

In The Matter Of:
BEFORE THE INDIANA ENVIRONMENTAL RULES BOARD

November 10, 2021

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

- - -

PUBLIC MEETING OF NOVEMBER 10, 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 South, Conference Center,
Room A, 402 West Washington Street, Indianapolis,
Indiana, on Wednesday, November 10, 2021 at 1:30
o'clock p.m.

- - -

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1 APPEARANCES:

2 BOARD MEMBERS:

3 Beverly Gard, Chairman
4 Angelique Collier
5 Dr. Ted Niemiec
6 Dr. Joanne Alexandrovich
7 William Etzler
8 Chris Horn
9 Michael Schuler
10 Calvin Davidson
11 R. T. Green
12 Dan Bortner
13 Michael Chambers
14 Mark A. Wasky, Proxy, Indiana Economic
15 Development Corporation
16 Katherine Nelson, Proxy, Lieutenant
17 Governor
18
19 Bruno Pigott, IDEM Commissioner
20 (Nonvoting)
21

22 IDEM STAFF MEMBERS:

23 Ryan Clem
Christine Pedersen
Keelyn Walsh
MaryAnn Stevens
Paul Higginbotham
Krystal Hackney
Harold Templin
Nancy King
Matt Stuckey
Jenny Acker
Beth Admire
Karla Kindrick

24 PUBLIC SPEAKERS:

25 Tim Bannister
26 Daniel Deeb
27 Craig Williams

28 - - -

29

1 1:30 o'clock p.m.
November 10, 2021

2 - - -

3 CHAIRMAN GARD: Okay. The
4 November 10th, 2021 meeting of the Indiana
5 Environmental Rules Board will come to order. A
6 quorum of the Board is present, and today we have
7 a new Board Member, Mr. Michael Chambers, from
8 Eli Lilly.

9 Mr. Chambers, are you on yet?

10 (No response.)

11 CHAIRMAN GARD: Well, he's not on
12 yet, but when he gets on, we'll have a chance to
13 meet him. He replaces Paul Gilson, who was sent
14 someplace on the East Coast by Lilly.

15 Ryan, do want to go ahead and cover the
16 meeting logistics for in-person and remote
17 participants?

18 MR. CLEM: Yes. Thanks, Madam
19 Chairman. This is Ryan Clem. I think we're
20 having just one issue here.

21 CHAIRMAN GARD: Do you know what that
22 is?

23 MR. CLEM: Yeah, I think -- is that

1 fixed? All right.

2 So, my name is Ryan Clem, Communications
3 Director with IDEM. We will be taking questions
4 and comments at today's hearing. For those in
5 the room who would like to speak, there are
6 speaker cards over with Karla, so please fill out
7 the speaker card if you're in the room today.

8 For those members of the public joining
9 via Zoom, if you would like to speak today,
10 please use the raised hand or chat feature. At
11 the bottom or the top of your screen, you'll see
12 the menu bar, and in the middle of that menu
13 there should be a chat icon and also a
14 raised-hand option. Please utilize either one of
15 those options if you have any questions or
16 comments, and you will be called upon at the
17 appropriate time.

18 For those joining by phone, if you have a
19 question or comment, you can raise your hand by
20 pressing star nine, and then when called upon,
21 please hit -- press star six to unmute yourself.

22 For everyone in today's meeting, please
23 identify yourself when speaking.

1 If any members of the media have joined,
2 please use the chat feature or send an e-mail to
3 media@idem.in.gov if you have any questions.

4 This meeting is being recorded and will be
5 posted on IDEM's Web site.

6 And with that, I will turn it back over to
7 you, Chairwoman Gard.

8 CHAIRMAN GARD: Okay.

9 Are there any questions for Ryan about how
10 to use the features to participate?

11 (No response.)

12 CHAIRMAN GARD: Okay. Our first
13 order of business today is the approval of the
14 summary of the August the 11th, 2021 Board
15 meeting. Are there any additions or corrections
16 to the summary as presented?

17 (No response.)

18 CHAIRMAN GARD: If not, is there a
19 motion to approve?

20 DR. NIEMIEC: So moved. This is Ted
21 Niemiec.

22 CHAIRMAN GARD: Is there a second?

23 DR. ALEXANDROVICH: Second,

1 Alexandrovich.

2 CHAIRMAN GARD: We'll have a voice
3 vote. All in favor, say aye.

4 MR. HORN: Aye.

5 DR. NIEMIEC: Aye.

6 DR. ALEXANDROVICH: Aye.

7 MR. BORTNER: Aye.

8 MR. GREEN: Aye.

9 MS. NELSON: Aye.

10 MR. ETZLER: Aye.

11 MR. WASKY: Aye.

12 MS. COLLIER: Aye.

13 MR. DAVIDSON: Aye.

14 MR. SCHULER: Aye.

15 CHAIRMAN GARD: Aye.

16 Any opposed, say nay.

17 (No response.)

18 CHAIRMAN GARD: The minutes are
19 approved unanimously as distributed.

20 Commissioner, your report, please.

21 MR. CLEM: He's not here yet.

22 CHAIRMAN GARD: Commissioner?

23 MR. CLEM: He's not here yet, Madam

1 Chair.

2 CHAIRMAN GARD: Okay. Well, we'll go
3 on, and Chris Pedersen, with her rulemaking
4 report.

5 MS. PEDERSEN: Hello. I'm Chris
6 Pedersen, with the Rules Development Branch of
7 the Office of Legal Counsel.

8 Our next Board meeting is tentatively
9 scheduled for February 9th, 2022. At that
10 meeting, we anticipate presenting the three rules
11 for final adoption that will be presented today
12 for preliminary adoption. Those are Public Water
13 System Definition, and the Water and Waste
14 Program Permit Fee rulemakings.

15 Also, a second final adoption is needed
16 for the Satellite Manure Storage Systems --
17 Storage Structure Reference Updates rulemaking.
18 This rule had to be re-called for a procedural
19 error, which has been corrected, but it must be
20 final adopted again. The rule language has not
21 changed since the previous final adoption in
22 August, except to correct a typographical error.

23 I'm happy to answer any questions Board

1 members may have about any of the rulemakings
2 before moving on to the Air Permitting Report.

3 CHAIRMAN GARD: Are there any
4 questions for Chris?

5 (No response.)

6 CHAIRMAN GARD: Thank you, Chris.

7 MS. PEDERSEN: All right. The Air
8 Permitting Report was submitted -- or was
9 included in your Board packet. It's provided
10 each year, usually at the last Board meeting of
11 the year. Jenny Acker was supposed to be here.
12 I don't know if she's arrived, but are there any
13 questions about the Air Permitting Report?

14 DR. ALEXANDROVICH: I don't have a
15 question, but when I was reading through it --
16 and thank you for presenting it -- I thought it
17 might be interesting if we could see a long-term
18 trend on a lot of the data that you present,
19 rather than just the last year, you know, maybe
20 by annual averages.

21 MS. PEDERSEN: Yeah. I will pass
22 that on to Jenny in the Air part.

23 Any other questions?

1 (No response.)

2 CHAIRMAN GARD: I don't think so.

3 MS. PEDERSEN: All right.

4 CHAIRMAN GARD: Well, thank you,

5 Chris.

6 Today we will have hearings for the
7 following Board actions: Adoption of Daviess and
8 Pike County SO2 Redesignations; Fort Wayne
9 Combined Sewer Overflow Wet Weather Limited Use
10 Designations; preliminary adoption of Public
11 Water System Definition, Water Program Permitting
12 Fees, and Waste Program Permitting Fees; and
13 final adoption of Septage Management.

14 We will also have a presentation of four
15 Nonrule Policy Documents today on Supplemental
16 Sampling Guidance, Supplemental Characterization
17 Guidance, Addressing Methane at Anaerobic
18 Bioremediation Sites, and Supplemental Guidance
19 on Engineered Exposure Controls.

20 The rules being considered today at
21 today's meeting were included in Board packets
22 and are available for public inspection at the
23 Office of Legal Counsel, 13th floor, Government

1 Center North. The entire Board packet is also
2 available on IDEM's Web site at least one week
3 prior to each Board meeting.

4 A written transcript of today's meeting
5 will be made. The transcript and any written
6 submissions will be open for public inspection at
7 the Office of Legal Counsel. A copy of the
8 transcript will be posted on the Rules page of
9 the agency Web site when it becomes available.

10 Will the official reporter of the cause
11 please stand, raise your hand and state your
12 name?

13 (Reporter sworn.)

14 CHAIRMAN GARD: Thank you.

15 Now we'll have a public hearing before the
16 Environmental Rules Board of the State of Indiana
17 concerning the adoption of amendments to rules at
18 326 IAC 1-4-15 and 326 IAC 1-4-64 regarding
19 redesignation of a portion of Daviess and Pike
20 Counties for the sulfur dioxide standard.

21 I will now introduce Exhibit A, the draft
22 rule, into the record of the hearing. Keelyn
23 Walsh will present the rule.

1 MS. WALSH: Good afternoon, members
2 of the Board I'm Keelyn Walsh, and I'm presenting
3 Rule No. 21-258, Sulfur Dioxide Redesignation for
4 Daviess and Pike Counties in Indiana, for your
5 consideration.

6 The Clean Air Act requires that U.S. EPA
7 set National Ambient Air Quality Standards, or
8 NAAQS, for pollutants that cause or contribute to
9 air pollution which may reasonably be anticipated
10 to endanger public health and welfare. Each
11 county in Indiana is classified, or designated,
12 as being in attainment if air quality monitoring
13 or modeling indicate that the area is meeting the
14 NAAQS.

15 Areas are designated as nonattainment if
16 the measured concentrations of one or more of
17 these criteria pollutants exceed the NAAQS or
18 contribute a significant amount of pollutants to
19 an area that measures air quality that does not
20 meet the NAAQS. An area can be redesignated from
21 nonattainment to attainment if the area has
22 demonstrated attainment and the standard, and if
23 U.S. EPA has determined that the improvement in

1 air quality is due to permanent and enforceable
2 reductions in emissions.

3 Indiana's attainment status tables at
4 326 IAC 1-4 are periodically updated to reflect
5 each county's attainment status. On
6 October 24th, 2018, Indiana submitted a request
7 for approval to U.S. EPA of the Southwest Indiana
8 nonattainment area's redesignation and
9 maintenance plan and provided supplemental
10 information to U.S. EPA on August 25th, 2020.

