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BEFORE THE STATE OF INDIANA
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF OCTOBER 9, 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, October 9, 2024 at 1:29
o'clock p.m.

- - -

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

1 APPEARANCES:

2 BOARD MEMBERS:

3 Beverly Gard, Chairman
4 William Etzler
5 Carrie Kozyrski
6 Ric Zehr
7 Dr. Ted Niemiec
8 Dr. Joanne Alexandrovich
9 Jamie Brown
10 Chris Horn
11 John Ketzenberger
12 Calvin Davidson
13 R. T. Green
14 Dan Bortner, Proxy, Indiana Department of
15 Natural Resources
16 Matt Jaworowski, Proxy, Indiana Economic
17 Development Corporation
18 Katherine Nelson, Proxy, Lieutenant
19 Governor

20
21 IDEM STAFF MEMBERS:

22 Parvonay Stover
23 Billie Franklin
Keelyn Walsh
Martha Clark Mettler
Nancy King
Phil Perry
Aidan Whitney
Karla Kindrick

18 PUBLIC SPEAKERS:

19 None

20 - - -

21
22
23

1 1:29 o'clock p.m.
2 October 9, 2024

3 - - -

4 CHAIRMAN GARD: Good afternoon,
5 everybody. It's 1:30, and I think we have a
6 quorum.

7 (Discussion off the record.)

8 CHAIRMAN GARD: I'm going to call the
9 meeting of the Environmental Rules Board to
10 order. It is October the 9th, 2024. I'm going
11 to call the role.

12 Mr. Davidson?

13 (No response.)

14 CHAIRMAN GARD: Mr. Davidson?

15 (No response.)

16 CHAIRMAN GARD: Mr. Etzler?

17 (No response.)

18 CHAIRMAN GARD: Dr. Niemiec?

19 DR. NIEMIEC: Here.

20 CHAIRMAN GARD: Mr. Horn?

21 MR. HORN: Present.

22 CHAIRMAN GARD: Mr. Rulon?

23 (No response.)

CHAIRMAN GARD: He's probably on his

1 tractor.

2 Mr. Zehr?

3 MR. ZEHR: Here.

4 CHAIRMAN GARD: Ms. Nelson?

5 MS. NELSON: Here.

6 CHAIRMAN GARD: Mr. Green?

7 MR. GREEN: Here.

8 CHAIRMAN GARD: Mr. Jaworowski?

9 MR. JAWOROWSKI: Present.

10 CHAIRMAN GARD: Mr. Jaworowski?

11 MR. JAWOROWSKI: Present.

12 CHAIRMAN GARD: Mr. Bortner?

13 MR. BORTNER: Here.

14 CHAIRMAN GARD: Ms. Brown?

15 MS. BROWN: Here.

16 CHAIRMAN GARD: Dr. Alexandrovich?

17 DR. ALEXANDROVICH: Here.

18 CHAIRMAN GARD: Ms. Kozyrski?

19 MS. KOZYRSKI: Here.

20 CHAIRMAN GARD: Mr. Ketzenberger?

21 MR. KETZENBERGER: Here.

22 CHAIRMAN GARD: And the Chair is

23 present. So, we definitely have a quorum, one,

1 two, three, four, five, six, seven, eight, nine,
2 ten -- we have twelve present, so it only takes
3 eight for a quorum.

4 The first order of business is the
5 approval of the summary of the minutes of our
6 August 14th, 2024 meeting. Are there any
7 additions or corrections to the minutes as
8 distributed?

9 (No response.)

10 CHAIRMAN GARD: If not, I need a
11 motion to approve.

12 MS. NELSON: So moved.

13 MR. JAWOROWSKI: Second.

14 CHAIRMAN GARD: Is there a second?

15 MR. JAWOROWSKI: Second.

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

18 (Board members responded, "Aye.")

19 CHAIRMAN GARD: Any opposed, say nay.

20 (No response.)

21 CHAIRMAN GARD: Then the summary of
22 the minutes are approved.

23 Ms. Rockensuess is in some kind of

1 conference, I think, today out of state, and
2 Chief of Staff Parvonay Stover will make his
3 report.

4 MS. STOVER: Good afternoon,
5 everybody. Brian apologizes that he can't be
6 here today, but he is at a Great Lakes Commission
7 meeting in Rochester, New York. So, I'm sure
8 he's having a ton of fun, but misses all of you
9 guys.

10 (Laughter.)

11 MS. STOVER: So, we -- normally he
12 gives a staffing report or staffing update. We
13 actually don't have a ton of staffing changes
14 since the August meeting, when he last updated
15 you on all of the leadership changes that we had
16 in the Office of Land Quality. The one big
17 change we have had recently, in the last couple
18 of weeks, is that we lost our IT Director, Jeremy
19 Chenevert, to IOT. He took another role at
20 another agency, and we're very excited for him,
21 but we'll miss him.

