

1       BEFORE THE STATE OF INDIANA  
2       ENVIRONMENTAL RULES BOARD

3               - - -

4  
5       PUBLIC MEETING OF APRIL 12, 2017

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8               - - -

9       PROCEEDINGS

10 before the Indiana Environmental Rules Board,  
11 Beverly Gard, Chairman, taken before me, Lindy L.  
12 Meyer, Jr., a Notary Public in and for the State  
13 of Indiana, County of Shelby, at the Indiana  
14 Government Center South, Conference Center,  
15 Room A, 402 West Washington Street, Indianapolis,  
16 Indiana, on Wednesday, April 12, 2017 at 1:31  
17 o'clock p.m.

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

1 APPEARANCES:

2 BOARD MEMBERS:

- 3 Beverly Gard, Chairman  
Gary Powdrill
- 4 Dr. Ted Niemiec  
Joanne Alexandrovich
- 5 Ken Rulon  
William Etzler
- 6 Gail Boydston  
Calvin Davidson
- 7 Mike Mettler, Proxy, Department of  
Health
- 8 Cameron Clark, Proxy, Department of  
Natural Resources
- 9 Devin Hillsdon-Smith, Proxy, Indiana Economic  
Development Corporation
- 10 Jeffrey Cummins, Proxy, Lieutenant  
Governor
- 11 Bruno Pigott (nonvoting)

12

IDEM STAFF MEMBERS:

13

- Nancy King
- 14 Keith Baugues  
Martha Clark Mettler
- 15 Samantha DeWester  
Brian Rockensuess
- 16 Jeff Sewell  
Susan Bem
- 17 Chris Pedersen  
Keelyn Walsh
- 18 Lauren Aguilar

19

PUBLIC SPEAKERS:

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None

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23

1 1:31 o'clock p.m.  
2 April 12, 2017

3 - - -

4 CHAIRMAN GARD: Thank you. Good  
5 afternoon. It's nice to see everyone here. It's  
6 been quite a while since we've gotten together.  
7 The Chair sees a quorum, so I will call the  
8 April 12th, 2017 meeting of the Indiana  
9 Environmental Rules Board to order. We have a  
10 new member with us today, Jeffrey Cummins, who's  
11 the proxy for the Lieutenant Governor.

12 So, welcome, Jeffrey.

13 MR. CUMMINS: Thank you.

14 CHAIRMAN GARD: We're glad to have  
15 you.

16 MR. CUMMINS: Thank you.

17 CHAIRMAN GARD: Our first order of  
18 business today is approval of the summary of  
19 minutes for the November 9th, 2016 Board meeting.  
20 Are there any additions or corrections to the  
21 summary as presented?

22 (No response.)

23 CHAIRMAN GARD: If not, do I hear a  
24 motion to accept the minutes as presented?

1 MR. POWDRILL: So moved.

2 DR. NIEMIEC: Second.

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

5 MR. HILLSDON-SMITH: Aye.

6 DR. NIEMIEC: Aye.

7 DR. ALEXANDROVICH: Aye.

8 MS. BOYDSTON: Aye.

9 MR. POWDRILL: Aye.

10 MR. CLARK: Aye.

11 MR. METTLER: Aye.

12 MR. DAVIDSON: Aye.

13 MR. CUMMINS: Aye.

14 MR. RULON: Aye.

15 MR. ETZLER: Aye.

16 CHAIRMAN GARD: Aye. All opposed,  
17 nay.

18 (No response.)

19 CHAIRMAN GARD: Okay. The minutes  
20 are approved.

21 Since our last meeting, we have a new

22 Commissioner, Comm. Bruno Pigott, no stranger to

23 us, but welcome. We're glad --

1           COMM. PIGOTT: Thank you.

2           CHAIRMAN GARD: -- you're here. So,  
3 you have a report.

4           COMM. PIGOTT: Thank you, Madam  
5 Chair. Thank you to the whole group. It's great  
6 to be able to work with you folks. I can't tell  
7 you how much I appreciate your guidance and  
8 friendship and the work we've done together, and  
9 I look forward to doing it in the future. I did  
10 want to say that, Mr. Etzler, just in case you  
11 need it, I brought you an extra tie.

12                   (Laughter.)

13           MR. ETZLER: There's a story behind  
14 that.

15           COMM. PIGOTT: I know that  
16 Mr. Mettler and Mr. Clark both have an exemption  
17 to the tie rule, and if you need it, I can give  
18 it to you at the break.

19           But you'll probably be more interested in  
20 what we're doing at IDEM, and in terms of my  
21 report, I wanted to let you know first, as the  
22 new Commissioner, we've been building a new set  
23 of folks in our senior staff, and I'm really

1 proud to help introduce some of those folks to  
2 you who will be working and have been working  
3 with you for quite some time.

4 Nancy King is our General Counsel. Nancy,  
5 if you want to stand up and wave. I know  
6 everybody knows Nancy. I appreciate the work  
7 Nancy has done for decades.

8 Our Office of Air Quality is still run by  
9 Keith Baugues, who is sitting in the Bermuda pink  
10 shirt in the audience.

11 Martha Clark Mettler is still our Office  
12 of Water Quality Assistant Commissioner.

13 Our Office of Land Quality, I don't see  
14 Peggy Dorsey here, but Peggy is our Assistant  
15 Commissioner in the Office of Land Quality.

16 Our Office of Program Support is still  
17 being run by Samantha DeWester.

18 In terms of our Chief of Staff, Brian  
19 Rockensuess is serving as our Chief of Staff, and  
20 Brian, do you want to stand up and say hello?

21 MR. ROCKENSUESS: Hello.

22 COMM. PIGOTT: Brian is a great fit,  
23 and is extremely energetic and tires me out at

1 the end of the day, and is doing a great job for  
2 us.

3 Julia Wickard, I'm extremely proud to  
4 announce, has joined us as our agricultural and  
5 legislative person, and she's going to do a great  
6 job working with us.

7 And who else am I missing? I think that's  
8 it. This is the senior staff of IDEM, the group  
9 that you all can feel free to go to in the case  
10 of needing assistance or any kind of question  
11 that can be answered. I'm really proud to be  
12 working with a group of people who are much  
13 smarter than I am and will provide great counsel  
14 and do good work for the State of Indiana.

15 I also want to quickly indicate that, as  
16 you probably remember, the CCR Solid Waste  
17 Management Plan that we've talked about at this  
18 Board was adopted by IDEM on February 23rd, 2017,  
19 and EPA has approved that on March 7th, so that's  
20 a nice little victory for us and we're moving  
21 forward with that.

22 And with that, I can take any questions or  
23 any concerns you may have, and I look forward to

1 working with you guys in the future.

2 CHAIRMAN GARD: Any questions for the  
3 Commissioner?

4 (No response.)

5 CHAIRMAN GARD: Okay. Thank you.

6 COMM. PIGOTT: Thank you.

7 CHAIRMAN GARD: Chris Pedersen's  
8 going to give us an update on rulemaking.

9 MS. PEDERSEN: Good afternoon. I'm  
10 Chris Pederson, with the Rules Development  
11 Branchy of the Office of Legal Counsel.

12 One thing I wanted to mention, just so  
13 you're hopefully already aware of it, in your  
14 folder today you received a copy of the emergency  
15 rule that's going to be presented to you later  
16 today. I just wanted to make sure that you're  
17 aware that that is the version that you'll be  
18 acting upon. It's been revised. The original  
19 emergency rule did not include a certain federal  
20 date, but that was published last Friday so we  
21 were able to update it and get you that, and I  
22 just wanted to make sure that you're aware of  
23 that.



1 As far as upcoming rules, we have three  
2 rules that could be ready for preliminary  
3 adoption in July, so I'd like to kind of briefly  
4 describe those to you. The first one is a rule  
5 on outdoor hydronic heaters. Indiana's Outdoor  
6 Hydronic Heater Rule was established in 2011.

