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BEFORE THE STATE OF INDIANA
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF AUGUST 14, 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, August 14, 2024 at 1:33
o'clock p.m.

- - -

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

1 APPEARANCES:

2 BOARD MEMBERS:

- 3 Beverly Gard, Chairman
- 4 William Etzler
- 5 Calvin Davidson
- 6 Ric Zehr
- 7 Dr. Ted Niemiec
- 8 Dr. Joanne Alexandrovich
- 9 Carrie Kozyrski
- 10 Jaime Brown
- 11 Ken Rulon
- 12 Chris Horn
- 13 R.T. Green
- 14 Daniel Bortner, Proxy, Department of
- 15 Natural Resources
- 16 Brian Rockensuess, IDEM Commissioner
- 17 (Nonvoting)

11 IDEM STAFF MEMBERS:

- 12 Aidan Whitney
- 13 Billie Franklin
- 14 Seth Engdahl
- 15 Keelyn Walsh
- 16 Nancy King
- 17 Karla Kindrick

16 PUBLIC SPEAKERS:

- 17 Patrick Bennett
- 18 Andrianna Moehle

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1 1:33 o'clock p.m.
2 August 14, 2024

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4 CHAIRMAN GARD: I'd like to call the
5 Indiana Environmental Rules Board to order,
6 August the 14th of 2024. We do have a quorum. I
7 am going to call the roll, because there are a
8 couple of people that will be participating
9 on-line.

10 Mr. Davidson?

11 MR. DAVIDSON: Yes.

12 CHAIRMAN GARD: Mr. Etzler?

13 MR. ETZLER: Here.

14 CHAIRMAN GARD: Dr. Niemiec?

15 DR. NIEMIEC: Here.

16 CHAIRMAN GARD: Mr. Horn?

17 MR. HORN: Yes.

18 CHAIRMAN GARD: Mr. Green?

19 MR. GREEN: Here.

20 DR. NIEMIEC: Can you hear me?

21 CHAIRMAN GARD: Yes, we heard you.

22 Mr. Bortner?

23 MR. BORTNER: Here.

CHAIRMAN GARD: Ms. Brown?

1 MS. BROWN: Here.

2 CHAIRMAN GARD: Dr. Alexandrovich?

3 DR. ALEXANDROVICH: Here.

4 CHAIRMAN GARD: Ms. Kozyrski [sic]?

5 MS. KOZYRSKI: Here.

6 CHAIRMAN GARD: I'll learn that in
7 another couple of years.

8 (Laughter.)

9 CHAIRMAN GARD: Mr. Zehr?

10 MR. ZEHR: Yes.

11 CHAIRMAN GARD: Ken Rulon?

12 MR. RULON: Here.

13 CHAIRMAN GARD: And the Chair is
14 present. We have 12 present. It takes eight
15 voting members for a quorum.

16 Are there any changes to the order of the
17 meeting as posted on the agenda?

18 (No response.)

19 CHAIRMAN GARD: No? There don't
20 appear to be.

21 Okay. Aidan Whitney's going to cover the
22 logistics of in-person and remote participants.

23 MR. WHITNEY: All right. And I am

1 Aidan. I will be helping out with the on-line
2 portion, and for -- just so you know, you are
3 being recorded, so if you have a question, there
4 is a -- on the top bar, on the third from the
5 left of the icons, there is a hand that is
6 raised. If you click that, it will raise your
7 hand, and when we have time for questions, we'll
8 call.

9 And if you would like to chat, there is a
10 chat button up top as well. And yeah, that
11 will -- if you type in your question, we will do
12 our best to answer it, and -- yeah, there's an
13 unmute button with -- so, you're all currently
14 muted.

15 On the right side, where there is a little
16 microphone and it says "mic." If you click that,
17 it will unmute your microphone, and if you click
18 it again once you're done, that would be greatly
19 appreciated, and that will mute you again.

20 CHAIRMAN GARD: Are there any
21 questions about this, remote participants? Any
22 questions?

23 (No response.)

1 CHAIRMAN GARD: Okay. We'll move on.

2 Our first order of business today is the
3 approval of the summary of the April 10th, 2024
4 Board meeting. Are there any additions or
5 corrections to the summary as presented?

6 (No response.)

7 CHAIRMAN GARD: If not, is there a
8 motion to approve?

9 MR. DAVIDSON: So moved.

10 CHAIRMAN GARD: Is there a second?

11 MR. HORN: Second.

12 CHAIRMAN GARD: All in favor, say
13 aye.

14 (Board members responded, "Aye.")

15 CHAIRMAN GARD: Opposed, nay.

16 (No response.)

17 CHAIRMAN GARD: The summary of the
18 meeting from April the 10th, 2024 is approved.

19 Comm. Rockensuess?

20 COMM. ROCKENSUESS: Good afternoon,
21 Chairwoman Gard, members of the Board.

22 So, the first thing I want to talk about
23 is staffing. We are at around 822 currently.

1 This is the highest we've been post-pandemic. I
2 think the highest we were prepandemic, during the
3 Holcomb Administration, was around 830, so we are
4 reaching capacity, at about where we should be.

5 There are a couple of things that may need
6 some more staffing that would include any future
7 regulations for PFAS, any potential new
8 regulation -- and I'm going to talk about this in
9 a minute -- on cyber security, and then we're
10 doing a modernization effort right now with our
11 technology. We will be hiring a couple of people
12 for that, but outside of that, it would be coal
13 combustion residual programs that we hope to be
14 implementing by next year.

15 So, staffing, we're doing really well. We
16 have some new leadership within the agency. So,
17 many of you knew Peggy Dorsey. She retired.
18 Corey Webb, also Land Quality, went on to the
19 another agency, so the new Assistant Commissioner
20 is Brian Wolff. He comes -- he was the Branch
21 Chief of the Wetlands and Stormwater Branch in
22 the Office of Water Quality.

23 The person that replaced Corey Webb, his

1 name is Andrew Pappas. He was within Office of
2 Land Quality, and prior to that, he was in
3 management roles at the Department of Health.

4 We have new leadership in the Northwest
5 Regional Office, so Michele Murday Pariso, she's
6 my new Northwest Regional Director, and her
7 Deputy is Chuck Breitenfeldt, and so, they've --
8 they just came into these roles midway through
9 the year, and they've hit the ground running.

10 And then the Branch Chiefs that -- the new
11 Branch Chiefs that replaced Brian Wolff as the
12 Wetlands Stormwater Branch Chief is Amari Farren,
13 and the new -- we also needed a new Branch Chief
14 in the Office of Land Quality Permits, and that
15 is Tom Kreke, who used to be the Section Chief in
16 Solid Waste Permitting.