22 And it's sort of an odd time in the
23 administration, with the election coming up and a

1 transition, to be hiring an executive-level role
2 like that, so we're talking to IOT and looking at
3 our options and figuring out how to fill that gap
4 until we've got a little bit more certainty on
5 what the -- you know, the agency is going to look
6 like for sure. So, that's probably the only
7 staffing change.

8 We just wrapped up our intern class not
9 too long ago. We had about 25 or 28 interns for
10 the summer, and all of them have taken off, and
11 they were fabulous. It's a great program, and we
12 end up hiring a lot of them full time. So, we're
13 always looking at ways to better recruit for more
14 interns, make sure we have amazing folks that we
15 can bring on in full-time roles as soon as they
16 graduate. So, that's one of the fun things.

17 We have also recently ramped up our
18 recruitment efforts. We are trying to have more
19 of a presence at job fairs across the state,
20 particularly at schools that have stronger
21 science and engineering programs, and we're
22 actually starting to focus on sending alumni of
23 those schools back to the school that is having

1 the job fair, to try and build those connections
2 with students.

3 So, the Purdue engineering grads we're
4 sending to the Purdue engineering fairs so they
5 can really connect with students, talk about the
6 benefits of state employment and public service,
7 and specifically working at IDEM, versus just
8 sending HR to those job fairs like we have in the
9 past.

10 So, we've gotten really positive feedback
11 from staff who've gotten to participate in those
12 things, and also the students that we're
13 connecting with. So, we're collecting a ton of
14 resumes, giving a lot of students experience both
15 in our internship programs and full-time work
16 with us. So, really excited about that.

17 And besides that, most of what is keeping
18 us busy is preparing for the legislative session,
19 which is a little bit wild, because it feels like
20 the session just ended five minutes ago and we're
21 already ramping back up for the 2025 session.

22 But our big agenda item, you know, we hope,
23 pending approval from the incoming

1 administration, whoever that is, is to have an
2 increased focus on cyber security.

3 We had an attack on a wastewater facility
4 in Tipton a couple of months ago, I think in
5 April, and then there was another attack on a
6 drinking water facility here recently, and we
7 realized there's no state-level notification.
8 So, if a facility gets hit, they're required to
9 report it to the Federal Government but not the
10 State Government, and we ended up finding out
11 about those attacks a couple of days after they
12 happened, which is really problematic for us.

13 And at the federal level, they take a
14 certain security clearance because of the
15 sensitivity of the information involved, but from
16 our perspective, we don't need to know what
17 country is attacking us or for what reason or
18 what their motivation is, what they're asking
19 for. We just need to know that a wastewater or
20 drinking water facility was hit so we can
21 potentially deploy resources to make sure that
22 people are drinking safe water, because if people
23 start messing with particularly drinking water

1 facilities and changing the levels of different
2 chemicals, that can be catastrophic.

3 So, it -- the proposal we're looking at
4 legislatively is twofold. One, we want to
5 require a state-level notification. And we're
6 talking to other agencies like IOT, DHS, the
7 IURC, other folks about how to better plan this.

8 But the idea is to have a one-stop shop of
9 some kind so people can call one phone number
10 with the state and know that that information is
11 going to be dispatched to whatever agency is
12 impacted, and not have people thinking, "Oh,
13 gosh, do I have to call IDEM? Do I have to call
14 DHS? I'm not sure what to do." Make it really
15 simple for folks so we get that information that
16 we need really quickly.

17 And then also, we are realizing that what
18 we're calling cyber hygiene is an issue, that a
19 lot of the wastewater and drinking water
20 facilities have passwords that are "password," or
21 "12345," or really basic things that make them
22 really easy targets for foreign actors, and there
23 are a lot of free, really high-quality trainings

1 out there from CISA and EPA and other
2 organizations.

3 So, we want to require water facilities to
4 do some kind of a vulnerability analysis, to take
5 a look at where they are, where their
6 vulnerabilities might be, and use some of the
7 free resources out there, or use our team, use,
8 you know, DHS resources, whatever, to put better
9 cyber hygiene practices in place to reduce the
10 risk of them being a target.

11 So, that's sort of what we're working on,
12 that's what keeps us busy at a high level. Also,
13 it's going to be a budget session, so we're
14 likely going to be seeking more funding for our
15 IT modernization project. You might recall that
16 we got five and a half million for that last
17 budget cycle two years ago. We're probably going
18 to be seeking another seven million to continue
19 those efforts.

20 But happy to answer any questions if folks
21 have any, but that's the update.

22 CHAIRMAN GARD: Yes.

23 Any questions?

1 MR. JAWOROWSKI: I have none.

2 MS. STOVER: Always.

3 DR. ALEXANDROVICH: At our last
4 meeting -- this is Joanne -- I think Ken asked
5 for an organizational chart since you've been
6 going through staff changes, and I didn't get
7 one, so I put the request back in.