7 Since then, U.S. EPA issued a new federal  
8 rule in 2015 that applies to the installation of  
9 the outdoor hydronic heaters that are currently  
10 regulated in the state rule. So, this rulemaking  
11 will update the state rule to include the 2015  
12 federal requirements. The draft amendments that  
13 we'll be proposing do not include any new  
14 requirements beyond those that are currently in  
15 effect in the federal rule, and do retain certain  
16 state requirements that are already in the rule.

17 A second rule that we are hopefully going  
18 to be bringing to you at the next meeting, NOx  
19 emissions for large affected units, large  
20 affected units is also sometimes referred to as  
21 non-EGU's, or nonelectric generating units. This  
22 rulemaking is actually related to the Cross-State  
23 Air Pollution Rule, or CSAPR Rule, that is going

1 to be presented to you for preliminary adoption  
2 today.

3 The CSAPR Rule placed the Clean Air  
4 Interstate Rule for electric generating units at  
5 power plants. The term large affected units  
6 includes large industrial fossil-fuel-fired  
7 boilers and electric generating units that are  
8 not at power plants, and that were covered under  
9 CAIR but that are not covered under the CSAPR.

10 So, this rulemaking basically is taking  
11 that subset of units that had been regulated  
12 under CAIR that will not be under CSAPR and  
13 basically putting them in their own rule so that  
14 they maintain certain requirements. They do --  
15 these large affected units are still subject to  
16 federal NOx monitoring requirements during the  
17 ozone season, and so those requirements that  
18 currently exist in the CAIR Rule were moved out  
19 and put into another rule so that they will  
20 maintain coverage.

21 The third rule that may be ready is  
22 Volatile Organic Liquid Storage Tanks, and for  
23 this rule, a source had requested a rule revision

1 to allow the use of an alternative inspection  
2 method for large storage tanks that hold volatile  
3 organic liquids. And these tanks are generally  
4 very large and contain petroleum products that  
5 have the potential to release volatile organic  
6 compounds, or VOC's, to the atmosphere during the  
7 filling and emptying process.

8 The rulemaking will allow the affected  
9 sources to inspect the tank while they're still  
10 filled instead of having to empty the tank and  
11 then degas it and then refill it. This will  
12 reduce the downtime and the material costs for  
13 the source, and it also will minimize VOC  
14 emissions that have been caused by the emptying  
15 of gas and then refilling. The current rule only  
16 applies in Clark, Floyd, Lake and Porter  
17 Counties, based on former ozone nonattainment  
18 status, and so those are the only areas that will  
19 be affected by the change.

20 In addition to those three rules, we would  
21 anticipate that if the Cross-State Air Pollution  
22 Rule is preliminarily adopted today, it could be  
23 ready for final adoption in July, and we would

1 anticipate bringing the emergency rule before you  
2 today back again in July.

3 And that's it.

4 CHAIRMAN GARD: Any questions for  
5 Chris?

6 (No response.)

7 CHAIRMAN GARD: Thank you, Chris.

8 Brian Rockensuess for a legislative  
9 update.

10 MR. ROCKENSUESS: Thank you, Chairman

11 Gard, members of the Board. My name is Brian  
12 Rockensuess.

13 The session's still going on, so some of  
14 these still could change. Of the bills that are  
15 still alive that we are tracking -- there are  
16 five of them -- I'm going to start with the House  
17 Bill 1230. It had to do with the CCR area that  
18 Bruno already spoke about. Part of what EPA  
19 wanted us to do to finish our solid waste  
20 management plan was address some deficiencies  
21 they saw in the beneficial use statute for coal  
22 combustion residuals, particularly basic road  
23 construction and structural fill.

1       So, what the House Bill 1230 did is  
2 authorize this Board to write rules for utilities  
3 to address those discrepancies that EPA found.  
4 It leaves those -- I think there were three --  
5 uses in the statute for companies that aren't  
6 utilities to still be able to use those.

7       Another bill currently moving is House  
8 Bill 1344. This is the East Chicago Lead and  
9 Arsenic Bill. It was heavily amended a couple of  
10 times. The crux of the bill now is to -- it  
11 defines "Superfund." It defines -- there's a  
12 statement in the bill that says IDEM shall work  
13 with EPA in cleaning up this property. And then  
14 finally, it has a provision that IDEM will do a  
15 lead and copper rule test in the City of East  
16 Chicago.

17       CHAIRMAN GARD: Are these bills going  
18 to conference?

19       MR. ROCKENSUESS: Right now, the only  
20 bill that I know of that is going to conference  
21 that we're following is the next bill I'm going  
22 to talk about.

23       CHAIRMAN GARD: Okay.

1           MR. ROCKENSUESS: So, that's IDEM's  
2 omnibus. That's our yearly cleanup bill. It's  
3 House Bill 1495. It has a number of items in the  
4 bill. It allows a designee for the Recycling  
5 Market Development Board, it allows more people  
6 to compost without falling under our  
7 registration, it changed dates with the e-waste  
8 and e-cycle program, it made a technical  
9 correction for the Excess Liability Trust Fund.

10          We also allowed for tank owners to be able  
11 to pay their back fees before us giving them a  
12 penalty. And then it also eliminated a provision  
13 in the regional sewer district statute that a  
14 facility could -- their contracts with local  
15 governments or other companies were subject to  
16 IDEM's approval, so we got rid of that, so we  
17 don't want to have any part of that.

18          That is in conference. The conference  
19 actually met today. There was a line put in in  
20 the Senate Environmental Committee that upset  
21 some of the underground storage tank  
22 environmental consultants, and so that line was  
23 taken out, and that was the Conference Committee.

1 The -- another bill we're watching is  
2 Sen. Charbonneau's Senate Bill 416. The reason  
3 we're watching this bill is it assumed Senate  
4 Bill 511, which had a line in it for IDEM that  
5 said first, IDEM cannot write rules -- or the  
6 Board can write rules, should we need to, for  
7 lead and copper reasons.

8 And then secondly, if you're going to  
9 switch a water source -- a utility, if you're  
10 going to switch a water source, you have to test  
11 for contaminants before hooking on. This is to  
12 preclude any kind of Flint situation from  
13 happening in Indiana.

14 And then finally, we have Senate Bill 421.  
15 That's the Above-Ground Storage Tank Bill. The  
16 impetus of that bill came from the advisory group  
17 who put together the bill. It has five  
18 provisions. It removes the reporting requirement  
19 to IDEM for above-ground storage tanks, it  
20 removes the rulemaking requirements for the  
21 Board, it allows public water systems to gather  
22 information from potential sources to develop  
23 their plans, it asks the Legislative Council to

1 study ways that public water systems can retrieve  
2 this information in one location. That's it.  
3 The last point was it does not repeal the SD  
4 statute.

5 So, that's all I have. I'd be happy to  
6 answer any questions.

7 CHAIRMAN GARD: Okay. Any questions  
8 for Brian?

9 (No response.)

10 MR. ROCKENSUESS: Thank you.

11 CHAIRMAN GARD: Thank you.

12 Nancy, are you going to give the update on  
13 the veto override for the No More Stringent Than?

14 MS. KING: Yes.

15 CHAIRMAN GARD: Okay.

16 MS. KING: I want to speak to you  
17 briefly about the No More Stringent Than bill  
18 that was passed last year, and Governor Pence  
19 vetoed that bill, as you recall. That bill  
20 was -- the veto was overridden early in the  
21 session. The law will now become effective  
22 July 1 of this year, so I wanted to just briefly  
23 go over what that bill does.



