

**ANNUAL REPORT
OF THE
ENVIRONMENTAL QUALITY
SERVICE COUNCIL**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 2004

INDIANA LEGISLATIVE COUNCIL
2004

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ENVIRONMENTAL QUALITY SERVICE COUNCIL
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Culver

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Winona Lake

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Beverly Gard
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John Ulmer
Zionsville

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Randal Edgemon
Greenwood

Julia Wickard
Greenfield

Ellen Tobias
Rockville

Lori Kaplan
Indianapolis

Staff

Robert Bond
Attorney for the Council

Valerie Ruda
Fiscal Analyst for the Council

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted P.L. 52-2004 (HEA 1277) directing the Environmental Quality Service Council (EQSC) to do the following:

- (1) Monitor the implementation of SECTIONS 21 through 25, 27 through 35, 38, and 39 of P.L. 282-2003 (HEA 1798).
- (2) Review the role of the department of environmental management (IDEM) with respect to action on requests under Section 401 of the Clean Water Act (33 U.S.C. 1341) for certifications concerning projects subject to permit requirements under Section 404 of the Clean Water Act (33 U.S.C. 1344), and recommend whether statutory direction is appropriate or necessary in defining that role.
- (3) Complete its consideration of the options for statutory definition of "private pond" as used in the definition of "waters" in IC 13-11-2-265, and:
 - (A) recommend an option; and
 - (B) include with the recommendation a statement of rationale for the recommendation.
- (4) Evaluate the tensions between existing programs for wetlands protection and for local drainage and recommend principles and policies for ameliorating those tensions, taking into consideration the rationale and objectives for both programs.
- (5) Submit its final report on the matters described in subdivisions (1) through (4) before November 1, 2004, to:
 - (A) the governor; and
 - (B) the executive director of the legislative services agency.

P.L. 52-2004 (HEA 1277) also directs the EQSC to:

- (1) conduct an ongoing evaluation of the implementation of the permit program for state regulated wetlands under IC 13-18-22;
- (2) recommend any adjustments to the program referred to in subdivision (1) that are considered advisable to improve the operation and effectiveness of the program, consistent with the purpose of providing an efficient permitting process and enhancing the attainment of an overall goal of no net loss of state regulated wetlands; and
- (3) submit its final report on the matters described in subdivisions (1) and (2) before November 1, 2006; to:
 - (A) the governor; and
 - (B) the executive director of the legislative services agency.

The Legislative Council directed the EQSC to study the following topics:

- (1) Environmental crimes (SB 165-2004).
- (2) Biofuels issues (SB 374-2004; HB 1126-2004).
- (3) Expansion of the categories of vehicles in Floyd and Clark Counties that are exempt from ozone testing (HR 78-2004).
- (4) Problems associated with the introduction of invasive species by release of

ballast water (SR 19-2004).

(5) Energy conservation under the International Energy Conservation Code (SR 37-2004).

II. INTRODUCTION AND REASONS FOR STUDY

The activities of the EQSC in 2004 were conducted to discharge the EQSC's various responsibilities under P.L. 248-2001 (SEA 121) and other acts imposing responsibilities on the EQSC.

III. SUMMARY OF WORK PROGRAM

The EQSC met four times on the following dates and at the following locations to consider the indicated topics:

1. July 26, 2004	Conference Room C 302 W. Washington St. Indianapolis, Indiana	Air issues
2. August 9, 2004	Conference Room A 302 W. Washington St. Indianapolis, Indiana	Water well contamination; biofuels issues; energy conservation issues
3. August 30, 2004	Training Center Room 5 302 W. Washington St. Indianapolis, Indiana	Howard County dam removal; brownfields issues; introduction of invasive species by release of ballast water
4. October 4, 2004	Conference Room C 302 W. Washington St. Indianapolis, Indiana	Wetlands and water issues; preparation of final report

The EQSC Subcommittee on Wildcat Creek Dam Removal met on August 9, 2004, upon adjournment of the EQSC to consider dam removal issues.

IV. SUMMARY OF TESTIMONY

First Meeting - July 26, 2004

Air Issues. Deputy Commissioner Tim Method, IDEM, presented a report on ozone and fine

particulate matter standards in Indiana. The report focused on state compliance with federal law and recent actions by the US Environmental Protection Agency (USEPA) designating new standards and nonattainment areas. He noted that a request by the state to defer stricter air permitting in most nonattainment areas was denied by USEPA. He discussed the newly created emission credit registry, and addressed public health and monitoring issues relating to fine particulate matter. Mr. Method outlined efforts underway to improve air quality and to involve interested parties.

Mr. Method and Commissioner Lori Kaplan, IDEM, responded to questions from the EQSC concerning economic and other effects of designation of a county as a nonattainment area, air monitoring and permitting, and IDEM's study of the contribution of air pollution to asthma.