17 We also -- and I think I mentioned this
18 last time -- we have Education and Training
19 Director Amanda Hall. She has been really doing
20 a phenomenal job. With consistently a third of
21 our agency ready to retire at any point, we're
22 bringing in a lot of new, inexperienced people, a
23 lot of them straight out of school, and so, it

1 was imperative that we have somebody that can
2 help train these people up.

3 And I like to mention the story that I
4 went to a -- we host a Christmas cooking thing,
5 and I walked in one day and I said, "Who brought
6 the kids to the --" they were my new air permit
7 writers.

8 (Laughter.)

9 COMM. ROCKENSUESS: And so, investing
10 in training and education is huge for us, because
11 we don't want to have a drop in service for any
12 of our stakeholders, and we also want to make
13 sure that we're training people to be that next
14 generation of leadership. And so, just this
15 month we started our own leadership academy. We
16 thought it was going to take a couple of years
17 for her to develop this. She did it all within a
18 year. She's really phenomenal, and I'm super
19 excited about the work she's doing.

20 I mentioned a modernization effort. Last
21 biennium we had about five and a half million
22 dollars to start that modernization effort.
23 We're in contract negotiations right now, but

1 moving forward, we are going to need a team of
2 people. Those are -- we're working with State
3 Personnel right now to put that package together.

4 That will look at, you know, providing
5 support for that new modernization effort going
6 forward. Something we haven't done well over the
7 years is have people dedicated to making sure
8 that those systems work, and companies and other
9 agencies have done that well, and so, we are
10 making that investment.

11 And we will be asking the legislature the
12 next number of bienniums to continue investing in
13 this. It's not going to be all one chunk, it's
14 going to be -- we want a little bit of money,
15 we'll get something done, we'll show you the
16 results so that you keep reinvesting in us.

17 We are working on our budget submission,
18 which is a little weird because we're in
19 transition with governors, so we have to -- we
20 have to submit it to Budget. The State Budget
21 Agency has to present their budget statutorily,
22 and then that can all go in the wind once the new
23 governor comes in and he decides what -- he or

1 she decides what they want to do. So, we are
2 working on that right now.

3 This summer we re-established a
4 legislative road show, where we've been going
5 around the state talking with legislators in
6 their districts, and that's been going really
7 well. It really presents an opportunity for
8 policy makers to meet the agency in a way that's
9 nonconfrontational. They can ask questions that
10 maybe they wouldn't feel comfortable doing in a
11 committee room, and it's going a long way to
12 repairing relationships. So, I'm pleased with
13 that.

14 Two more things quickly. It was mentioned
15 in the last Board meeting that we applied for the
16 CPRG, which was the Carbon Pollution Reduction
17 Grant. It's that 4.6 billion dollars that EPA
18 put out. Unfortunately, Indiana was not chosen.

19 It ended up being more partisan than I
20 would have hoped for. Many of the states that
21 won were blue. There were two or three states
22 that were red that did get some money, but the
23 majority of states or cities that got it were

1 blue in nature, which is unfortunate, because we
2 had a lot of great plans to use that money.

3 So, we still have -- we did get a
4 three-million-dollar grant on the front end
5 that -- anybody that applied got it. We have
6 some close-up things in the next two years that
7 we will have to use that money for, but unless
8 they open up another pot of money, we are out of
9 the CPRG funding.

10 And then finally, something I've been
11 focusing on a lot recently is cyber security.
12 So, in Aprilish time frame, the wastewater
13 utility in Tipton, Indiana was attacked by a
14 group out of Russia, and they literally took over
15 the plant.

16 The utility wastewater operator got a
17 notification on his app, you know, on his phone,
18 that some of the controls of the facility had
19 changed, and he thought that was weird. He set
20 them back. They changed again. So, he knew he
21 was under attack.

22 He did the right thing. He immediately
23 reported it to the Federal Government, and he

1 also immediately took the system off-line and ran
2 it manually. Great.

3 The problems that exist after learning
4 more about this is: First, the State of Indiana
5 wasn't notified for three days. He did
6 everything he was supposed to do, but once an
7 attack is reported and confirmed, the security
8 level in the Federal Government jumps so high
9 that even our National Security Advisor, which is
10 the Director of Homeland Security, his security
11 level's not high enough to know.

12 And so -- and, you know, it's not that I
13 don't care who is attacking, but that's not my
14 concern. My concern is the water and wastewater
15 plants operating correctly. And so, if we're not
16 notified, we can't help present resources to help
17 triage any issues that may be going on.

18 So, we are looking at legislation this
19 year. First is you have to report it to the
20 state. Now, there's going to be a central
21 location, so you don't have to call these
22 different people. There'll be one number,
23 probably to DHS, and then the Department of

1 Homeland Security would then funnel that out to
2 the appropriate teams.

3 The second thing is: Most water and
4 wastewater utilities, most people that we deal
5 with generally in the environmental world, they
6 do not think about cyber security, they think
7 about the environmental things they need to deal
8 with. They're -- this group in Russia, this is
9 the third or fourth utility they attacked. They
10 attacked two or three in Texas, and I think one
11 on the East Coast.

12 They're just getting in and playing around
13 right now. They don't actually know what they're
14 doing. The minute that they do understand what
15 they're doing, they can cause really a lot of
16 harm, especially when it's drinking water. You
17 start changing chemicals, the constituencies are
18 in a lot of trouble.

19 So, the second part of that legislation
20 that we're looking at is mandatory that you start
21 doing vulnerability assessments. And what I mean
22 by "they're walking in," it's situations where
23 the password is "password." They have Internet

1 facing devices that anybody can get into because
2 they're factory settings, and they're
3 environmental people, so they're not thinking
4 about these things. Well, I need them to start
5 thinking about these things, because it is --
6 it's water. It's what we drink; right?

7 And so, we've been building coalitions
8 with all of the agencies that should be involved,
9 we've been having conversations with
10 municipalities about it, as well as legislators,
11 about how important this is, because we need to
12 protect the water people are drinking and our
13 wastewater plants from -- you know, we can't have
14 sewage just going into a river.

15 So, yeah, that's -- that's my report. I'd
16 be happy to answer any questions. There's a lot
17 there with the cyber.

18 CHAIRMAN GARD: I have a question.
19 For most of these small utilities, are they going
20 to have to hire somebody to come in and take care
21 of whatever they need?

22 COMM. ROCKENSUESS: Yeah. So, the --
23 they can if they'd like to. EPA, CISA, which is

1 the cyber federal agency, American Waterworks
2 Association, they all have free assessment tools.
3 You just have to do them. I do have a person on
4 my team that walks utilities through these right
5 now. American Waterworks Association will walk
6 people through this right now.

7 So, all I want them to do is do that
8 exercise, to know where their vulnerabilities are
9 at, and then we -- I've been working with IOT,
10 because they have connections with Purdue and IU
11 and other universities that will come, and they
12 will help people shift those vulnerabilities.
13 Like I don't -- I recognize small communities,
14 even bigger communities, don't have the funding.
15 That's another unfunded mandate; right?