11 On March 2nd, 2021, U.S. EPA published the
12 approved request for redesignation of the
13 Southwest Indiana SO₂ nonattainment area for Veale
14 Township in Daviess County and Washington
15 Township in Pike County to attainment for the
16 2010 one-hour primary SO₂ NAAQS.

17 In this final action, U.S. EPA found
18 Indiana had demonstrated that this area is
19 attaining the 2010 SO₂ NAAQS and that the
20 improvement in air quality is due to permanent
21 and enforceable reductions of SO₂ in the area.
22 U.S. EPA also approved Indiana's maintenance
23 plan, which is designed to ensure that the area

1 will continue to maintain the SO2 NAAQS in the
2 future.

3 This rule amends 326 IAC 1-4-15 and 1-4-64
4 to update the attainment designation statuses for
5 Veale Township in Daviess County and Washington
6 Township in Pike County under the 2010 one-hour
7 primary NAAQS for SO2.

8 This rule also amends these two sections
9 to update the designation statuses for the
10 remaining portions of Daviess and Pike Counties
11 to unclassifiable or attainment under the 2010
12 one-hour primary SO2 NAAQS as published by
13 U.S. EPA on January 19th, 2018, and to clarify
14 that these counties are designated as better than
15 national secondary standards as published on
16 March 3rd, 1978.

17 In addition to improving air quality in
18 the area, the updates to the attainment
19 designation statuses for Daviess and Pike
20 Counties will ease state and federal permitting
21 burdens for the identified portions of these
22 counties.

23 A separate rulemaking amends 326 IAC 1-4

1 to update the attainment designation status for
2 90 Indiana counties under the primary and
3 secondary NAAQS for SO2 and the 2015 eight-hour
4 Porter County ozone designation status was
5 initiated after the notice for this rule was
6 published in the Indiana Register. Therefore,
7 the SO2 national secondary standard for Daviess
8 and Pike Counties has been updated in this
9 rulemaking instead of the future SO2 designations
10 rulemaking. This will ensure that the SO2 updates
11 for Daviess and Pike Counties are contained in
12 one rulemaking to avoid confusion and potential
13 crossover errors between the two rules.

14 IDEM requests that the Board final adopt
15 the rule as presented, and program staff are
16 available to answer any further questions you may
17 have.

18 Thank you.

19 CHAIRMAN GARD: Any questions for
20 Keelyn?

21 (No response.)

22 CHAIRMAN GARD: Thank you.

23 Are there any speaker cards?

1 MS. KINDRICK: No.

2 MR. CLEM: No.

3 CHAIRMAN GARD: Okay. This hearing
4 is concluded.

5 The Board will now consider adoption of
6 amendments to 326 IAC 1-4-15 and 326 IAC 1-4-64,
7 Daviess and Pike Counties SO2 Redesignation.

8 Is there any Board discussion?

9 (No response.)

10 CHAIRMAN GARD: I need a motion to be
11 made to adopt the rules as presented.

12 DR. ALEXANDROVICH: So moved,
13 Alexandrovich.

14 CHAIRMAN GARD: Is there a second?

15 MS. COLLIER: Second --

16 DR. NIEMIEC: Second.

17 MS. COLLIER: -- Angelique Collier.

18 CHAIRMAN GARD: Okay. I'll call the
19 roll.

20 Dr. Niemiec?

21 DR. NIEMIEC: Yes.

22 CHAIRMAN GARD: Dr. Alexandrovich?

23 DR. ALEXANDROVICH: Yes.

1 CHAIRMAN GARD: Mr. Green?

2 (No response.)

3 CHAIRMAN GARD: Mr. Green?

4 (No response.)

5 CHAIRMAN GARD: He was here.

6 Mr. Davidson?

7 MR. DAVIDSON: Yes.

8 MR. GREEN: This is Mr. Green; I'm
9 sorry.

10 CHAIRMAN GARD: Okay. I thought you
11 were here.

12 Ms. Nelson?

13 MR. GREEN: I vote yea.

14 CHAIRMAN GARD: Ms. Nelson?

15 MS. NELSON: Yes.

16 CHAIRMAN GARD: Mr. Horn?

17 MR. HORN: Yes.

18 CHAIRMAN GARD: Ms. Collier?

19 MS. COLLIER: Yes.

20 CHAIRMAN GARD: Mr. Schuler?

21 MR. SCHULER: Yes.

22 CHAIRMAN GARD: Mr. Etzler?

23 MR. ETZLER: I will abstain since I

1 didn't participate in the discussion.

2 CHAIRMAN GARD: Beg your pardon?

3 MR. ETZLER: I will abstain because I
4 was not on the call participating in the
5 discussion.

6 CHAIRMAN GARD: Okay.

7 Mr. Bortner?

8 MR. BORTNER: Yes.

9 CHAIRMAN GARD: Mr. Chambers?

10 MR. CHAMBERS: Yes.

11 CHAIRMAN GARD: Mr. Wasky?

12 MR. WASKY: Yes.

13 CHAIRMAN GARD: The Chair votes aye.

14 The vote is ten to zero, with one abstention.

15 Okay. Thank you.

16 Mr. Chambers, when we introduced -- were
17 going through introductions, which we didn't
18 complete, we wanted to welcome you.

19 MR. CHAMBERS: Thank you. I'm here.

20 CHAIRMAN GARD: And so, we hope that
21 you find this interesting and that you will make
22 a lot of contribution to our discussions.

23 We didn't go around and introduce the

1 Board, and Mr. Chambers wasn't here, and I'd like
2 for him to know who all's on the Board and who
3 they represent. So, before we move on to the
4 next item, let's do that. So, I'll introduce
5 myself first. I'm Beverly Gard, Chairman of the
6 Board, former State Senator.

7 Dr. Niemiec, do you want to introduce
8 yourself?

9 DR. NIEMIEC: Yes. I'm Ted Niemiec.
10 I'm the medical representative. Thank you.

11 CHAIRMAN GARD: Commissioner?

12 COMM. PIGOTT: Bruno Pigott,
13 Commissioner of IDEM.

14 CHAIRMAN GARD: Ms. Nelson?

15 MS. NELSON: I'm Katie Nelson, and
16 I'm the representative of the Lieutenant
17 Governor's Office.

18 CHAIRMAN GARD: Mr. Green?

19 (No response.)

20 CHAIRMAN GARD: Can't hear you.

21 Unmute.

22 (No response.)

23 CHAIRMAN GARD: Unmute.

1 (No response.)

2 CHAIRMAN GARD: Can you unmute? Can
3 you hear me?

4 MR. GREEN: Can you hear me now?

5 CHAIRMAN GARD: Yes.

6 MR. CLEM: Yes.

7 CHAIRMAN GARD: Good.

8 MR. GREEN: All right. Yeah, I'm
9 R. T. Green, from Indianapolis, Indiana, and I'm
10 a citizen representative.

11 CHAIRMAN GARD: Cal?

12 MR. DAVIDSON: Calvin Davidson, local
13 garbage man, and I represent the solid waste
14 collection recycling industry.

15 CHAIRMAN GARD: Dr. Alexandrovich?

16 DR. ALEXANDROVICH: Good morning --
17 or afternoon. I'm Joanne Alexandrovich, and I
18 represent local government.

19 CHAIRMAN GARD: Chris?

20 MR. HORN: Yes. My name is Chris
21 Horn, and I represent organized labor. I live in
22 Southwest Indiana.

23 CHAIRMAN GARD: Mr. Schuler?

1 MR. SCHULER: Michael Schuler,
2 representing construction, New Albany, Indiana.

3 CHAIRMAN GARD: Matt Stuckey?

4 MR. STUCKEY: I'm not on the Board,
5 but this is Matt Stuckey. I'm the Assistant
6 Commissioner for the Office of Air Quality.

7 CHAIRMAN GARD: Okay. Well, you were
8 on here, so you get introduced.

9 MR. STUCKEY: There you go.

10 CHAIRMAN GARD: Angelique Collier?

11 MS. COLLIER: Good afternoon, and
12 welcome to the Board. I'm Angelique Collier,
13 representing public utilities.

14 CHAIRMAN GARD: Bannister, Mr. or
15 Ms. Bannister?

16 MR. BANNISTER: Yes. My name's Tim
17 Bannister. I'm representing the NWRA, Indiana
18 Chapter.

19 CHAIRMAN GARD: Okay. Mr. Bortner?

20 MR. BORTNER: Dan Bortner,
21 representing the Indiana Department of Natural
22 Resources, and welcome to the Board.

23 CHAIRMAN GARD: Okay.

1 Beth Mire -- Beth Admire.

2 MS. ADMIRE: Hi. This is Beth
3 Admire. I am with IDEM's Office of Legal
4 Counsel.

5 CHAIRMAN GARD: Jenny Acker?

6 (No response.)

7 CHAIRMAN GARD: Jenny?

8 MS. ACKER: The unmute didn't want to
9 work. I'm Jenny Acker. I'm the Branch Chief for
10 the Air Permits.

11 CHAIRMAN GARD: Okay. Thank you.
12 Jennifer Baker?

13 (No response.)

14 CHAIRMAN GARD: Jennifer?

15 (No response.)

16 CHAIRMAN GARD: She must have stepped
17 away.

18 Mark Wasky?

19 MR. WASKY: Good afternoon. I'm Mark
20 Wasky, representative from the IEDC.

21 CHAIRMAN GARD: And Mr. Chambers, if
22 you would introduce yourself.

23 MR. CHAMBERS: Well, I'm Michael

1 Chambers, and I'm from Eli Lilly, and
2 representing manufacturing.

3 CHAIRMAN GARD: There's a phone with
4 a long number after it. I have no idea who that
5 is.

6 MR. ETZLER: That's Bill Etzler, and
7 I represent small business, and I'm from
8 Fort Wayne.

9 CHAIRMAN GARD: Okay. Bill, glad to
10 know that's what you look like today. Thank you.

11 (Laughter.)

12 CHAIRMAN GARD: I've never seen you
13 look quite like that before.

14 Okay. And out in the audience we have
15 Nancy King, who's the legal counsel, and you've
16 heard from a couple of the other people that have
17 been involved with this.

