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BEFORE THE STATE OF INDIANA  
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF APRIL 10, 2024

- - -

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, April 10, 2024 at  
1:31 o'clock p.m.

- - -

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1 APPEARANCES:

2 BOARD MEMBERS:

- 3 Beverly Gard, Chairman
- 4 William Etzler
- 5 Carrie Kozyrski
- 6 Ric Zehr
- 7 Dr. Ted Niemiec (via Zoom)
- 8 Dr. Joanne Alexandrovich (via Zoom)
- 9 Jaime Brown
- 10 Ken Rulon (via Zoom)
- 11 Chris Horn (via Zoom)
- 12 John Ketzenberger
- 13 Calvin Davidson
- 14 R. T. Green (via Zoom)
- 15 Dan Bortner, Proxy, Indiana Department of
- 16 Natural Resources
- 17 Matt Jaworowski, Proxy, Indiana Economic
- 18 Development Corporation
- 19 Katherine Nelson, Proxy, Lieutenant
- 20 Governor
- 21 Brian Rockensuess, IDEM Commissioner
- 22 (Nonvoting)

14 IDEM STAFF MEMBERS:

- 15 Billie Franklin
- 16 Nancy King
- 17 Jenny Acker
- 18 Paul McMurray
- 19 Ali Meils
- 20 Seth Engdahl
- 21 Kevin Bump
- 22 Aidan Whitney

19 PUBLIC SPEAKERS:

- 20 Andrianna Moehle
- 21 Mike Zoeller

22 - - -

23

1 1:31 o'clock p.m.  
2 April 10, 2024

3 - - -

4 CHAIRMAN GARD: Well, first of all, I  
5 want to welcome everyone. We do have a quorum,  
6 so I will call the April the 10th, 2024 meeting  
7 of the Indiana Environmental Rules Board to  
8 order.

9 I'm going to ask members to -- we'll just  
10 start down here at the end and go around the room  
11 and introduce yourselves and say who you  
12 represent. We have five members on-line, and so  
13 then after -- after the in-person people  
14 introduce themselves, then I'll ask the people  
15 on-line to introduce themselves. So, we'll start  
16 down here at the left.

17 MR. WHITNEY: I'm Aidan Whitney.  
18 Thank you, Madam Chairman.

19 Good afternoon. All participants will be  
20 muted when they join the meeting, but  
21 participants will be able to address the Board  
22 during open forum portions of the meeting. We do  
23 not -- or we do ask that you identify yourself  
when speaking. Participants must only send

1 shout-outs just to the host.

2           And for those joining via Teams, if you  
3 have any questions or technical issues during the  
4 meeting, please use the raised-hand feature or  
5 chat feature. To access the raised-hand and chat  
6 feature, go to the top of your screen, depending  
7 on your device. You'll see a menu bar. You may  
8 have to touch your screen for the menu bar to pop  
9 up on mobile devices.

10           In the beginning of the menu, use -- or  
11 there is a chat icon which you can click -- which  
12 you can click on to show the chat dialogue. You  
13 should address -- or you should also see the  
14 raised-hand option. Please utilize the  
15 raised-hand or chat feature if you have any  
16 questions or comments, and if -- you will be  
17 called upon during the appropriate time.

18           If any members of the media have joined us  
19 via Teams, please utilize the feature or e-mail  
20 media@idem.in.gov if you have any questions.

21           I will now return the meeting back over to  
22 you, Madam Chair.

23                   CHAIRMAN GARD: Are there any

1 questions before we move on?

2 (No response.)

3 CHAIRMAN GARD: Okay.

4 Go ahead.

5 MR. ZEHR: Good afternoon. I'm Ric  
6 Zehr, and I represent the construction industry.

7 MS. BROWN: Hello. Jaime Brown, and  
8 I represent manufacturing.

9 MS. KOZYRSKI: Good afternoon.  
10 Carrie Kozyrski, and I'm a utility  
11 representative.

12 MR. DAVIDSON: Calvin Davidson, the  
13 solid waste industry.

14 MR. ETZLER: Bill Etzler, small  
15 business.

16 CHAIRMAN GARD: Beverly Gard, general  
17 public.

18 MR. KETZENBERGER: John Ketzenberger,  
19 conservation and the environment.

20 MS. NELSON: Katie Nelson, and I  
21 represent the Lieutenant Governor's Office.

22 MR. JAWOROWSKI: Matt Jaworowski,  
23 Indiana Economic Development Corporation.

1 MR. BORTNER: Dan Bortner, Director  
2 of the Indiana Department of Natural Resources.

3 COMM. ROCKENSUESS: Brian  
4 Rockensuess, Commissioner of IDEM.

5 CHAIRMAN GARD: Thank you all.

6 Okay. Those of you on-line?

7 DR. ALEXANDROVICH: I'll start.

8 Joanne Alexandrovich, local government.

9 MR. HORN: Chris Horn, labor.

10 MR. RULON: Ken Rulon, agriculture.

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

13 MR. GREEN: R. T. Green, citizen of  
14 the State of Indiana.

15 CHAIRMAN GARD: I think that -- I  
16 think that's all. Thank you all.

17 Our first order of business today is the  
18 approval of the summary of the August the 9th,  
19 2023 Board meeting. Are there any additions or  
20 corrections to the minutes as presented?

21 MR. ETZLER: Move to approve.

22 CHAIRMAN GARD: Is there a second?

23 DR. NIEMIEC: Second. This is Ted

1 Niemiec.

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

4 (Board members responded, "Aye.")

5 CHAIRMAN GARD: Any opposed, nay.

6 (No response.)

7 CHAIRMAN GARD: Thank you all. The  
8 minutes for August 9th are approved.

9 Comm. Rockensuess, report, please.

10 COMM. ROCKENSUESS: Good afternoon,  
11 everybody. Welcome. Thanks for joining us, all  
12 of those in the crowd and on-line. I hope  
13 everybody got to enjoy the eclipse on Monday and  
14 wore your glasses. It was a phenomenal event,  
15 drew in lots of different crowds, especially at  
16 my partner, DNR's parks, they were full.

17 We've had, from a staffing perspective,  
18 quite a few leadership changes over the last  
19 couple of months. In particular to this Board,  
20 and she'll be getting up to introduce herself in  
21 a minute, Billie Franklin has joined us,  
22 replacing Chris Pedersen.

23 Many of you know Peggy Dorsey. She is,

1 until April 30th, my Assistant Commissioner for  
2 Land Quality. She's retiring. She has spent  
3 25-plus years at IDEM in different capacities, so  
4 I'm super thankful for her time.

5 As -- in an effort to make sure that  
6 leadership shifts don't really affect the agency  
7 business, we have hired Brian Wolff to replace  
8 Peggy. Brian most recently was the Branch Chief  
9 over Wetlands Operations and Stormwater in the  
10 Office of Water Quality.

11 We also in Land Quality had a Deputy  
12 Assistant Commissioner, Corey Webb. He left the  
13 agency for another agency, and so, we have filled  
14 that position and recently hired Andrew Pappas to  
15 fill that role. Andrew has a wealth of  
16 experience both at Department of -- mainly with  
17 Department of Health. He helped with logistics  
18 in running many of their COVID operations, and  
19 so, a welcome member to our team and our  
20 leadership team.

21 We have a new Northwest Regional Office  
22 Director, Michele Murday Pariso. We promoted her  
23 in March to run the Northwest Office, and now we



1 have -- her deputy is -- that position is open  
2 for hiring right now as well.

3 And then the position that Brian Wolff  
4 vacated, Amari Farren is taking over that role as  
5 Branch Chief, and she has been with the agency  
6 for a number of years in a variety inspector or  
7 enforcement roles.

8 Now, with different things going on --  
9 there's been a lot of federal things going on  
10 that many of the states are dealing with, and  
11 I'll -- I have a whole list. I'm going to go  
12 through these rather quickly.

13 The PFAS Rule for drinking water just came  
14 out this morning. The standard is going to be --  
15 and we all kind of knew this -- four parts per  
16 trillion for PFOA and PFAS. It's going to be  
17 phased in over five years, and the first three  
18 years are going to be focussed on testing and  
19 notification, with the goal of compliance within  
20 five years.

21 The nice thing about Indiana is that we  
22 have been proactively testing all of the  
23 different drinking water utilities across the

1 state, just to see where they were. And when  
2 they started talking four parts per trillion, we  
3 started -- the ones that we had that were above  
4 that, we started working with those utilities  
5 already to see, "How could we take that well  
6 off?" or "Could we provide -- help them provide a  
7 treatment for that well?" So, we're already  
8 ahead of the curve, which is good.

9 This is the first of PFAS rules that are  
10 coming down. They're also considering rules on  
11 whether it's going to be a CERCLA or RCRA  
12 hazardous waste. They're considering potential  
13 air rules for admissions, PFAS and PFOA, so  
14 there's more to come.

15 EPA just dropped a new PM<sub>2.5</sub> standard.  
16 That's one of our national ambient air quality  
17 standards. The -- it will become effective in  
18 June. They're dropping the standard from 12 to  
19 nine. That is going to have a rather large  
20 impact on Indiana. Today, at 12, we do not have  
21 really any areas that are out of attainment. At  
22 nine, we will have eight areas, representing  
23 about 30ish counties, that would or could be

1 nonattainment.

2           So, we're working on communicating with  
3 industry, communicating with the Governor and  
4 Congressional leadership, on what this means for  
5 Indiana. It will be very hard to permit anybody  
6 that is a major source in those areas that could  
7 be nonattainment, because we simply could not.  
8 So, it has huge implications on economic  
9 development, and we've been working with the  
10 Economic Development Corporation so they know  
11 that as well.

12           Recently, as well, the U.S. EPA Office of  
13 Water came out with a combined sewer overflow  
14 letter that really called out Indiana for -- and  
15 the things that we did, not in a positive way.  
16 And so, we have responded to that memo, and we  
17 can get you a copy of that if you'd like,  
18 suggesting that they're trying to, you know,  
19 regulate based on memo, rather than changing a  
20 law or going through the proper process with the  
21 consent decrees.

22           And so, we have CD's or agreed judgments  
23 with every single -- all 109 communities that we

1 have in Indiana, and so, we're going to continue  
2 going down those paths, because we have to and  
3 EPA has to, and we'll be working with communities  
4 to make sure we're that buffer between them and  
5 EPA moving forward.

6           Legislatively -- and I was just talking to  
7 Mr. Zehr about that -- we had a pretty productive  
8 session. There was the Wetland Bill, 1583, that  
9 was the agency's bill, and it was a compromise  
10 between industry and some of the wetland  
11 consultants. It wasn't the most popular bill,  
12 but it was a place where we all agreed to move  
13 forward with on that bill, and that was signed  
14 into law in February. It will become effective  
15 July 1.

16           We had our own agency bill, Senate  
17 Bill 206, and that allows us to post notices and  
18 send communications electronically. It also puts  
19 a 90-day time frame for permitting on  
20 biodigesters.

21           And then there's a couple of other bills  
22 that had, you know, periphery -- something to do  
23 with us, whether it was the Administrative Law

1 Judge Bill that moved the Office of Environmental  
2 Adjudication under the bigger Administrative Law  
3 Proceedings agency. That was one that we were  
4 watching.

