the Board, and I appreciate you
22 bringing that up, Dr. Alexandrovich.

23 CHAIRMAN GARD: Are there other

1 comments?

2 DR. ALEXANDROVICH: To follow up on
3 that, please, just a second. So, what limited
4 uses -- so, has IDEM started a rulemaking or put
5 a public notice, and what limited uses are you
6 looking at?

7 COMM. PIGOTT: There were limited use
8 waters and there were a handful of them, and they
9 didn't really have any regulatory impact, and
10 they were kind of holdovers from, you know, the
11 standards that we had put in place for our water
12 quality standards for nine-tenths of our waters,
13 and there were just a handful. We had no -- I
14 mean it was a totally separate endeavor.

15 Martha, I don't even know where we went
16 from moving forward with that proposal, and maybe
17 you can --

18 MS. METTLER: Yeah.

19 COMM. PIGOTT: -- provide an update.

20 MS. METTLER: So, that --

21 COMM. PIGOTT: And this is Martha
22 Clark Mettler. She's the Assistant Commissioner
23 in the Office of Water Quality.

1 MS. METTLER: Right. So, that notice
2 that Craig referred to was our water quality
3 standards review, where we list out any concepts
4 of any changes to our standards that we may or
5 may not make so we can get comments from the
6 public and interested parties on whether there
7 are adjustments, we should, you know, adopt the
8 new ammonia criteria, which I'm sure Craig is
9 really behind, and some other things. And we try
10 to be comprehensive in our listing of potential
11 things.

12 We had previously -- I don't even remember
13 now how long ago it was, Chris -- introduced the
14 idea of getting rid of those waters that were
15 listed as limited use. They were listed
16 literally decades ago, before secondary treatment
17 was available in wastewater treatment plants.
18 There wasn't a very rigorous analysis of those
19 waters being listed.

20 We've talked to those systems that
21 discharged those waters. They think they can
22 meet up-to-date standards, and so, we thought
23 that in conjunction with the fact that there were

1 changes years ago made that took away exceptional
2 use waters, that that would make it easier to
3 have just all of the uniform waters classified,
4 and they would need to meet all of the water
5 quality standards as we have them on the books,
6 with the exception of this limited use
7 subcategory, which is also in statue, as you
8 know, so --

9 COMM. PIGOTT: Yeah. So, in short,
10 Dr. Alexandrovich, those waters were including in
11 a larger proposal of potential changes, that
12 rulemaking is -- there's never been a rulemaking
13 that's been -- gone forward with that, and we
14 have no intention to eliminate the wet weather
15 limited use subcategory that we worked so hard to
16 establish in this agency, and which we believe is
17 a viable alternative for communities across the
18 state that are CSO communities for the CSO
19 purposes.

20 DR. ALEXANDROVICH: Thank you for all
21 of your answers.

22 CHAIRMAN GARD: Any other questions?

23 MR. WILLIAMS: My apologies for the

1 mischaracterization. It simply was our
2 understanding based on what we saw that was
3 happening. We were concerned that that was
4 happening, so we just simply had the opportunity
5 to talk about that. Thank you for the
6 clarification.

7 CHAIRMAN GARD: Thank you.

8 Did you have a comment.

9 MR. HIGGINBOTHAM: Yes. My name's
10 Paul Higginbotham. I'm the Deputy Assistant
11 Commissioner for the Office of Water Quality.

12 I've been involved with the petitioners in
13 discussions and meetings, and Craig's right,
14 we've had some great discussions about this.
15 It's a very complicated issue that we're trying
16 to work through and address. We've kind of --
17 it's veered off somewhat from -- the original
18 petition was the adoption of the 2012 criteria as
19 a way to get to regulatory certainty.

20 And as we've been having these meetings,
21 we've expanded into a discussion well beyond
22 that, you know, of other ways to possibly address
23 their issues and concerns as it relates to

1 regulatory certainty and how that works. We
2 currently have the two positions now where Craig
3 mentioned. We have the use attainability
4 analysis and wet weather rulemaking.

5 So, we're looking into is there a way to
6 streamline and handle the use attainability
7 analysis in a different manner to benefit the
8 smaller communities in a way to continue to
9 utilize our wet weather limited use with some
10 kind of rulemaking, as well as one of the things
11 that Craig mentioned, the permit language we
12 utilized for Angola had a probation, a specific
13 probation in the permit language.

14 So, we're also evaluating exchanging
15 permit language with the petitioners as well, as
16 a way to try to address that concern. There
17 still is the issue of the nonrule policy document
18 that addresses that, and utilizing our
19 enforcement discretion process through that. And
20 again, enforcement discretion, we utilize it
21 every day when we do inspections, even with
22 nonformal. We just -- "okay. Hey, you have this
23 relatively minor violation." We give people the

1 opportunity to address that. That's utilized
2 every day.