18 Okay. Let's move on to a public hearing
19 before the Rules -- Environmental Rules Board of
20 the State of Indiana concerning adoption of
21 amendments to rules at 327 IAC 2-1-3.1 and
22 327 IAC 2-1.1, Fort Wayne SO2 Wet Weather Limited
23 Use Designation Rule.

1 I will now introduce Exhibit H [sic], the
2 draft rule, into the record of the hearing.

3 MaryAnn Stevens will present the rule.

4 MS. STEVENS: Good afternoon, members
5 of the Board. I am MaryAnn Stevens, a rule
6 writer in the Office of Legal Counsel, Rules
7 Development Branch.

8 This rulemaking establishes a combined
9 sewer overflow wet weather limited use
10 subcategory of the recreational use designation
11 under authority provided by Indiana
12 Code 13-18-3-2.5, the Clean Water Act, and
13 federal regulations at 40 CFR 131.10. The
14 rulemaking process to add a CSO wet weather
15 limited use subcategory to Title 327 for a CSO
16 community is found at IC 13-14-9-14.

17 The Section 14 rulemaking process requires
18 one posting in the Indiana Register of the
19 proposed rule with a written comment period and
20 one hearing before this Board with the
21 opportunity for public comment.

22 Communities with combined sewers were
23 required under the Clean Water Act and NPDES

1 requirements to prepare and implement a long-term
2 control plan describing what steps the CSO
3 community would take to address combined sewer
4 overflows. The CSO communities also have an
5 option to conduct a use attainability analysis in
6 order to change the designated use of waters
7 receiving combined sewer overflow.

8 The establishment of a CSO wet weather
9 limited use subcategory for Fort Wayne will be
10 the second subcategory adopted by this Board.
11 The CWA Authority's Indianapolis CSO wet weather
12 limited use subcategory adopted by the
13 Environmental Rules Board in January of 2020 was
14 the first.

15 The City of Fort Wayne conducted a use
16 attainability analysis, and IDEM approved it on
17 July 9th, 2020. The analysis determined that
18 even after completion of the long-term control
19 plan, which for Fort Wayne includes construction
20 of an underground tunnel to store stormwater
21 during high flow for treatment later and
22 associated sewer projects, it is expected that
23 there will be limited combined sewer overflow

1 events each year.

2 Fort Wayne's use attainability analysis
3 provided sufficient information to initiate
4 changing the designated recreational use for
5 portions of seven Fort Wayne area water bodies
6 from full body contact to the CSO wet weather
7 limited use subcategory of Indiana's recreational
8 use designation as provided in IC 13-18-3-2.5.

9 With the subcategory, the seven designated
10 waterways would not be held to the recreational
11 use water quality standard for E. Coli bacteria
12 for up to four days following the date that a
13 combined sewer overflow discharge ends. At all
14 other times, the recreational use water quality
15 standards are in effect.

16 The CSO wet weather limited use
17 subcategory cannot be used by a CSO community
18 until its long-term control plan is fully
19 implemented. Complete implementation of Fort
20 Wayne's long-term control plan is expected to
21 occur in 2025, after which the CSO wet weather
22 limited use subcategory will be effective.

23 Full implementation of the long-term

1 control plan requires that CSO events that occur
2 must be consistent with the performance criteria
3 of the long-term control plan, including a
4 maximum of one annual, untreated CSO event per
5 typical year to the St. Joseph River and four
6 annual, untreated CSO events per typical year to
7 designated waters other than the St. Joseph
8 River.

9 This rulemaking amends 327 IAC 2-1-3.1,
10 adds 327 IAC 2-1.1, and repeals 327 IAC 2-1-11.5.
11 When the rulemaking was drafted to establish the
12 CSO wet weather limit use subcategory for the
13 Indianapolis area waterways, it was placed in a
14 new section at 327 IAC 2-1-11.5. As the only
15 community with a subcategory at that time, a
16 section was sufficient to contain the CWA
17 Authority's Indianapolis CSO wet weather limited
18 use subcategory.

19 With Fort Wayne potentially to become the
20 second CSO wet weather limited use subcategory,
21 the decision was made to repeal section 11.5 and
22 place both the CWA Authority's Indianapolis
23 subcategory and the Fort Wayne subcategory in a

1 new rule at 327 IAC 2-1.1, which will be able to
2 accommodate any future communities that become
3 eligible to have a CSO wet weather limited use
4 subcategory.

5 IDEM believes the proposed rule meets the
6 Indiana statutory and federal requirements for
7 establishing a combined sewer overflow wet
8 weather limited use subcategory of the
9 recreational use designation for Fort Wayne and,
10 therefore asks the Board's vote for adoption. If
11 there are any questions, I can provide answers,
12 as well as the IDEM staff members from the Office
13 of Water Quality who can provide more detailed
14 answers.

15 Thank you.

16 CHAIRMAN GARD: Are there any
17 questions for MaryAnn?

18 (No response.)

19 CHAIRMAN GARD: Well, MaryAnn, the
20 question that I had is: Do you have -- do you
21 have many of these requests like this?

22 MS. STEVENS: I think Paul would be a
23 good one to answer that.

1 MR. HIGGINBOTHAM: My name's Paul
2 Higginbotham. I'm the Deputy Assistant
3 Commissioner for the Office of Water Quality.

4 Right now, Fort Wayne will be the second
5 one who is asking for this, and we are currently
6 expected 22 to 23 more will come in who will ask
7 for this as well at a future date, as required by
8 their long-term control plans in their -- for
9 their communities.

10 CHAIRMAN GARD: And do you anticipate
11 those being as smooth as this one's gone?

12 MR. HIGGINBOTHAM: Yeah, I think
13 these are actually getting better as we move
14 through this process and we learn it, as well as
15 EPA's approval of the CWA Authority of the
16 Indianapolis waterway. Rulemaking, they are now
17 comfortable with it as well, so I see it just
18 getting easier as we move through these and do
19 more.

20 CHAIRMAN GARD: Okay. I appreciate
21 your answer. Thank you.

22 MR. HIGGINBOTHAM: Thanks.

23 CHAIRMAN GARD: Anybody else have a

1 question?

2 (No response.)

3 CHAIRMAN GARD: Are there any speaker
4 cards?

5 MS. KING: Yes, we do have one
6 speaker here. Dan Deeb will speak to the Board.

7 MR. DEEB: Good afternoon, Madam. My
8 name is Dan Deeb. I'm with Schiff Hardin LLP.
9 I'm here on behalf of the City of Fort Wayne.

10 I simply wanted to speak to express the
11 city's support of this proposal. We believe that
12 it appropriately closes out the wet weather
13 paradigm envisioned by the Indiana statute, and
14 we also wish to express our appreciation for the
15 diligent work of IDEM's staff in working through
16 the process to where we are prepared for
17 hopefully final adoption.

18 Thank you.

19 CHAIRMAN GARD: Thank you.

20 Are there any questions for the witness?

21 (No response.)

22 CHAIRMAN GARD: Any other speaker
23 cards?

1 MS. KING: No.

2 MR. CLEM: No, no others.

3 CHAIRMAN GARD: Okay. This hearing
4 is concluded.

5 The Board will now consider adoption of
6 amendments to rules at 327 IAC 2-1-3.1 and 327327
7 IAC 2-1.1, Fort Wayne CSO Wet Weather Limited Use
8 Designation Rule.

9 Any Board discussion?

10 (No response.)

11 CHAIRMAN GARD: Is there a motion to
12 adopt the draft rule?

13 MS. COLLIER: So moved, Angelique
14 Collier.

15 CHAIRMAN GARD: Is there a second?

16 MR. BORTNER: So moved, Madam Chair,
17 Dan Bortner.

18 CHAIRMAN GARD: Thank you.

19 Any additional questions?

20 (No response.)

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

23 Dr. Niemiec?

1 DR. NIEMIEC: Yes.

2 CHAIRMAN GARD: Dr. Alexandrovich?

3 DR. ALEXANDROVICH: Yes.

4 CHAIRMAN GARD: Mr. Green?

5 MR. GREEN: Yes.

6 CHAIRMAN GARD: Mr. Davidson?

7 (No response.)

8 CHAIRMAN GARD: Cal?

9 (No response.)

10 CHAIRMAN GARD: He must have jumped
11 off for a while.

12 Ms. Nelson?

13 MS. NELSON: Yes.

14 CHAIRMAN GARD: Mr. Horn?

15 MR. HORN: Yes.

16 CHAIRMAN GARD: Ms. Collier?

17 MS. COLLIER: Yes.

18 CHAIRMAN GARD: Mr. Schuler?

19 MR. SCHULER: Yes.

20 CHAIRMAN GARD: Mr. Etzler?

21 MR. ETZLER: Yes.

22 CHAIRMAN GARD: Mr. Bortner?

23 MR. BORTNER: Yes.

1 CHAIRMAN GARD: Mr. Chambers?

2 MR. CHAMBERS: Yes.

3 CHAIRMAN GARD: Mr. Wasky?

4 MR. WASKY: Yes.

5 CHAIRMAN GARD: The Chair votes aye.

6 The vote is twelve yes, zero nay. The draft rule
7 is adopted.

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 7.1, Septage Management.

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

15 Krystal Hackney will present the rule.

16 MS. HACKNEY: Good afternoon, members
17 of the Board. My name is Krystal Hackney, and I
18 am here -- I am a rule writer in the Rules
19 Development Branch within the Office of Legal
20 Counsel. I am here to present the Septage
21 Management Rule.

22 Septage is the human excreta, water, scum,
23 sludge, sewage, and incidental or accidental

1 seepage from sewage disposal systems. It also
2 includes the retained contents of sewage holding
3 tanks and portable sanitary units, grease, fats,
4 and retained wastes from grease traps or
5 interceptors, and human wastes carried in liquid
6 from ordinary living processes.

7 Managing the transportation, storage,
8 treatment, and disposal, including land
9 application, of septage protects the public from
10 threats to water quality resulting from runoff,
11 spills, and leaks that can result from the use of
12 improper techniques and lack of safeguards. When
13 water quality is degraded, members of the public
14 may lose drinking water, fishing, and
15 recreational resources.