16 And so, I'm looking for ways to reduce
17 that as much as possible. We -- through the free
18 tools, or we will help do some things, or Indiana
19 Finance Authority has helped in funding some of
20 these things. So, we're looking at multiple ways
21 to reduce that impact to a community.

22 CHAIRMAN GARD: Okay. Thank you.

23 There's one other thing I'd like to add.

1 You all are all aware that over the last five
2 years, we've been -- we've had a committee that's
3 worked on awarding the 41 million dollars from
4 the Volkswagen settlement. We are at the end of
5 that, and we're having one last meeting in
6 October to actually celebrate. This has been at
7 least a five-year endeavor, and you can get
8 on-line and see all of the things that are
9 benefitting from this 41 million dollars.

10 COMM. ROCKENSUESS: Yeah. Thank you.

11 CHAIRMAN GARD: Okay. Any questions
12 from -- yes.

13 MR. RULON: I just have a question.
14 The legislation, instead of having the call go to
15 DHS, I'd almost rather have them e-mail both of
16 you at the same time, because we just saw what
17 happens when the Federal Government doesn't
18 communicate well.

19 COMM. ROCKENSUESS: So, fortunately,
20 on the state level -- I'm talking state DHS --

21 MR. RULON: Okay.

22 COMM. ROCKENSUESS: -- DHS, IOT,
23 IDEM, in some cases IURC and IFA, we're meeting

1 consistently and constantly about cyber. I meet
2 actually monthly with IOT and DHS and other
3 stakeholders that are critical infrastructure on
4 cyber already. So, we are sharing constantly.
5 Not Federal, yeah.

6 MR. RULON: That's great. Thank you.

7 COMM. ROCKENSUESS: Yeah.

8 CHAIRMAN GARD: Any other questions?

9 Yes.

10 MR. DAVIDSON: My Dropbox got hacked
11 over the weekend, so if any of you got a Dropbox
12 from me, I'm reporting it to you now, just don't
13 open that file.

14 COMM. ROCKENSUESS: I won't.

15 MR. DAVIDSON: One quick thought
16 about that. You pointed out actually where the
17 mindset's at, about the environmental and not
18 about -- and I recall being on a local committee
19 when we thought it was a good idea to do wellhead
20 assessment vulnerability studies years ago, and
21 someone quickly said, "Let's not make all of that
22 public," because all we did was identify the
23 targets.

1 not -- they're not doing this for money, either.
2 They're doing this to show that they attacked
3 American Government, and they don't care if it's
4 a city, an agency, a state. They get to just
5 claim, "We attacked American Government." And
6 then they Webcast it, while they're doing it, to
7 the world. So, that is -- they're trying to
8 create chaos is what they're trying to do.

9 MR. DAVIDSON: Good enough for me.

10 DR. ALEXANDROVICH: I have a
11 question. So, are those people -- they're not
12 related to the Russian Government, they're
13 just --

14 COMM. ROCKENSUESS: They're loosely
15 affiliated -- they're loosely affiliated -- now,
16 the attack on Tipton, it's called CAR. I can't
17 even member what it stands for. Cyber Army of
18 Russia is what it's called. They have -- they've
19 had some loosely -- loose affiliations to the
20 Russian Government on some other things.

21 This one is not -- you know, there's no
22 intel or anything to say that this was on behalf
23 of the Russian Government, but between Russia and

1 Iran, in the last year, we had at least 36
2 attacks on critical infrastructure. Now, that's
3 food, one of them was a dairy, water, wastewater,
4 cities and towns.

5 But -- and the map's public, and we can --
6 I can have Nancy or whoever share that with
7 everybody. Thirteen out of the 36, so a third,
8 almost a third -- over a third -- were water and
9 wastewater. So, they are targeting that critical
10 infrastructure, because it's so easy to walk in
11 right now.

12 CHAIRMAN GARD: Hmm. That's scary.
13 Yes.

14 MR. ZEHR: I'm curious. As part of
15 the cyber process, will you be able to survey and
16 assess the utilities to understand their level of
17 technology sophistication?

18 COMM. ROCKENSUESS: So, that's part
19 of what we're trying to work into this idea.
20 Like if you're not running a SCADA system, if
21 you're just doing it manually, there'd be an
22 off-ramp for you, right, because you're not
23 on-line. If you are on-line, then we're going to

1 have to -- my hope is that we would bring
2 everybody in.

3 There's a federal law that was passed on
4 drinking water, and it's AIWA [sic]. I couldn't
5 tell you what that stands for. It focused on
6 utilities 3300 and above. Tipton has 2,000
7 people. So, there's -- and we have close to
8 4,000 utilities in the state, most of which are
9 Tipton level or smaller.

10 So, when you're looking at the possibility
11 of getting hit, it's likely one of the smaller,
12 less -- they don't have the funding or
13 capabilities to be a Citizens or American Water.
14 Citizens and American Water, they can get hit,
15 but they're also paying people to attack them to
16 see where their vulnerabilities are at so that
17 they don't get hit; right? They're -- it's a
18 whole different level that they're at compared to
19 these smaller guys.

20 CHAIRMAN GARD: Any other questions?
21 This is interesting discussion.

22 (No response.)

23 COMM. ROCKENSUESS: It's -- these

1 meetings I go to with IOT and others, it's
2 fascinating to be in the room, because it's not a
3 place I ever thought I'd be, but it's also scary.
4 When you come out -- when you hear what we hear,
5 it's, "Oh, my goodness." I would not want to be
6 Homeland Security Director and have to deal with
7 this constantly.

8 MR. RULON: When anything changes,
9 can we get a new update e-mailed to us, please?

10 COMM. ROCKENSUESS: Yes, absolutely.

11 MR. RULON: Thank you.

12 MS. KOZYRSKI: I do have a question,
13 Commissioner, on -- you mentioned the CCR
14 rulemaking. I know the second round of comments
15 were issued -- or the second draft was issued for
16 public comment. Do you have any comments on the
17 timeline?

18 COMM. ROCKENSUESS: So, depending on
19 comments we get -- you know, my hope, when we put
20 these things out, is we don't have to change very
21 much -- it would be -- go to final in December.

22 MS. KOZYRSKI: Okay.

23 COMM. ROCKENSUESS: That's the hope.

1 MS. KOZYRSKI: Yeah.

2 COMM. ROCKENSUESS: I really want to
3 get this thing done.

4 MS. KOZYRSKI: And then they have to
5 go through the budget cycle on the program?

6 COMM. ROCKENSUESS: We would have to
7 then submit a packet to EPA --

8 MS. KOZYRSKI: Oh.

9 COMM. ROCKENSUESS: -- for program
10 approval --

11 MS. KOZYRSKI: Yeah.

12 COMM. ROCKENSUESS: -- which I have
13 no clue how long that's going to take, and
14 depending on how the administrations change,
15 what's going to be required, what's not going to
16 be required, so we're trying to work through
17 that.