3 This is raised to the level of an NPD, a
4 Nonrule Policy Document, it came to the Board, it
5 was publicized. So, this level of enforcement
6 discretion we utilize. I just want to kind of
7 express to the Board that this is an extremely
8 high level of enforcement discretion that we
9 utilize as it relates to combined sewer
10 communities.

11 So, it's not something if I were to leave
12 we would change or do something different. I
13 mean that -- it's a set standard through a
14 Nonrule Policy Document. So, the concern raised
15 about if I were to leave or Martha or Bruno were
16 to leave, you know, that Nonrule Policy Document
17 that addresses that stays with the agency. It
18 doesn't -- it doesn't disappear if we were to
19 leave.

20 So, I think, you know, there is that issue
21 there that there is something for them to address
22 that issue, but we are continuing -- they've
23 provided us a lot of information. In the past

1 couple of meetings we have been digging into
2 their implementation procedures and processing
3 their ideas and we're looking at that, as well as
4 the use attainability analysis and can we
5 streamline it, as well as a couple of other
6 issues that we'll be talking to the petitioners
7 about.

8 So, now -- and Bill, a member, has
9 served -- Bill Etzler's been involved and he's
10 listened in on some of the meetings, so I don't
11 know if he would want to give his version or his
12 update or if he has an opinion about how the
13 meetings have been going, but we look forward to
14 kind of continuing to have a couple of more
15 meetings internally as well as externally with
16 petitioners, and then maybe we can wrap this
17 thing up here pretty soon.

18 CHAIRMAN GARD: Okay.

19 MR. HIGGINBOTHAM: Thank you.

20 CHAIRMAN GARD: Thank you.

21 Any questions for Paul?

22 (No response.)

23 CHAIRMAN GARD: Bill, do you want to

1 give your two cents' worth?

2 MR. ETZLER: Yes.

3 First of all, I've been very appreciative
4 of the effort that both the agency and the
5 petitioners have put into this effort. There has
6 been a great deal of information exchange, and
7 the discussion has been very fruitful. I agree
8 with both parties that we are moving toward and
9 looking at various options.

10 I hope that in the near future we can come
11 to the Board with a great deal of information
12 about these efforts and hopefully reach a
13 conclusion to the effort. I know there are
14 some -- there are some gaps that we need to fill
15 in terms of how we approach a final solution to
16 this, but the work group has done an excellent
17 job of providing information, answering
18 questions, and the discussion that I've been
19 involved with has been very good.

20 CHAIRMAN GARD: Thank you.

21 Any questions for Bill?

22 (No response.)

23 CHAIRMAN GARD: Any other comments

1 from any Board members?

2 (No response.)

3 CHAIRMAN GARD: Okay. Now is an Open
4 Forum. Is there anyone that wishes to address
5 the Board today?

6 (No response.)

7 CHAIRMAN GARD: Anyone virtually?

8 MR. CLEM: No.

9 CHAIRMAN GARD: Okay.

10 Well, the next meeting of the
11 Environmental Rules Board is tentatively set for
12 November 10th, 2021 at 1:30 in Conference Room A,
13 Indiana Government Center South. The meeting
14 date is tentative and subject to change. We will
15 keep everyone updated when it is -- that is
16 confirmed or another date is chosen.

17 Is there a motion to adjourn?

18 DR. NIEMIEC: So, moved. This is Ted
19 Niemiec.

20 CHAIRMAN GARD: Is there a second?

21 MR. DAVIDSON: Second.

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

1 MS. HUFF: Aye.

2 DR. NIEMIEC: Aye.

3 DR. ALEXANDROVICH: Aye.

4 MR. BORTNER: Aye.

5 MR. RULON: Aye.

6 MR. ETZLER: Aye.

7 MS. COLLIER: Aye.

8 MR. HORN: Aye.

9 MR. WASKY: Aye.

10 MR. DAVIDSON: Aye.

11 MR. SCHULER: Aye.

12 CHAIRMAN GARD: Aye.

13 Opposed, nay.

14 (No response.)

15 CHAIRMAN GARD: I think it's by

16 acclamation. We are adjourned.

17 - - -

18 Thereupon, the proceedings of
19 August 11, 2021 were concluded
at 2:56 o'clock p.m.

20 - - -

21

22

23

24

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, August 11, 2021 in this matter and
8 transcribed by me.

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

14
15 My Commission expires August 26, 2024.

16 Commission No. NP0690003
17
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23

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