16 This rule amends 327 IAC 7.1 to address
17 the changes that have been made through the
18 Indiana General Assembly regarding the change of
19 terminology from "wastewater" to "septage" and
20 removal of vehicle licensing requirements. This
21 rule also addresses recordkeeping requirements
22 for the cleaning of portable sanitary units, adds
23 flexibility to septage transportation

1 requirements, allows for alternate design and
2 construction of storage and treatment facilities,
3 and adds phosphorus testing requirements.

4 The addition of phosphorus testing is to
5 prevent septage from contributing to excess
6 phosphorus in the soil to reduce contamination of
7 surface and ground waters. The draft rule also
8 includes amendments to ensure the rules are
9 consistent with the most current applicable state
10 law, removes outdated language and forms, and
11 reorganizes and revises language for improved
12 clarity and understanding.

13 After considering Board member questions
14 about the proposed rule language at the
15 preliminary adoption hearing on August 14th
16 of 2019, IDEM determined that surface application
17 of septage is not permitted by Indiana Code,
18 IC 13-11-2-114. The definition of land
19 application, for purposes of IC 13-18-12, is
20 limited to burial or incorporation of septage
21 into the soil.

22 Land application of domestic septage,
23 grease, or a combination of domestic septage and

1 grease by injection or incorporation will
2 continue to be allowed, in accordance with the
3 statute. IDEM conducted outreach on this
4 proposed change and provided a third comment
5 period for interested parties to be able to
6 submit official comments regarding these changes.

7 IDEM received several unofficial comments,
8 that is, comments that were received outside of
9 the official third comment period timeline from
10 June 10th of 2020 to July 1st, 2020, concerning
11 the cost and practicality of remove surface
12 application from the state rule.

13 Because surface application of septage is
14 not currently allowed under state law and
15 injection or in corporation of septage is more
16 protective of the environment and human health,
17 IDEM has eliminated all references to surface
18 application from the rule and limited the methods
19 of land application to burial or incorporation
20 into the soil only.

21 IDEM has also included information brought
22 into question at the preliminary adoption
23 hearing -- excuse me -- regarding the soil sample

1 collection method for the new phosphorus testing
2 requirement under 327 IAC 7.1-8-7 to ensure the
3 most accurate results are provided for land
4 appliers of septage.

5 IDEM determined that the best method for
6 soil sample collection is for all soil tests to
7 consist of one composite sample for every twenty
8 acres, with each composite sample consisting of
9 twenty representative subsamples. These samples
10 must be analyzed for pH by a laboratory certified
11 by the North American Proficiency Testing
12 Program.

13 IDEM has made changes to the rule language
14 since preliminary adoption to provide
15 clarification, consistency with federal and state
16 requirements, and to provide further information
17 on application requirements that were directly
18 taken from the septage management application
19 forms. IDEM has also made amendments to the rule
20 language that remove redundant or vague
21 information and requirements.

22 Lastly, IDEM has made changes to provide
23 less restrictions for permittees regarding

1 septage tank construction that will allow for
2 advancements in technology with the tank material
3 that is used.

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

8 Thank you.

9 CHAIRMAN GARD: Are there any
10 questions?

11 (No response.)

12 CHAIRMAN GARD: Okay. Are there any
13 speakers cards?

14 MR. CLEM: No speaker cards.

15 CHAIRMAN GARD: This hearing is
16 concluded.

17 The Board will now consider final adoption
18 of amendments to 327 IAC 7.1, Septage Management.

19 Any Board discussion?

20 (No response.)

21 CHAIRMAN GARD: Is there a motion to
22 adopt IDEM's suggestions changes?

23 MS. NELSON: So moved, this is Katie

1 Nelson.

2 CHAIRMAN GARD: Is there a second?

3 (No response.)

4 CHAIRMAN GARD: Was there a second?

5 MR. ETZLER: Second, Bill Etzler.

6 CHAIRMAN GARD: This will be a
7 roll-call vote.

8 Dr. Niemiec?

9 DR. NIEMIEC: Yes.

10 CHAIRMAN GARD: Dr. Alexandrovich?

11 DR. ALEXANDROVICH: Yes.

12 CHAIRMAN GARD: Mr. Green?

13 MR. GREEN: Yes.

14 CHAIRMAN GARD: Mr. Davidson?

15 (No response.)

16 CHAIRMAN GARD: Mr. Davidson?

17 (No response.)

18 CHAIRMAN GARD: Cal?

19 (No response.)

20 CHAIRMAN GARD: Ms. Nelson?

21 MS. NELSON: Yes.

22 CHAIRMAN GARD: Mr. Horn?

23 MR. HORN: Yes.

1 CHAIRMAN GARD: Ms. Collier?

2 MS. COLLIER: Yes.

3 CHAIRMAN GARD: Mr. Schuler?

4 MR. SCHULER: Yes.

5 CHAIRMAN GARD: Mr. Etzler?

6 MR. ETZLER: Yes.

7 CHAIRMAN GARD: Mr. Bortner?

8 MR. BORTNER: Yes.

9 CHAIRMAN GARD: Mr. Chambers?

10 MR. CHAMBERS: Yes.

11 CHAIRMAN GARD: Mr. Wasky?

12 MR. WASKY: Yes.

13 CHAIRMAN GARD: The Chair votes aye.

14 The -- the vote is twelve yes, zero nay.

15 Now we need a motion to final adopt the
16 rules as amended.

17 DR. ALEXANDROVICH: So moved,
18 Alexandrovich.

19 CHAIRMAN GARD: Is there a second?

20 MR. HORN: I'll second that motion.

21 CHAIRMAN GARD: This is for final
22 adoption as amended.

23 Dr. Niemiec?

1 DR. NIEMIEC: Yes.

2 CHAIRMAN GARD: Dr. Alexandrovich?

3 DR. ALEXANDROVICH: Yes.

4 CHAIRMAN GARD: Mr. Green?

5 MR. GREEN: Yes.

6 CHAIRMAN GARD: Mr. Davidson?

7 (No response.)

8 CHAIRMAN GARD: Ms. Nelson?

9 MS. NELSON: Yes.

10 CHAIRMAN GARD: Mr. Horn?

11 MR. HORN: Yes.

12 CHAIRMAN GARD: Ms. Collier?

13 MS. COLLIER: Yes.

14 CHAIRMAN GARD: Mr. Schuler?

15 MR. SCHULER: Yes.

16 CHAIRMAN GARD: Mr. Etzler?

17 MR. ETZLER: Yes.

18 CHAIRMAN GARD: Mr. Bortner?

19 MR. BORTNER: Yes.

20 CHAIRMAN GARD: Mr. Chambers?

21 MR. CHAMBERS: Yes.

22 CHAIRMAN GARD: Mr. Wasky?

23 MR. WASKY: Yes.

1 CHAIRMAN GARD: And the Chair votes
2 aye. The total of the vote is twelve aye, zero
3 nays. The rule is final adopted.

4 And at this point, I think, Commissioner,
5 are you still here?

6 COMM. PIGOTT: I am.

7 CHAIRMAN GARD: Okay. We'll have
8 your report.

9 COMM. PIGOTT: Thank you.

10 CHAIRMAN GARD: You weren't here when
11 we started.

12 COMM. PIGOTT: Yes. I apologize for
13 being late, Madam Chair. I was in a meeting with
14 the new U.S. EPA Regional Administrator, Debra
15 Shore. She takes over responsibilities with a
16 new federal administration, and we talked about
17 some of the work that she's doing regarding where
18 she's been and where she's going. She was a part
19 of the Great Lakes Protection Fund in the past,
20 and an elected member the Water Reclamation
21 District in the Chicago area.

22 And I'd like to say that she was at the
23 intersection of politics and policy, and believes

1 that partnerships are essential and exciting in
2 this time, where infrastructure dollars are
3 coming out as a result of the infrastructure bill
4 that just passed. So, one update is we have a
5 new Regional Administrator in U.S. EPA Region V.
6 We at IDEM work closely with the Regional
7 Administrator.

8 Secondly, on the water and wastewater
9 infrastructure front, I participated over the
10 past month in testifying before the House and
11 Senate Wastewater Task Force, which focused not
12 only on infrastructure dollars available, but
13 also on the challenges associated with ensuring
14 that drinking water and wastewater systems remain
15 in compliance with the terms of their permits in
16 the Clean Water Act and the Safe Drinking Water
17 Act.

18 The task force covering a number of
19 topics, from wastewater treatment systems in
20 small communities to operators and the need for
21 new operators in areas where operators are -- are
22 retiring, and there are a large number of
23 operators retiring, to the different technologies

1 associated with wastewater treatment.

2 And a way forward -- they're really
3 focused on: Are there ways to ensure that
4 wastewater systems and drinking water systems
5 across the state are able to either receive the
6 help they need or move into different levels of
7 control if they cannot -- just simply cannot
8 operate their systems.

9 The arrival of wastewater infrastructure
10 dollars should really assist, especially with
11 communities, but it also places a new burden on
12 the regulatory agency, as we work to ensure that
13 those funds are distributed, and that once
14 they're distributed, communities around the state
15 receive the construction permits in water and
16 wastewater that are necessary to ensure that
17 they're able to construct those systems in
18 accordance with the rules in Indiana.

19 Our Office of Water Quality has been
20 working closely with the IFA and the State
21 Revolving Loan Fund. We're bolstering some of
22 our staffing to ensure that we're able to process
23 those permit requests in a timely manner, but

1 also the state revolving fund program is working
2 to ensure that the pipeline is not so congested
3 that it's difficult to process those requests in
4 a timely manner.

5 So, the big message here is infrastructure
6 dollars are going to impose requirements on the
7 agency to process permit requests, and we're
8 working in conjunction with the State Revolving
9 Fund to ensure that that approval process is
10 smooth.

11 And finally, in regard to infrastructure,
12 I'm a part of a Great Lakes commission group
13 that's working on infrastructure issues as well.
14 So, infrastructure in water and wastewater are --
15 is a big topic right now. Money is coming, and
16 lots of it, which is good for those communities
17 that need to make improvements to their systems.
18 It also means that we need to be staffed up to
19 handle the flow.