8 MS. STOVER: Yeah, I can pull that as
9 soon as I get back to the office this afternoon
10 and have it distributed to everyone.

11 DR. ALEXANDROVICH: Thank you.

12 CHAIRMAN GARD: I appreciate that.

13 Any other questions?

14 (No response.)

15 CHAIRMAN GARD: Well, thank you for
16 your report.

17 MS. STOVER: Thank you.

18 CHAIRMAN GARD: Billie Franklin will
19 give the rulemaking report.

20 MS. FRANKLIN: Good afternoon. My
21 name is Billie Franklin. I'm in the Rules
22 Development Section of the Office of Legal
23 Counsel.

1 There are a few things that I wanted to
2 bring to your attention. First off, I wanted to
3 begin by letting you know that you'll find a
4 slight change to the Emergency Affirmative
5 Defense Provisions Draft Rule that is in your
6 packet. This is different compared to the
7 version that was previously sent to you.

8 Under 326 IAC 2-7-1 subdivision 19
9 clause (f), they originally marked subdivision 42
10 out -- I'm sorry; "they," as in LSA -- originally
11 marked 42 out and inserted 39, which is accurate.
12 They failed to correct this on the final version,
13 and we -- once again, we corrected it on our
14 version, which is in front of you now.

15 Secondly, you are probably aware that we
16 originally had CCR down for preliminary adoption
17 today. That has been moved to the December
18 meeting so we can incorporate the most recent
19 federal rules for legacy ponds, which will be
20 termed early -- effective early November.

21 We also wanted to make sure we are
22 addressing the comments and making amendments as
23 necessary based on the extended comment period,

1 so we are reflecting those federal rules.

2 And last but not least, you probably have
3 by now received an e-mail from Karla asking about
4 your Board terms. If you have responded to her,
5 please do so soon.

6 And as far as our next Board meeting, we
7 are scheduled for December 11th, and we are
8 anticipating on having Kaiser Aluminum and the
9 Emergency Affirmative Defense down for our final
10 adoption, and we also hope to have a few rules
11 ready for preliminary adoption. That includes
12 Coal Combustion Residuals, CCR; Lead & Copper; NO_x
13 RACT; and Waste Tire Revisions. We will also
14 have a nonrule policy document for water quality
15 review standards that will be presented on that
16 meeting as well.

17 That is all I have. I'm happy to answer
18 any questions you might have.

19 CHAIRMAN GARD: Are there any
20 questions for Billie?

21 MS. KOZYRSKI: Could you repeat the
22 list of anticipated rules?

23 MS. FRANKLIN: Sure. For final

1 adoption, it will be Kaiser Aluminum and the
2 Emergency Affirmative Defense Rule, and for
3 preliminary, we have Waste Tire Revisions, NO_x
4 RACT, Lead & Copper, and CCR.

5 MS. KOZYRSKI: Thank you.

6 CHAIRMAN GARD: And I would also like
7 to remind people, because I've gotten a reminder
8 as well, some of the people on the Board are due
9 for that on-line ethics training again, and I
10 think the deadline is coming up for that pretty
11 soon. So, if you've gotten an e-mail about that,
12 we probably need to go and take that.

13 Okay. Today, we have hearings for the
14 following regular rule Board actions: Final
15 adoption of Titles 326, 327 and 329 readoptions;
16 preliminary adoption of Emergency Affirmative
17 Defense. Since readoptions are almost identical,
18 there will be a single presentation for all three
19 rules, and then separate votes for each of them.

20 As reminder, if you wish to testify in any
21 of today's hearings, please fill out a comment
22 card and give it to Karla, back at the sign-in
23 table. If you're on-line, then if you'll raise

1 your hand when the time comes.

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

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

15 Will the official reporter for the cause
16 stand, raise your right hand and state your name,
17 please?

18 (Reporter sworn.)

19 CHAIRMAN GARD: Thank you so much.

20 Okay. This is a public hearing before the
21 Environmental Rules Board of the State of Indiana
22 concerning final adoption of the Title 326. I
23 will now enter Exhibit A, the preliminarily

1 adopted rule, into the record of the hearing.

2 Billie Franklin will present, as she said,
3 all three rules.

4 MS. FRANKLIN: With the
5 implementation of House Enrolled Act 1623, a rule
6 now expires on January 1st of the fifth year
7 after the year in which a rule takes effect,
8 under Indiana Code 4-22-2.6. Due to the
9 elimination of exemptions in Indiana
10 Code 4-22-2.5, there are no longer any rules that
11 do not expire, also known as forever rules.