1 It does not preclude us from doing rules  
2 more stringent. That is a common misconception,  
3 and based on many years of similar type  
4 legislation going through. The bill provides  
5 that before July 1 of each year, IDEM must  
6 provide a report on the following: Any proposed  
7 rule, any adopted rule, any operating policy that  
8 has been instituted or changed by IDEM, and any  
9 nonrule policy document that has been proposed or  
10 put into effect within the previous year.

11 So, based on the effective date of the  
12 rule, our first time frame for reporting will be  
13 from July 1, 2017 to June 30th of 2018, and that  
14 will be submitted on June 30th, 2018 to  
15 Legislative Services. The report -- we send the  
16 report to Legislative Services. Legislative  
17 Services has to provide that to the Legislative  
18 Council by September 1st of that same year.

19 The bill requires that any second notice  
20 of rulemaking under our 13-14-9-4 rulemaking  
21 process that contains proposed language that  
22 imposes a restriction or requirement more  
23 stringent than that imposed under federal law

1 must be submitted to LSA, who will then present  
2 the notice to the Legislative Council. This is  
3 in addition to when we publish our second notice  
4 of rulemaking, and as you may recall, within that  
5 second notice, we're required to provide  
6 information related to any particular provisions  
7 that may be more stringent, and some basic  
8 information as to why that is.

9       If we have rules that are -- there are  
10 certain aspects of them that will be considered  
11 more stringent than federal law, then we also  
12 have to send separately a notice to the executive  
13 director, I believe, of Legislative Services, and  
14 then they submit that to the Legislative Council,  
15 just as sort of a heads-up this has happened.

16       Again, we are not precluded from moving  
17 forward on that particular rulemaking. It  
18 doesn't prevent the rule from moving forward  
19 through the promulgation process, but the rule  
20 does not become effective until the adjournment  
21 of the regular session of the General Assembly  
22 that begins after the Department provides the  
23 notice.

1 Presumably this provides the legislature  
2 time to deliberate on the wisdom of adopting more  
3 stringent standards, so timing may occasionally  
4 be an issue, but as you know, rulemakings  
5 generally take a fair amount of time, and if  
6 we're going to be doing something that is not  
7 specifically provided for or directed by the  
8 state legislature and there are more stringent  
9 requirements, those are the kinds of rules we  
10 often have more groups for than anything else.

11 So, timing -- you know, we have our own  
12 timing on that, but that's essentially what the  
13 requirement is, that the legislature, until the  
14 regular session is over with, we -- those rules  
15 don't become effective. So, the effective date  
16 that we normally see after it goes through our  
17 promulgation process is either a specific date or  
18 30 days after it's filed with LSA.

19 So, as far as what the process will be for  
20 that, what I anticipate at this point is that the  
21 Board will basically go through the same  
22 promulgation process for those rules, and  
23 realistically, those are very rare, those

1 instances where we have oversight by them anyway.

2 But in a case where that would happen, those  
3 rules would go through the regular promulgation  
4 process.

5 I haven't talked to the Attorney General's  
6 Office at this point in time, but I would assume  
7 that they would still want to go through the form  
8 and legality review of the rule, and then I would  
9 anticipate that process-wise, what would probably  
10 happen at that point is that the Governor would  
11 hold off signature until the legislature would be  
12 out for the next session, and then probably do  
13 the signing. Again, that's kind of a process  
14 issue, so it's kind of up to the Governor's  
15 Office as to how they would like to handle that,  
16 but presumably that would be the case.

17 It does not apply to rules for which we  
18 have specific authorization from the Indiana  
19 General Assembly. It's tied to federal  
20 requirements only and how we implement those in  
21 our rules. It does not -- also does not prohibit  
22 the adoption of emergency rules. So, that's  
23 basically how it relates to rulemaking.

1       Again, we're still sort of working out  
2 how, process-wise, it will work, but that's kind  
3 of the meat and potatoes of that particular bill.  
4 I'm happy to try to answer any questions you may  
5 have about it.

6           CHAIRMAN GARD: Okay. I have a  
7 couple.

8           MS. KING: All right.

9           CHAIRMAN GARD: Is LSA just a  
10 pass-through, or --

11          MS. KING: Yes.

12          CHAIRMAN GARD: -- is LSA required to  
13 review this and make it --

14          MS. KING: They are not required to  
15 review this. The bill is actually a very short  
16 and sweet bill, sweet being anyone's guess, but  
17 it is -- it's not long on detail, so essentially,  
18 as the administrative arm for the Legislative  
19 Council, it directs us to send it to the  
20 executive director of LSA, who then forwards an  
21 electronic copy -- we're supposed to provide an  
22 electronic report -- electronic copy to the  
23 Legislative Council.

1       So, presumably, based on the language of  
2 the bill, it's essentially in their  
3 administrative function. There's no review by  
4 LSA, to my knowledge, not laid in out in the  
5 bill, anyway.

6           CHAIRMAN GARD: Okay. Thank you.  
7 What about the situation that if we needed to do  
8 something and set a numeric standard for  
9 something, that there is nothing in federal law  
10 related to that?

11          MS. KING: So --

12          CHAIRMAN GARD: What happens?

13          MS. KING: -- we're playing "Stump  
14 Nancy" today; is that it?

15               (Laughter.)

16          MS. KING: You know what? I don't  
17 know. They could make an argument either way.  
18 I, for example, might argue that it's no more  
19 stringent than federal law because there's not a  
20 specific aspect of federal law that covers it.  
21 But it raises a good point, and it's one that I  
22 have always raised whenever this issue has come  
23 up.

1 A great example of that would be our Great  
2 Lakes Initiative rulemakings, for those of you  
3 who may remember the infamous GLI Rules. Those  
4 are based on a guidance, a giant, long guidance  
5 that EPA provided, and they said, "Oh, yeah, like  
6 follow the guidance, do whatever you want, but  
7 these are the parameters within which you work.  
8 Oh, and by the way, if we don't like it, we're  
9 going to overfile on you."

10 And that's what they did on a few of our  
11 specific rules. They said, "Well, that's very  
12 nice, but we want you to follow this specific --"  
13 it was actually an amend -- it was some kind of  
14 like test thing that they had within their actual  
15 rules, but within the guidance that we were  
16 supposed to follow, they didn't like how we did a  
17 specific thing. So, there were a few of those  
18 rules -- and it was many years ago so I can't  
19 remember exactly which ones -- that they  
20 overfiled on and said, "You will follow this  
21 particular version of the CFR for that specific  
22 issue."

23 So, how that's going to play out, I don't

1 honestly know. I think, on the one hand, it  
2 might be good to provide that information and be  
3 able to have those conversations, because there  
4 are a lot of kind of gaps in this particular  
5 bill. So, I don't know.

6 On the other hand, like I said, if it's  
7 not a party -- if it's not part of a federal  
8 rule, then it's not more stringent than that  
9 federal rule is. So, I guess it depends on if  
10 Bruno feels like rolling the dice that day. I  
11 don't know.

12 (Laughter.)

13 MS. KING: I think that those are  
14 going to be some of the questions that we'll  
15 probably be talking to you guys about, too. And  
16 again, as we go through the rulemaking process  
17 with that second notice, that information is in  
18 that second notice. So, people who are affected  
19 by the rule, people who want to comment on the  
20 rule, that's when they will get to do that, and  
21 so, we might have some pretty, you know, vigorous  
22 discussions before the Board with folks who want  
23 to be part of it.



1 And again, those are likely going to be  
2 rules where we would probably have to have a work  
3 group anyway, so those issues will be kind of  
4 hashed out. And so, I'm sure that folks will  
5 have some views and ideas on how this should be  
6 presented.

7 I certainly don't want to keep anything  
8 from the Legislative Council in terms of  
9 information they may want. I don't know how  
10 they're going to react. It's been a while since  
11 we've had to provide things to the Legislative  
12 Council, so they may not be enthralled with  
13 seeing one of our big, fat rules, but then again,  
14 I don't know. Was that a very long way to say I  
15 really don't know?