20 In addition to water and wastewater
21 infrastructure, we have been working on ensuring
22 that we bolster our resources in Northwest
23 Indiana. As you may be aware, the United States

1 Steel and other steel mills have had compliance
2 problems over the past several years. There was
3 a fish kill on the Little Calumet River. Most
4 recently, U.S. Steel in Northwest Indiana, Gary
5 works and other places has had problems. There
6 was an iron plume as a result of a discharge from
7 the facility, oil sheens, and we're working in a
8 three-pronged approach to deal with the issues at
9 the steel mills.

10 One of those approaches involves using our
11 enforcement authority to ensure that the steel
12 mills comply with the terms of the consent
13 decrees and agreed orders that they've signed
14 onto with U.S. EPA and the Department.

15 A second area that we're working on is to
16 ensure that we bolster our presence at those
17 steel mills. We're going to be hiring new
18 inspectors to add to the crew that already
19 inspects in that area so that we can more closely
20 track the progress that they make to ensure that
21 they put in place the infrastructure they need to
22 ensure they comply with their requirements.

23 And then thirdly, we'll be reaching out to

1 the steel mills. We believe that not only should
2 we answer to ensure that they're doing their job,
3 but also that they speak to the public
4 themselves, to explain why they've had these
5 issues in the past and what they're going to do
6 to ensure that these exceedences of permit
7 limits, these discharges of plumes, the fish
8 kills that have been in existence in the past
9 don't continue.

10 And so, we'll be encouraging them to meet
11 with the community to talk about the improvements
12 they're going to make at their facilities. So,
13 that's the three-pronged approach with the steel
14 mills up north.

15 Finally, I want to mention wetlands.
16 Wetlands is an issue, as Sen. Gard knows, was
17 before the state legislature during the last
18 term, but also more recently, the Federal
19 Government has been indicating that they are
20 going to be revisiting the rule that is defining
21 what a Waters of the United States is.

22 And they've put together listening
23 sessions, they're traveling around the country to

1 talk with people. It's already affecting the way
2 that we issue 401 Water Quality Certifications as
3 well as the way that the U.S. Army Corps of
4 Engineers evaluates permit applications for the
5 impact to wetlands throughout the state and
6 throughout the country.

7 We recently were notified by the U.S. Army
8 Corps of Engineer -- Engineers that we -- that
9 they will not be processing 404 permits, that --
10 404 refers to the section of the Clean Water Act
11 that they derive their authority to issue permits
12 that impact wetlands -- because of the changed
13 nature of the regulatory scheme, both in terms of
14 401 Certifications and the Waters of the United
15 States issue.

16 I'm not too pleased with that. I'm not
17 sure why they need to stop issuing 404 Water
18 Quality Certifications, and we'll be working to
19 better understand why it is they're deciding at
20 this point not to issue any. We're worried a
21 little bit that -- of course, that when
22 permittees hear that they're not getting their
23 permits on time, they'll wonder why that our

1 agency isn't doing its job, when in fact it's the
2 U.S. Army Corps of Engineers that has decided
3 that they won't be issuing 404 permits for some
4 period of time that isn't defined by them.

5 So, those are some of the big issues.

6 Finally, I want to mention PFAS. As you
7 may know, there has been concern about these --
8 this series of chemical compounds that is used in
9 a variety of different instances, from the
10 waterproof jackets we wear to the popcorn bags to
11 firefighting foam.

12 A lot of firefighters around the State of
13 Indiana are very concerned that the firefighting
14 foam that they use or can use contains PFAS
15 chemicals, and they want to get it out of their
16 systems.

17 We've been working with the Department of
18 Homeland Security as well as the State Fire
19 Marshall to put together an effort, a coordinated
20 effort, to identify which fire departments have
21 this firefighting foam, and then pick up and
22 dispose of this firefighting foam that contains
23 these PFAS chemicals in an appropriate manner so

1 that they don't need to use it in the future in
2 their firefighting processes. And do it at no
3 cost to the fire departments around the state.

4 We sent out a survey to fire departments.
5 We're getting responses back, and we're planning
6 out the process for the collection of that
7 firefighting foam, and I think that the
8 firefighters are really happy that the agencies
9 are working together on this initiative.

10 So, that's my report, Sen. Gard, and I'm
11 happy to answer any questions.

12 CHAIRMAN GARD: With respect to the
13 Army Corps and approving the permits for
14 wetlands, if our statute had not been changed,
15 would things be going along as normal here?

16 COMM. PIGOTT: No. I mean I wish I
17 could say that yes, that it was all because of
18 the state statutory change. I think it was
19 because of the federal changes. But we've also
20 let all of our stakeholders know about these
21 changes, because many of them are now even more
22 greatly confused than they were in the past about
23 whether they need a permit.

1 And several had submitted applications,
2 and we had done our part to process our 401 Water
3 Quality Certifications, and now their permit
4 applications will be stuck at U.S. EPA. So,
5 we'll be reaching out to the Corps to try to
6 better understand why they feel that they can't
7 process things anymore.

8 It's my understanding, from documents that
9 I've read and conversations I've had with
10 U.S. EPA, that that was not the intent of
11 U.S. EPA to stop the whole process, but rather to
12 ensure that we had a process to move forward, and
13 they were going back to the -- the kind of
14 case-by-case determination that was solidified in
15 the WOTUS decision some years ago and the
16 guidance that resulted therefrom.

17 So, it's -- this sort of regulatory
18 uncertainty does nothing for anybody. It's not
19 also good to put a stop on anything, but we'll be
20 working with the Corps and U.S. EPA in the future
21 to try to figure out what the path forward is
22 here.

23 CHAIRMAN GARD: Okay.

1 Any other questions?

2 (No response.)

3 CHAIRMAN GARD: Okay. Thank you for
4 that.

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

10 I will now introduce Exhibit D, the rule
11 as preliminarily adopted with IDEM's suggested
12 changes, into the record of the hearing.

13 MaryAnn Stevens will present the rule.

14 MS. STEVENS: Hi. I'm MaryAnn
15 Stevens again.

16 Chairperson Gard just read statutory
17 citations for the Metals Criteria rule, which was
18 final adopted at the last Board meeting. Nancy's
19 just informed me that the mistake is on the
20 script, so what I am here to present is a
21 preliminary adoption for rulemaking that we are
22 calling the Definition of Public Water System.
23 It's LSA Document 21-132, and as I said, it is a

1 preliminary adoption hearing.

2 So, good afternoon, members of the Board.
3 I am MaryAnn Stevens, a rule writer in the Office
4 of Legal Counsel, Rules Development Branch.

5 This rulemaking is in response to the
6 U.S. EPA finding that the state's definition of
7 "public water system" is not consistent with the
8 federal definition. To correct this
9 inconsistency, the state's definition of a public
10 water system needs to add the words, quote, an
11 average of, end quote, before the words, quote,
12 at least 25 individuals, end quote, to all
13 definitions of "public water system" in Article 8
14 of Title 327 in order to be as stringent as the
15 federal definition.

16 Additionally, a definition of "public
17 water system" is being added to 327 IAC 8-3.4-1,
18 definition no. 24, to include it and variations
19 that occur in rule language, such as "public
20 water supply," "public water supply systems," and
21 the acronyms for these terms, and connect them to
22 the definition of "public water system" at
23 327 IAC 8-2-1, definition no. 74.

1 Similarly, additions have been made to the
2 definitions of "community water system" and
3 noncommunity water system" to include variations
4 of the terms used in rule language plus the
5 acronyms for those terms.

6 This rulemaking also is amending the rule
7 language at 327 IAC 8-2.5-2(b)(2) by adding the
8 term "GAC10" before "enhanced coagulation." This
9 is another U.S. EPA requested clarification to
10 make it clear that the GAC10 treatment, which
11 refers to ten minutes of contact time in granular
12 activated carbon filter beds, applies to enhanced
13 coagulation as well as enhanced softening.

14 These wording additions will cause no
15 implementation change for drinking water systems
16 because for years IDEM has been determining
17 whether a drinking water system is or is not a
18 public water system according to the federal
19 definition and applying the requirement that
20 GAC10 treatment applies to both enhanced
21 coagulation and enhanced softening.

22 IDEM's drinking water programs are
23 delegated to the state from U.S. EPA, which gives

1 the federal agency authority to require IDEM to
2 make these rule language changes so that IDEM can
3 maintain primacy for the programs. Therefore,
4 IDEM believes the requirements of U.S. EPA have
5 been met in this rulemaking, and we ask for the
6 Board's vote for preliminary adoption.

7 If there are any questions, I can provide
8 answers as well as the IDEM staff members from
9 the Office the Water Quality who can provide more
10 detailed answers.

11 Thank you.

12 CHAIRMAN GARD: Any questions?

13 (No response.)

14 CHAIRMAN GARD: MaryAnn, did I say
15 something wrong at the beginning?

16 MS. STEVENS: Well, as I walked up
17 here, Nancy whispered to me that there's a
18 mistake in the script. It must have repeated
19 language from the August Board meeting, when I
20 presented the final adoption for Metals Criteria
21 rulemaking, which I can happily tell everybody we
22 got notice last Friday that the rule has made its
23 way through the promulgation process.

1 It was finally published in the Indiana
2 Register last Friday, November 5th, which means
3 that long-term rulemaking will become effective
4 30 days after filing, so that will be
5 December 5th. That's excellent news. I'm just
6 very happy to be able to say that.

7 CHAIRMAN GARD: Okay. So, this is --
8 this is for preliminary adoption or final
9 adoption?

10 MS. STEVENS: This is preliminary
11 adoption of the --

12 CHAIRMAN GARD: Okay.

13 MS. STEVENS: -- Definition of Public
14 Water System, LSA Document No. 21-132.

15 CHAIRMAN GARD: Okay.

16 Any speaker cards?

17 MS. KING: No.

18 MR. CLEM: No speaker cards.

19 CHAIRMAN GARD: Pardon me?

20 MR. CLEM: No speakers cards.

21 CHAIRMAN GARD: Okay. The hearing is
22 concluded.

23 The Board will now consider preliminary

1 adoption of amendments to the rules
2 327 IAC 8-1-3, 327 IAC 8-2-1, 327 IAC 8-2.5-2,
3 327 IAC 8-4.1-1, and 327 IAC 8-10-1 regarding
4 Public Water System Definition.