12 With that in mind, we have decided to
13 readopt our rules as a whole package to avoid
14 having them expire as of January 1st, 2025.
15 Readopting the titles in their entirety and
16 keeping all of the rules or the same schedule for
17 readoption every five years will make it easier
18 to ensure that we do not have any rules that
19 inadvertently expire.

20 Today I'm presenting three rulemaking
21 actions for readoption, one for each Title: 326,
22 327 and 329. We provided a 30-day comment period
23 for these readoptions. The comment period ran

1 from August 21st, 2024 through September 20th
2 of 2024. We received no comments.

3 We ask that the Board approve each of
4 these readoptions in its entirety without
5 amendments so we don't run the risk of our agency
6 rules expiring. I am happy to answer any
7 questions that you may have.

8 Thank you.

9 CHAIRMAN GARD: Are there any
10 questions?

11 (No response.)

12 CHAIRMAN GARD: Do we have any --

13 DR. NIEMIEC: Hi. This is
14 Dr. Niemiec. I have a question.

15 CHAIRMAN GARD: Yes, Dr. Niemiec.

16 DR. NIEMIEC: This rule is No. 327,
17 and under Section Roman numeral six, where
18 there's a table, including a column on the far
19 right regarding "Fines, fees, and other fiscal
20 elements." There are multiple locations where
21 they talk about fees that are proscribed, and I
22 question whether they have made an error in
23 saying that they are proscribed, which normally

1 means that they are banned or prohibited, but
2 maybe rather they mean prescribed or specified or
3 something similar to that.

4 Thank you.

5 MS. FRANKLIN: We didn't make any
6 amendments to these rules, we just adopted them
7 as whole. If there's anything that needs to be
8 amended in these rules, we will take that action
9 separately.

10 CHAIRMAN GARD: Will you check on
11 that, please?

12 MS. FRANKLIN: I will.

13 CHAIRMAN GARD: Okay. Thank you.

14 Any other questions or comments?

15 (No response.)

16 CHAIRMAN GARD: Any speaker cards?

17 MS. KINDRICK: No, ma'am.

18 CHAIRMAN GARD: Any -- anyone
19 on-line? Any raised hands?

20 (No response.)

21 CHAIRMAN GARD: Okay. The hearing is
22 concluded. The Board will now consider final
23 adoption of Title 326.

1 Is there any further Board discussion?

2 (No response.)

3 CHAIRMAN GARD: Do I have a motion
4 for final adoption of the rule as presented?

5 MS. KOZYRSKI: So moved.

6 DR. NIEMIEC: So moved. This is Ted
7 Niemiec.

8 CHAIRMAN GARD: Who said the second?

9 MS. KOZYRSKI: Carrie Kozyrski.

10 CHAIRMAN GARD: Okay. I'll call the
11 roll.

12 Mr. Davidson?

13 (No response.)

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: Yes.

20 CHAIRMAN GARD: Mr. Rulon.

21 (No response.)

22 CHAIRMAN GARD: Mr. Zehr?

23 MR. ZEHR: Yes.

1 CHAIRMAN GARD: Ms. Nelson?

2 MS. NELSON: Yes.

3 CHAIRMAN GARD: Mr. Green?

4 MR. GREEN: Yes.

5 CHAIRMAN GARD: Mr. Jaworowski?

6 MR. JAWOROWSKI: Aye.

7 CHAIRMAN GARD: Mr. Bortner?

8 MR. BORTNER: Yes.

9 CHAIRMAN GARD: Ms. Brown?

10 MS. BROWN: Yes.

11 CHAIRMAN GARD: Dr. Alexandrovich?

12 DR. ALEXANDROVICH: Yes.

13 CHAIRMAN GARD: Ms. Kozyrski?

14 MS. KOZYRSKI: Yes.

15 CHAIRMAN GARD: Mr. Ketzenberger?

16 MR. KETZENBERGER: Yes.

17 CHAIRMAN GARD: And the Chair votes
18 aye. The vote is 13 ayes, zero nays. The rule
19 has been finally adopted.

20 This is a public hearing before the
21 Environmental Rules Board of the State of Indiana
22 concerning final adoption of the Title 327. I
23 will now present Exhibit B, the preliminarily

1 adopted rule, into the record. The rule has
2 already been presented.

3 Are there any speaker cards for this one?

4 MS. KINDRICK: No, ma'am.

5 CHAIRMAN GARD: Any on-line?

6 (No response.)

7 CHAIRMAN GARD: Any Board member have
8 a question?

9 (No response.)

10 CHAIRMAN GARD: The hearing is
11 concluded. The Board will now consider final
12 adoption of Title 327.

13 Is there Board discussion?

14 (No response.)