16 (Laughter.)

17 MS. KING: But that's pretty much it  
18 right now.

19 CHAIRMAN GARD: Anyone else have  
20 questions? Yes.

21 MR. RULON: An easy question for you,  
22 then.

23 MS. KING: Thank you.

1 MR. RULON: So, I -- just in terms of  
2 public safety, if something came up and we needed  
3 to do something in terms of this body extremely  
4 quickly, this doesn't stop us from --

5 MS. KING: This does not preclude us  
6 from emergency rulemakings, the likes of which  
7 we've done. In many cases, those emergency  
8 rulemakings, much like the one today, are simply  
9 an adoption or an incorporation of a federal --  
10 like a redesignation or something.

11 But beyond that, it specifically says -- I  
12 will read it and make sure that I'm quoting it  
13 correctly. It does not prevent us from taking  
14 emergency action under 13-14-10, and that's the  
15 agency's emergency action statute. So, if some  
16 particular rule was needed in some kind of an  
17 emergency situation, we would still be able to do  
18 that.

19 MR. RULON: Okay. Thank you.

20 MS. BOYDSTON: So, Nancy, is there  
21 any reporting or accountability that is imposed  
22 upon us related to emergency rules?

23 MS. KING: Not the way it's written,

1 no, no. But one could read it to say -- because  
2 when we do emergency rules, we are required then  
3 to go through the regular rulemaking process to  
4 put those in place.

5 So, based on our kind of interesting and  
6 Byzantine rulemaking process in 13-14-9, there  
7 are a few kind of glaring gaps in how this is  
8 written that don't account for those. It's  
9 written in sort of a common-sense-how-you-would-  
10 think-about-it way, as opposed to looking at our  
11 not entirely common-sense rulemaking process.  
12 So, there are a few of those.

13 So, presumably, when we would do the  
14 regular rulemaking, the emergency rule would  
15 remain in place, but the second notice itself,  
16 without -- if there's something that's more  
17 stringent, then that would have to go over to the  
18 Legislative Council.

19 And it may well be in the situation like  
20 that that the Legislative Council would, you  
21 know, recommend that -- and in many cases, the  
22 legislature may not do anything with these. They  
23 might just be like, "Yeah, that's very

1 interesting," and then at the point at which the  
2 General Assembly closes for that particular  
3 session, then those would become effective.  
4 They're not required to make any affirmative  
5 statement that these rules are effective, either,  
6 within this particular bill.

7 MS. BOYDSTON: Okay.

8 DR. ALEXANDROVICH: So, is there a  
9 definition for what's more stringent or no more  
10 stringent?

11 MS. KING: Nope, no definitions  
12 whatsoever.

13 CHAIRMAN GARD: Any other questions?

14 (No response.)

15 CHAIRMAN GARD: Thank you.

16 MS. KING: Thank you.

17 CHAIRMAN GARD: Today there will be a  
18 public hearing prior to consideration for final  
19 adoption of the 2015 Ozone Standard and CAFO and  
20 CFO Reference Updates. We will also have a  
21 hearing prior to consideration for preliminary  
22 adoption of the Cross-State Air Pollution Rule.  
23 In addition, we also have one emergency rule that

1 the Board will be asked to readopt, Lawrenceburg  
2 Township, Dearborn County Ozone Redesignation.

3 The rules being considered at today's  
4 meeting were included in Board packets and are  
5 available for public inspection at the North  
6 Office of Legal Counsel, 13th Floor, Indiana  
7 Government Center North. The entire Board packet  
8 is also available for [sic] IDEM's Web site at  
9 least one week prior to each Board meeting.

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

17 Will the official reporter of the cause  
18 please stand, raise your right hand and state  
19 your name?

20 (Reporter sworn.)

21 CHAIRMAN GARD: Thank you.

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 326 IAC 1-3-4, the 2015 Ozone Standard.

3 I will now introduce Exhibit A, the  
4 proposed rules, into the record of the hearing.  
5 Keelyn Walsh from the Department will present the  
6 rule.

7 MS. WALSH: Good afternoon, members  
8 of the Board. I'm Keelyn Walsh, with the Rules  
9 Development Section of the Office of Legal  
10 Counsel, and I'm here to present Rule No. 16-529,  
11 National Ambient Air Quality Standards for Ozone,  
12 for your consideration.

13 The Clean Air Act requires that the  
14 U.S. EPA set primary and secondary national  
15 ambient air quality standards for the six  
16 criteria pollutants considered harmful to public  
17 health and the environment. These pollutants are  
18 carbon monoxide, lead, nitrogen dioxide, ozone,  
19 particulate matter, and sulfur dioxide. On  
20 October 26, 2015, U.S. EPA issued revised primary  
21 and secondary national ambient air quality  
22 standards for ozone that strengthened the  
23 standards from seventy-five thousandths parts per

1 million to seventy thousandths parts per million.

2 IDEM is proposing to revise 326 IAC 1-3-4  
3 for the 2015 eight-hour ozone primary and  
4 secondary national ambient air quality standard  
5 to seventy thousandths parts per million, and to  
6 make formatting changes to ensure consistency  
7 between the federal and state rules. This  
8 rulemaking will not established any new  
9 requirements to which the regulated sources are  
10 not already subject, and will ensure consistency  
11 between federal and state rules.

12 Without this rulemaking, the standard for  
13 ozone in the state rules would be different than  
14 the federal standard, and this may cause  
15 confusion for businesses and citizens.  
16 Additionally, IDEM is required to adopt the  
17 correct standard to meet state implementation  
18 plan obligations.

19 IDEM requests that the Board final adopt  
20 this rule as presented, and program staff are  
21 available to answer any further questions you may  
22 have.

23 Thank you.

1 CHAIRMAN GARD: Any questions for  
2 Keelyn?

3 (No response.)

4 CHAIRMAN GARD: Thank you.

5 I have no cards for anyone that would like  
6 to speak. Is there anyone out there that didn't  
7 sign a -- present a card that would like to speak  
8 on this issue?

9 MR. POWDRILL: Madam Chairman?

10 CHAIRMAN GARD: Yes.

11 MR. POWDRILL: It might not be part  
12 of the rule, it might be part of the Indiana  
13 Register, but there was a typo in there, so I --  
14 I don't remember where it was.

15 CHAIRMAN GARD: Okay.

16 No one else?

17 (No response.)

18 CHAIRMAN GARD: The hearing is  
19 concluded. The Board will now consider final  
20 adoption of amendments to rules at 326 IAC 1-3-4,  
21 the 2015 Ozone Standard. Any further Board  
22 discussion?

23 (No response.)



1 CHAIRMAN GARD: Seeing none, is there  
2 a motion to final adopt the rules?

3 MR. RULON: So moved.

4 CHAIRMAN GARD: Is there a second?

5 MR. POWDRILL: Second.

6 CHAIRMAN GARD: Dr. Alexandrovich?

7 DR. ALEXANDROVICH: Yes.

8 CHAIRMAN GARD: Ms. Boydston?

9 MS. BOYDSTON: Yes.

10 CHAIRMAN GARD: Mr. Powdrill?

11 MR. POWDRILL: Yes.

12 CHAIRMAN GARD: Mr. Davidson?

13 MR. DAVIDSON: Yes.

14 CHAIRMAN GARD: Mr. Horn is not here.

15 Mr. Hillsdon-Smith?

16 MR. HILLSDON-SMITH: Yes.

17 CHAIRMAN GARD: Dr. Niemiec?

18 DR. NIEMIEC: Yes.

19 CHAIRMAN GARD: Mr. Rulon?

20 MR. RULON: Yes.

21 CHAIRMAN GARD: Mr. Etzler?

22 MR. ETZLER: Yes.

23 CHAIRMAN GARD: Mr. Cummins?

1 MR. CUMMINS: Yes.

2 CHAIRMAN GARD: Mr. Mettler?

3 MR. METTLER: Yes.

4 CHAIRMAN GARD: And the Chair votes

5 aye. The rules are adopted 11 to 0.