5 Any Board discussion?

6 (No response.)

7 CHAIRMAN GARD: Is there a motion to
8 preliminarily adopt the rule, the draft rule?

9 MS. COLLIER: So moved, Angelique
10 Collier.

11 CHAIRMAN GARD: Is there a second?

12 MR. GREEN: This is R. T. Green. I
13 so second.

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

16 Dr. Niemiec?

17 DR. NIEMIEC: Yes.

18 CHAIRMAN GARD: Dr. Alexandrovich?

19 DR. ALEXANDROVICH: Yes.

20 CHAIRMAN GARD: Mr. Green?

21 MR. GREEN: Yes.

22 CHAIRMAN GARD: Mr. Davidson?

23 (No response.)

1 CHAIRMAN GARD: Ms. Nelson?

2 MS. NELSON: Yes.

3 CHAIRMAN GARD: Mr. Horn?

4 MR. HORN: Yes.

5 CHAIRMAN GARD: Ms. Collier?

6 MS. COLLIER: Yes.

7 CHAIRMAN GARD: Mr. Schuler?

8 MR. SCHULER: Yes.

9 CHAIRMAN GARD: Mr. Etzler?

10 MR. ETZLER: Yes.

11 CHAIRMAN GARD: Mr. Bortner?

12 MR. BORTNER: Yes.

13 CHAIRMAN GARD: Mr. Chambers?

14 MR. CHAMBERS: Yes.

15 CHAIRMAN GARD: Mr. Wasky?

16 MR. WASKY: Yes.

17 CHAIRMAN GARD: The Chair votes yes.

18 So, the vote is twelve ayes, zero nays. The rule
19 is preliminarily adopted.

20 Okay. This is a public hearing before the
21 Environmental Rules Board of the State of Indiana
22 concerning preliminary adoption of amendments to
23 rules at 327 IAC 3-5-5, 327 IAC 5-3-2,

1 327 IAC 5-21-3, 327 IAC 8-3-7, 327 IAC 15-16-5,
2 327 IAC 15-16-10, and 327 IAC 19-7. -- 7-1, and
3 addition of 327 IAC 5-3-17, 327 IAC 5-21-12, and
4 327 IAC 19-9-2 regarding Water Program Permitting
5 Fees.

6 I will now introduce E, the draft rule,
7 into the record of the hearing.

8 MaryAnn Stevens will present the rule.

9 MS. STEVENS: Good afternoon, members
10 of the Board. I am MaryAnn Stevens, a rule
11 writer in the Office of Legal Counsel, Rules
12 Development Branch.

13 This rulemaking to increase permitting
14 fees for IDEM's water program is conducted under
15 the authority of Public Law 250-2019, which was
16 passed by the 2019 General Assembly to amend the
17 process in IC 13-16 concerning the adoption of
18 environmental fees by the Environmental Rules
19 Board.

20 In addition to the revisions to IC 13-16
21 that allow for future rulemakings to increase
22 environmental fees by not more than ten percent
23 in a five-year time period, Public Law 250-2019

1 requires the Environmental Rules Board to adopt
2 rules once before January 1, 2022, a date now
3 extended to January 1, 2023, to increase the
4 amount of the fees for water-related programs
5 under IC 13-18-10, IC 13-18-20, and IC 13-18-20.5
6 regarding confined feeding operations, NPDES
7 permits, and public water systems, respectively.

8 The increased water program fees, along
9 with increased fees for solid waste and hazardous
10 waste programs under IC 13-20-21 and IC 13-22-12,
11 are limited to an aggregate increase of 3.2
12 million dollars more than the aggregate fee
13 revenue actually received in the year immediately
14 preceding the proposed fee increases. The water
15 program fee increases will result in increased
16 revenue for IDEM's water programs of
17 approximately \$1,490,110.

18 The statutes named in Public Law 20 --
19 250-2019 for the water program fees are the
20 current location of permit application fees and
21 flow based annual fees for NPDES and drinking
22 water permits. Construction permit fees are
23 currently found in Title 327.

1 Through this rulemaking, the permit
2 application and flow based annual fees are being
3 added to the administrative rules in Title 327.
4 Public Law 250-2019 requires that the current
5 statutory fees be removed from the statutes in
6 the next legislative session after the completion
7 of this rulemaking.

8 At the Board's August meeting,
9 Comm. Pigott explained that the fee increases
10 that have already been adopted for the air
11 program are not enough to cover the actual costs
12 of conducting the program. Similarly, the
13 collected water program fees have not been
14 sufficient for some time to cover IDEM's costs of
15 operating the water program.

16 The fees associated with issuing permits,
17 amendments, modifications, and renewals have not
18 changed since 1996 for NPDES permits, 2003 for
19 public water system permits, and 1997 for
20 confined feeding operation permits. However, the
21 fees increased under this rulemaking will help
22 IDEM's water program. Therefore, we ask for the
23 Board's vote for adoption.

1 If there are any questions, I can provide
2 answers as well as other IDEM staff members who
3 are here today.

4 Thank you.

5 COMM. PIGOTT: MaryAnn and Madam
6 Chair, if I might add just a comment or two.

7 First of all, it should be noted that the
8 legislation that this was based on was worked on
9 by a number of folks within the agency. Part of
10 the reason I don't see a large crowd of people
11 opposing this is that we both conducted a study,
12 thanks to Grant Geiss and the folks in our
13 finance area, that indicated and proved that we
14 needed the money just to maintain our operations,
15 but also we engaged in a wide variety of
16 discussions with all of the stakeholders in
17 advance of the legislation and in advance of the
18 rulemaking.

19 And it's my understanding, looking at the
20 information here, that we received only a couple
21 of comments from the stakeholders, and that's
22 been due to the hard work that's been done on the
23 part of the staff at IDEM. I want to just point

1 out Nancy King for her work on this fees rule.
2 It was extensive, and I will tell you, it's
3 lasted years.

4 So, if we are able to answer any
5 questions, it's been a big endeavor, and I'm just
6 thankful we've gotten to this point today.

7 Thank you.

8 CHAIRMAN GARD: Well, and thank you,
9 Commissioner, and thank you, Nancy, for your work
10 on this.

11 Are there any questions from anyone for
12 either MaryAnn or Nancy or the Commissioner?

13 (No response.)

14 CHAIRMAN GARD: Are there any
15 speakers cards?

16 MR. CLEM: No.

17 COMM. PIGOTT: No speaker cards.

18 CHAIRMAN GARD: Did you say no?

19 COMM. PIGOTT: That's correct, no
20 speaker cards.

21 CHAIRMAN GARD: Then this hearing is
22 concluded.

23 The Board will now consider preliminary

1 adoption of amendments to rules at 327 IAC 3-5-5,
2 327 IAC 5-3-2, 327 IAC 5-21-3, 327 IAC 8-3-7,
3 327 IAC 15-16-5, 327 IAC 15-16-10, and 327 3 --
4 and 327 IAC 19-7-1, and the addition of
5 327 IAC 5-3-17, 327 IAC 5-21-12, and
6 327 IAC 19-9-2 regarding Water Program Permitting
7 Fees.

8 Is there any Board discussion?

9 (No response.)

10 CHAIRMAN GARD: Is there a motion to
11 preliminarily adopt the draft rule?

12 MR. ETZLER: So moved, Bill Etzler.

13 CHAIRMAN GARD: Is there a second?

14 MR. GREEN: This is R. T. Green. I
15 second.

16 CHAIRMAN GARD: Okay. Thank you.
17 This will be a roll-call vote for preliminary
18 adoption of water fees.

19 Mr. -- Dr. Niemiec?

20 DR. NIEMIEC: Yes.

21 CHAIRMAN GARD: Dr. Alexandrovich?

22 DR. ALEXANDROVICH: Yes.

23 CHAIRMAN GARD: Mr. Green?

1 MR. GREEN: Yes.

2 CHAIRMAN GARD: Mr. Davidson?

3 MR. DAVIDSON: Madam Chair, I'm
4 sorry. I just made it back. Sorry I missed the
5 discussion, but I'll abstain since I wasn't here
6 for all of that.

7 CHAIRMAN GARD: Okay.

8 Mr. Nel -- Ms. Nelson?

9 MS. NELSON: Yes.

10 CHAIRMAN GARD: Mr. Horn?

11 MR. HORN: Yes.

12 CHAIRMAN GARD: Ms. Collier?

13 MS. COLLIER: Yes.

14 CHAIRMAN GARD: Mr. Schuler?

15 MR. SCHULER: Yes.

16 CHAIRMAN GARD: Mr. Etzler?

17 MR. ETZLER: Yes.

18 CHAIRMAN GARD: Mr. Bortner?

19 MR. BORTNER: Yes.

20 CHAIRMAN GARD: Mr. Chambers?

21 MR. CHAMBERS: Yes.

22 CHAIRMAN GARD: Mr. Wasky?

23 MR. WASKY: Yes.

1 CHAIRMAN GARD: The Chair votes aye.
2 It'll be twelve ayes, zero nays. The rule has
3 been preliminarily adopted.

4 This is a public hearing before the
5 Environmental Rules Board of the State of Indiana
6 concerning preliminary adoption of amendments to
7 rules at 329 IAC 3.1-1-14.1, 329 IAC 10-11-8,
8 329 IAC 10-11-9, 329 IAC 11-9-4.1, and
9 329 IAC 15-3-4, and the repeal of 329 IAC 15-3-7
10 and 329 IAC 15-4-3 for Waste Program Permitting
11 Fees.

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

14 Chris Pedersen will present the rule.

15 MS. PEDERSEN: Good afternoon,
16 members of the Board. My name is Chris Pederson.
17 I am in the Rules Development Branch in IDEM's
18 Office of Legal Counsel.

19 This rulemaking incorporates into the
20 Indiana Administrative Code fee increases for the
21 solid and hazardous waste permitting programs
22 currently in IC 13-20-21 and IC 13-22-12. These
23 fees have not been raised since 1996. Upon

1 completion of this rule, the fees will be removed
2 from the statute in accordance with Public
3 Law 250-2019.

4 As you just heard in the presentation for
5 the water program permitting fees, the deadline
6 for completing these rulemakings was extended to
7 January 1st, 2023, and after this rulemaking is
8 complete, future increases are limited to once
9 every five years and by no more than ten percent.