15 CHAIRMAN GARD: A motion needs to be
16 made to final adopt the rules as presented.

17 MR. HORN: I would so move. Chris
18 Horn.

19 CHAIRMAN GARD: Is there a second?

20 MS. NELSON: Second, Katie Nelson.

21 CHAIRMAN GARD: Okay. I'll call the
22 roll.

23 Mr. Davidson?

1 (No response.)

2 CHAIRMAN GARD: Mr. Etzler?

3 MR. ETZLER: Yes.

4 CHAIRMAN GARD: Dr. Niemiec?

5 DR. NIEMIEC: Yes.

6 CHAIRMAN GARD: Mr. Horn?

7 MR. HORN: Yes.

8 CHAIRMAN GARD: Mr. Zehr?

9 MR. ZEHR: Yes.

10 CHAIRMAN GARD: Ms. Nelson?

11 MS. NELSON: Yes.

12 CHAIRMAN GARD: Mr. Green?

13 MR. GREEN: Yes.

14 CHAIRMAN GARD: Mr. Jaworowski?

15 MR. JAWOROWSKI: Yes.

16 CHAIRMAN GARD: Mr. Bortner?

17 MR. BORTNER: Yes.

18 CHAIRMAN GARD: Ms. Brown?

19 MS. BROWN: Yes.

20 CHAIRMAN GARD: Dr. Alexandrovich?

21 DR. ALEXANDROVICH: Yes.

22 CHAIRMAN GARD: Ms. Kozyrski?

23 MS. KOZYRSKI: Yes.

1 CHAIRMAN GARD: Mr. Ketzenberger?

2 MR. KETZENBERGER: Yes.

3 CHAIRMAN GARD: The Chair votes aye.
4 The vote tally is 13 ayes, zero nays. The rule
5 has been adopted.

6 This is a public hearing before the
7 Environmental Rules Board of the State of Indiana
8 concerning final adoption of the Title 326 [sic].
9 I will now introduce Exhibit C, the preliminarily
10 adopted rule, into the record of the hearing.
11 The rule has already been presented.

12 Are there any speaker cards for this one?

13 MS. KINDRICK: No, ma'am.

14 CHAIRMAN GARD: Any questions from
15 anyone?

16 (No response.)

17 CHAIRMAN GARD: If not, the hearing
18 is concluded. The Board will now consider final
19 adoption of the Title 329. You know what?
20 There's a typo in -- that I read back at the
21 beginning. This is for final adoption of
22 Title 329, not 326. I want to make sure that
23 that's understood. The Board will now consider

1 final adoption of the Title 329.

2 Is there any further Board discussion?

3 (No response.)

4 CHAIRMAN GARD: A motion needs to be
5 made to final adopt the rule as presented.

6 DR. NIEMIEC: This is Ted Niemiec.

7 So moved.

8 CHAIRMAN GARD: Is there a second?

9 (No response.)

10 CHAIRMAN GARD: Is there a second?

11 MR. HORN: Chris Horn. Yes.

12 CHAIRMAN GARD: Okay. I'll call the
13 roll.

14 Mr. Davidson?

15 (No response.)

16 CHAIRMAN GARD: Mr. Etzler?

17 MR. ETZLER: Yes.

18 CHAIRMAN GARD: Dr. Niemiec?

19 DR. NIEMIEC: Yes.

20 CHAIRMAN GARD: Mr. Horn?

21 MR. HORN: Yes.

22 CHAIRMAN GARD: Mr. Rulon?

23 (No response.)

1 CHAIRMAN GARD: Mr. Zehr?

2 MR. ZEHR: Yes.

3 CHAIRMAN GARD: Ms. Nelson?

4 MS. NELSON: Yes.

5 CHAIRMAN GARD: Mr. Green?

6 MR. GREEN: Yes.

7 CHAIRMAN GARD: Mr. Jaworowski?

8 MR. JAWOROWSKI: Aye.

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. Kozyrski?

16 MS. KOZYRSKI: Yes.

17 CHAIRMAN GARD: Mr. Ketzenberger?

18 MR. KETZENBERGER: Yes.

19 CHAIRMAN GARD: And the Chair votes

20 aye. That is 13 ayes, zero nays. The Board has

21 adopted final adoption of Title 329.

22 Okay. This is a public hearing before the

23 Environmental Rules Board of the State of Indiana

1 concerning preliminary adoption of the Emergency
2 Affirmative Defense Rule. I will now introduce
3 Exhibit D, the proposed rule, into the record of
4 the hearing. The rule has already been
5 presented [sic].

6 Keelyn Walsh will present this rule.

7 (Pause in proceedings.)

8 CHAIRMAN GARD: Well, it says it's
9 already been presented. I think -- I think
10 there's also another typo here; I'm sorry.

11 MS. WALSH: Yes. I'm Keelyn Walsh.
12 I'm here to present the rule. It is the
13 Emergency Affirmative Defense Provisions
14 rulemaking. It's LSA 24-318.