5 And we were also watching House Enrolled  
6 Act 1276, which stated that if we're going to  
7 host a public hearing, we have to make a decision  
8 to do that within ten days after the public  
9 comment period has ended, which I was fine with.  
10 We get requests for public hearings now, and  
11 within two or three days, typically, they're out  
12 the door, because I've signed off on them. So,  
13 that was not a big deal for us.

14 We are starting budget development,  
15 working with our teams internally. This budget  
16 session's going to be different than most because  
17 there's going to be a new governor coming in, and  
18 so, we do our best based on what today is, and  
19 then we'll see what the next governor will want  
20 us to shift or do.

21 And then I talked about, I think, last  
22 time how we did a legislative road show last  
23 summer, and that was hugely beneficial for

1 relationship-building with different legislators  
2 across the state. We're going to pick that back  
3 up this summer, after the primary's over, because  
4 it's important that the elected officials know  
5 who we are, what we do, why we do it, and who to  
6 come for -- to when there's an issue that comes  
7 up.

8 A couple of other quick things. We just  
9 submitted the Climate Pollution Reduction Grant  
10 application to EPA that was due -- we did it last  
11 week, it was due April 1st. There's 4.6 billion  
12 dollars of funding available in this pot that 45  
13 states and, I think, another 25 to 30 cities and  
14 towns across the country are vying for.

15 Some states are doing regulatory things.  
16 We took the approach of everything should be  
17 voluntary, and so, we submitted a plan with  
18 projects to reduce greenhouse gas emissions  
19 across the state, and we're aiming for -- they  
20 have different buckets within this grant -- we're  
21 aiming for the hundred-to-two-hundred-million-  
22 dollar bucket, and if we get that, then we will  
23 start rolling those out.

1           They're hoping to have the money out by  
2   October, or the decisions out, so as soon as we  
3   start getting that money, we'll start rolling it  
4   out to the people that we put in that grant  
5   application.

6           And then finally, our metrics, our -- you  
7   know, we're -- all agencies are judged based on  
8   their metrics and how they're doing with them.  
9   The air quality, the drinking water, and the  
10  compliance metrics are all doing phenomenal, as  
11  they always have been. Permitting, we had a  
12  little snafu in Land Quality permitting in that  
13  we developed a little bit of a backlog, but we  
14  are going to be done with that backlog by May 1.  
15  So, we will be back down to the zero backlog  
16  status.

17           Air Quality and Water Quality, they're  
18  fine. It's mainly Land Quality that we're  
19  addressing this issue with, so it has little bit  
20  of work to do there. Overall, agency-wide, our  
21  permitting metric is still, I think, 60 percent  
22  of time allowed, and our goal is 75 percent, so  
23  we're still doing a great job, but on a micro

1 level, we need to make sure we're hitting on  
2 every facet of that and doing well.

3 And that is my report.

4 CHAIRMAN GARD: I have a question:  
5 What's your staffing level now?

6 COMM. ROCKENSUESS: We're at 812 as  
7 of yesterday, which is probably around the right  
8 number.

9 CHAIRMAN GARD: Uh-huh.

10 COMM. ROCKENSUESS: We might add a  
11 person here or there based on a particular need,  
12 but we're getting all of our work done and we're  
13 doing it well, and so -- and even on things like  
14 the land permitting thing where we need to catch  
15 up a little bit, we're putting -- we have the  
16 people and time to get it done. So, unless  
17 there's some shift in programing that we need to  
18 add another section or group, I think we'll  
19 probably be around this number for the future.

20 CHAIRMAN GARD: Okay. Thank you.

21 Questions from the Board? Yes.

22 MR. ETZLER: I'd be interested in  
23 seeing the CSO memo.



1                   COMM. ROCKENSUESS: We'll make --  
2 we'll -- Nancy, can you make sure?

3                   MS. KING: (Nodded head yes.)

4                   COMM. ROCKENSUESS: We'll -- Nancy  
5 will make sure to get it up to the Board.

6                   MR. ETZLER: Thank you.

7                   CHAIRMAN GARD: Other questions from  
8 the Board that's in person?

9                                   (No response.)

10                  CHAIRMAN GARD: On-line?

11                  MR. WHITNEY: Yeah, on-line, Joanne  
12 asked if the organizational chart could be  
13 e-mailed as well as the CSO memo.

14                  COMM. ROCKENSUESS: Definitely, we  
15 will get that to you.

16                  CHAIRMAN GARD: That's good, yes.  
17 Thank you.

18                  DR. ALEXANDROVICH: I do have one  
19 other question. At the last meeting, you talked  
20 about changes in the rulemaking process that  
21 might affect the Board, and you're working  
22 through that. Do you have any update on that?

23                  COMM. ROCKENSUESS: We -- I think

1 that's going to be part of this presentation  
2 we're doing today, because the Civil Penalty  
3 Rules are the first ones we're doing through that  
4 new process. So, Nancy could give you a better  
5 explanation of how we're doing this.

6 CHAIRMAN GARD: Okay.

7 Dr. Alexandrovich, Nancy's going to be on  
8 in just a few minutes. Can she answer that?

9 DR. ALEXANDROVICH: Yeah, that's  
10 fine.

11 COMM. ROCKENSUESS: Okay.

12 CHAIRMAN GARD: Other questions?

13 (No response.)

14 CHAIRMAN GARD: Okay. Thank you.

15 COMM. ROCKENSUESS: Thank you.

16 CHAIRMAN GARD: Thank you,

17 Commissioner.

18 Nancy? Nancy King?

19 MS. KING: I didn't know I was going  
20 to get a pop quiz, but okay.

21 (Laughter.)

22 MS. KING: For those of you who don't  
23 know me, I'm Nancy King. I'm the General Counsel

1 over the Office of Legal Counsel. Our rulemaking  
2 process is also housed within the Office of Legal  
3 Counsel.

4 So, first of all, to answer Joanne's  
5 question, yes, we now are required to get our  
6 rules done within a year, like everyone else was  
7 under. And for those of you who have been around  
8 for a while, you know that's -- that's going to  
9 be a tough one for us, because we usually allow  
10 for a lot of time for the work groups and  
11 discussions and everything else.

12 But the fact of the matter is, under the  
13 new process, we have to -- we have a year to  
14 start -- from the day that we start rulemaking to  
15 get those rules complete. We can, however --  
16 under the existing law, we can put a date certain  
17 beyond that time frame within which we can get  
18 those rules done, so there is a little bit of  
19 leeway on most of them.

20 That is not the case for the rules that  
21 you're looking at today, and I'll mention that in  
22 a minute, but yes, if we were to say, you know,  
23 "We need 14 months to get something done," and we

1 give them -- we have to give them a date certain,  
2 and if we miss that date, the whole rule goes  
3 away and we have to start over. Just a little  
4 aside, it doesn't seem to be particularly  
5 efficient, but I didn't write it.

6 As far as the rules that we have before us  
7 today, our -- I won't steal everyone's thunder on  
8 this -- these are our civil penalty policies.  
9 There was a stat -- the statute requires that we  
10 put those into -- any agency that has them in  
11 guidances, or the way we did, those need to be  
12 codified as a rule, and so, that's what you'll  
13 see before you today.

14 Under that particular aspect of the  
15 statute, we have to have those rules done by the  
16 end of this year, and if you ask me what happens  
17 if we don't, I cannot tell you that, because the  
18 statute does not specifically speak to that.

19 What I do know is that if we don't have  
20 them done, I don't believe we can actually assess  
21 civil penalties, and if we can't, then we are  
22 violating our various things that we are required  
23 to do to EPA, which means then we might have to

1 send all of our -- worst-case scenario; I'm not  
2 putting -- you know, I'm not making -- not  
3 twisting any arms here, I'm just saying this is  
4 what's going to happen. We have to have them  
5 done so that we can meet the requirements of the  
6 statute.

7           So, that -- Joanne, I don't know if you  
8 had specific questions about the rulemaking  
9 process. I'm happy to try to answer them. We  
10 are -- you know, we really -- we haven't -- we  
11 don't have that many rules going right now, and  
12 we don't have a lot that we're thinking of  
13 starting right at the moment, so I don't have a  
14 broad spectrum of how things are working so far,  
15 but that's basically the system that we're now  
16 working under.

17           DR. ALEXANDROVICH: No, that's fine.  
18 I was just -- you indicated there were changes  
19 that might affect us, and I was wondering what  
20 those would be. Nancy, could I ask one more  
21 thing while you're up there?

22           MS. KING: Well, of course.

23           DR. ALEXANDROVICH: In our summary

1 from the last meeting, you were going to work on  
2 a draft on the citizen's petitions. Is that kind  
3 of in limbo, or --

4 MS. KING: Well, to be honest with  
5 you, I -- I have not worked on that draft,  
6 because I -- frankly, I had forgot that I was  
7 going to get it to you. So, that being the case,  
8 you know, as far as what the citizen's petitions  
9 look like and how we've moved through them in the  
10 past, I don't see -- nothing has changed as far  
11 as that goes.

12 But I will -- I will make sure someone  
13 reminds me to get that to you so that we at least  
14 have a document that we can discuss and maybe  
15 clarify it, because, as you know, and as we've  
16 had conversations with folks before this Board  
17 before, it's not -- the statute, as it currently  
18 is written, it's not -- it's not very step by  
19 step, it's pretty much -- you know, it's kind of  
20 general, and we've sort of the put together how  
21 we've done it in the past, but, you know, how  
22 that looks and what the Board would like to see  
23 based on the issues we've had, we can certainly

1 work on that.

2 DR. ALEXANDROVICH: Thank you.

3 MS. KING: You're welcome.

4 CHAIRMAN GARD: Any other questions?

5 (No response.)

6 CHAIRMAN GARD: Well, I think one  
7 thing important for this Board to remember, if  
8 you get questions or concerns from the general  
9 public about the shortened time frame with which  
10 we have to do rules, which obviously allows for  
11 far less time for the public -- for public input  
12 and, like Nancy said, work groups and so forth,  
13 I -- just remember: We didn't pass that statute.  
14 That's the legislature. It's not our choice in  
15 particular. So, I think that's important, in  
16 case you all do get questions.

17 MS. KING: Well, I think it will be  
18 kind of a change for us. I mean -- and it's kind  
19 of a good time, to a certain extent, because we  
20 don't have a lot of big rules going, but by the  
21 same token, we're very used to having these  
22 conversations in our work groups and things like  
23 that.

1           Now, I mean what changes in terms of that  
2           and what we're looking at as far as how that  
3           would -- before we actually officially start a  
4           rule, we can have those meetings ahead of time,  
5           before we start. So, we can get some of that  
6           done so that we're not under a timeline.

7           You know, so as things -- you know,  
8           occasionally we have the minorly controversial  
9           rule, and that being the case, we can have those  
10          conversations before we kind of, you know, hit  
11          the starting line, so I think that's one way for  
12          us to approach it. So, it's not -- it's not all,  
13          you know, doom and gloom. It just sort of  
14          changes the way we're going to move forward with  
15          rulemaking.

16          But that said, I actually didn't get up  
17          here to talk to you guys. I actually got up here  
18          to introduce our new Rules Section Chief. Chris  
19          Pederson, who you've worked with for many years,  
20          retired, rudely retired.