10 Of the 3.2 million dollars established for
11 the water and waste fee increases, the solid and
12 hazardous waste fees in the draft rule would
13 increase the waste program revenue by
14 approximately 1.7 million dollars.

15 The proposed fee amounts in the draft rule
16 were determined based on an analysis of current
17 fee revenue and the permitting-related costs
18 incurred by IDEM. This rule not only addresses
19 the statutory requirement, but it is essential to
20 support the waste permitting programs.

21 IDEM requests that the Board preliminarily
22 adopt this rule. Staff are here to answer any
23 questions you may have.

1 CHAIRMAN GARD: Are there any
2 questions for Chris?

3 (No response.)

4 CHAIRMAN GARD: Are there any
5 speakers cards?

6 MR. CLEM: No speaker cards.

7 CHAIRMAN GARD: This hearing is
8 concluded.

9 The Board will now consider preliminary
10 adoption of amendments to rules at 329 IAC 3 --
11 3.1-1-14.1, 329 IAC 10-11-8, 329 IAC 10-9 --
12 10-11-9, 329 IAC 11-9-4.1, and 329 IAC 15-3-4,
13 and repeal of 329 IAC 15-3-7 and 329 IAC 15-4-3
14 regarding Waste Program Permitting Fees.

15 Is there any Board discussion?

16 (No response.)

17 CHAIRMAN GARD: Is there a motion to
18 preliminarily adopt the draft rule?

19 MR. HORN: So moved.

20 CHAIRMAN GARD: Is there a second?

21 MS. NELSON: I --

22 DR. NIEMIEC: Second.

23 MS. NELSON: -- second, Katie Nelson.

1 CHAIRMAN GARD: Okay.

2 Dr. Niemiec?

3 DR. NIEMIEC: Yes.

4 CHAIRMAN GARD: Dr. Alexandrovich?

5 DR. ALEXANDROVICH: Yes.

6 CHAIRMAN GARD: Mr. Green?

7 MR. GREEN: Yes.

8 CHAIRMAN GARD: Mr. Davidson?

9 MR. DAVIDSON: Yes.

10 CHAIRMAN GARD: Ms. Nelson?

11 MS. NELSON: Yes.

12 CHAIRMAN GARD: Mr. Horn?

13 MR. HORN: Yes.

14 CHAIRMAN GARD: Ms. Collier?

15 MS. COLLIER: Yes.

16 CHAIRMAN GARD: Mr. Schuler?

17 MR. SCHULER: Yes.

18 CHAIRMAN GARD: Mr. Etzler?

19 MR. ETZLER: Yes.

20 CHAIRMAN GARD: Mr. Bortner?

21 MR. BORTNER: Yes.

22 CHAIRMAN GARD: Mr. Chambers?

23 MR. CHAMBERS: Yes.

1 CHAIRMAN GARD: Mr. Wasky?

2 MR. WASKY: Yes.

3 CHAIRMAN GARD: And the Chair votes
4 aye. So, the tally is thirteen ayes, zero nays.
5 The preliminary rule is adopted.

6 We're almost through. Nonrule Policy
7 Documents are next. We will have a presentation
8 of four Nonrule Policy Documents by Harold
9 Templin of IDEM's Office of Land Quality
10 regarding Supplemental Sampling Guidance,
11 Supplemental Characterization Guidance,
12 Addressing Methane and Anaerobic Bioremediation
13 Sites, and Supplemental Guidance on Engineered
14 Exposure Controls.

15 Are there any questions for Mr. Templin?

16 (No response.)

17 CHAIRMAN GARD: Mr. Templin?

18 MR. TEMPLIN: Yes, yes. Good
19 afternoon, members of the Environmental Rules
20 Board. My name is Harold Templin. I'm a
21 geological technical evaluation specialist in the
22 Science Services Branch of the Office of Land
23 Quality, and the lead for the Office's Technical

1 Evaluation Group.

2 The Technical Evaluation Group has used a
3 multidisciplinary approach to evaluate proposed
4 new technologies for investigating and clearing
5 up contamination in soil and groundwater. The
6 TEG developed the technical guidance documents
7 for IDEM staff and the public, describing the
8 technologies, the applicability, and
9 effectiveness.

10 While the law requires that owners and
11 operators have [sic] a contaminated site must
12 take such actions as necessary to assure that
13 there are no unacceptable risks to those exposed,
14 there's no current rules to provide how that is
15 to be done.

16 For more than ten years, IDEM staff and
17 the public have been using these documents to
18 interpret the statutes and provide direction for
19 remediation action and removal. Because of these
20 actions, the Office of Legal Counsel recommends
21 that these documents go through the nonrule
22 policy procedure.

23 Office of Land Qual -- the Office of Legal

1 Counsel also suggested that it would be expedient
2 to combine these guidance documents of like
3 subject matter into one nonrule policy document.
4 Therefore, today I'm bringing before you four
5 nonrule policy documents, Waste-0071
6 through 0074.

7 The technical guidance documents referred
8 to in these four doc -- in these four nonrule
9 policy documents are developed by describing the
10 technology, its advantages, limitations, problems
11 encountered, and safety issues.

12 The TEG uses their experience with
13 technology, peer-reviewed literature, U.S. EPA
14 documents, and detailed case studies from the
15 public to do these evaluations. They do not
16 include requirements, nor do they verify their
17 effectiveness in conditions not identified in the
18 evaluation. Mention of trade names or commercial
19 products do not constitute endorsement or
20 recommendation by IDEM.

21 Waste-0071 combines the sampling guidance
22 documents, described in [sic] a couple of
23 specific devices that are used to collect

1 groundwater, procedures that can be used in
2 collecting soil samples of volatile organics, and
3 two procedures for preparing monitoring wells for
4 collecting groundwater samples.

5 Waste-0072 is the group of technical
6 guidance documents describing attributes of site
7 characterization for land remediation in specific
8 landforms or specific land uses, such as the
9 aquitards, karst terrain, manmade preferential
10 pathways, shallow groundwater [sic], vapor
11 intrusion, drycleaners, small arms firing ranges,
12 and the use of high-tech -- high-resolution tool
13 in the site characterization.

14 Waste-73 -- 0073 addresses a specific
15 technical issue of methane gas generation at many
16 remediation sites.

17 Waste-0074 is the grouping of technical
18 guidance documents on the use of engineering
19 controls within a remedy. These controls include
20 barriers such as covers, fences, slurry walls.
21 There is also a guidance on the vapor mitigation
22 systems.

23 Other technical guidance documents that

1 have been developed by TEG will be incorporated
2 in a Risk-Based Closure Guide, which will be
3 brought before you at a future date.

4 We received no comments from the public or
5 staff during this comment period of July 7th
6 through August 23rd, 2021. We suggest that this
7 demonstrates that the guidance documents have
8 been accepted for their use and are routinely
9 updated with appropriate new advances in the
10 technology.

11 If you have any questions, I will be
12 pleased to address them. Thank you for your
13 attention.

14 CHAIRMAN GARD: Any questions?

15 DR. ALEXANDROVICH: I do have a few
16 questions and comments, Chairman Gard.

17 CHAIRMAN GARD: Okay. Yes.

18 DR. ALEXANDROVICH: Thanks.

19 I -- I understand that these are just
20 basically a list of references for your technical
21 guidance documents, so I thought it was kind of
22 unique to put it as a nonpolicy guidance -- a
23 nonpolicy document. So, I was wondering how you

1 plan on updating them. You mentioned you are
2 going to update them. That's one comment I have.

3 The second one is I -- you mentioned in
4 your presentation that any mention of commercial
5 products is not an endorsement. I'm not sure
6 that's anywhere written in the document there, so
7 you might want to check on that.

8 And my third one was in the
9 characterization guidance. The last reference on
10 page 10 is a personal communication by John Sohl,
11 and somehow I don't think that's available to
12 anybody using this. It's basically what you
13 would put in a reference list.

14 MR. TEMPLIN: Right.

15 DR. ALEXANDROVICH: Thanks.

16 MR. TEMPLIN: Okay.

17 CHAIRMAN GARD: Does any IDEM staff
18 have any response to any of her comments?

19 MR. TEMPLIN: The uniqueness of these
20 nonrule policy documents were that they list all
21 of the technical information that was used by the
22 group to develop the policies, and on the last
23 page of the nonrule policy, the appendices are

1 the links to those documents which have been
2 established on IDEM's cleanup page, Web page, so
3 that when they would click on that, you would --
4 the policy document would come up.

5 At present, the way that we understand a
6 nonrule policy document would be updated is that
7 if new technology -- or we receive comments that
8 we need that the nonrule -- that some of these
9 technical documents are not up to date, we would
10 see them as a minor change to this nonrule policy
11 and would update the technical guidance document
12 in the -- with the concurrence of the Office of
13 Legal Counsel.

14 And the last issue of personal
15 communication, what occurs is that there are
16 several of the documents that are in the nonrule
17 policy that are not available on the Web -- I
18 should not say several, there are some -- and
19 these would be obtained by contacting the Office
20 of Land Quality, the Science Services Branch,
21 where we give the number for -- if they wanted to
22 see these documents. And so, that personal
23 communication was an e-mail with the same --

1 DR. ALEXANDROVICH: Well, then maybe
2 something could be added there in terms of if
3 they were interested in that personal
4 communication, to contact whomever to get a copy
5 of it.

6 MR. TEMPLIN: Yes.

7 CHAIRMAN GARD: Yeah, I think
8 transparency is important in these discussions
9 and in these issues, and it seems to me that
10 would be part of the public record.

11 MR. TEMPLIN: Yes.

12 CHAIRMAN GARD: Anybody else?

13 (No response.)

14 CHAIRMAN GARD: Okay. And there's no
15 vote on that?

16 COMM. PIGOTT: No, that's -- nonrule
17 policies don't require a vote.

18 CHAIRMAN GARD: Right.

19 MR. CLEM: And Madam Chair, there's
20 one question. T. Bannister had a question. I
21 don't know if that person can unmute, but the
22 question is: If a new technological method
23 becomes available but is not listed in the NRB --

1 PD, will IDEM still consider them for use?

2 MR. TEMPLIN: That is for someone
3 above my pay grade, I guess.

4 (Laughter.)