15 The federal emergency affirmative defense
16 provisions in 40 CFR 70.6(g) and 40 CFR 71.6(g)
17 establish an affirmative defense for sources to
18 assert in enforcement cases brought for
19 noncompliance with technology-based emission
20 limitations in operating permits if the
21 exceedences occurred due to qualifying emergency
22 circumstances. These provisions have never been
23 required elements of state operating permit

1 programs and were removed from federal
2 regulations on July 24th, 2023, because they are
3 inconsistent with the Clean Air Act and U.S.
4 EPA's interpretation of the Act's enforcement
5 structure.

6 Consequently, U.S. EPA requires each state
7 with a Part 70 program to submit a program
8 revision or request an submission extension, by
9 August 21st, 2024, to remove similar affirmative
10 defense provisions from EPA-approved Title V
11 programs. IDEM timely submitted a request for an
12 extension to submit its program revision, which
13 is now due on August 21st of 2025.

14 Although states may not retain Title V
15 provisions establishing an affirmative defense to
16 noncompliance with federal requirements, U.S. EPA
17 is allowing states to choose whether to retain
18 certain aspects of their existing program
19 regulations, such as the definition of emergency,
20 associated reporting and recordkeeping
21 requirements, and prompt reporting to support
22 functions unrelated to an affirmative defense.

23 This rulemaking proposes to revise rule

1 language at 326 IAC 2-7-16 and 326 IAC 2-8-12 to
2 remove the emergency affirmative defense
3 provisions from Indiana's EPA-approved Title V
4 program consistent with U.S. EPA's removal of
5 these provisions in 40 CFR 70.6(g) and
6 40 CFR 71.6(g). The proposed amendments will
7 also remove the emergency provisions from its
8 FESOP program, which is also federally approved
9 and is part of Indiana's State Implementation
10 Plan.

11 Repealing these sections renders other
12 rule language obsolete, including the definition
13 of "emergency," "health-based emission limit,"
14 and "technology-based emission limit" at
15 326 IAC 2-7-1 and the requirement to specify
16 permit conditions to which the emergency
17 provision applies at 326 IAC 2-7-5. Accordingly,
18 this rulemaking proposes to remove these
19 provisions and clarifies that proper reporting
20 under 326 IAC 1-6-2 satisfies the Title V
21 deviation report requirement.

22 Additionally, this rule amends the
23 malfunction rule at 326 IAC 1-6-1 to ensure

1 regulatory continuity with the reporting and
2 recordkeeping requirements being removed by the
3 repeal of the emergency provisions. The proposed
4 amendments revert to the applicability and
5 notification requirements that were in place
6 prior to the promulgation of the Title V and
7 FESOP emergency provisions.

8 Prior to the creation of Indiana's Title V
9 and FESOP programs, 326 IAC 1-6 applied to all
10 permitted sources. The malfunction rule also
11 once contained affirmative defense provisions,
12 but they were required to be removed from 326 IAC
13 1-6 in 2016.

14 This rulemaking brings Title V and FESOP
15 sources back under 326 IAC 1-6, which imposes
16 reporting and recordkeeping requirements that are
17 functionally equivalent to those found in the
18 emergency provisions being repealed by this
19 rulemaking. Because the malfunction rule's
20 requirements are functionally equivalent to those
21 in the to-be-repealed emergency provisions,
22 sources should experience relatively no
23 regulatory burden by becoming subject

1 to 326 IAC 1-6 once again.

2 IDEM therefore requests that the Board
3 preliminarily adopt this rule as presented, and
4 program staff are available to answer any further
5 questions.

6 Thank you.

7 CHAIRMAN GARD: Are there any
8 questions for Keelyn?

9 DR. ALEXANDROVICH: This is Joanne,
10 and I do have one question.

11 MS. WALSH: Uh-huh.

12 DR. ALEXANDROVICH: Would there be
13 any likelihood to be any source permits that
14 conflict with these changes?

15 MS. WALSH: I might defer to --

16 MR. PERRY: I can address that.

17 MS. WALSH: Okay.

18 MR. PERRY: Hi. I'm Phil Perry. I'm
19 the Deputy Assistant Commissioner for the Office
20 of Air Quality.

21 And in terms of -- we will be re -- once
22 this rule is passed, we will be required to amend
23 all of the Title V and FESOP permits to remove

1 the emergency provision languages. Jenny Acker,
2 our Branch Chief, is aware of this, and we are
3 developing a process to amend those permits once
4 the rule becomes effective. We cannot do that
5 until such time, and so that's the plan.

6 DR. ALEXANDROVICH: So, there's no
7 way to wait until it's time to renew the permits.
8 We've got to do it kind of right away?