18 MS. KOZYRSKI: Thank you.

19 CHAIRMAN GARD: Any other questions?

20 (No response.)

21 CHAIRMAN GARD: Okay. We'll move on.

22 COMM. ROCKENSUESS: Thank you.

23 CHAIRMAN GARD: Billie Franklin will

1 report on rulemaking.

2 I think this is your first time to --

3 MS. FRANKLIN: This is my second.

4 CHAIRMAN GARD: Second time; okay.

5 MS. FRANKLIN: Well, we'll say first
6 anyway. Good afternoon. My name is Billie
7 Franklin, in the Rules Development Section of the
8 Office of Legal Counsel.

9 Currently we have our next Board meeting
10 tentatively scheduled for October 9th. We are
11 running on a deadline for our readoptions to be
12 finalized by December 31st, so the October
13 meeting will be our only opportunity to present
14 these.

15 With the recently House Enrolled Act 1623,
16 a rule will now expire January 1st of the fifth
17 year after the year a rule takes effect. Under
18 Indiana Code 4-22-2.6-3. Because of this, we
19 decided to readopt all of our rules as a whole
20 package in anticipation of the rules expiring
21 January 1st of 2025.

22 With that in mind, we will need to hold a
23 meeting no later than October to obtain those

1 final approvals, so we can submit our final
2 readopted rules to the publisher in November in
3 order to publish by December 1st and be effective
4 by January 1st.

5 Additionally, we will also plan on having
6 a December meeting, as we have several rules
7 moving forward on our new time line. We are
8 likely to have more frequent meetings than we
9 normally are used to, due to the time constraints
10 we now have on adopting rules. I am working hard
11 to group as many rules together as possible to
12 ensure a full agenda at each meeting.

13 At the October meeting, we anticipate
14 presenting four rules for final adoption. We
15 will have the Kaiser Aluminum, which will be
16 presented today for preliminary, and we will have
17 our three readoptions.

18 We also hope to have four ready -- rules
19 ready for preliminary adoption at that meeting.
20 We are hoping to have our CCR Rule ready, Lead &
21 Copper Amendments, Emergency Affirmative Defense,
22 and Waste Tire Revisions.

23 That is all I have for now. If anybody

1 has any questions, I'm happy to answer those.

2 CHAIRMAN GARD: I have a question. I
3 know it seems like it's either feast or famine
4 with these rules, but the Budget Agency, for some
5 time, was kind of -- and not just this
6 administration, previous ones as well -- a lot of
7 the hang up was there. This new process, does it
8 get things through the Budget Agency more
9 quickly?

10 MS. FRANKLIN: Yes and no. We cut
11 down the amount of steps. We no longer have to
12 do the moratorium exception first and then go
13 back for OMB approval. We just do that approval
14 up front, but it seems to be taking anywhere from
15 roughly four to six weeks to get that approval
16 right now.

17 I don't know if it's the influx of rules
18 coming through, I don't know if there's a reason
19 for that, or if it will eventually kind of
20 shorten down our time, but that's -- the good
21 thing about that is our clock does not start
22 until after we get that approval and submit our
23 first notice to LSA, so it doesn't count against

1 us.

2 CHAIRMAN GARD: Okay.

3 Okay. Any questions for Billie?

4 (No response.)

5 CHAIRMAN GARD: Thank you.

6 MS. FRANKLIN: Thank you.

7 CHAIRMAN GARD: Today we have
8 hearings for the following regular rule Board
9 actions: Final adoption of Titles 326, 327,
10 and 329, Civil Penalties since the Civil
11 Penalties Rules are almost identical, there will
12 be a single presentation for all three rules and
13 then separate votes on each of them. Preliminary
14 adoption of the Kaiser Aluminum. Also, as a
15 reminder, if you wish to testify in any of
16 today's hearings, please fill out a comment card
17 and give it to Karla there at the back table.

18 The rules being considered in today's
19 meeting were included in Board packets and are
20 available for public inspection at the Office of
21 Legal Counsel, 13th Floor, Indiana Government
22 Center North. The entire Board packet is also
23 available on IDEM's Web site at least one week

1 prior to each Board meeting.

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

8 Will the official reporter for the cause
9 please stand, raise your right hand, and state
10 your name?

11 (Reporter sworn.)

12 CHAIRMAN GARD: Thank you.

13 This is a public hearing before the
14 Environmental Rules Board of the State of Indiana
15 concerning final adoption of the Title 326 Civil
16 Penalties Rule. I will now introduce Exhibit A,
17 the preliminarily adopted rule, into the record
18 of the hearing.

19 Seth Engdahl will present the information
20 for all three Civil Penalties Rules.

21 MR. ENGDahl: Members of the Board,
22 good afternoon. My name is Seth Engdahl, and I
23 am a Rule Writer in the Rules Development Section

1 within IDEM's Office of Legal Counsel.

2 This Board is about to consider three
3 nearly identical rulemakings concerning the
4 agency's Civil Penalties. This presentation will
5 give a general overview of these rulemakings, but
6 I'm happy to answer questions regarding any of
7 these specific rulemakings that you may have.

8 As we have discussed at previous Board
9 meetings and just now, in 2023 the Indiana
10 General Assembly dramatically amended the state's
11 statutes concerning administrative rulemaking. A
12 component of these changes requires that any fee,
13 fine, or civil penalty imposed by an agency be
14 included in the Indiana Administrative Code.
15 Agencies that were assessing fines, fees, or
16 civil penalties that were not already in the
17 Administrative Code at the time of the law's
18 enactment have until December of this year to
19 amend their rules accordingly.

20 IDEM has two nonrule civil penalty
21 policies that impose civil penalties for
22 violations of pollution control laws and rules,
23 and also impose civil penalties for violations of

1 laws and rules concerning underground storage
2 tanks.

3 These policies have been in effect for 25
4 years, but because of the recent statutory
5 changes, these policies must now be incorporated
6 into IDEM's rules. Accordingly, IDEM is amending
7 Titles 326, 327, and 329 to include civil
8 penalties for violations of the air, water and
9 land pollution rules.

10 If these policies are not amended into the
11 Indiana Administrative Code and effective before
12 December 31st of this year, IDEM will be unable
13 to assess and collect civil penalties until a
14 civil penalty policy is placed in rules. Given
15 this time constraint and stakeholder familiarity
16 with the existing nonrule civil penalty policy,
17 IDEM sought to transpose the existing civil
18 penalty policy into rules without any substantive
19 changes.

20 Due to the nature of nonrule policy
21 documents and the structure and formatting
22 requirements of administrative rules, an exact
23 cut-and-paste of the existing policy was not

1 possible. Nevertheless, the essential elements
2 and structure of the existing civil penalty
3 policy remain within the rule. It is the
4 agency's intention to implement the rules in the
5 same way it implemented the nonrule policy,
6 which, as I mentioned, has been in place for 25
7 years.