6 MR. DAVIDSON: Did Mr. Clark vote?

7 CHAIRMAN GARD: Oh, it's not on here.

8 MR. CLARK: That's what you get when

9 you don't wear a tie, Bruno.

10 (Laughter.)

11 CHAIRMAN GARD: Okay. Mr. Clark?

12 MR. CLARK: We're going to vote yes.

13 CHAIRMAN GARD: It's 12 to 0. I am

14 so sorry. Speak up if your name isn't on the

15 list.

16 This is a public hearing before the

17 Environmental Rules Board of the State of Indiana

18 concerning final adoption of amendments to rules

19 at 327 IAC 15-16 and 327 IAC 19, the CAFO and CFO

20 Reference Update Rules.

21 I will now introduce Exhibit B, the rules

22 as preliminarily adopted with IDEM's suggested

23 changes incorporated, into the record of the

1 hearing.

2 Lauren Aguilar will present the rule.

3 MS. AGUILAR: Good afternoon, Chair  
4 Gard, members of the Board. My name is Lauren  
5 Aguilar. I'm here representing the Department.

6 The Department presents LSA No. 16-3, the  
7 CAFO and CFO Reference Update, for final  
8 adoption. This rulemaking was preliminarily  
9 adopted on May 11th of 2016.

10 To summarize, this rulemaking amends  
11 327 IAC 15-16 and 327 IAC 19, otherwise known as  
12 the CAFO and CFO Rules. In each of these rules,  
13 three categories of changes were made. First, we  
14 changed references to the Natural Resource  
15 Conservation Service Nutrient Management  
16 Conservation Practice Standards Codes. That's a  
17 mouthful.

18 (Laughter.)

19 MS. AGUILAR: We -- secondly, we  
20 changed any incorporation by reference of the CFR  
21 to the edition year of 2016. We also made  
22 formatting, typographical, and references to Web  
23 sites were updated were corrected.

1 To give you some further explanation, the  
2 NRCS provides technical assistance through  
3 conservation practice standards codes. These  
4 standards codes in this rulemaking deal with  
5 nutrient management. The current standards mean  
6 easier accessibility to interested stakeholders  
7 and maintains protection of human health and the  
8 environment.

9 These standards are already in use by the  
10 regulated community, and in order to use them  
11 under our current rules, they must get a  
12 variance. This process is time consuming and  
13 costly. Using these updated codes has no  
14 appreciable difference in cost. IDEM contacted  
15 interested stakeholders, and they confirmed that.

16 The CFR is codified annually, but updates  
17 do not always equal change. In this instance,  
18 updating to 2016, there were no substantive  
19 changes made within most of the CFR sections.  
20 However, I would like to call your attention to  
21 40 CFR 122.42(e). There were some minor changes  
22 made in the list of information that a CAFO or  
23 CFO must submit to the agency, and there was also

1 the addition of electronic reporting.

2       However, because of the standards for  
3 applicability, there are currently no permitted  
4 CAFO's or CFO's out of the 1800 permits that we  
5 have issued that would be subject to these  
6 regulations. Using the latest version of the CFR  
7 provides consistency, clear expectations, and,  
8 once again, easy accessibility.

9       Much like the CFR and NRCS updates,  
10 correcting defunct Web sites, providing --  
11 correcting incorrect cross-references and  
12 formatting errors provides, again, consistency,  
13 clear expectations and easy accessibility to  
14 stakeholders.

15       Since preliminary adoption, IDEM held a  
16 21-day comment period in accordance with  
17 IC 13-14-9-4 [sic] due to some differences  
18 between the draft rule and the proposed rule.  
19 These changes were mostly technical, formatting  
20 and typographical in nature. Also during this  
21 interim time, IDEM identified some additional  
22 NRCS standards to be undated, and as well, we  
23 decided to move to the 2016 version of the CFR

1 due to publication availability.

2 For final adoption of this rule, the  
3 Department suggests the following changes:  
4 NRCS 313 at 327 IAC 19-12-4(d) to the  
5 October 2016 standard; replace the NRCS 521B and  
6 521C with the newly standardized versions of  
7 October 2016, NRCS 520 and 522.

8 We also suggest that the term "owner or  
9 operator" be changed to "owner/operator" in the  
10 CAFO Rule at 327 IAC 15-16 to mirror what is  
11 already in the CFO rules. This is in response to  
12 interested stakeholder permit [sic], and also  
13 because these rules are often read together, so  
14 we would like for them to be as consistent as  
15 possible.

16 As we already spoke about, we would like  
17 to change all of the CFR references to the 2016  
18 edition. There were also some additional  
19 typographical improvements to the incorporation  
20 by reference sections that we also suggest be  
21 changed for final adoption.

22 The Department respectfully requests the  
23 Board final adopt the proposed rule with IDEM's

1 suggested changes, and program staff are  
2 available should you have any questions.

3 CHAIRMAN GARD: Okay. Are there  
4 questions from the Board? Yes.

5 MR. POWDRILL: Lauren --

6 MS. AGUILAR: Yes.

7 MR. POWDRILL: -- in the rule itself,  
8 on page 14, it talks about property line setback  
9 distances in this section may be waived in the  
10 writing by the owner of the adjacent -- adjoining  
11 property.

12 MS. AGUILAR: Uh-huh.

13 MR. POWDRILL: Is that waiver  
14 continued in perpetuity?

15 MS. AGUILAR: That actually may be a  
16 better question for program staff.

17 Jeff, do you know how that works?

18 That wasn't necessarily the subject of  
19 this particular rulemaking, but we're happy to go  
20 ahead and discuss that.

21 MR. SEWELL: So, the setback waivers  
22 would apply at the time that it's permitted and  
23 constructed. If a future landowner decided they

1 didn't like that setback waiver, we wouldn't  
2 make the CFO go away. So --

3 MR. POWDRILL: Right.

4 MR. SEWELL: -- it kind of does end  
5 up being in perpetuity.

6 MR. POWDRILL: So, then does that  
7 become a recorded document in the county  
8 recorder's office?

9 MR. SEWELL: That would be reflected  
10 in the IDEM's public files, but I don't know that  
11 that would be necessarily reflected in a --

12 MR. POWDRILL: Because every time  
13 that property would be sold, somebody needs to  
14 know that they have agreed -- tacitly have agreed  
15 to a property line setback.

16 MR. SEWELL: Right, and I don't know  
17 that our process necessarily provides for that.  
18 I think we create a public record at the time  
19 that farm is approved, and we make our decision  
20 based on the fact that that waiver was granted at  
21 that time, and then whatever come -- whatever  
22 property transactions come after that, they're  
23 kind of not really related to an IDEM decision



1 anymore. Does that make sense?

2 MR. POWDRILL: Yes and no.

3 (Laughter.)

4 MR. SEWELL: Okay. That's the  
5 reality of the situation.

6 MR. POWDRILL: So, it's a "buyer  
7 beware" situation?

8 MR. SEWELL: It sort of is, yes.

9 MR. POWDRILL: The guy that owned the  
10 property before gave up his rights, and therefore  
11 I gave up my rights.

12 MR. SEWELL: Right.

13 MR. RULON: But one thing, just --  
14 maybe that -- maybe a best management practice,  
15 anybody who builds a multimillion-dollar CAFO is  
16 going to record that --

17 MR. SEWELL: Okay.

18 MR. RULON: -- just to protect  
19 themselves from just what you're talking about,  
20 but if they didn't, it is plain sight. I mean  
21 once the CAFO's there, it's plain sight, it's not  
22 been in a setback, so part of that would be  
23 buying it as is. But yeah, it's a good point.