9 MR. PERRY: We can -- we have to do
10 it right away. EPA allows for a period of time,
11 and that's why we asked for an extension until
12 August of 2025 to get this rule passed. So, EPA
13 removed those provisions last year, and so we're
14 under a clock, basically, to get the rule revised
15 and then all of those permits changed.

16 DR. ALEXANDROVICH: So, those permits
17 need to be changed by next August?

18 MR. PERRY: The EPA program wants us
19 to develop a plan to make those revisions as soon
20 as possible, as soon as the rule becomes
21 effective. So, they didn't set --

22 DR. ALEXANDROVICH: Okay. Thank you.

23 MR. PERRY: Yeah. They didn't set a

1 specific time frame, but in the case of FESOP
2 programs, many of those that would be issued here
3 in the next month or so would not expire for ten
4 years, and that would be inconsistent with the
5 rule if it -- once it's passed, so we want to get
6 those permits changed as soon as possible to
7 reflect the current rule.

8 DR. ALEXANDROVICH: Okay. Thank you.

9 CHAIRMAN GARD: Any other questions?

10 MS. KOZYRSKI: Yes.

11 Could you explain a little bit further how
12 the health-based emission limit relates to the
13 emergency provision? It's page 4 of 30, item
14 no. (20), in 326 IAC 2-7-1, no. (20). It's in
15 the Definitions, but I don't see "emergency"
16 noted in that definition, so I'm just wondering
17 what the relationship is, why that's being
18 eliminated.

19 THE REPORTER: Who's speaking?

20 MS. KOZYRSKI: Yeah, me.

21 CHAIRMAN GARD: Yes, I was going to
22 ask: Who's speaking? We need your name.

23 MS. KOZYRSKI: Carrie Kozyrski.

1 MR. PERRY: The -- yeah, the
2 provisions under the definition of an emergency
3 in 16 refer back to whether a source can continue
4 to operate under an emergency if it's a
5 health-based standard or a technology-based
6 standard.

7 MS. KOZYRSKI: Okay.

8 MR. PERRY: If it was a health-based
9 standard, they were obligated to shut that unit
10 down immediately. Under a technology-based
11 standard, they can continue to operate under an
12 emergency provision. Because the emergency
13 provision is being removed in the affirmative
14 defense, that no longer applies.

15 MS. KOZYRSKI: Thank you.

16 CHAIRMAN GARD: Any other questions?

17 (No response.)

18 CHAIRMAN GARD: Anyone virtually?

19 (No response.)

20 CHAIRMAN GARD: If not, this hearing
21 is concluded. The Board will now consider
22 preliminary adoption of the Emergency Affirmative
23 Defense Rule.

1 Any further Board discussion?

2 (No response.)

3 CHAIRMAN GARD: There needs to be a
4 motion to preliminarily adopt the rules as
5 presented.

6 (No response.)

7 CHAIRMAN GARD: Is there a motion to
8 adopt the --

9 MR. ETZLER: So moved.

10 CHAIRMAN GARD: -- preliminary
11 adoption?

12 MR. ETZLER: So moved.

13 DR. NIEMIEC: Ted Niemiec seconding
14 it.

15 CHAIRMAN GARD: Did you get the
16 second?

17 THE REPORTER: Yes.

18 CHAIRMAN GARD: Okay.

19 Mr. Etzler?

20 MR. ETZLER: Yes.

21 CHAIRMAN GARD: Dr. Niemiec?

22 DR. NIEMIEC: Yes.

23 CHAIRMAN GARD: Mr. Horn?

1 MR. HORN: Yes.

2 CHAIRMAN GARD: Mr. Rulon?

3 (No response.)

4 CHAIRMAN GARD: Mr. Zehr?

5 MR. ZEHR: Yes.

6 CHAIRMAN GARD: Ms. Nelson?

7 MS. NELSON: Yes.

8 CHAIRMAN GARD: Mr. Green?

9 MR. GREEN: Yes.

10 CHAIRMAN GARD: Mr. Jaworowski?

11 MR. JAWOROWSKI: Yes.

12 CHAIRMAN GARD: Mr. Bortner?

13 MR. BORTNER: Yes.

14 CHAIRMAN GARD: Ms. Brown?

15 MS. BROWN: Yes.

16 CHAIRMAN GARD: Dr. Alexandrovich?

17 DR. ALEXANDROVICH: Yes.

18 CHAIRMAN GARD: Ms. Kozyrski?

19 MS. KOZYRSKI: Yes.

20 CHAIRMAN GARD: Mr. Ketzenberger?

21 MR. KETZENBERGER: Yes.

22 CHAIRMAN GARD: The Chair votes aye.

23 Thirteen ayes, zero nays, the rule has been

1 preliminarily adopted.

2 Now, we have a Nonrule Policy Document for
3 action. It's the Permitting for the Placement of
4 Fill Material into Isolated Wetlands. I had
5 questions about this, and I talked to Nancy King
6 about it yesterday.