Removal of Dams on Wildcat Creek in Kokomo. Representative Herrell expressed his interest in determining whether water quality can be improved by removal of dams on Wildcat Creek in Kokomo, and, if so, whether the law permits removal. Barton Jones, Strand Associates Inc., described the investigation to date on the dam removal issues. Chairman Bottorff appointed Representative Herrell, William Hayden, and Randal Edgemon as a subcommittee of the EQSC to address the issues.

Second Meeting - August 9, 2004

Contamination of Water Wells. Pat Carroll, IDEM, presented a report entitled "Drinking Water Protection, Public Water Systems, Private Wells." He described IDEM's responsibilities in carrying out federal Safe Drinking Water Act requirements with respect to various types of public water supply systems. Systems are subject to testing, permitting, inspection, and reporting requirements. IDEM's assistance to public water supply systems in various aspects of drinking water protection has resulted in fewer monitoring and reporting violations. IDEM does not have direct regulatory responsibility with respect to private wells, but is involved indirectly with water well contamination through various programs. IDEM has established a ground water task force to address ground water contamination issues. The Water Pollution Control Board is considering rules to reduce the regulatory burden on small drinking water systems.

Mr. Carroll responded to questions from the EQSC concerning private well standards and testing, well driller permits, the cost of well permits, the usefulness of requiring water softener permits, and failed septic systems as a source of ground water contamination.

Bill Grant, LaGrange County Health Department, presented a report on the negative impact of state well rules on businesses. Brian Wright, Hoosier Environmental Council, addressed issues relating to well contamination in Pines, Indiana.

Biofuels Issues. Representative Heim discussed legislation he authored last session to require use of biodiesel fuel in state vehicles, and to create a biofuels task force. Chris Novak, Indiana Soy Bean Board, and Charlie Smith, Countrymark Co-Op, presented a report entitled "Biodiesel

Opportunities in Indiana." The report favorably compared biodiesel fuel to petroleum diesel fuel, and described how biodiesel fuel is made, the benefits derived from its use including emissions benefits, the volume of recent sales, and various uses of biodiesel fuel in Indiana. A bill pending in Congress would provide federal tax exemptions to increase biodiesel fuel demand. The report noted various ways in which state law could be amended to encourage the production and use of biodiesel fuel.

Energy Conservation. Senator Landske explained the background of a resolution she authored last session to urge consideration of adoption of the International Energy Conservation Code (IECC) as the Indiana Energy Conservation Code. Don Blinzinger, Bose Treacy Associates, indicated that it is time to update Indiana law regarding energy conservation, and discussed the possible use of the IECC as compared to the establishment by the state of its own requirements.

Wildcat Creek Dam Removal Subcommittee. The subcommittee met upon adjournment of the EQSC to consider whether any law precludes the removal of dams from Wildcat Creek in Kokomo, and, if not, what procedure must be followed for removal. Andrew Peloso, IDEM, and Kenneth Smith, Indiana Department of Natural Resources (IDNR) indicated that there is no prohibition against removal of the dams. However, the removal of a dam could trigger requirements for permits from IDNR, IDEM, or the U.S. Army Corps of Engineers. Mr. Peloso and Mr. Smith agreed to work with the city to identify any such requirements and to continue investigation of the steps that must be taken to accomplish the removal of the dams.

Third Meeting - August 30, 2004

Report of Wildcat Creek Dam Removal Subcommittee. Rep. Herrell presented a report to the EQSC on the August 9 subcommittee meeting.

Brownfields Issues. David Valinetz, SESCO Group, presented a report on brownfields issues. The decline of urban areas over several decades has resulted in the abandonment of many sites. Expansion, redevelopment, or reuse of the sites is complicated because of the presence of contaminants. Mr. Valinetz considers the redevelopment of these sites to be a recycling of land that combats urban sprawl and contributes to the tax base, economic growth, environmental quality, and the creation of jobs. His company uses improving brownfields technology and various financing and indemnity techniques to carry out environmental remediation and redevelopment of brownfields sites. He described some of the obstacles his company faces, including delays in the issuance of "no further action" letters by IDEM and in securing appropriate zoning. He believes that IDEM, the Indiana Development Finance Authority, and cities and towns must adopt approaches used in other states that create an environment more conducive to brownfield redevelopment and result in much higher rates of redevelopment. Developers' current reticence to become involved with brownfield redevelopment could be reversed by appropriate changes in state and local rules and policies.

Mr. Valinetz responded to questions from the EQSC concerning the brownfield definition used

in other states, approvals required from IDEM and the procedure to obtain approvals, indemnity for developers, liability of former site owners and the current owner, and remediation standards based on expected use of the site.