1 You do give up rights.

2 MR. POWDRILL: Thank you.

3 CHAIRMAN GARD: Any other questions?

4 (No response.)

5 CHAIRMAN GARD: I don't have any

6 speaker cards. Is there anyone within the

7 audience that would like to speak on this issue?

8 (No response.)

9 CHAIRMAN GARD: If not, and seeing no

10 further committee discussion, the hearing is

11 concluded. The Board will now consider final

12 adoption of amendments to 327 IAC 15-16 and

13 327 UAC 19 [sic], the CAFO and CFO Reference

14 Update Rules. Any more Board discussion?

15 (No response.)

16 CHAIRMAN GARD: Do I hear a motion to

17 adopt IDEM's suggested changes?

18 MR. POWDRILL: So moved.

19 CHAIRMAN GARD: Is there a second?

20 MR. DAVIDSON: Second.

21 CHAIRMAN GARD: All in favor, say

22 aye.

23 DR. NIEMIEC: Aye.

1 DR. ALEXANDROVICH: Aye.

2 MS. BOYDSTON: Aye.

3 MR. POWDRILL: Aye.

4 MR. CLARK: Aye.

5 MR. METTLER: Aye.

6 MR. DAVIDSON: Aye.

7 MR. CUMMINS: Aye.

8 MR. RULON: Aye.

9 MR. ETZLER: Aye.

10 CHAIRMAN GARD: Aye.

11 Opposed, nay.

12 (No response.)

13 CHAIRMAN GARD: The changes are

14 adopted. Motion needs to be made to final adopt

15 the rule as amended. Is there a motion?

16 MR. POWDRILL: So moved.

17 CHAIRMAN GARD: Second?

18 MR. DAVIDSON: Second.

19 CHAIRMAN GARD: Roll call.

20 Dr. Alexandrovich?

21 DR. ALEXANDROVICH: Yes.

22 CHAIRMAN GARD: Ms. Boydston?

23 MS. BOYDSTON: Yes.

1 CHAIRMAN GARD: Mr. Powdrill?

2 MR. POWDRILL: Yes.

3 CHAIRMAN GARD: Mr. Davidson?

4 MR. DAVIDSON: Yes.

5 CHAIRMAN GARD: Mr. Hillsdon-Smith?

6 MR. HILLSDON-SMITH: Yes.

7 CHAIRMAN GARD: And we'll put

8 Mr. Clark right here.

9 (Laughter.)

10 MR. CLARK: Yes.

11 CHAIRMAN GARD: Dr. Niemiec?

12 DR. NIEMIEC: Yes.

13 CHAIRMAN GARD: Mr. Rulon?

14 MR. RULON: Yes.

15 CHAIRMAN GARD: Mr. Etzler?

16 MR. ETZLER: Yes.

17 CHAIRMAN GARD: Mr. Cummins?

18 MR. CUMMINS: Yes.

19 CHAIRMAN GARD: Mr. Mettler?

20 MR. METTLER: Yes.

21 CHAIRMAN GARD: And the Chair votes

22 aye, so that is -- the rule is adopted 12 to 0.

23 This is a public hearing before the

1 Environmental Rules Board of the State of Indiana  
2 concerning preliminary adoption of amendments to  
3 rules at 326 IAC 24 and 26, the Cross-State Air  
4 Pollution Rule.

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

7 Lauren Aguilar will present the rule.

8 MS. AGUILAR: Good afternoon. Once  
9 again, my name is Lauren Aguilar. I'm here  
10 representing the Department.

11 The Department presents LSA No. 16-209,  
12 the Cross-State Air Pollution Rule, for  
13 preliminary adoption.

14 The Clean Air Act contains requirements  
15 concerning the transport of air pollution across  
16 state boundaries. States are required to reduce  
17 emissions that cross state lines and affect  
18 neighboring states. The good neighbor provisions  
19 were previously addressed under the Clean Air  
20 Interstate Rule, otherwise known as CAIR.

21 However, in response to the December 2008 court  
22 decision directing the United States  
23 Environmental Protection Agency to issue a new

1 rule to implement Clean Air Act requirements, EPA  
2 finalized a rule on August 8th, 2011 that  
3 requires states to reduce SO<sub>2</sub> and NO<sub>x</sub> with a  
4 trading program including assurance levels to  
5 attain the clean air standards by reducing power  
6 plant emissions.

7 After delays, which I will not go into at  
8 this time, in which CAIR remained in place during  
9 the interim, CSAPR was put into effect starting  
10 January 1st, 2015, with two phases of reductions.  
11 CAIR and the replacement CSAPR rule addressed  
12 transport obligations under the 1997 ozone  
13 standard and fine particulate matter air quality  
14 standards.

15 On October 26, 2015 -- or 2016 -- EPA  
16 revised the CSAPR ozone season NO<sub>x</sub> program to  
17 address the 2008 ozone air quality standard by  
18 revising the budget for the ozone season trading  
19 program starting with the May 1st, 2017 ozone  
20 season. They also made some minor updates to  
21 terms such as changing transport rule to CSAPR in  
22 the other two trading programs. This is often  
23 referred to as the CSAPR Update Rule.

1 To speed implementation, since it  
2 obviously just took so too long, EPA adopted a  
3 federal implementation plan for each of the  
4 states covered by CSAPR. For Indiana, that  
5 includes a FIP for each of the three CSAPR  
6 trading programs: Annual SO<sub>2</sub>, annual NO<sub>x</sub>, and  
7 ozone season NO<sub>x</sub>. States are encouraged to  
8 develop a state implementation plan to administer  
9 the federal trading programs.

10 A state wanting to operate under a SIP can  
11 address interstate transport of pollution in any  
12 way it chooses, including a trading program. If  
13 a state chooses a trading program, it may adopt  
14 any methodology to allocate or auction off  
15 allowances. IDEM has chosen to participate in a  
16 trading program that regulates electric  
17 generating units and uses methodologies similar  
18 to the trading program under the FIP.

19 This rulemaking was split from a companion  
20 rulemaking, which Chris spoke to you earlier  
21 about, currently titled the Large Affected Units  
22 rulemaking. This is LSA No. 15-414. The Large  
23 Affected Units rulemaking is necessary because,

1 unlike CAIR, CSAPR does not allow participation  
2 by the large affected units without a dramatic  
3 reduction in available allowances.

4 IDEM had originally planned for the CSAPR  
5 rulemaking and the Large Affected Units  
6 rulemaking to run parallel and become effective  
7 concurrently. Due to complexities in the  
8 rulemaking schedules, input from interested  
9 stakeholders in the draft language, and SIP  
10 submittal deadlines, CSAPR has proceeded a little  
11 faster than the Large Affected Unites rulemaking.

12 Should the rulemaking schedules continue  
13 not to properly align, IDEM will need to address  
14 the monitoring and reporting requirements for  
15 large affected units currently found at  
16 326 IAC 24-3. IDEM is currently considering for  
17 final adoption of the CSAPR rulemaking adding a  
18 sunset provision for large affected units to the  
19 ozone season trading rule or making appropriate  
20 amendments to maintain the requirements of the  
21 previously listed sections for large affected  
22 units and not repealing those sections until the  
23 Large Affected Units rulemaking.



1 IDEM plans to put in place a SIP for the  
2 three CSAPR trading programs. Allocations cannot  
3 be recorded under the SIP methodology until EPA  
4 has approved the state rule into Indiana's SIP.  
5 IDEM plans to submit this rulemaking to EPA by  
6 their December 1st, 2017 deadline so that the EPA  
7 can approve the rule in time to record allowances  
8 starting in 2021. EPA has set a deadline for  
9 allowances to be submitted by July 1st, 2018.