7 Who's going to give an explanation of
8 this?

9 MS. METTLER: Hi. I am Martha Clark
10 Mettler, the Assistant Commissioner of the Office
11 of Water Quality.

12 So, this is a fairly straightforward
13 Nonrule Policy Document meant to eliminate a
14 bureaucratic step that had been imbedded in our
15 rules before. With the changes of the definition
16 of Waters of the U.S. at a federal level, it
17 narrows the scope of federal jurisdiction and
18 puts a lot more of the wetlands under state
19 jurisdiction.

20 So, before we had a requirement, before
21 you could move on any permit, that you had to
22 have a letter from the Army Corps that said
23 whether it's a Federal Water or not. Since now

1 so many more waters are wetlands, in particular,
2 our state jurisdictional, that seems like an
3 unnecessary step, and so, we want to just
4 eliminate that so that we can proceed with
5 permitting in a more expedited way.

6 CHAIRMAN GARD: Are there questions
7 about this? I -- it's -- a question that I had
8 for Ms. King was: Did this allow more fill to be
9 dumped into isolated wetlands, which I certainly
10 do not approve of? But it's really different
11 than that.

12 MS. METTLER: Yes, there -- it's just
13 more of an administrative correction. You would
14 still need permitting if you exceed the
15 thresholds of fill in your project proposal. We
16 did put this out for a 45-day public notice, and
17 we received no comments.

18 CHAIRMAN GARD: Okay.

19 Any -- any more questions about it?

20 MR. KETZENBERGER: I have a question,
21 Madam Chair.

22 CHAIRMAN GARD: Yes.

23 MR. KETZENBERGER: So, the -- if

1 there's a difference or a disagreement about
2 whether it's a state regulated wetland or a
3 federal regulated wetland, there's some
4 discussion about requiring the letter from the
5 Corps.

6 MS. METTLER: Yes.

7 MR. KETZENBERGER: I'm worried about
8 the timing of that. Is there an opportunity to
9 have that determination if there's a question
10 before the filling action begins, if that's the
11 case?

12 MS. METTLER: Yes. It would part of
13 the project proposal, and we would have that
14 discussion with the applicant.

15 MR. KETZENBERGER: Okay. So, it
16 wouldn't be a surprise if there was a
17 determination that it came under federal or
18 needed a --

19 MS. METTLER: It should --

20 MR. KETZENBERGER: -- federal letter?

21 MS. METTLER: -- not be. It should
22 not be. With the way the new definition of
23 Waters of the United States is, it's clearer that

1 less waters are protected federally. And so,
2 there might be some with impacts that are mixed,
3 that have some federal and some state, and we
4 would require that determination from the Corps
5 before we would proceed with permitting.

6 MR. KETZENBERGER: So, the approach
7 from the agency then would be to look at that
8 possibility that there's a conflict between --

9 MS. METTLER: Uh-huh.

10 MR. KETZENBERGER: -- the two areas,
11 and then --

12 MS. METTLER: Right --

13 MR. KETZENBERGER: -- anticipate
14 that?

15 MS. METTLER: -- which is why we say
16 that we need to look at the delineation and the
17 characteristics of the site.

18 MR. KETZENBERGER: Okay. Thank you.

19 MS. METTLER: Uh-huh.

20 CHAIRMAN GARD: Any other questions?

21 DR. ALEXANDROVICH: This is Joanne
22 again. This -- you may not -- a crazy question:
23 Is the WOTUS still kind of hung up in litigation

1 and legal wranglings?

2 MS. METTLER: Yes.

3 CHAIRMAN GARD: Forever, probably.

4 MS. METTLER: Yeah, it could be
5 forever, but yes.

6 DR. ALEXANDROVICH: Do you know of
7 any deadlines that might be coming sooner or
8 later, or it's kind of all up in the air?

9 MS. METTLER: Well, it's up to the --
10 it's in the courts now, so who knows?

11 DR. ALEXANDROVICH: Okay. Thank you.

12 CHAIRMAN GARD: Any other questions?

13 (No response.)

14 CHAIRMAN GARD: Okay.

15 Well, thank you. As I understand it, this
16 is an information-only presentation. It doesn't
17 take Board action; correct?

18 MS. METTLER: Correct. Thank you.

19 CHAIRMAN GARD: Okay.

20 Under Open Matters -- Other Matters, this
21 is an Open Forum. Is there anyone who wishes to
22 address the Board today?

23 (No response.)

1 CHAIRMAN GARD: Opposed, nay.

2 (No response.)

3 CHAIRMAN GARD: Then, we are
4 adjourned, and thank all of you for coming.

5 - - -
6 Thereupon, the proceedings of
7 October 9, 2024 were concluded
8 at 2:08 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, October 9, 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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