21          And so, we very -- we were very fortunate  
22          to get Billie Franklin, and I would like to thank  
23          Mr. Bortner for allowing her to come over. She



1     came over from DNR, and they kindly let her, and  
2     we appreciate it. So Billie has worked in  
3     rulemaking and understands the new process as  
4     well, and so, she is going to give you the rule  
5     report, so I will let her get up and speak.

6             Thank you.

7             CHAIRMAN GARD: Thank you, Nancy.

8             Welcome, Billie. We're glad to have you.

9             MS. FRANKLIN: Thank you.

10            Good afternoon. My name is Billie  
11     Franklin, in the Rules Development Section of the  
12     Office the Legal Counsel.

13            Currently, our next Board meeting is  
14     tentatively scheduled for July 10th, 2024. At  
15     that meeting we anticipate presenting three rules  
16     for final adoption, which are the civil penalties  
17     which will be presented today, and we will also  
18     have a rule ready for preliminary adoption for  
19     Kaiser Aluminum.

20            That is all I have today, but I'm happy to  
21     take any questions.

22            CHAIRMAN GARD: Any questions?

23                     (No response.)

1                   CHAIRMAN GARD: Any questions from  
2 on-line people?

3                                   (No response.)

4                   CHAIRMAN GARD: Welcome. Thank you,  
5 Billie.

6                   MS. FRANKLIN: Thank you.

7                   CHAIRMAN GARD: Your report won't  
8 always be that short.

9                                   (Laughter.)

10                  MS. FRANKLIN: I figured.

11                  COMM. ROCKENSUESS: She's used to  
12 longer reports with DNR.

13                  CHAIRMAN GARD: Okay. Today we have  
14 hearings for the following regular rule Board  
15 actions: Preliminary adoptions of Titles 326,  
16 327, and 329, Civil Penalties. Since the Civil  
17 Penalty Rules are almost identical, there will be  
18 a single presentation for all three rules, and  
19 then separate votes on each of them.

20                  There will be a presentation on the Air  
21 Permitting Report, there will be a presentation  
22 on the 2024 List of Impaired Waters and  
23 Consolidated Assessment and Listing Methodology

1 under Section 303(d) of the Clean Water Act. As  
2 a reminder, if you wish to testify in any of  
3 today's hearings, please fill out a comment card  
4 and give it to Karla at the sign-in table.

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

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

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

21 (Reporter sworn.)

22 CHAIRMAN GARD: Thank you very much.

23 This is a public hearing before the

1 Environmental Rules Board of the State of Indiana  
2 concerning preliminary adoption of the Title 326  
3 Civil Penalties Rule.

4 I will now introduce Exhibit A, the  
5 preliminary adopt --

6 MS. KING: Pardon me. Bev, can I  
7 interrupt?

8 CHAIRMAN GARD: Yes.

9 MS. KING: I apologize. Here I am  
10 again. We actually -- I believe probably your  
11 script is missing part of what was in the script.  
12 We are supposed to first have the Air Permitting  
13 Report and the -- then the 303(d) List report.

14 CHAIRMAN GARD: That's not here.

15 MS. KING: I know. I just realized  
16 that as you were speaking. So, I don't mean to  
17 interrupt, but we had intended to have those  
18 reports prior to the hearings.

19 CHAIRMAN GARD: Okay. Good.

20 MS. KING: So, I'm sorry to interrupt  
21 again, but -- so, the first thing would be  
22 probably the Air Permitting Report, and then the  
23 Impaired Waters one.

1                   CHAIRMAN GARD: Okay.

2                   Air Permitting Report?

3                   MS. ACKER: Good afternoon. My  
4 name's Jenny Acker, and I'm the Air Permits  
5 Branch Chief. I'm here today to present the  
6 Report on Air Permitting for Fiscal Year '23.

7                   A brief overview. Pages 2 and 3 -- and  
8 you should all have this -- provide background  
9 information regarding the types of permits and  
10 programs that are covered in the report. In  
11 FY 23 we received a total of 1178 permit  
12 applications. This is a 2.8 percent decrease  
13 from the prior fiscal year. Pages 8 -- 5  
14 through 8 contained detailed information on the  
15 types of applications received and issued during  
16 Fiscal Year '23. We conducted two public  
17 meetings. We did not hold any public hearings.

18                   As you are aware, we do have a Title V  
19 funding grant that grants -- funds our program,  
20 and we did begin dip into a range insufficient to  
21 support our program. We requested, this Board  
22 approved, and Senate Bill 155 passed during  
23 the 2023 legislative session. This bill allowed

1 us to increase our annual base fee for the  
2 Title V and FESOP sources from \$1,875 to \$6100.  
3 Our Title V Fee Fund is currently sufficient to  
4 fund our program.

5 At the end of FY 23, we had an unobligated  
6 balance in our fund less than the surplus cap of  
7 three million dollars, and additionally, we did  
8 not have to refund any permit fees, as all  
9 permits were -- there were no late decisions.

10 Page 12 of your report provides an overview of  
11 the fund during Fiscal Year '23.

12 Metrics. We continue to issue permits  
13 below the Governor's metric of 75 percent of the  
14 allowable days. Our monthly metrics for Fiscal  
15 Year '23 range from 53 percent to 62 percent. We  
16 also submit a renewal issuance permit metric  
17 twice a year to EPA. Their metric is: No more  
18 than ten percent of the Title V renewals are  
19 allowed to be administratively extended or, as we  
20 call them, backlogged.

21 For the December 22 report, our metric for  
22 backlogs was 0.36, and the metric for the  
23 June '23 report was 1.26. These reports, these

1 backlogged ones, were mostly due to very large  
2 permits: BP, Cleveland Cliffs, Carmeuse Lime.  
3 These are permits that are really large but also  
4 have a lot of public interest, so when we do go  
5 out to public notice, we have public hearings, we  
6 have extensive comments to respond to. The  
7 comment response period is what is driving these  
8 permits into those levels of being backlogged.

9           We took on some projects this year that  
10 were kind of fun during this year. We developed  
11 a new SharePoint site. It's the location where  
12 we store our documents. We provide tasks to  
13 draft. Things go back and forth. It's where  
14 documents are grabbed and sent to our Web sites,  
15 where permits are issued, off of this site.

16           We had a very antiquated site. It didn't  
17 have a lot of features to it, Microsoft was  
18 working its way out of supporting it, and more  
19 importantly, I was terrified it was going to go  
20 down and we were going to be back to e-mailing  
21 things back and forth.

22           We asked IT for a new modern site, one of  
23 the first branches in IDEM to tackle a modern

1 site. We now have a very nice navigable site.  
2 It runs seamlessly. We've been able to take  
3 advantage of some of the built-in macros and  
4 programs in this new site, and we've automated  
5 tasks.

6 So, rather than people entering data  
7 multiple times to create a doc set or to create a  
8 new task, it gets entered once, and we can run a  
9 little program off of it. It does a lot of the  
10 work that we were doing manually, so that's been  
11 a real nice feature. And we're continuing to  
12 explore the functionality of this site.

13 We also developed a permit writer  
14 onboarding manual. So, something that bothered  
15 me was walking down a corridor and seeing my  
16 senior environmental manager sitting with a  
17 permit writer, a new one, many times walking them  
18 through something.

19 And this manual that we developed really  
20 just walks them through the procedures, how to  
21 set up a shortcut on your desktop, and "Here's  
22 the shortcuts that you need, where to access  
23 them," how to function in SharePoint, a manual on



1     how to use the new site.

2             Silly little things. They get a Post-It  
3     note when they start, "Here's who you're sitting  
4     next to," because you get up to go to the  
5     restroom on the 11th floor, you may not find your  
6     way back to your seat, and the first thing  
7     someone's going to ask you is, "Well, where are  
8     you sitting?"

9             They have a Post-It note. They can now  
10    say who they sit next to so they can get back.  
11    Just trying to take into account talking to  
12    permit writers and what did they stumble across  
13    when they started, what would be helpful to them  
14    to put into this manual.

15            And we do consider it a living document.  
16    I have one permit writer who, ten percent of her  
17    time is dedicated to taking feedback and keeping  
18    this updated and keeping it maintained. So,  
19    hopefully this is something that will just grow  
20    and continue to meet the needs of our staff.

21            Meeting the needs of not just my staff but  
22    the public. Our forms are very outdated.  
23    They're cumbersome to get through, they're

1       cumbersome for us to get information out of. So,  
2       we took on what is probably going to be a  
3       several-year project of updating our forms.

4               And we've started with the initial chunk,  
5       which is the DSD -- GSDO -- GSD forms. There's  
6       about 15 of them. We've consolidated three of  
7       them into one. We've taken five and consolidated  
8       them down to three. We've made the information  
9       requests clear.

10              As soon as we get that block done, we're  
11       going to go public with the new forms on that,  
12       and then just continually grabbing new chunks of  
13       forms and updating them. Hopefully this is going  
14       to help us get better information, but more  
15       importantly, I think it's going to help the  
16       public understand what we need and make the forms  
17       easier for them to fill out.

18              So, with that, any questions?

19              CHAIRMAN GARD: With your -- with the  
20       updated forms and some of the other things you're  
21       doing, are you having to contract out computer  
22       services to bring your system up compatible?

23              MS. ACKER: No. I'm really lucky and

1 fortunate. One of my little things is a  
2 spreadsheet. When we hire somebody, I track when  
3 they start, when they promoted. I also keep  
4 track of some of their interests, including their  
5 background.

6 And when I knew we needed this new  
7 SharePoint site, I went through there, and I  
8 found a couple of permit writers that are working  
9 on Master's degrees in Information Sciences. And  
10 fortunately, we are efficient enough that they  
11 could spend some of their time working on this  
12 site with me. So, we've been able to locate  
13 internal sources.

14 CHAIRMAN GARD: Good.

15 Any other questions?

16 (No response.)

17 CHAIRMAN GARD: Any questions from  
18 on-line people?

19 (No response.)

20 CHAIRMAN GARD: Okay. Thank you so  
21 much.

22 MS. ACKER: Thank you.

23 CHAIRMAN GARD: Now, Nancy, you

1 wanted the Consolidated Waters now, or what  
2 did --

3 MS. KING: Yes.

4 CHAIRMAN GARD: Okay.

5 MR. MCMURRAY: Good afternoon, Madam  
6 Chairman and Board. My name is Paul McMurray,  
7 and I am the Integrated Report Coordinator for  
8 the IDEM Office of Water Quality, and today I'm  
9 presenting the Indiana 2024 List of Impaired  
10 Water Bodies.

11 Next slide, please.

12 So, Clean Water Act Section 303(d)  
13 requires all states to produce a list of water  
14 bodies within the state that are not supporting  
15 one or more designated uses. For Indiana, the  
16 designated uses that we are assessing include the  
17 aquatic life use, you know, just make sure that  
18 fish and bugs and everything have a good  
19 environment to live in; public water supply use;  
20 fish consumption and recreational, for, you know,  
21 E. Coli and algae in water.