8 Now, IDEM received several comments on the
9 proposed rule language and made changes to reduce
10 ambiguity, to tailor each civil penalty policy to
11 match its respective title, and since the last
12 Board meeting in April, IDEM received a handful
13 of comments during the second comment period. In
14 response to these comments, the agency made one
15 additional change to each rule.

16 Specifically, under the section on Penalty
17 Adjustment Factors, we changed the usage of the
18 word "shall" to "may" in applying these factors.
19 And I apologize; there was a bit of a snafu
20 regarding the correct version with all of these
21 "shalls" converted to "mays." However, the
22 correct version is now in the Board packet in
23 front of you.

1 In general, IDEM assesses civil penalties
2 using the following formula: The civil penalty
3 equals the base civil penalty plus or minus the
4 adjustment factors plus any economic benefit
5 gained through a violation. The base civil
6 penalty is determined using a matrix that
7 examines the potential for harm to human health
8 and the environment, to a regulatory program,
9 along with the extent of deviation from a
10 regulatory requirement.

11 This base civil penalty may then be
12 adjusted based on the following factors: Actions
13 before and after a violation; the violator's
14 history of noncompliance; the violator's ability
15 to pay; unanticipated circumstances, such as
16 additional evidence that leads to a significant
17 re-evaluation of the facts surrounding a
18 violation; or -- and costs incurred by IDEM for
19 enforcement.

20 After that is ascertained, the amount of
21 economic benefit that the violator achieved is
22 then added to the civil penalty. This could be
23 an economic benefit that arose from delayed or

1 avoided costs, or profits from a period of
2 startup prior to obtaining a permit. This
3 ensures that violations are not profitable.
4 However, IDEM may disregard the economic benefit
5 if it cannot be ascertained, or if it is less
6 than \$1,000.

7 Any money collected through civil
8 penalties is deposited into the Environmental
9 Special Fund, with the exception of underground
10 storage tank civil penalties, which are deposited
11 into the Excess Liability Trust Fund.

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

15 CHAIRMAN GARD: Are there any
16 questions for Seth?

17 (No response.)

18 CHAIRMAN GARD: Thank you.

19 MR. DAVIDSON: I've got one, I guess.

20 CHAIRMAN GARD: Okay. Yes.

21 MR. DAVIDSON: I don't know if we'll
22 have -- we'll have discussion, I'm sure, at some
23 point, but I -- the "shall" to "may" right before

1 the -- or right after the table that you referred
2 to --

3 MR. ENGDAHL: Uh-huh, yeah.

4 MR. DAVIDSON: -- I'm looking for the
5 specific provision, but the -- that first one is
6 still "shall," and then everything that follows
7 it went to a "may." Is there a reason that one
8 was still left in? So, in section --

9 COMM. ROCKENSUESS: (g).

10 MR. DAVIDSON: Page 4 of 8, right
11 below the table, probably --

12 COMM. ROCKENSUESS: Letter (g).

13 MR. DAVIDSON: -- it's item (g).

14 MR. ENGDAHL: Yeah. So, that is in
15 the previous section (g), the "shalls" that
16 remain were all in the Penalty Adjustment --

17 MR. DAVIDSON: Uh-huh.

18 MR. ENGDAHL: -- Factors, which is in
19 the following section, 1-3-4.

20 MR. DAVIDSON: Right. I just
21 wondered why, since that one's regarding how that
22 would be calculated.

23 MR. ENGDAHL: Well, two things. The

1 changes from "shall" to "may" within the Penalty
2 Adjustment Factors, that came direct from a
3 concern based on a comment. They were concerned
4 regarding specifically IDEM's, you know,
5 reoccurring costs that they incurred from
6 enforcement. And so, to basically respond to
7 that comment, we decided to change in the Penalty
8 Adjustment Factor section the "shalls" to "mays"
9 to allow that extra flexibility.

10 I would also mention that the statute that
11 supersedes this gives the Commissioner ultimate
12 discretion to move things back and forth, and so,
13 we didn't necessarily think that the "shall" in
14 that provision should be changed.

15 MR. DAVIDSON: Fair enough. Thanks.

16 MR. ENGDahl: Yeah.

17 CHAIRMAN GARD: Any other questions?

18 (No response.)

19 CHAIRMAN GARD: Okay. Are there any
20 speakers on this?

21 MS. KINDRICK: Yes, ma'am.

22 CHAIRMAN GARD: Patrick Bennett.

23 MR. BENNETT: Good afternoon, Madam

1 Chair, members of the Board. I'm Patrick Bennett
2 with Rideout Public Affairs, here today on behalf
3 of the Indiana Cast Metals Association. Members
4 of the Cast Metals Association are foundries
5 located in Indiana, some supporting businesses
6 with that. It's foundry products that go into an
7 awful lot of other products, it's not just
8 cast-iron skillets, although that is a wonderful
9 cast product, mostly made in Tennessee.

10 We're here today to support the final
11 adoption for all three titles for the civil
12 penalties. The Cast Metals Association submitted
13 comments during the second period. We heard
14 through connections of ours and folks that we
15 communicate with about some ongoing concerns with
16 the civil penalties policy, but we understand the
17 time constraints that the agency is under with
18 the enactment of the House Bill, and so, adopting
19 this as is and moving forward makes sense.

20 If possible, if the agency would convene a
21 work group, the Cast Metals Association would be
22 glad to share its experiences and its -- with its
23 members to help that, if there are to be any

1 substantial changes in that policy, and we
2 encourage your adoption of all three titles
3 today.

4 CHAIRMAN GARD: Any questions for
5 Patrick?

6 (No response.)

7 CHAIRMAN GARD: Thank you.

8 MR. BENNETT: Uh-huh.

9 CHAIRMAN GARD: Adrianna [sic]
10 Moehle?

11 MS. MOEHLE: Good afternoon,
12 everyone. My name is Andrianna Moehle with the
13 Indiana Manufacturers Association, and we want to
14 thank IDEM for their response to comments. We
15 did submit comments on many of the changes that
16 were made, and so, we do appreciate IDEM
17 responding to those.

18 However, just as Mr. Davidson suggested,
19 we do notice that the section 1-3-3(g) still says
20 that IDEM shall multiply the base penalty by the
21 number of days of violation, and that does
22 concern us, because an administrative law judge
23 could potentially read this as a mandatory

1 calculation, which then would be a substantial
2 deviation from IDEM's current practice.

3 Additionally, the IMA continues to believe
4 that this rule does not necessarily match the
5 legislative intent of House Enrolled Act 1623,
6 although we do understand the time constraint
7 that the agency is under, and so, we ask that a
8 work group be created to revisit the Civil
9 Penalties Rule and hopefully have a work product
10 created by the end of next year, potentially, so
11 that we could match -- fulfill the legislative
12 intent of House Enrolled Act 1623.