10 IDEM has been working with EPA to ensure  
11 that the rule as drafted can be approved into the  
12 Indiana SIP. Upon development of draft language  
13 at second notice, IDEM sent a copy to EPA for  
14 input. On March 3rd, 2017, IDEM received  
15 comments on the draft from EPA, which were  
16 included in your Board documents.

17 Although these comments are outside of the  
18 official comment period, IDEM has included them  
19 for your reference so that EPA's input is taken  
20 into consideration when drafting rule language.  
21 Most of the comments from EPA on the draft rule  
22 language provided were administrative in nature.  
23 IDEM is revising the date for providing notice of

1 allowances to EPA for new sources, and the second  
2 round of allocations from January 30th to  
3 February 6th to allow for fourth quarter  
4 emissions data to be available to CAMD.

5 With the transition to the CSAPR Update  
6 Rule starting with the 2017 ozone season, the  
7 allowances under the CSAPR NO<sub>x</sub> Ozone Season  
8 Group 2 trading program are due at a later date.  
9 While EPA commented that Indiana does not need to  
10 wait until 2021 to transition for this particular  
11 trading program, Indiana would prefer to have all  
12 three programs start at the same time for  
13 consistency.

14 IDEM also met with affected electric  
15 generating units twice during the rulemaking and  
16 has addressed the concerns with the draft rule  
17 language commented on during second notice.

18 To summarize, because, boy, was that a lot  
19 of information, this rulemaking proposes to  
20 repeal the CAIR Rules found at 326 IAC 24-1, 24-2  
21 and 24-3 since EPA is no longer implementing  
22 these, and seeks to establish rules to operate  
23 the three CSAPR trading programs in Indiana for

1 SO<sub>2</sub>, NO<sub>x</sub>, and the annual NO<sub>x</sub> ozone season.  
2       Additionally, the reference to CAIR in the  
3 Regional Haze Rule at 326 IAC 26-1-5 has been  
4 replaced with CSAPR. IDEM would like to make you  
5 aware that EPA is completing technical analysis  
6 to conclude that CSAPR is equivalent in reducing  
7 SO<sub>2</sub> and NO<sub>x</sub> as a best available retrofit  
8 technology alternative for regional haze, but at  
9 this time, IDEM sees no reason why EPA's analysis  
10 won't reach this conclusion. IDEM will submit  
11 the completed rule to EPA for approval into  
12 Indiana's SIP.  
13       It is important to move forward with a  
14 rule to address Indiana's transport obligations.  
15 Without the CSAPR Update Rule lowering the ozone  
16 season budgets, or a replacement SIP, Indiana  
17 would need to find another way to meet these  
18 obligations. CSAPR is the most cost-effective  
19 way to address the impact on neighboring states.  
20 Transport obligations under the 2008 ozone  
21 standard were due, and Indiana was put on notice  
22 for failure to submit. The CSAPR Rule with the  
23 Update helps fulfill these obligations.

1 The Department respectfully requests the  
2 Board preliminarily adopt the draft rule.  
3 Additional IDEM staff are available should you  
4 have any questions that I cannot answer.

5 CHAIRMAN GARD: Thank you. That was  
6 a mouthful.

7 MS. AGUILAR: That was a lot of  
8 information. I apologize.

9 CHAIRMAN GARD: Are there any  
10 questions? Dr. Alexandrovich.

11 DR. ALEXANDROVICH: How many large  
12 affected units are in the state?

13 MS. AGUILAR: Actually I do not know  
14 that.

15 Susan, do you know how many large --

16 MS. BEM: I think it's about eight to  
17 ten.

18 MS. AGUILAR: Eight to ten.

19 MR. POWDRILL: Lauren, I believe I  
20 heard you say that we did not accept or implement  
21 or incorporate all of EPA's recommendations. Is  
22 that -- is what I heard correct?

23 MS. AGUILAR: So, most of their

1 recommendations were administrative in nature,  
2 but the one recommendation that they made was for  
3 us to start our NOx ozone season trading program  
4 early. Because of the nature of how that ozone  
5 season trading program works, we could have  
6 started it prior to 2021. We spoke with EPA and  
7 let them know that we wanted to start all of the  
8 trading programs at the same time, and EPA said  
9 that that's more than fine. They're happy with  
10 us doing -- taking that approach.

11 MR. POWDRILL: So, other than that,  
12 we have adopted what they've said? I'm just  
13 going towards -- is there a risk --

14 MS. AGUILAR: Right.

15 MR. POWDRILL: -- if we keep going  
16 down the road, that they will come back later and  
17 say, "Oh, by the way --"

18 MS. AGUILAR: "You messed up."

19 MR. POWDRILL: "-- you didn't --"

20 MS. AGUILAR: Right. The only other  
21 issue that EPA brought up that we're not  
22 necessarily asking you to adopt at this moment,  
23 but we're working it out with them, has to do

1 with that timing issue that I talked about with  
2 the Large Affected Units rulemaking. So, when  
3 EPA originally reviewed these rules, they almost  
4 did it in sort of a vacuum, and they said,  
5 "You're repealing all of CAIR. There's some  
6 large affected units standards that we still need  
7 you to keep," not necessarily fully understanding  
8 that we had two rulemakings addressing these  
9 issues.

10 So, we're continuing to work with EPA on  
11 how they want us to work this out, and so that's  
12 why I wanted to put you on notice that at final  
13 adoption, this rulemaking may look a little  
14 different in regards to those sections.

15 MR. POWDRILL: Okay. Thank you.

16 MS. AGUILAR: Uh-huh.

17 CHAIRMAN GARD: Any other questions?

18 Yes.

19 MR. CUMMINS: Lauren --

20 MS. AGUILAR: Yes.

21 MR. CUMMINS: -- do we -- I mean for  
22 anybody on the Board, do we ever see -- or is  
23 this body required to have an economic impact

1 statements of any of these rules from IEDC or  
2 anything like that?

3 MS. AGUILAR: So, I can tell you what  
4 we do as far as our process. So, we do file a  
5 fiscal impact statement, and that gets sent over  
6 to OMB. I don't think it's actually part of the  
7 rulemaking unless it's over \$500,000. Is that  
8 number effective, with the --

9 MR. SEWELL: Five hundred thousand?

10 MS. AGUILAR: Yeah, 500,000.

11 MS. KING: Legislative services has  
12 the actual --

13 MS. AGUILAR: Right. But it wouldn't  
14 be published?

15 MS. KING: The Board wouldn't receive  
16 it.

17 MS. AGUILAR: Right. The Board  
18 wouldn't receive it unless it's over that  
19 threshold of \$500,000. With this particular  
20 rulemaking, we're not doing anything outside of  
21 what EPA is currently doing under the SIP. We  
22 made a few modifications in how we're going to  
23 actually implement CSAPR, but that's fully

1 authorized under the rules that EPA put forth for  
2 the CSAPR rules anyway. So, we don't anticipate  
3 sources incurring any other type of fiscal impact  
4 beyond what they are already incurring under the  
5 FIP that they're operating under.

6 MR. CUMMINS: Okay. Just a quick --  
7 not quite a follow-up, but does CSAPR apply to  
8 all six criteria of pollutants?

9 MS. AGUILAR: Just -- we are just  
10 partaking in the SO<sub>2</sub>, the NO<sub>x</sub> annual and the NO<sub>x</sub>  
11 ozone season.