22 So, the 303(d) list is submitted to  
23 U.S. EPA every two years, in even years, as part

1 of Indiana's Integrated Water Monitoring and  
2 Assessment Report. As part of this process,  
3 there is a 45-day public comment period, where a  
4 draft version of the list and the Consolidated  
5 Assessment and Listing Methodology, which is  
6 basically the methods we use to assess water  
7 bodies, are put onto the IDEM web site for any  
8 public comments, and comments from U.S. EPA as  
9 well.

10 Part of the -- part of the -- well, one of  
11 the documents included is the notice of comment  
12 period, which is just kind of a summary of  
13 changes that have been made to the list since the  
14 last cycle.

15 Next slide.

16 So, all of the water bodies in Indiana are  
17 assessed and placed into one of five categories.  
18 The 303(d) list itself are the Category 5 waters.  
19 Those are impaired, and a TMDL, or a Total  
20 Maximum Daily Load Report, is required for those  
21 water bodies.

22 Category 4 water bodies are impaired, but  
23 a TMDL is either already completed or is not

1 required for a different reason. You know, if  
2 it's like natural conditions are leading to the  
3 impairment, for instance.

4 Category 2 waters are those that we have  
5 sampled and assessed and the designated uses are  
6 fully supporting, so those are the ones we like  
7 to see.

8 And Category 3 are those that we have  
9 either not visited or we just don't have enough  
10 information to make an accurate assessment of the  
11 status of the water.

12 Next slide, please.

13 So, this is the fourth cycle in which IDEM  
14 has submitted our Integrated Report and the  
15 303(d) list to the EPA ATTAINS database, and it's  
16 a lot easier than it used to be, I guess, just  
17 upload our documents and they are able to take  
18 the data, put it into the database, and then use  
19 it for various purposes.

20 One of those is a Web site called "How's  
21 My Waterway," which allows anyone in the general  
22 public to search on -- you know, on a map for the  
23 stream or lake or water body closest to them, if

1 they want to, and see what the current condition  
2 is of that water body. And it just overall makes  
3 it a lot easier to track and report on not only  
4 high-quality waters, but also impairments that we  
5 might see.

6 Next slide.

7 So, just very quickly, looking at some of  
8 the numbers that are on the Category 5 list, we  
9 have -- so, streams are kind of broken up into  
10 different segments, depending on the size, like  
11 we won't have, you know, like a 50-mile stretch  
12 of river or anything. We're not looking at the  
13 entire Wabash River as one water body. We have  
14 it broken up into many smaller segments. And we  
15 call those -- those are reaches.

16 So, looking at streams, we have almost  
17 15,000 reaches within the state, and about -- a  
18 little over 4,000 of those have at least one  
19 impairment, or sometimes two or more. Out of  
20 the 63,000 miles of streams in the state, there's  
21 about 21,000 that have some form of impairment  
22 associated with them. Lakes, we have about -- a  
23 little over 1500 lakes that we could -- can

1 assess, I guess, and currently about 136 of those  
2 are impaired for at least one designated use.

3 Next slide, please.

4 So, looking at the top causes of stream  
5 impairments, the top cause is E. Coli in the  
6 water body. That affects the recreational  
7 designated use. We have about -- about 12,000  
8 miles of streams are impaired for E. Coli.

9 The next most common one is biological  
10 integrity, and that is covering the aquatic  
11 communities in water, the fish, the insects that  
12 are in the water. If they're not meeting a  
13 certain level of quality of health, then, you  
14 know, the water body will be impaired for  
15 biological integrity.

16 The next few are PCB's in fish tissue, and  
17 dissolved oxygen, nutrients, and mercury in fish  
18 tissue.

19 Next slide, please.

20 So, overall, not any really big changes  
21 since the 2022 list, but we seem to be going in  
22 the right direction. We had fewer impairments  
23 and fewer impaired water bodies than in the last



1 list. Of course, you know, we continue to look  
2 at our list and our methodology, and if we find  
3 errors, we fix those, and that will usually help  
4 to reduce the number of impairments. Our  
5 continued TMDL development also helps to remove  
6 impairments off of the Category 5 and into 4a, so  
7 that's, you know, usually a step in the right  
8 direction.

9 Next slide, please.

10 As far as any changes, or large changes, I  
11 guess, in our listing methodology, the --  
12 probably the biggest change we've had is the  
13 addition of New Selenium Criteria, which were  
14 adopted into Indiana's water quality standards  
15 in 2022, and these are based on selenium criteria  
16 developed by EPA in 2016.

17 This is a little bit different in that  
18 it's a criteria designed for aquatic life use, so  
19 we're looking at protecting the fish communities,  
20 but it's using fish tissue samples over water  
21 quality data. So, we don't -- I don't think we  
22 have any other criteria in the water quality  
23 standards that are quite like that. So, it's

1 just a little different.

2 And the criteria can differ depending on  
3 where you are in the state and whether the water  
4 bodies are -- could be, you know, home to  
5 sturgeon or paddlefish. Those are, you know,  
6 types of fish that are a little bit more  
7 sensitive to the effects of selenium.

8 Next slide, please.

9 This is not completely new, but we have  
10 been working on developing conversion formulas  
11 for several different dissolved metals that we  
12 see, and we're looking at using this as a  
13 screening tool to figure out, based on samples  
14 where we collect total metals concentrations,  
15 where we might also see a dissolved metal  
16 constant -- dissolved metal impairment, excuse  
17 me -- potentially, and, you know, can go back and  
18 actually do dissolved sampling, and the idea is  
19 that this will hopefully result in fewer  
20 additions to the 303(d) list.

21 Next slide.

22 Here we have a couple of maps showing the  
23 distribution of the Category 5 and 4a water

1 bodies in the state. Category 5 are those that  
2 are impaired without a TMDL, and Category 4a are  
3 those that are impaired, but we have written a  
4 TMDL for that impairment.

5 Next slide.

6 The Key Take-Aways. We're not really  
7 seeing any major changes in the types of  
8 impairments we're seeing. They've been pretty  
9 consistent, I think, for the past few cycles. We  
10 continue monitoring at about 250 to 300 sites a  
11 year.

12 This map is showing the number of sites  
13 we've sampled in the past nine years, which is  
14 how long it takes us to cover the entire state  
15 with our probabilistic sampling program. And we  
16 continue, you know, writing and making new TMDL's  
17 for those water bodies that are impaired.

18 And the next slide.

19 And if you'd like more information or to  
20 see a copy of the 303(d) list, there's a Web site  
21 there, or you can just contact me and I'll be  
22 happy to send it to you.

23 Any questions?

1                   CHAIRMAN GARD: I have a question.

2                   MR. MCMURRAY: Yes.

3                   CHAIRMAN GARD: Do you monitor  
4 blue-green algae at all? I know that's really a  
5 result of another contaminant.

6                   MR. MCMURRAY: We have a blue-green  
7 algae beach monitoring program, where we will go  
8 to DNR beaches across the state. We do this  
9 during the recreational season, May through  
10 September.

11                  MS. MEILS: Memorial Day through  
12 Labor Day.

13                  MR. MCMURRAY: Memorial Day through  
14 Labor Day; okay.

15                  So, we will go there weekly and take a  
16 water sample to bring it back to our labs in the  
17 IDEM offices on -- off of Shadeland Avenue, and  
18 we have staff that will count the number of  
19 blue-green algae, and also run tests to determine  
20 the amount of toxins that are in the water sample  
21 as well, and that information is then put onto an  
22 IDEM Web site, and I think it goes onto the DNR  
23 Web site as well, I think.

1           It's like a public notice, you know, so  
2 people -- if you're wanting to go to a certain  
3 DNR, you know, lake or something, or park, you  
4 can get onto there and see if -- see what the  
5 current algae concentration is.

6           CHAIRMAN GARD: Have you had any luck  
7 in getting the residents that border those water  
8 bodies to change the way they fertilize their  
9 lawns and so forth?

10          MR. MCMURRAY: I do not know --

11          CHAIRMAN GARD: Okay.

12          MR. MCMURRAY: -- actually.

13          COMM. ROCKENSUESS: Some have, and  
14 there's a project going on up near Lake Wawasee  
15 right now in Northeast Indiana where they're  
16 having -- they've had some substantial  
17 blue-green-algae issues. And so, they're looking  
18 upstream, downstream, "Where is this coming  
19 from?" We have a good idea.

20                When there are permitting conditions, we  
21 can take action, and EPA can help us take action,  
22 where it's -- you know, whether it's failing  
23 septic systems or, you know, lawn runoff. It's usually

1 a combination of all of it.

2 On the septic piece, if it's, you know,  
3 bad enough for that area, we start working down  
4 the regional sewer district path, and also  
5 consulting with the Indiana Finance Authority to  
6 see if they have pathway towards connecting to  
7 the sewers.

8 So, there's a -- there's a large swath of  
9 options that we work towards when we have larger  
10 blue-green algae issues.

11 CHAIRMAN GARD: Yeah. Thank you.  
12 It's just something I used to hear about all of  
13 the time.

14 COMM. ROCKENSUESS: The number of  
15 incidents have gone down --

16 CHAIRMAN GARD: Yes.

17 COMM. ROCKENSUESS: -- which is good.

18 CHAIRMAN GARD: Uh-huh.

19 MR. BORTNER: And there are some  
20 natural components, too, like the Indiana Dunes  
21 is a natural part of the process. So --

22 COMM. ROCKENSUESS: Right.

23 MR. BORTNER: -- not all of it is. A

1 lot of it is, but not all of it.

2 COMM. ROCKENSUESS: Right.

3 CHAIRMAN GARD: Any other questions?

4 MR. JAWOROWSKI: I have a question.

5 With regards to like watershed assessment and  
6 water quality, we've been seeing an uptick in  
7 projects that are taking on a corporate  
8 responsibility when they are entering communities  
9 that they're looking into. Is there best  
10 practices that would be beneficial for them to be  
11 understanding of, that we can advise on  
12 participating in the community and being a part  
13 of solutions for restoration of our watersheds?  
14 This might be an inappropriate forum, but -- and  
15 we can take it off-line if it is.

16 MR. MCMURRAY: Yes, we have -- in our  
17 branch, we have a Watershed Planning and  
18 Restoration Branch, and with our -- I'm sorry --  
19 Watershed Planning Group, and they work with  
20 different watershed groups around the state, you  
21 know, who are concerned about, you know, the  
22 quality of the local river, stream or something.

23 They work with them to, you know, give

1 grant money to them to help implement best  
2 management practices, you know, to help make  
3 those kinds of changes. I can get you more  
4 information about them, if you would like to  
5 contact --

6 MR. JAWOROWSKI: That would be  
7 helpful. I appreciate it.

8 MR. MCMURRAY: Okay. Thank you.

9 CHAIRMAN GARD: Other questions?

10 MR. WHITNEY: Yeah, there's a  
11 question on-line. Joanne asked if you received  
12 many public comments.

13 MR. MCMURRAY: Yes, we had, you know,  
14 our normal comments from EPA, they usually have a  
15 few every cycle, and a few general comments from  
16 the public, nothing that was like too hard to  
17 answer. There were some public comments  
18 regarding the selenium criteria as well.

19 Those are all -- all of the public  
20 comments are included in an appendix in the final  
21 303(d) list, which hopefully will be up on the  
22 IDEM Web site very soon, I think, so the comments  
23 and our responses to them are included in that --



1 in that section of the report.