13 Thank you very much for your time.

14 CHAIRMAN GARD: Thank you.

15 Any questions for the witness? Yes.

16 MR. RULON: I just was wondering; so,
17 how does it not fulfill the legislative intent?

18 MS. MOEHLE: So, the legislation,
19 1623, required a clear idea of what the civil
20 penalties were going to be, and this was just
21 taking what was a nonrule pol -- and
22 understanding why they did that, taking what was
23 a nonrule policy and putting it into this format,

1 but we think it was supposed to be more specific,
2 with a little bit more clarity around those
3 rules, and I do believe Sen. Garten and
4 Rep. Bartels, that's what they were looking for
5 as well.

6 CHAIRMAN GARD: Any other questions?

7 (No response.)

8 MS. MOEHLE: Thank you.

9 CHAIRMAN GARD: Thank you.

10 Any other comments?

11 (No response.)

12 CHAIRMAN GARD: Okay. The hearing is
13 concluded. The Board will now consider final
14 adoption of the Title 326 Civil Penalties Rule.
15 Is there more discussion?

16 MS. BROWN: Yes. I would like to
17 hear from IDEM --

18 CHAIRMAN GARD: Speak more into the
19 microphone, please?

20 MS. BROWN: Can you hear me now? So,
21 we just heard two proposals for work groups, and
22 I think the IMA said, you know, it would be nice
23 to have a work product by the end of 2025. I'd

1 just like to know what IDEM's thoughts are, and
2 if we can get a commitment to pull together
3 stakeholders for feedback, if we seek approval
4 this year.

5 COMM. ROCKENSUESS: So, a couple of
6 things. I mentioned in the prelim adoption that
7 I'm happy to do a work group, but we had to get
8 this done, because I have -- I can't run the
9 delegated programs without fining authority.

10 And I -- I'm not fully understanding how
11 this does not meet the criteria of 1623. I
12 presented it in front of the Budget Committee,
13 which Sen. Garten sits on. I provided him copies
14 of this, and I didn't get any questions
15 concerning that. So, if there are adjustments
16 that need to be made, I'm happy to convene a
17 group to discuss what those should be. That's
18 not a problem.

19 MS. BROWN: Okay.

20 CHAIRMAN GARD: Any other questions?

21 MR. DAVIDSON: Just as a follow-up, I
22 don't know that we can express how much we
23 appreciate the discretion that you and some of

1 your predecessors have applied. When I first
2 arrived here, I got a brief understanding of
3 what -- what's the difference between a nonrule
4 policy document and what's a rule, and why we
5 sometimes have to make a nonrule policy document,
6 because it's hard to put nonrule policy documents
7 into rules. I think that's part of what some
8 have wrestled with is: It sounds on one hand,
9 "We'll just write this in a rule," but then we
10 were cautioned that's why we sometimes don't do
11 that.

12 So -- and I'll echo to our friends here
13 that have spoken and others that may not be
14 present, if we agree to have a work group, we
15 have to show up with specifics about how to get
16 that done. We saw some other work groups happen
17 in the last couple of years that -- it kind of
18 seemed painful, to be honest. I think some of us
19 got tired hearing reports back from them.

20 But we were glad in the end. It sounded
21 like they accomplished a lot. So, not to lay
22 that on heavy. In fact, I'll even offer to help
23 with some of that, as I've done that before, if

1 there's a way to help participate and bring that,
2 but that's a charge to the speakers as well.
3 Bring your specifics to the game if we're going
4 to commit to do it that way.

5 COMM. ROCKENSUESS: And I'd also like
6 to echo what Seth said. My discretion on
7 enforcement matters does not lie in this rule or
8 this policy. It lies in the statute. So,
9 regardless of what this rule or policy says, I
10 have statutory authority to offer discretion on
11 whatever the violation is, and whether it's days
12 or money or economic benefit, I have the ability
13 to have discretion on all of that, because the
14 statute gives it to me. I wish we weren't in
15 this situation, but we are where we are.

16 MR. DAVIDSON: One fresher follow-up,
17 too, I guess, since this is fresh for all of us.
18 With the recent Chevron Doctrine decision, more
19 matters may be litigated now instead of left to
20 your discretion. So, I know that comment's been
21 made, not long enough to digest it, but with that
22 hitting the fan, it might not stop here. It
23 might stop -- and so, the desire to be as

1 specific as we can, and that includes work group,
2 because some judge without the environmental
3 technical experience could be making that
4 decision.

5 DR. ALEXANDROVICH: Can I make a
6 comment?

7 CHAIRMAN GARD: Yes.

8 DR. ALEXANDROVICH: I didn't know
9 about your discretion, Commissioner. I guess
10 it's a good thing I haven't been involved with
11 civil penalties and things like that, but it kind
12 of almost makes having a statute on this level
13 moot.

14 On the other hand, there was some
15 specifics that were offered to IDEM about wording
16 that would actually identify the difference
17 between substantial, significant, and low harm,
18 and I thought that that was -- I'm not sure that
19 the numbers are right, where they should lie, but
20 when I read what you guys are proposing, it's not
21 clear where, you know, the boundary between
22 significant, substantial, and low might be. So,
23 I guess my comment is that I think a work group

1 would be a good thing.

2 COMM. ROCKENSUESS: I have to --

3 CHAIRMAN GARD: Okay. Any other
4 questions or any other comments?

5 MR. RULON: I was impressed. I mean
6 because you read this document, they have found a
7 way to give Brian every bit of discretion that he
8 had before in the rule, because everything's
9 "may" or "shall," and I talked it over with my
10 attorney daughter, and she was like, "They did a
11 really good job of walking this kind of bizarre
12 line the legislature gave us."

13 So, I think it's as good as we can do
14 right now, but I do think, like the substantial,
15 the low, I read that, and I was like, "Wow, that
16 is bizarrely broad." There's like no constraints
17 around it at all.

18 And so, maybe if some of those things
19 could be ironed out to the Manufacturers'
20 satisfaction, and even to you; right? I mean
21 it'd be helpful to you sometimes to have a little
22 bit more direction on what that means, and take
23 some of the ambiguity out of it maybe in the

1 future. So, I think it's a great job in a very
2 short period of time.

3 CHAIRMAN GARD: Yeah, I do think that
4 this is a good work product, and thank you to
5 your staff, and --

6 COMM. ROCKENSUESS: It's all them.

7 CHAIRMAN GARD: -- I appreciate the
8 comments that have come in, and I look forward to
9 working with people in the future.

10 Okay. Is that it?

11 (No response.)