12 MR. CUMMINS: So, would there be a  
13 need to do the other three, or are those just --

14 MS. AGUILAR: I don't think -- does  
15 EPA even deal with creating programs for the  
16 other three?

17 MS. BEM: Just those two.

18 MS. AGUILAR: Just the two.

19 MR. CUMMINS: Okay. Thank you.

20 MS. BOYDSTON: Lauren, I have a  
21 question.

22 MS. AGUILAR: Yes.

23 MS. BOYDSTON: Are there states in



1 the same predicament as Indiana that are choosing  
2 not to implement their SIP because of the  
3 litigation that's ongoing? I'm just curious.

4 MS. AGUILAR: I am not entirely sure  
5 what other states are doing, but I'm sure that  
6 you're aware there are some challenges with the  
7 Update Rule. That came out -- I think the crux  
8 of the challenges -- what it mostly boils down to  
9 is the budgets, and the way that we have  
10 structured our rule, we're incorporating EPA's  
11 budgets by reference. So, if something were to  
12 change in what the budget number would be, we're  
13 covered with that.

14 And also, there's -- this rulemaking, the  
15 way that EPA has it set up and for us to  
16 transition from FIP to SIP, there's a gigantic  
17 chunk of time in between us actually adopting  
18 this rule and when we're going to actually start  
19 making allocations.

20 So, we're moving through the rule process  
21 now, but IDEM wouldn't be responsible for making  
22 allocations until 2021, so IDEM basically  
23 anticipates that should something change, that we

1 would have time to make adjustments in the  
2 rulemaking, and then get those approved by EPA  
3 into the SIP so that we can take over in 2021.

4 We're -- IDEM's just trying to operate as  
5 taking the law of the land as it is today. We're  
6 monitoring the situation, but we're just trying  
7 to move forward with what we're actually  
8 presented with today.

9 CHAIRMAN GARD: Any other questions?

10 (No response.)

11 CHAIRMAN GARD: Thank you.

12 No one has presented speaker cards. Is  
13 there anyone in the audience that would care to  
14 speak on the issue?

15 (No response.)

16 CHAIRMAN GARD: If not, the hearing  
17 is concluded. The Board will now consider  
18 preliminary adoption of the Cross-State Air  
19 Pollution Rule at 326 IAC 24 and 26. Is there  
20 any Board discussion?

21 (No response.)

22 CHAIRMAN GARD: Seeing none, we need  
23 to -- a motion to adopt the -- preliminarily

1 adopt the rules.

2 MR. POWDRILL: So moved.

3 CHAIRMAN GARD: Is there a second?

4 MR. HILLSDON-SMITH: Second.

5 CHAIRMAN GARD: All in favor, say

6 aye.

7 MR. HILLSDON-SMITH: Aye.

8 DR. NIEMIEC: Aye.

9 DR. ALEXANDROVICH: Aye.

10 MS. BOYDSTON: Aye.

11 MR. POWDRILL: Aye.

12 MR. CLARK: Aye.

13 MR. METTLER: Aye.

14 MR. DAVIDSON: Aye.

15 MR. CUMMINS: Aye.

16 MR. RULON: Aye.

17 MR. ETZLER: Aye.

18 CHAIRMAN GARD: Aye.

19 Opposed, nay.

20 (No response.)

21 CHAIRMAN GARD: The rule is

22 preliminarily adopted.

23 The Board will now consider adoption of an

1 emergency rule to redesignate Lawrence  
2 Township -- Lawrenceburg Township in Dearborn  
3 County to attainment for the 2008 eight-hour  
4 ozone standard. The federal redesignation rule  
5 became effective April 7th. This emergency rule  
6 incorporates the federal rule.

7 I will enter Exhibit D, the draft  
8 emergency rule, into the record of the hearing.

9 Keelyn Walsh will present the rule.

10 MS. WALSH: Good afternoon once  
11 again. I am Keelyn Walsh, and I'm here to  
12 present an emergency rule to redesignate  
13 Lawrenceburg Township in Dearborn County to  
14 attainment for the 2008 eight-hour ozone  
15 standard. And as we mentioned, the emergency  
16 rule that's included in your folder for today's  
17 meeting is the updated version that we ask you to  
18 act on today.

19 This rule temporarily revises  
20 326 IAC 1-4-16 to redesignate Lawrenceburg  
21 Township to attainment for the 2008 eight-hour  
22 ozone standard until the regular rulemaking is  
23 completed.

1        On April 7th, 2017, U.S. EPA published a  
2 final rule to redesignate Lawrenceburg Township  
3 in Dearborn County to attainment for the 2008  
4 eight-hour ozone standard. The emergency rule  
5 will allow affected sources to be permitted under  
6 the Prevention of Significant Deterioration  
7 program under 326 IAC 2-2 instead of the more  
8 restrictive emission offset program under  
9 326 IAC 2-3.

10        Being permitted under the PSD program  
11 instead of the emission offset program will have  
12 a positive impact on Dearborn County's economy  
13 and contribute greater economic benefits to the  
14 redesignated area. Redesignating Lawrenceburg  
15 Township to attainment for the 2008 eight-hour  
16 ozone standard will not establish any  
17 requirements to which the regulated sources are  
18 not already subject.

19        If adopted, this emergency rule will be  
20 filed and become effective immediately for 90  
21 days, at which time the emergency rule will be  
22 brought to you again for adoption.

23        IDEM requests that the Board adopt this

1 emergency rule as presented, and program staff  
2 are available to answer any further questions you  
3 may have.

4 Thank you.

5 CHAIRMAN GARD: Are there any  
6 questions for Keelyn?

7 (No response.)

8 CHAIRMAN GARD: Is there any Board  
9 discussion?

10 (No response.)

11 CHAIRMAN GARD: Seeing none, is there  
12 a motion to adopt the emergency rule?

13 MR. HILLSDON-SMITH: So moved.

14 CHAIRMAN GARD: Is there a second.

15 MR. RULON: Second.

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

18 MR. HILLSDON-SMITH: Aye.

19 DR. NIEMIEC: Aye.

20 DR. ALEXANDROVICH: Aye.

21 MS. BOYDSTON: Aye.

22 MR. POWDRILL: Aye.

23 MR. CLARK: Aye.

1 MR. METTLER: Aye.

2 MR. DAVIDSON: Aye.

3 MR. CUMMINS: Aye.

4 MR. RULON: Aye.

5 MR. ETZLER: Aye.

6 CHAIRMAN GARD: Aye.

7 Opposed, nay.

8 (No response.)

9 CHAIRMAN GARD: The emergency rule is  
10 adopted.

11 The next order of business is an Open  
12 Forum. Is there anyone in the audience who  
13 wishes to address the Board today?

14 (No response.)

15 CHAIRMAN GARD: Seeing none, the next  
16 meeting of the Environmental Rules Board is  
17 tentatively set for July 12th, 2017 at 1:30 in  
18 Conference Room A, Government Center South. Now,  
19 the date is always subject for -- to change, but  
20 we will keep everyone updated, and hopefully by  
21 then we'll know about the Board reappointments.

22 So, do I hear a motion to adjourn?

23 DR. NIEMIEC: So moved.

1 MR. ETZLER: Second.  
2 CHAIRMAN GARD: All in favor, say  
3 aye.  
4 MR. HILLSDON-SMITH: Aye.  
5 DR. NIEMIEC: Aye.  
6 DR. ALEXANDROVICH: Aye.  
7 MS. BOYDSTON: Aye.  
8 MR. POWDRILL: Aye.  
9 MR. CLARK: Aye.  
10 MR. METTLER: Aye.  
11 MR. DAVIDSON: Aye.  
12 MR. CUMMINS: Aye.  
13 MR. RULON: Aye.  
14 MR. ETZLER: Aye.  
15 CHAIRMAN GARD: Aye.  
16 Opposed, nay.  
17 (No response.)  
18 CHAIRMAN GARD: We're adjourned.  
19 - - -  
20 Thereupon, the proceedings of  
at 2:29 o'clock p.m.  
21 - - -  
22  
23



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, April 12, 2017 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.

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