2 CHAIRMAN GARD: Any other comments or  
3 questions?

4 (No response.)

5 CHAIRMAN GARD: Thank you.

6 MR. MCMURRAY: Okay. Thank you.

7 CHAIRMAN GARD: Very informative.

8 Now we'll move on to the public hearing  
9 before the Environmental Rules Board of the State  
10 of Indiana concerning preliminary adoption of the  
11 Title 326 Civil Penalties Rule.

12 I will now introduce Exhibit A, the  
13 preliminarily adopted Title 326 Civil Penalties  
14 Rule, into the record of the hearing.

15 Seth Engdahl will present the information  
16 for all three rules.

17 MR. ENGDAHL: Members of the Board,  
18 good afternoon. My name is Seth Engdahl, and I  
19 am a Rule Writer within the Rules Development  
20 Section within IDEM's Office the Legal Counsel.

21 As mentioned, the Board is considering  
22 three nearly identical rulemakings concerning  
23 civil penalties.

1           As many of you are aware, Indiana statutes  
2 on administrative rulemaking changed in 2023.  
3 One of the new requirements of this change is  
4 that any fee, fine, or civil penalty imposed by  
5 an agency must be included in the agency's rules.  
6 Agencies that were assessing fines, fees, or  
7 civil penalties that were not already in rules at  
8 the time of the law's enactment were given until  
9 December 31st of this year to amend their rules  
10 accordingly.

11           IDEM has two nonrule policies for  
12 assessing civil penalties for violations of the  
13 state's pollution control laws and for assessing  
14 civil penalties for violations of the state's  
15 underground storage tank laws and rules. These  
16 civil penalties are statutorily authorized and  
17 are statutorily capped at \$25,000 per violation  
18 per day for general violations and \$10,000 per  
19 violation per day for general violations for  
20 underground storage tanks.

21           However, the method that IDEM uses to  
22 assess the exact fee amount is determined by  
23 using a civil penalty nonrule civil policy -- or

1 nonrule policy document. These policies have  
2 been in effect for over 25 years, but due to the  
3 new statutory requirements, these policies must  
4 now be incorporated into IDEM's rules.

5 If these policies are not amended into the  
6 Indiana Administrative Code and effective before  
7 December 31st, 2024, IDEM will be unable to  
8 assess and collect civil penalties until a civil  
9 penalty policy is amended into rules. If IDEM is  
10 unable to assess and collect civil penalties,  
11 U.S. EPA will likely take over our delegated  
12 programs because IDEM will be unable to enforce  
13 those programs.

14 Given the time constraint, and the  
15 consequences, and the stakeholder familiarity  
16 with the existing nonrule civil penalty policy,  
17 IDEM sought to transpose the existing civil  
18 penalty policy into rules with no substantive  
19 changes. Due to the nature of nonrule policy  
20 documents and the structure, language, and  
21 formatting requirements of rules, an exact  
22 cut-and-paste of the existing policy was not  
23 possible.

1           However, the essential elements and  
2 structure of the existing civil penalty policy  
3 remain intact within the rule, and it is the  
4 agency's intention to implement the rules in the  
5 exact same way it implements the nonrule policy  
6 document. IDEM received several comments on the  
7 proposed rule language and made changes to reduce  
8 ambiguity and tailor each civil penalty rule to  
9 its respective title.

10           In general, IDEM assesses civil penalties  
11 using the following formula: The civil penalty  
12 equals the base civil penalty, plus or minus  
13 adjustment factors, plus any economic benefit  
14 gained through the violation. The base civil  
15 penalty is determined using a matrix that  
16 examines the potential for harm to human health  
17 or the environment, or to a regulatory program,  
18 along with the extent of deviation from the  
19 regulatory requirements.

20           This base penalty may then be adjusted  
21 based on the following factors: Actions before  
22 and after the violation; the violator's history  
23 of noncompliance; the violator's ability to pay;

1 unanticipated circumstances, such as additional  
2 evidence that leads to a significant  
3 re-evaluation of the facts surrounding the  
4 violation; and costs incurred by IDEM for  
5 enforcement.

6           The amount of economic benefit the  
7 violator achieved is then added to this civil  
8 penalty. This could be an economic benefit that  
9 arose from delayed or avoided costs, or profits  
10 from a period of startup prior to obtaining a  
11 permit. And this ensures that violations are not  
12 profitable; however, IDEM may disregard the  
13 economic benefit if it cannot be ascertained, or  
14 if it is less than \$1,000.

15           So, that is a general overview of the  
16 civil penal -- of the general civil penalty  
17 policy. The underground storage tank civil  
18 penalty policy is very similar. There is a  
19 gravity-based portion, which, like the general  
20 civil penalty policy, is based on a matrix.

21           Once the matrix penalty is determined, the  
22 penalty is multiplied by the number of  
23 underground storage tanks in violation, and then

1     there is a multiplier based on the number of days  
2     in violation.  And then like the general civil  
3     penalty policy, there is also an economic benefit  
4     portion as well.

5             If you would like, I'm happy to go into --  
6     generally, over -- between FY 2014 and FY 2023,  
7     the mean annual average of civil penalties that  
8     was collected by IDEM under the generally policy  
9     was about 2.4 million dollars per year.  This  
10    varies quite a bit, it goes up and down.

11            During that same time period, the mean  
12    annual average that was collected under the UST  
13    civil penalty policy, the underground storage  
14    tank civil penalty policy, was about \$210,000  
15    annually.

16            IDEM requests that the Board approve this  
17    rule as written, and I'm happy to answer any  
18    questions that you may have.

19            CHAIRMAN GARD:  Are there any  
20    questions?

21                            (No response.)

22            CHAIRMAN GARD:  And just keep in mind  
23    that Seth presented essentially for all three

1 rules, so your questions can cover any of the  
2 three.

3 And I do have a question: Do the fines go  
4 back to the general fund, or does IDEM keep them?

5 MR. ENGDAHL: They're -- they go to  
6 the -- for the UST's, it goes to the Excess  
7 Liability Trust Fund, and then for the general  
8 policy, it goes to the Environmental Management  
9 Special Fund.

10 CHAIRMAN GARD: Okay.

11 So, any questions on any of the three  
12 rules?

13 MR. WHITNEY: There's an on-line  
14 question. Joanne asks, "Where do the UST's fall  
15 under the rules we're considering today?"

16 MR. ENGDAHL: Those go under the  
17 Title 3 -- or Title 329 rules, so they go in  
18 Title -- or 329 IAC 9 is where those will go.

19 CHAIRMAN GARD: Any more questions?

20 MS. KOZYRSKI: I did have one  
21 question.

22 CHAIRMAN GARD: Yes.

23 MS. KOZYRSKI: The comments -- the

1 comments that you included in the packet include  
2 a discussion of definitions, such as "substantial  
3 likelihood" and "cooperation."

4 MR. ENGDahl: Yeah.

5 MS. KOZYRSKI: And IDEM responded  
6 that you had not intended to include additional  
7 definitions, but -- and I guess the question  
8 raised is: Your note that cooperation, in  
9 quotes, with a small entity may look different  
10 than cooperation with a large entity, and the  
11 same is true for "substantial likelihood." Could  
12 IDEM give an example of how that might look  
13 different depending on the size of the entity  
14 that is --

15 MR. ENGDahl: Sure. So, I mean  
16 that's one of the reasons why we decided not to  
17 adopt those definitions is, say you have a small  
18 entity where it's, you know, ten employees,  
19 having one employee there working with IDEM,  
20 providing information and whatnot, is different  
21 than if you had a large manufacturing facility --

22 UNIDENTIFIED SPEAKER: -- required to  
23 regulate the entire proposed activity, not just



1 the discharge, and to determine whether --

2 MR. ENGDAHL: -- if you had a large  
3 facility who, you know, offered up the exact same  
4 stuff, knowing that they have the resources to be  
5 more useful and helpful, and IDEM would know that  
6 and then take that into account.

7 MS. KOZYRSKI: Thank you.

8 CHAIRMAN GARD: Other questions?

9 Yes, Cal.

10 MR. DAVIDSON: Thanks, Madam Chair.

11 Just in general, it's obvious you're  
12 getting your money's worth out of the Board  
13 members this month reading all of these comments.

14 (Laughter.)

15 MR. DAVIDSON: So, thanks for giving  
16 us a little more challenging homework. It's  
17 obvious it's tough. It's a broader issue, and I  
18 think it's a compliment, because all of this --  
19 all of the comments that you're getting back are  
20 because -- and the Commissioner referenced  
21 relationships earlier, how important it is to  
22 have a relationship with the legislature.

23 And I think it's good to also emphasize

1 and not lose sight of the relationships we have  
2 with the regulated community, because a lot of  
3 them are -- "fearful" is probably a strong word,  
4 but what's up for grabs is the uncertainty of the  
5 agency that we sing about around the campfire.  
6 It's been good, it feels good, and we hear the  
7 intent is to keep doing business as we've done  
8 business.

9           The -- it's that relationship factor,  
10 where is it going? We trust you. We're worried  
11 about your successor, because if you put this in  
12 writing, how is somebody else going to read it?  
13 And how does it boil down to the working-class  
14 side of the agency that the regulated community  
15 deals with?

16           And that's a real broad stroke, and I  
17 wanted to -- I kind of compared it when I was  
18 going through some mental notes about marriage.  
19 Most of us in here are of age to be married,  
20 whether you chose to do that or not. This is --  
21 the regulated community is married to you. They  
22 don't have a choice; right? They do certain  
23 things. They're married.

1           And look at all of the books that are  
2 written about how to have a happy marriage. It's  
3 not easy to take something -- even though they  
4 crossed the street and told us, "You've got to do  
5 this, you've got to boil it all down to something  
6 simple," it's very complicated. It's not like,  
7 "Look at the --" if you write a rule that flips a  
8 switch on, which you haven't, you could, and they  
9 won't get what they desire across the street.  
10 That's not what they had in mind either.

11           So, just keep that in mind as you go down  
12 this road. You're trying to create something  
13 that -- I think everybody still wants that warm,  
14 fuzzy relationship. They don't want to lose hope  
15 they can work with.

16           COMM. ROCKENSUESS: So, a few  
17 comments on that. The -- as Seth mentioned,  
18 we've been using the same policy, and it hasn't  
19 changed in 25 years; right? Now, the  
20 implementation of that policy, I'm sure, has  
21 changed off and on in that 25 years. And  
22 policies are very easy to change. We haven't,  
23 but I can change a policy tomorrow, and it's

1 done.

2 This at least -- and I know there were  
3 some comments back and forth on the "Can we  
4 update?" and all of that, and there will be a  
5 time that we probably could, but given our time  
6 constraints, we need to get this in and get it in  
7 now.

8 It is absolutely going to be, as long as  
9 I'm around, that we're going to implement the way  
10 we've always implemented, and that's going to be  
11 the way we go, but with any rules, and anybody  
12 coming after me, they can interpret it how they  
13 want; right? And so, that's always going to be  
14 the case, whether it's a rule, statute, nonrule  
15 policy document.