12 CHAIRMAN GARD: The Board will --
13 well, now we need a motion for final adoption of
14 the rules as presented.

15 MR. GREEN: So moved.

16 MR. RULON: Second.

17 CHAIRMAN GARD: Is there a second?

18 Somebody --

19 MR. RULON: Second.

20 CHAIRMAN GARD: And this is

21 Title 326, Civil Penalties Rule.

22 Mr. Davidson?

23 MR. DAVIDSON: Yes.

1 CHAIRMAN GARD: Mr. Etzler?

2 MR. ETZLER: Yes.

3 CHAIRMAN GARD: Dr. Niemiec?

4 (No response.)

5 CHAIRMAN GARD: Dr. Niemiec?

6 DR. NIEMIEC: Yes.

7 CHAIRMAN GARD: Mr. Horn?

8 MR. HORN: Yes.

9 CHAIRMAN GARD: Mr. Green?

10 MR. GREEN: Yes.

11 CHAIRMAN GARD: Mr. Bortner?

12 (No response.)

13 CHAIRMAN GARD: Mr. Bortner?

14 MR. BORTNER: Yes.

15 CHAIRMAN GARD: Ms. Brown?

16 MS. BROWN: Yes.

17 CHAIRMAN GARD: Dr. Alexandrovich?

18 DR. ALEXANDROVICH: Yes.

19 CHAIRMAN GARD: Ms. -- I just can't

20 say it -- Kozyrski?

21 MS. KOZYRSKI: That's perfect. Yes.

22 CHAIRMAN GARD: Ric Zehr?

23 MR. ZEHR: Yes.

1 CHAIRMAN GARD: Ken Rulon?

2 MR. RULON: Yes.

3 CHAIRMAN GARD: The Chair votes aye.
4 Twelve -- twelve yeases, zero nays. So, the
5 Title 326 Civil Penalties Rule is adopted as
6 presented.

7 Okay. This is a public hearing before the
8 Environmental Rules Board of the State of Indiana
9 concerning final adoption of Title 327 Civil
10 Penalties Rule. I will now introduce Exhibit B,
11 the preliminarily adopted rule, into the record
12 of the hearing. The rule has also already been
13 presented.

14 Speaker cards on this? Is it the same? I
15 guess.

16 Patrick, do you want to speak again?

17 MR. BENNETT: I apologize, Madam
18 Chair. I was talking in the back of the
19 classroom.

20 (Laughter.)

21 CHAIRMAN GARD: Shame on you.

22 COMM. ROCKENSUESS: Do you want to
23 speak again?

1 CHAIRMAN GARD: Title 327 Civil
2 Penalties Rule.

3 MR. BENNETT: Thank you, Madam Chair.

4 I intended for my original comments to
5 apply to all of the adoptions, so please consider
6 that for the same.

7 CHAIRMAN GARD: Okay. Thank you.

8 Adrianna [sic]?

9 MS. MOEHLE: Same here.

10 CHAIRMAN GARD: Okay.

11 MS. MOEHLE: Thank you.

12 CHAIRMAN GARD: Thank you.

13 I will now -- did I introduce the
14 Exhibit B?

15 COMM. ROCKENSUESS: Uh-huh.

16 CHAIRMAN GARD: Okay.

17 The hearing is concluded. The Board will
18 now consider final adoption of Title 327 Civil
19 Penalties Rule. Is there any further Board
20 discussion?

21 (No response.)

22 CHAIRMAN GARD: Is there a motion for
23 final adoption of the rules as presented?

1 MR. RULON: So moved.

2 CHAIRMAN GARD: Is there a second?

3 MR. GREEN: Second.

4 MR. HORN: Second.

5 CHAIRMAN GARD: Okay. Roll call.

6 Mr. Davidson?

7 MR. DAVIDSON: Yes.

8 CHAIRMAN GARD: Mr. Etzler?

9 MR. ETZLER: Yes.

10 CHAIRMAN GARD: Dr. Niemiec?

11 (No response.)

12 CHAIRMAN GARD: Dr. Niemiec?

13 (No response.)

14 CHAIRMAN GARD: Dr. Niemiec?

15 (No response.)

16 CHAIRMAN GARD: Well, we can come

17 back to him.

18 Mr. Horn?

19 MR. HORN: Yes.

20 CHAIRMAN GARD: Mr. Green?

21 MR. GREEN: Yes.

22 CHAIRMAN GARD: Mr. Bortner?

23 MR. BORTNER: Yes.

1 CHAIRMAN GARD: Dr. Alexandrovich?

2 DR. ALEXANDROVICH: Yes.

3 CHAIRMAN GARD: Ms. Kozyrski?

4 MS. KOZYRSKI: Yes.

5 CHAIRMAN GARD: Mr. Zehr?

6 MR. ZEHR: Yes.

7 CHAIRMAN GARD: Mr. Rulon?

8 MR. RULON: Yes.

9 CHAIRMAN GARD: And the Chair votes
10 aye.

11 Dr. Niemiec?

12 (No response.)

13 MR. RULON: Did you make somebody mad
14 or something?

15 (Laughter.)

16 CHAIRMAN GARD: Is he there?

17 MR. WHITNEY: He's there, yeah.

18 Dr. Niemiec, do you have yourself muted?

19 COMM. ROCKENSUESS: Yeah, we can't
20 unmute.

21 MS. BROWN: Madam Chair, my name was
22 skipped. Jaime Brown also.

23 CHAIRMAN GARD: Pardon me?

1 MS. BROWN: You skipped Jaime Brown.
2 So, Jaime Brown is a yes.

3 CHAIRMAN GARD: Oh, I guess I did.
4 I'm sorry.

5 MS. BROWN: That's okay. I'm sorry
6 if I made you mad.

7 (Laughter.)

8 CHAIRMAN GARD: Okay. Well,
9 Dr. Niemiec, again?

10 (No response.)

11 CHAIRMAN GARD: So, I guess I just
12 move on. Okay. The Rule, Title 327 Civil
13 Penalties Rule, is final adopted as presented.
14 The vote is eleven yeas, zero nay -- noes.

15 This is a public hearing before the
16 Environmental Rules Board of the State of Indiana
17 concerning preliminarily adopt -- preliminary
18 adoption for Title 329 Civil Penalties Rule. I
19 will now introduce Exhibit C, the preliminarily
20 adopted rule, into the record of the hearing.
21 The rule has already been presented.

22 Any speakers that haven't spoken before?

23 (No response.)

1 CHAIRMAN GARD: Okay. The hearing is
2 concluded. The Board will now consider final
3 adoption of Title 329 Civil Penalties Rule. Is
4 there any Board discussion?

5 (No response.)