5 MR. TEMPLIN: What we -- what we do
6 is we do consider, in technical evaluations, it's
7 a matter of whether it raises itself up to the
8 point of needing to be a public transparency
9 for -- on the Web page.

10 CHAIRMAN GARD: Okay.

11 Any more?

12 MR. CLEM: I don't see any more.

13 COMM. PIGOTT: Thank you, Harold.

14 CHAIRMAN GARD: Thank you.

15 The Board has provided responses to the
16 questions, and this is concerning the citizens
17 petition, for both the agency and petitioners who
18 have asked this Board to consider adopting the
19 federal 2012 recreational water quality standards
20 to address CSO issues and their requirements to
21 abate CSO under existing state and federal
22 consent decrees and orders.

23 The agency and petitioners have been in

1 discussions for many months attempting to work
2 through the issues, and they have worked for a
3 long time. Our Board member, Bill Etzler, has
4 attended these meetings as well, and I have asked
5 Bill -- or am asking Bill -- to provide us with a
6 write-up of his perspective on this issue.

7 Given Bill's experience in this area, I'm
8 hoping he will be able to provide us with
9 information to enable us to have an informed
10 discussion, which I would like to have at our
11 next meeting. It is my understanding that both
12 the petitioners and the agency would like to give
13 their members time to digest the information
14 provided while both sides continue their
15 discussions.

16 However, if anyone has any questions
17 related to the information provided by either of
18 the petitioners or the agency today, we can raise
19 them now. Are there -- are there any questions
20 that any of you have?

21 (No response.)

22 CHAIRMAN GARD: Okay. Well, I'd like
23 to ask the agency to send Bill's write-up to the

1 Board members as soon as he submits it to you so
2 that we can have time to review it and the
3 information provided in today's Board packet, and
4 any additional information that comes from
5 continuing discussions, between now and the next
6 scheduled Board meeting.

7 Bill, how does that suit you?

8 MR. ETZLER: Well, I don't know.
9 Having been involved with the work group, I think
10 we have made a great deal of progress, and I
11 think there's been a real sharing of ideas and an
12 understanding of each side's position, and as you
13 suggested, I believe that I can put together a
14 document that will make it easy for the Board to
15 understand where both parties are at in this
16 discussion, and provide us with some information
17 on how the parties might move forward.

18 CHAIRMAN GARD: Bill, that would be
19 great, and it would be great to have this
20 resolved in some way after the next meeting.

21 COMM. PIGOTT: And we're happy to
22 distribute Bill's -- his evaluation of the matter
23 to all of the Board Members.

1 DR. ALEXANDROVICH: I have a --

2 CHAIRMAN GARD: Is that

3 Dr. Alexandrovich?

4 DR. ALEXANDROVICH: Yeah. I have a
5 question for Bill, if that's okay.

6 CHAIRMAN GARD: Sure.

7 DR. ALEXANDROVICH: So, I really -- I
8 read through all of the material that was sent to
9 us, and I really appreciate it all. It looks
10 like you are making progress, and I was kind
11 of -- I kind of like that implementation
12 document.

13 But Bill, one question that I have, and
14 maybe you can address it in your document, it
15 seems like the petitioners are saying, "We don't
16 need to go to the EPA because we won't be
17 adopting a new standard and that this
18 implementation would be based in the permit."

19 But I'm not -- to me, it doesn't all
20 make -- that doesn't quite make sense. I think
21 we need to adopt the standard in order to put it
22 into the permit. So, maybe you can -- in your
23 document, you can help me with that confusion.

1 MR. ETZLER: I will do that.

2 DR. ALEXANDROVICH: Thank you.

3 MR. ETZLER: And that's a very good
4 point.

5 CHAIRMAN GARD: Is there any other
6 point that people would like for Bill to address
7 in his document?

8 (No response.)

9 CHAIRMAN GARD: Well, Bill, I
10 appreciate you taking the time to be as involved
11 in this as you've been, and I know this has been
12 kind of -- your career is these kind of issues,
13 so if you don't mind, go ahead and do that, and
14 they'll pass it -- the agency will pass it on to
15 us just as soon as you get it to them.

16 MR. ETZLER: Okay.

17 CHAIRMAN GARD: And if anybody thinks
18 of any questions in the meantime, don't hesitate
19 to send them to the agency, and then they'll
20 forward them on to Bill.

21 MR. CLEM: And Chair Gard, we do have
22 someone here to speak on the issue --

23 CHAIRMAN GARD: Okay.

1 MR. CLEM: -- Craig Williams.

2 CHAIRMAN GARD: Yes.

3 MR. WILLIAMS: Thank you. I -- just
4 really quickly, I wanted to give an update to the
5 Board, and we're happy to continue working with
6 IDEM. The agency's been fantastic to work with.
7 This is a complex topic for sure, and I think
8 that a lot of the struggles that we've probably
9 had is because Indiana is on that leading edge
10 nationally on this issue of trying to find good
11 working solutions for Indiana communities.

12 As noted, we have submitted responses to
13 the Board members' questions for their review,
14 and with that, the white paper that puts forth
15 what we believe would be a workable solution for
16 every Indiana CSO community. We appreciate that
17 there are now two approved UAA's, and while the
18 UAA certainly is a solution for this issue, we
19 don't believe it is the solution for --
20 necessarily for every Indiana community.

21 I'll respectfully note here that the
22 apparent ease for the Board and the agency to
23 approve Fort Wayne's UAA is contrasted by the

1 significant cost and burden on the part of the
2 applicant to prepare and submit the UAA.

3 I also would like to just remind the Board
4 that EPA must also provide approval of individual
5 UAA's, and certainly Comm. Pigott's update with
6 EPA's change in 404 approvals demonstrates one of
7 our concerns: The potential uncertainty that
8 future UAA applicants could face with their
9 submissions.

10 In our last work group meeting with IDEM's
11 staff, we were presented with the concept of a
12 focused UAA that the agency wishes to pursue, and
13 certainly while we believe the implementation
14 changes that we proposed in our white paper are
15 the way to go, we're willing to work with IDEM's
16 staff on what a focused UAA would look like, and
17 as such, we do -- just for the record, we do
18 respectfully request to table the petition again
19 while we continue working with IDEM's staff.

20 That's all I have. Thank you.

21 CHAIRMAN GARD: Okay. Thank you very
22 much.

23 Anyone else want to speak to the subject?

1 (No response.)

2 CHAIRMAN GARD: Okay. If -- if not,
3 then we will move to an Open Forum. Is there
4 anyone who wishes to address the Board today?

5 (No response.)

6 CHAIRMAN GARD: No one? Well, that
7 brings us to the end. The next meeting of the
8 Environmental Rules Board is tentatively set for
9 February the 9th, 2022 at 1:30 in Conference
10 Room A, Indiana Government Center, or I assume
11 Zoom, if we need to do that. The meeting date is
12 tentative and subject to change. We will keep
13 everyone updated when this is confirmed or
14 another date is chosen.

15 Staff, do you want to comment on the
16 meeting in February?

17 COMM. PIGOTT: No, no big comments on
18 that from the staff, Madam Chair.

19 CHAIRMAN GARD: Okay.

20 Well, with that, do I hear a motion to
21 adjourn the meeting?

22 DR. NIEMIEC: So moved. This is Ted
23 Niemiec.

1 CHAIRMAN GARD: And is there a
2 second?

3 (No response.)

4 CHAIRMAN GARD: Is there a second?

5 MR. HORN: Yes, ma'am, Chris Horn.

6 CHAIRMAN GARD: All right.

7 All in favor, say aye.

8 MR. HORN: Aye.

9 DR. NIEMIEC: Aye.

10 DR. ALEXANDROVICH: Aye.

11 MR. BORTNER: Aye.

12 MR. GREEN: Aye.

13 MS. NELSON: Aye.

14 MR. ETZLER: Aye.

15 MR. WASKY: Aye.

16 MS. COLLIER: Aye.

17 MR. CHAMBERS: Aye.

18 MR. DAVIDSON: Aye.

19 MR. SCHULER: Aye.

20 CHAIRMAN GARD: Aye.

21 Opposed, no.

22 (No response.)

23 CHAIRMAN GARD: Well, thank you all

1 for your participation today, a good turnout, and
2 again, we welcome Mr. Chambers. Okay.

3 COMM. PIGOTT: Thank you, Chairwoman
4 Gard.

5 - - -
6 Thereupon, the proceedings of
7 November 10, 2021 were concluded
8 at 3:07 o'clock p.m.
9 - - -

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1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Wednesday, November 10, 2021 in this matter
8 and transcribed by me.

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

14
15 My Commission expires August 26, 2024.

16 Commission No. NP0690003
17
18
19
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21
22
23

	adding (1) 53:7	47:1	53:6	82:16
\$	addition (6) 13:17;34:4;44:20; 58:3,20;63:4	afternoon (11) 11:1;19:17;20:11; 21:19;23:4;29:7; 32:16;52:2;58:9; 65:15;69:19	amendments (15) 10:17;15:6;22:21; 30:6;32:10;34:8; 36:19;37:18;51:7; 56:1;57:22;60:17; 63:1;65:6;67:10	appreciation (1) 29:14
\$1,490,110 (1) 59:17	additional (2) 30:19;79:4	again (3) 7:20;51:15;83:18	amends (5) 13:3,8,23;26:9; 33:16	approach (3) 45:8;46:13;70:3
[Additionally (1) 52:16	agencies (1) 49:8	American (1) 36:11	approaches (1) 45:10
[sic (4) 23:1;70:11;71:22; 72:10	additions (3) 5:15;53:1,14	agency (15) 10:9;43:12;44:7; 48:1;54:1;61:9; 77:17,23;78:12,18, 23;81:14,19;82:22; 83:12	amount (2) 11:18;59:4	appropriate (3) 4:17;48:23;73:9
A	address (7) 24:3;33:16;73:12; 77:20;80:14;81:6; 84:4	agency's (1) 82:6	amounts (1) 66:15	appropriately (1) 29:12
abate (1) 77:21	addresses (3) 33:21;66:18;72:14	aggregate (2) 59:11,12	Anaerobic (2) 9:17;69:12	approval (5) 5:13;12:7;28:15; 44:9;83:4
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