16 And it is very much about those  
17 relationships, and it has always been -- I mean  
18 you can ask all of my AC's. It's in every one of  
19 their performance appraisals, that we communicate  
20 and we communicate well. Nobody should be  
21 shocked about what we're doing and why we're  
22 doing it.

23 So, I get what you're saying. We're doing

1 this because we have to. I would rather not rock  
2 the boat and just continue living life the way we  
3 were, but we are where we are.

4 MR. DAVIDSON: Thank you.

5 CHAIRMAN GARD: Other questions?

6 MR. KETZENBERGER: I have a quick  
7 comment to build off of that as well, and I  
8 concur that, you know, the effort that's been  
9 done is not just imposed, but also been done  
10 well. I think the agency has managed this well,  
11 and I take into account the comments that have  
12 been made before, but in addition to the  
13 relationship with the regulated community, we  
14 have relationships with every person who lives in  
15 the state.

16 So, I would also just continue to urge  
17 that the agency make its outreach and that it  
18 include the general public, and be as transparent  
19 as possible as violations occur, judgments are  
20 made, and actions are taken. And I think that we  
21 create the virtuous cycle that we're all trying  
22 to enjoy. And that's not meant as a criticism  
23 either. I'm just --

1                   COMM. ROCKENSUESS:  Yeah.

2                   MR. KETZENBERGER:  -- bringing that  
3 up in the context of the discussion today.  So,  
4 thank you.

5                   COMM. ROCKENSUESS:  Thank you.

6                   MR. BORTNER:  And if I may, Madam  
7 Chair, just -- you know, this -- this new way of  
8 doing business, which affects all of the  
9 agencies, and the time constraints we have in  
10 order to complete this, there are going to be  
11 mistakes made, and my hope is that people don't  
12 get their toes stepped on or think there's  
13 something intentional.

14                   The Department of Natural Resources, our  
15 fees, fines and penalties is over 150 pages, and  
16 trying to pull that all together, it's the same  
17 thing that you folks are facing.  Some things are  
18 going to get missed.  So, bear with the agencies  
19 as we try to get through this.  It's going to be  
20 a work in progress.

21                   COMM. ROCKENSUESS:  I can't wait for  
22 that rule.

23   (Laughter.)

1 MR. BORTNER: Yeah.

2 COMM. ROCKENSUESS: Yes.

3 MS. BROWN: I do have a question,  
4 though, to follow up on your comment. So,  
5 several of the comments that were submitted, and  
6 I think it goes back to what you were saying,  
7 were around the sufficient certainty that is part  
8 of the new requirement. And I really appreciate  
9 that we've got to get it done and we've got to  
10 get it done fast. Can you tell us how you feel?  
11 Because I think the concern is: Is the language  
12 specific enough where we are consistent and we  
13 have that certainty?

14 MR. ENGDAHL: Right.

15 MS. BROWN: I think the response  
16 that's been there was, "We hear you, but we want  
17 to stay the course now that this is going into a  
18 policy rule." How are you meeting that  
19 requirement?

20 MR. ENGDAHL: Right. And that's the  
21 struggle is finding that balance; right? Because  
22 you don't want to pin down the language so much  
23 that you can't apply -- at IDEM, we regulate such

1 a wide swath of sources, individuals, entities,  
2 and if -- you know, I hate to quote Star Wars,  
3 but, you know, the tighter you grip your fist,  
4 the more things slip through your fingers. And  
5 so, you know, that's kind of the balance that we  
6 try to strike here with this particular language.

7 And, you know, if we do feel that we come  
8 into view -- we've certainly kicked it around the  
9 office about potentially coming up with guidance,  
10 future, on down the line, if we do find that  
11 there's issues with inconsistency.

12 And, of course, this can be amended at a  
13 later point as well. So -- and also, one of the  
14 benefits of having a policy in place for 25 years  
15 is we can go back and look at the history and see  
16 how similar violations played out.

17 COMM. ROCKENSUESS: And I would add,  
18 too, the stricter you make the policy, the less  
19 workability that we have as an agency to work  
20 through situations that, while there are  
21 violations made but out of your control, or  
22 there's extenuating circumstances, whatever;  
23 right?



1           And so, copying and pasting what we have  
2 today still allows us to have the flexibility to  
3 work with everybody, whether it is communities  
4 or, you know, industry, to work towards getting  
5 to a solution for everyone.

6           CHAIRMAN GARD: Any other questions?

7           MS. BROWN: Yeah, another question;  
8 sorry.

9           So, based on the number of comments that  
10 you receive, will this require a second public  
11 notice? Because I believe the rule is that if  
12 you have substantive comments. Is that  
13 considered -- like what is the definition of that  
14 and --

15           MR. ENGDAHL: Well, with our  
16 rulemaking process -- so, there's the Title IV  
17 rulemaking process, which was amended, and then  
18 there's also the Title XIII, which is IDEM  
19 specific. We have to have a second hearing  
20 anyway.

21           MS. BROWN: Okay.

22           MR. ENGDAHL: So, it doesn't really  
23 matter.

1 CHAIRMAN GARD: Any other questions?

2 (No response.)

3 CHAIRMAN GARD: Well, I do want to  
4 thank the agency and all of the staff that worked  
5 through this. I know it's been difficult.  
6 Previously, over the 25 years that I was involved  
7 in working on rulemaking legislation, it came a  
8 little more slowly.

9 COMM. ROCKENSUESS: Uh-huh.

10 CHAIRMAN GARD: It didn't come all in  
11 one big bundle, so you all have done a good job.  
12 Thank you.

13 I have two speaker cards. Adri --  
14 Adrianna Moehle?

15 MS. MOEHLE: Yeah.

16 CHAIRMAN GARD: I don't think I  
17 pronounced your last name correctly.

18 MS. MOEHLE: That's okay.

19 CHAIRMAN GARD: And I assume you're  
20 going to be speaking on all three of the rules.

21 MS. MOEHLE: Yes, I will be.

22 Good afternoon. My name is Andrianna  
23 Moehle, with the Indiana Manufacturers

1 Association, and thank you for providing us the  
2 opportunity to speak today. I've got some copies  
3 of my testimony that I can give out afterwards,  
4 which also has additional specific comments that  
5 I won't run through, just in the interest of  
6 time.

7 We submitted formal comments, and we thank  
8 IDEM for their responses. However, we do still  
9 have a quite a few concerns with all aspects of  
10 the rules. So, first, to begin, I'd like to say  
11 this: The IMA believes that simply adopting the  
12 existing penalty policy as a rule does not  
13 comport with the General Assembly's directive in  
14 adopting House Enrolled Act 1623.

15 IDEM should adopt civil penalty language  
16 that fits within its statutory authority and  
17 complies with the statutory requirement to  
18 provide sufficient certainty, as Jaime mentioned,  
19 on what penalties may be imposed and for what  
20 conduct.

21 We also believe that the proposed rules  
22 will not allow IDEM to continue assessing civil  
23 penalties using same methods that have been used

1 for the previous 25 years. These rulemakings  
2 will have a negative impact on our members and  
3 regulated entities.

4 For example, all three rulemakings ignore  
5 the IDEM self-disclosure policy, which is an  
6 extremely successful program that precludes  
7 issuance of or significantly reduces a penalty  
8 for disclosure of certain violations under  
9 specific conditions. This oversight could lead  
10 to those increased penalties.

11 IDEM's response to comments did state that  
12 this rulemaking will not overrule the  
13 self-disclosure policy when the policy does  
14 apply, but this rule will have the force of law,  
15 whereas an agency nonrule policy document is  
16 guidance and nonbinding. So, we believe this  
17 self-disclosure policy should be codified along  
18 with these rules.

19 We also believe the rulemakings introduce  
20 some unclear and maybe some arbitrary terms. For  
21 example, it's not clear how harm to a regulatory  
22 program can be determined. We believe that the  
23 potential for harm factors are the same as in

1 IDEM's policy.

2           However, the statute requires IDEM to  
3 consider whether the violation has a major or  
4 minor impact. IDEM's practice of looking at  
5 potential as opposed to actual harm arguably  
6 violates the new statute. Any reference to  
7 "potential," we believe, should be removed from  
8 the new rule.

9           IDEM's response to comments states that  
10 IDEM disagrees with this sentiment because it  
11 would deviate from IDEM's existing civil penalty  
12 policy, which the agency is seeking to transition  
13 into rules. The statute states that a rule  
14 adopted under this article must comply with this  
15 section, but the inclusion of "potential" is  
16 inconsistent with the statute's requirement,  
17 which only focuses on whether the violation  
18 actually has an impact.

19           I'm almost done. The draft rule also  
20 includes the current policy's days of violation  
21 multiplier, but IDEM typically does not use the  
22 policy in this manner. The proposed rule states  
23 that IDEM shall multiply the base penalty by the

1 days of violation, which, when adopted into a  
2 rule, suggests that IDEM must now start doing  
3 that.

4 This would exponentially increase the  
5 amount of civil penalties IDEM is collecting for  
6 the same violations. The language should not be  
7 directly adopted into rule as is and should  
8 potential -- should specifically address the  
9 ability for IDEM to be able to use their  
10 discretion to reduce these civil penalties.

11 IDEM did respond to these comments, saying  
12 that the rule includes several provisions that  
13 allow for civil penalties to be adjusted, but we  
14 believe that they should revise Section 3(a) to  
15 specifically include the reference-based civil  
16 penalty adjustment in Section 4.

17 And lastly, with this being IDEM's attempt  
18 at codifying the civil penalty requirements into  
19 rule, the minor violation statute should also be  
20 addressed, since it limits IDEM's penalty amount  
21 for certain violations. IDEM did not  
22 specifically address this aspect that we had  
23 added into our comments, and just responded

1 saying that the statute has primacy over the  
2 proposed rule.

3 So, we would strongly appreciate the  
4 opportunity to continue working with them,  
5 understanding that this is under a very quick  
6 time constraint per the legislation, but has the  
7 potential to be a larger shift in policy that  
8 could impact our members.

9 So, I don't know if you want me to send  
10 the -- or who to hand these copies to.

11 MS. KINDRICK: Me.

12 MS. MOEHLE: Okay.

13 CHAIRMAN GARD: You can hand them to  
14 her.

15 MS. MOEHLE: There you go.

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

18 (No response.)

19 MS. MOEHLE: Thank you.

20 CHAIRMAN GARD: Thank you, Adrianna.

21 The next person that presented a card was  
22 Mike Zoeller, with the Conservation Law Center.

23 MR. ZOELLER: Good afternoon. I'm

1 Mike Zoeller, with the Conservation Law Center in  
2 Bloomington.

3 I'm afraid I'm the guilty party for  
4 submitting a lot of these comments. And I --  
5 many of our comments received responses or  
6 modifications to the proposed rules by IDEM, so I  
7 want to start out by thanking their staff for  
8 carefully considering our comments and making  
9 adjustments that have resolved a lot of our  
10 concerns.

11 I -- our comments are based primarily on  
12 my experience working with the Department of  
13 Justice for 16 years, representing EPA in civil  
14 enforcement matters. The language of civil  
15 penalty policies, you know, can be confusing and  
16 complicated and can apply to a lot of different  
17 situations.

18 I've got the experience of negotiating  
19 civil penalties with industry, and a  
20 particular -- you know, some minor ambiguity or  
21 lack of clarity can really make a difference in  
22 how long a time -- how long it takes to negotiate  
23 a civil penalty, and what you end up with.