6 CHAIRMAN GARD: Motion -- I need a
7 motion to final adopt the rules as presented.

8 MR. DAVIDSON: So moved.

9 CHAIRMAN GARD: Is there a second?

10 DR. NIEMIEC: So moved. This is
11 Dr. Niemiec.

12 CHAIRMAN GARD: Okay.

13 Did you get that?

14 THE REPORTER: Yes.

15 CHAIRMAN GARD: Okay. Roll call.

16 Mr. Davidson?

17 MR. DAVIDSON: Yes.

18 CHAIRMAN GARD: Mr. Etzler?

19 MR. ETZLER: Yes.

20 CHAIRMAN GARD: Dr. Niemiec?

21 DR. NIEMIEC: Yes.

22 CHAIRMAN GARD: Mr. Horn?

23 MR. HORN: Yes.

1 CHAIRMAN GARD: Mr. Green?

2 MR. GREEN: Yes.

3 CHAIRMAN GARD: Mr. Bortner?

4 MR. BORTNER: Yes.

5 CHAIRMAN GARD: Ms. Brown?

6 MS. BROWN: Yes.

7 CHAIRMAN GARD: Dr. Alexandrovich?

8 DR. ALEXANDROVICH: Yes.

9 CHAIRMAN GARD: Ms. Kozyrski?

10 MS. KOZYRSKI: Yes.

11 CHAIRMAN GARD: Mr. Zehr?

12 MR. ZEHR: Yes.

13 CHAIRMAN GARD: Mr. Rulon?

14 MR. RULON: Yes.

15 CHAIRMAN GARD: And the Chair votes
16 aye, so that is twelve yeas, zero nays.

17 Okay. This is a public hearing before the
18 Environmental Rules Board of the State of Indiana
19 concerning preliminary adoption of the Kaiser
20 Aluminum Rule. I will now introduce Exhibit D,
21 the proposed rule, into the record of the
22 hearing. The rule has already not presented.

23 Keelyn Walsh will present the rule.

1 MR. WALSH: Good afternoon, members
2 of the Board. My name is Keelyn Walsh, and I'm
3 with the Rules Development Section of the Office
4 of Legal Counsel, and I am here to present the
5 Kaiser Aluminum Wastewater Treatment Facility
6 rulemaking, LSA No. 24-213, for your
7 consideration.

8 This rulemaking proposes to update the
9 Warrick Operations facility in Newburgh, Indiana
10 from the Alcoa Corporation, or Alcoa, to Kaiser
11 Aluminum Warrick LLC, known as Kaiser, after
12 Kaiser purchased the wastewater treatment
13 operations facility in December of 2022. This
14 facility generates wastewater treatment sludge,
15 which was previously delisted under Alcoa, and
16 Kaiser has requested that IDEM delist the
17 wastewater treatment sludge under their name.

18 Additionally, Kaiser is upgrading the
19 wastewater treatment equipment by adding an
20 additional filter press, which will result in the
21 delisted wastewater treatment sludge being
22 generated at two locations rather than the single
23 location in the approved delisting. The incoming

1 waste and treatment processes will not change,
2 and Kaiser is not requesting to increase the
3 maximum amount of sludge generated in the current
4 delisting.

5 This proposed rulemaking will also
6 increase the sampling requirements to reflect the
7 new point of sludge generation. Instead of two
8 samples collected each quarter for one point of
9 generation, the proposed rule requires that two
10 samples be collected from each of the points of
11 generation each quarter. The analysis parameters
12 will remain the same on those as well.

13 IDEM requests that the Board preliminarily
14 adopt this rule as presented, and program staff
15 and I are available to answer any further
16 questions that you have.

17 Thank you.

18 CHAIRMAN GARD: Are there any
19 questions from the Board?

20 (No response.)

21 CHAIRMAN GARD: Thank you.

22 Any -- I don't have any speaker cards on
23 this. Anybody want to speak, in the audience?

1 (No response.)

2 CHAIRMAN GARD: Okay. The hearing is
3 concluded. The Board will now consider
4 preliminary adoption of the Kaiser Aluminum Rule.
5 Is there Board discussion?

6 (No response.)

7 CHAIRMAN GARD: Is there a motion to
8 preliminarily adopt the rules as presented?

9 MR. ETZLER: So moved.

10 CHAIRMAN GARD: Is there a second?

11 MR. GREEN: Second.

12 CHAIRMAN GARD: Mr. Davidson?

13 MR. DAVIDSON: Yes.

14 CHAIRMAN GARD: Mr. Etzler?

15 MR. ETZLER: Yes.

16 CHAIRMAN GARD: Dr. Niemiec?

17 DR. NIEMIEC: Yes.

18 CHAIRMAN GARD: Mr. Horn?

19 MR. HORN: Madam Chair, I would like

20 to abstain on this particular vote due to the

21 fact that I do work for Kaiser part time.

22 CHAIRMAN GARD: Okay.

23 Mr. Green?

1 MR. GREEN: Yes.

2 CHAIRMAN GARD: Mr. Bortner?

3 MR. BORTNER: Yes.

4 CHAIRMAN GARD: Ms. Brown?

5 MS. BROWN: Yes.

6 CHAIRMAN GARD: Dr. Alexandrovich?

7 DR. ALEXANDROVICH: Yes.

8 CHAIRMAN GARD: Ms. Kozyrski?

9 MS. KOZYRSKI: Yes.

10 CHAIRMAN GARD: Mr. Zehr?

11 MR. ZEHR: Yes.

12 CHAIRMAN GARD: Mr. Rulon?

13 MR. RULON: Yes.

14 CHAIRMAN GARD: And the Chair votes
15 aye. That is twelve yeas, zero nays, and one
16 abstention.

17 Okay. This is an Open Forum. Is there
18 anyone who wishes to address the Board today?

19 (No response.)

20 CHAIRMAN GARD: Okay.

21 Well, the next meeting of the
22 Environmental Rules Board is tentatively set for
23 October 9th, 2024 at 1:30 p.m. in Conference

1 Room A in this same Government Center building.
2 The meeting date is subject to change. We'll
3 keep you updated, and if that is changed, another
4 date will have to be chosen, and you also heard
5 that we probably will meet in December.

6 So, with that, is there anything else?

7 (No response.)

8 CHAIRMAN GARD: If not, is there a
9 motion to adjourn?

10 MR. HORN: So moved.

11 CHAIRMAN GARD: Is there a second?

12 MR. RULON: Second.

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

15 (Board members responded, "Aye.")

16 CHAIRMAN GARD: Those opposed, nay?

17 (No response.)

18 CHAIRMAN GARD: We are adjourned.
19 Thank you all for being here. It's nice to see
20 everyone.

21 - - -
22 Thereupon, the proceedings of
23 August 14, 2024 were concluded
at 2:30 o'clock p.m.

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CERTIFICATE

I, Lindy L. Meyer, Jr., the undersigned Court Reporter and Notary Public residing in the City of Shelbyville, Shelby County, Indiana, do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me on Wednesday, August 14, 2024 in this matter and transcribed by me.

Lindy L. Meyer Jr.
Lindy L. Meyer, Jr.,
Notary Public in and
for the State of Indiana.

My Commission expires August 26, 2032.
Commission No. NP0690003

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