1           Civil penalties are really important for  
2 deterring noncompliance, and nobody has mentioned  
3 the importance of these civil penalties. This is  
4 what makes our markets fair, because if a company  
5 is gaining economic benefit from noncompliance,  
6 the company that's lawfully operating is at a  
7 disadvantage and may lose market share, may lose  
8 profits.

9           So, these civil penalties are really  
10 important, not just for our environment, but for  
11 our economy, and I stressed that repeatedly when  
12 I was, you know, opposing industry, who were  
13 complaining about what impact this would have on  
14 their bottom line.

15           So, I stand here primarily today not --  
16 not to -- I've got a couple of minor points, but  
17 the main thrust of our argument was really much  
18 like what the Association of Manufacturers said.  
19 This is an opportunity to make the civil penalty  
20 policy better.

21           I would not have recommended that you put  
22 it in Code, it wouldn't have been my  
23 recommendation, but now that you have to do it --

1 and I understand that you're under, you know, a  
2 tight timeline, and absolutely you should meet  
3 that timeline and get these penalties in force so  
4 you can apply them.

5 But IDEM has a lot of really good staff.  
6 They're really smart. I know people who have  
7 been in the Enforcement Office for years, and  
8 they have been applying these policies for a  
9 number of years -- hopefully none of them for 25  
10 years, but maybe some of them -- and I'm sure  
11 they've got ideas about how to make improvements  
12 in language.

13 Almost all of our comments deal with  
14 clarity in the language, because that's where  
15 you're going to get both information to the  
16 regulated public about what their likely penalty  
17 will be, but also some certainty in the civil  
18 penalty.

19 Just three really minor things. We  
20 rewrote Section 3(c), which deals with the base  
21 civil penalty. IDEM made some changes that they  
22 felt were sufficiently clarifying. I would just  
23 ask the Board to compare the language that we

1 proposed with what IDEM proposed and pick what  
2 you think is the clearest, you know, not just for  
3 the enforcement authority, but also the regulated  
4 community.

5           Secondly, the BEN model is currently in  
6 the rules, but it's an alternative, and IDEM said  
7 that they didn't want to just use the BEN -- the  
8 BEN model is a model created by U.S. EPA. It's  
9 free of charge, it's got a lot of -- it's easy to  
10 use, even I can use it. They didn't want to just  
11 rely on that model in case there were  
12 alternatives, but they didn't identify any  
13 alternatives.

14           Removing the economic benefit from  
15 noncompliance is absolutely essential for  
16 deterrence, because otherwise, you make  
17 noncompliance profitable. So, understanding how  
18 you do that is really just math. This is not a  
19 theory. I mean it is a model that you have to  
20 plug in numbers, but it's essentially math.

21           And in Footnote 9 of our comments, we  
22 identified a couple of white papers. It was a  
23 consensus opinion of dozens of the nation's

1 leading economists gathered by EPA to review the  
2 BEN model and make improvements on it. Now, the  
3 reason I emphasize this is not that the BEN model  
4 is the be all and end all. I'm not an economist.

5           There may be something else out there, but  
6 IDEM should say what it is, because if you don't,  
7 you'll have violators come and say, "Well, here's  
8 our view of economic benefit," and it'll be  
9 pennies, and you'll have to deal with all of that  
10 in negotiations and eventually negotiate  
11 something smaller.

12           If you say, "We're going to use the BEN  
13 model," or something else, or a model that has  
14 been, you know, reviewed by a peer-review study  
15 or something like that, you'd at least have a  
16 stronger argument in negotiations.

17           And then finally, I asked about examples.  
18 A number of people have asked, "What do you mean  
19 by this language?" Language in civil penalties  
20 has to be malleable, because it applies to so  
21 many different entities and circumstances. But  
22 without some examples, it's hard to understand  
23 how those terms will be applied. Now, the agency

1 knows, and they can go back and look at 25 years  
2 of experience, but the regulated public doesn't.

3 So, I would encourage IDEM to put together  
4 a guidance policy -- if they don't want to put it  
5 in the rules, put together a guidance document  
6 that shows examples of some of these provisions,  
7 how they apply, and put that out at the same time  
8 or shortly after these rules get developed. And  
9 I'm -- the Conservation Law Center is glad to  
10 help with that or make comments on any guidance  
11 documents they produce.

12 If anybody has any comments, I do  
13 appreciate being able to stand here and give you  
14 these.

15 CHAIRMAN GARD: I appreciate your  
16 comments.

17 Are there questions?

18 (No response.)

19 CHAIRMAN GARD: Anybody on-line have  
20 a question?

21 (No response.)

22 MR. ZOELLER: Thank you.

23 CHAIRMAN GARD: Thank you very much.

1           Anyone else that didn't submit a speaker  
2 card?

3                           (No response.)

4           CHAIRMAN GARD: Okay. This hearing  
5 is concluded. The Board will now consider  
6 preliminary adoption of the Title 326 Civil  
7 Penalties Rule.

8           Board discussion?

9                           (No response.)

10          CHAIRMAN GARD: Well, I just want to  
11 make one comment. I think the timing of moving  
12 this is really important. I think we have to get  
13 those civil penalties adopted within the time  
14 frame the legislature's given us, and so, I think  
15 it's very important to continue moving this rule  
16 along.

17          COMM. ROCKENSUESS: Dr. Alexandrovich  
18 has something.

19          CHAIRMAN GARD: Yes.

20          DR. ALEXANDROVICH: I'm just  
21 wondering -- I know IDEM has gone over the rules  
22 and stuff. Have you sent it to LSA or any other  
23 attorney in state government who could determine

1 that you meet the statute?

2           COMM. ROCKENSUESS: So, I had to go  
3 in front of Budget Committee and submit these  
4 rules to Budget Committee for review, to move  
5 forward to this point, and so, that has happened.  
6 That happened, I don't know, last year or at the  
7 beginning this year at some point, and so -- and  
8 the Budget Committee's made up of both  
9 legislators, your typical finance people in LSA,  
10 and there's attorneys involved there as well.

11           DR. ALEXANDROVICH: Thank you.

12           CHAIRMAN GARD: Any other questions  
13 or comments from Board Members?

14           MR. DAVIDSON: Just one quick ask.

15           CHAIRMAN GARD: Yes.

16           MR. DAVIDSON: Sorry. I agree with  
17 you, it needs to stay on track. How much is  
18 there -- or are you guys already working on  
19 guidance that's suggested? I know that's been  
20 discussed, but is that something we're likely to  
21 see almost in parallel to address some of these  
22 issues that have been brought up? Is that  
23 something that's --

1           And I guess a follow-up to that: Are we  
2 likely to see in the next adoption, final  
3 adoption, the same thing, or is there still some  
4 working in progress with some of these comments?

5           MS. KING: Well, I'll speak from my  
6 perspective and what we've been working on in the  
7 rules process. The Commissioner may want to add  
8 something to that.

9           The concept of a guidance is something  
10 that we think would be useful. It sounds ironic.  
11 We're taking a guidance, putting it in a rule,  
12 and then doing a guidance, like we're addicted to  
13 guidances or something. But the reality is, you  
14 know, our thought was that people are comfortable  
15 with this. The 25 years of how we've done this,  
16 people are comfortable with it.

17           However, the comments we've received and  
18 the comments that you've seen, folks do have some  
19 issues and some things that they would like  
20 clarified. You know, we're a little paranoid  
21 about this rule, getting it done and everything  
22 else. But the concept of a guidance that can  
23 clarify some of this information, I think, is



1 something that we -- we have been putting  
2 together some notes on it. We have not -- we  
3 don't have anything formulated yet. If we do  
4 that, it prob -- it wouldn't be before this  
5 Board, by that time frame -- when we put together  
6 a guidance, we have to put it out for public  
7 comment as well.

8           And then once that -- once we go through  
9 that process, we bring it to the Board. And the  
10 Board, as you know, doesn't approve it, but we  
11 have the conversation so the Board can see it,  
12 and then it becomes effective 30 days after we  
13 present to the appropriate board. So, that would  
14 be the process for that.

15           As we're trying to move this as quickly as  
16 possible, I don't think that it would be ready  
17 for the Board at our next meeting, but the  
18 concept of it is something that we are looking  
19 at, based on the comments we've received.

20           And also based on the comments we've  
21 received, and something that Seth touched on,  
22 getting this in place now does not obviate the  
23 need to look at it after it's in rule. Again,

1 once it's in rule, it becomes something that we  
2 can reopen and look at in the regular rulemaking  
3 process. Yes, we have the one-year deadline, but  
4 again, we're not stuck with a specific date like  
5 we are now.

6 So, we have that ability, looking at  
7 what -- how it might -- how it being in rule  
8 might impact it and change what people see and  
9 what they want, if the policy doesn't work, we  
10 have the ability to reopen that rule as well.  
11 So, it is certainly something that we're  
12 considering, based on the comments that we've  
13 received.

14 Thank you.

15 MR. DAVIDSON: The second part of  
16 that was: Do you see any potential change -- is  
17 it still a work in process between now and final,  
18 or should we pretty much plan to see this again?

19 MS. KING: I think that the document  
20 you have -- and again, this is my opinion, but  
21 that's not to say that -- the comments we're  
22 receiving today are also important for us in  
23 terms of moving this forward.

1           I think that, as a general rule, what  
2   you're seeing is pretty much what you're going to  
3   see. Some of the comments we've received might  
4   end up make -- we might make some suggested  
5   changes for that. We also might be able to  
6   explain how this issue that has been brought up,  
7   we can work on in guidance, such as the  
8   definitions or how things are applied.

9           To the extent that -- as it was pointed  
10   out earlier, we have the ability to look back at  
11   how we've done things over the years, and that  
12   informs what some kind of a document that is --  
13   that you have more ability to explain things, and  
14   the nonrule policy document might work. So, I  
15   kind of didn't answer your question, but --

16           MR. DAVIDSON: No, normally --

17           MS. KING: -- that kind of is --

18           MR. DAVIDSON: -- normally it is the  
19   same thing.

20           MS. KING: Yeah, it's --

21           MR. DAVIDSON: Normally we don't get  
22   this many comments.

23           MS. KING: Yeah. It's not -- it's

1 not like, "No, we're not changing a word in it."  
2 That's -- that's not it at all, because the  
3 regulated community has been very openly saying,  
4 "We're happy to work with you on these things,"  
5 and we meet with them on issues like this all of  
6 the time.

7 So, having those kind of discussions  
8 might -- you know, we might decide that -- what a  
9 policy would look like, or "What changes to the  
10 rule for final adoption would still allow us to  
11 meet the requirements and get this done in the  
12 time frame that we're required to?"

13 CHAIRMAN GARD: Do you have a --

14 MR. ETZLER: So, I have a question.  
15 Right now, the deadline to get this adopted is  
16 December 31st; correct?

17 MS. KING: The deadline to have it --  
18 it's supposed to be effective by then.

19 MR. ETZLER: So, let's back up.  
20 What's the last Rule Board -- Rules Board meeting  
21 date for final adoption that would allow us to  
22 meet that burden?

23 MS. KING: We are looking at July.

1 We could go as late as August, but then we have  
2 to get the transcript, we have to -- the Attorney  
3 General has 45 days to review it, the Governor's  
4 Office has 15 days to sign it, it becomes  
5 effective 30 days after it goes to LSA. So,  
6 that's what, two -- a couple of months.

7 MR. ETZLER: So, September could be  
8 the --

9 MS. KING: September would be the  
10 absolute drop-dead Board meeting.

11 MR. ETZLER: I understand that.  
12 That's what I was asking, though.

13 MS. KING: Yeah. I mean -- but that  
14 would be cutting it very close.

15 MR. ETZLER: Right. I understand.

16 MS. KING: So, that's why it -- we're  
17 saying that ideally we'd like to get it done in  
18 July or August so that we do have the time to put  
19 everything together.

20 CHAIRMAN GARD: Other questions?

21 MR. BORTNER: And I'd remind  
22 everybody that what we're talking about is as the  
23 legislation is passed as of today. This may --

1 some things may be changed or tweaked as you move  
2 through this, because the amount of paper tsunami  
3 that's going to fall before the Assembly on some  
4 of these things may cause them to tweak some  
5 things. So, this is as we know it to be today.

6 MS. KING: Oh, yes, let's hope.

7 (Laughter.)

8 CHAIRMAN GARD: Well, I think this  
9 has been a learning process for the General  
10 Assembly, because there's not really any  
11 historical memory in the General Assembly to deal  
12 with rulemaking. And so, I think they're going  
13 to be surprised at some of the tweaks they have  
14 to make.

15 Any other questions before we move on?

16 (No response.)

17 CHAIRMAN GARD: Okay. Is there a  
18 motion to preliminarily adopt the rules as  
19 presented?

20 MR. ETZLER: So moved.

21 CHAIRMAN GARD: Is there a second?

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

1 CHAIRMAN GARD: Well, wait a minute.  
2 This is a roll-call vote.

3 DR. NIEMIEC: Okay.

4 CHAIRMAN GARD: So, is -- is there a  
5 second?

6 DR. NIEMIEC: Second. This is Ted  
7 Niemiec.

8 CHAIRMAN GARD: Okay. This is a  
9 roll-call vote.

10 Mr. Davidson?

11 MR. DAVIDSON: Yes.

12 CHAIRMAN GARD: Mr. Etzler?

13 MR. ETZLER: Yes.

14 CHAIRMAN GARD: Dr. Niemiec?

15 DR. NIEMIEC: Yes.

16 CHAIRMAN GARD: Mr. Horn?

17 MR. HORN: Yes.

18 CHAIRMAN GARD: Mr. Rulon?

19 (No response.)

20 COMM. ROCKENSUESS: You're on mute.

21 CHAIRMAN GARD: Mr. Rulon?

22 MR. HORN: Am I on mute?

23 COMM. ROCKENSUESS: No, you're good.

1 MR. RULON: Yes; sorry. Yes.

2 CHAIRMAN GARD: Okay.

3 Mr. Jaworowski?

4 MR. JAWOROWSKI: Yes.

5 CHAIRMAN GARD: I'm sorry; I really  
6 butchered that.

7 Mr. Green?

8 MR. GREEN: Yes.

9 CHAIRMAN GARD: Mr. Bortner?

10 MR. BORTNER: Yes.

11 CHAIRMAN GARD: Ms. Brown?

12 MS. BROWN: Yes.

13 CHAIRMAN GARD: Dr. Alexandrovich?

14 DR. ALEXANDROVICH: Yes.

15 CHAIRMAN GARD: Ms. Koryoski [sic]?

16 MS. KOZYRSKI: Yes.

17 CHAIRMAN GARD: Mr. Ketzenberger?

18 MR. KETZENBERGER: Yes.

19 CHAIRMAN GARD: Mr. Zehr?

20 MR. ZEHR: Yes.

21 CHAIRMAN GARD: Ms. Nelson?

22 MS. NELSON: Yes.

23 CHAIRMAN GARD: The Chair votes aye.



1 Fifteen ayes, zero nays. The rule is  
2 preliminarily adopted.

3 This is a public hearing before the  
4 Environmental Rules Board of the State of Indiana  
5 concerning preliminary adoption of the Title 327  
6 Civil Penalties Rule.

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

10 The rule has already been presented, and  
11 the speaker cards have addressed all three rules.  
12 The hearing is concluded. The Board will now  
13 consider preliminary adoption of Title 327, Civil  
14 Penalties Rule.

15 Is there any Board discussion?

16 (No response.)

17 CHAIRMAN GARD: Okay. Is there a  
18 motion to preliminarily adopt the rules as  
19 presented?

20 MR. RULON: So moved, Ken Rulon.

21 CHAIRMAN GARD: Is there a second?

22 DR. NIEMIEC: This is Ted Niemiec.

23 CHAIRMAN GARD: Roll-call vote.

1           Mr. Davidson?

2           MR. DAVIDSON: Yes.

3           CHAIRMAN GARD: Mr. Etzler?

4           MR. ETZLER: Yes.

5           CHAIRMAN GARD: Dr. Niemiec?

6           DR. NIEMIEC: Yes.

7           CHAIRMAN GARD: Mr. Horn?

8           MR. HORN: Yes.

9           CHAIRMAN GARD: Mr. Rulon?

10          MR. RULON: Yes.

11          CHAIRMAN GARD: Mr. Jaworowski?

12          MR. JAWOROWSKI: Yes.

13          CHAIRMAN GARD: Mr. Green?

14          MR. GREEN: Yes.

15          CHAIRMAN GARD: Mr. Bortner?

16          MR. BORTNER: Yes.

17          CHAIRMAN GARD: Ms. Brown?

18          MS. BROWN: Yes.

19          CHAIRMAN GARD: Dr. Alexandrovich?

20          DR. ALEXANDROVICH: Yes.

21          CHAIRMAN GARD: Ms. Koryoski [sic]?

22          MS. KOZYRSKI: Yes.

23          CHAIRMAN GARD: Mr. Ketzenberger?

1 MR. KETZENBERGER: Yes.

2 CHAIRMAN GARD: Mr. Zehr?

3 MR. ZEHR: Yes.

4 CHAIRMAN GARD: Ms. Nelson?

5 MS. NELSON: Yes.

6 CHAIRMAN GARD: The Chair votes aye.

7 Fifteen ayes, zero nays. The rule is

8 preliminarily adopted.

9 This is a public hearing before the  
10 Environmental Rules Board of the State of Indiana  
11 concerning preliminary adoption for Title 329,  
12 Civil Penalties.

13 I will now introduce Exhibit C, the  
14 preliminarily adopted [sic] Title 329 Civil  
15 Penalties Rule, into the record of the hearing.

16 The rule has already been presented, and  
17 the speakers have already made their comments.  
18 This hearing is concluded. The Board will now  
19 consider preliminary adoption of Title 329, Civil  
20 Penalties Rule.

21 Is there any Board discussion?

22 (No response.)

23 CHAIRMAN GARD: I need a motion to

1 adopt the preliminarily adopted -- to  
2 preliminarily adopt the rule.

3 MR. DAVIDSON: So moved.

4 CHAIRMAN GARD: Is there a second?

5 MR. ETZLER: Second.

6 DR. NIEMIEC: Second. This is Ted  
7 Niemiec.

8 CHAIRMAN GARD: This is a roll-call  
9 vote.

10 Mr. Davidson?

11 MR. DAVIDSON: Yes.

12 CHAIRMAN GARD: Mr. Etzler?

13 MR. ETZLER: Yes.

14 CHAIRMAN GARD: Dr. Niemiec?

15 DR. NIEMIEC: Yes.

16 CHAIRMAN GARD: Mr. Horn?

17 MR. HORN: Yes.

18 CHAIRMAN GARD: Mr. Rulon?

19 MR. RULON: Yes.

20 CHAIRMAN GARD: Mr. Jaworowski?

21 MR. JAWOROWSKI: Yes.

22 CHAIRMAN GARD: Mr. Green?

23 MR. GREEN: Yes.

1 CHAIRMAN GARD: Mr. Bortner?

2 MR. BORTNER: Yes.

3 CHAIRMAN GARD: Ms. Brown?

4 MS. BROWN: Yes.

5 CHAIRMAN GARD: Dr. Alexandrovich?

6 DR. ALEXANDROVICH: Yes.

7 CHAIRMAN GARD: Ms. Koryoski [sic]?

8 MS. KOZYRSKI: Yes.

9 CHAIRMAN GARD: Mr. Ketzenberger?

10 MR. KETZENBERGER: Yes.

11 CHAIRMAN GARD: Mr. Zehr?

12 MR. ZEHR: Yes.

13 CHAIRMAN GARD: Ms. Nelson?

14 MS. NELSON: Yes.

15 CHAIRMAN GARD: The Chair votes aye.

16 Fifteen ayes, zero nays. That rule is

17 preliminarily adopted.

18 Okay. This is an Open Forum. Is there

19 anyone who wishes to address the Board today?

20 (No response.)

21 CHAIRMAN GARD: Before we adjourn, is

22 there anything any IDEM person needs to say?

23 Commissioner?

1                   COMM. ROCKENSUESS: (Shook head no.)

2                   CHAIRMAN GARD: Nancy?

3                   MS. KING: I'm done.

4                   CHAIRMAN GARD: Okay.

5                   Okay. Well, as indicated, the next  
6 meeting of the Environmental Rules Board is  
7 tentatively, and I will underline "tentatively,"  
8 set for July the 10th, 2024 at 1:30 p.m. in  
9 Conference Room A, Indiana Government Center  
10 South. As you know, it's tentative and subject  
11 to change, but we'll keep everyone updated as  
12 to -- as soon as possible if there is a change in  
13 the date.

14                  Any further Board discussion?

15                                   (No response.)

16                  CHAIRMAN GARD: Is there a motion to  
17 adjourn?

18                  MS. NELSON: So moved.

19                  CHAIRMAN GARD: Is there a second?

20                  DR. NIEMIEC: I move. This is Ted  
21 Niemiec. Or second. This is Ted Niemiec.

22                                   (Laughter.)

23                  CHAIRMAN GARD: All in favor, say

1 aye.

2 (Board members responded, "Aye.")

3 CHAIRMAN GARD: Opposed, nay.

4 (No response.)

5 CHAIRMAN GARD: We are adjourned, and  
6 thank you all for your patience, and this is a  
7 little different than we've had -- anything we've  
8 had to do before.

9 - - -  
10 Thereupon, the proceedings of  
11 April 10, 2024 were concluded  
12 at 3:07 o'clock p.m.  
13 - - -

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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, April 10, 2024 in this matter and  
8 transcribed by me.

9  
10 

11 Lindy L. Meyer, Jr.,

12 Notary Public in and

13 for the State of Indiana.

14  
15 My Commission expires August 26, 2024.

16 Commission No. NP0690003  
17  
18  
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20  
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23



<b>\$</b>	26:22, 36:9, 51:7, 94:8, 95:10, 96:7, 96:15	<b>53</b> [1] - 30:15 <b>543</b> [1] - 1:21	<b>added</b> [2] - 53:7, 70:23	29:3, 36:5, 49:18, 66:22, 71:23				
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