Bruce Oertel and Tom Baker, IDEM, presented a report on IDEM brownfield activities. Mr. Oertel described the funding available for brownfield remediation and the various ways in which IDEM addresses brownfield issues. IDEM brownfield responsibilities are dealt with primarily by the Remediation Branch of the Office of Land Quality, but can also come under the Voluntary Remediation Program or other programs addressed in IDEM's Risk Integrated System of Closure guidance manual. Three hundred sixty-nine brownfield sites have been identified. Depending on the size and complexity of issues, some sites can be dealt with quickly. Mr. Baker cited examples of successful brownfield remediation facilitated by IDEM and stressed IDEM's capabilities in this area. He described the agency's ongoing consideration of ways to protect a developer against liability related to contamination not caused by the developer and to improve worker safety at brownfield sites.

In response to questions from the EQSC, Mr. Baker addressed IDEM's inspection of buildings for contamination before a company moves to reduce the likelihood of the company's escaping liability after abandonment, and Mr. Oertel addressed IDEM's allocation of resources in dealing with brownfield sites.

Glenn Pratt stated that Indiana compares unfavorably to other states in the resources devoted to brownfield redevelopment, and expressed his view that Indiana should increase its efforts and funding.

Invasive Species. Sen. Zakas presented a report on the introduction of invasive species through ballast water discharged from vessels. Ballast water is necessary to the stability and structural integrity of oceangoing vessels. The ballast water taken on by vessels in foreign ports is discharged in U.S. ports, and nonindigenous species in the discharged water are given the opportunity to take hold in the new location. Native species suffer from the competition, and economic and environmental damage results. Sen. Zakas would like the EQSC to examine a recent Michigan law that requires development of ballast water treatment methods and the listing of vessel owners that do not comply with treatment requirements. He also recommends that one or more state legislators should be appointed to the Great Lakes Commission in order to better monitor this issue.

Miriam Dant, Baker & Daniels, spoke on behalf of Ispat Inland, Inc., which is a member of the Lake Carriers Association. She stressed that the ballast water invasive species problem applies only to oceangoing vessels, and that any remedial action should not apply to vessels that never leave the Great Lakes.

William Niemier, Ports of Indiana, described the economic impact of the operation of Indiana's ports. Proposals to combat invasive species have included a prohibition on ballast water

discharge in U.S. ports. Because ballast water transfers are necessary when vessels are loaded and unloaded, such a proposal would cripple shipping and eliminate its benefits to Indiana. He stressed that the issue is complicated, and that any regulation must be very carefully considered.

Steve Lucas, Indiana Natural Resources Commission, stressed the complexity of the issue and the need to proceed cautiously based in part on the potential for introduction of invasive species from not only ballast water, but also from bilge water, sewage, and galley water.

Stephen Mosher, Ports Director, Burns Harbor, indicated that the Indiana Port Commission is participating in a coalition to study the invasive species issue.

Andre Joseph, International Longshoremen's Association, cautioned against a simple solution that would create other problems. He emphasized that Indiana is typically not the first point of entry for oceangoing vessels, and therefore contributes to the invasive species problem less than other states.

Ray Sierra, International Longshoremen's Association, indicated that a thorough study is needed to determine the direct and indirect impacts of ballast water regulation. The issue is complicated by the limited number of vessels contributing to the problem, the unwillingness of some shippers to maintain awareness of the problem, and the problems in enforcement with respect to less reputable shippers.

Glenn Pratt stated that Congress has been aware of the issue for at least twenty years, but has not acted. He believes that Indiana should address the issue to put pressure on Congress to act.

Fourth Meeting - October 4, 2004

Wetlands and Water Issues. Tim Method addressed the issues outlined in P.L. 52-2004 (HEA 1277), SECTION 13, which are as follows:

- (1) The implementation by IDEM of wetlands permitting.
- (2) The role of IDEM with respect to action on requests under Section 401 of the Clean Water Act for certifications concerning projects subject to permit requirements under Section 404 of the Clean Water Act.
- (3) The statutory definition of "private pond" as used in the definition of "waters" in IC 13-11-2-265.
- (4) The tensions between existing programs for wetlands protection and for local drainage.

Mr. Method stated that IDEM is in the process of developing rules relating to wetland activity permits. Notice of rulemaking has been published. IDEM has assembled working groups representing parties interested in wetland regulation to assist in the creation of definitions and to otherwise assist with the proposed rules. Preliminary adoption of the rules is expected later this year.

James Robb, IDEM, provided further information on the rulemaking. Four new rules are proposed as follows:

(1) General provisions that apply to all isolated wetlands and to all state regulated wetland permits.

_____ (2) Provisions specific to the minimal impact general permit.

(3) Provisions specific to the Class I general permit.

(4) Provisions specific to the Class II and Class III individual permit.

Key issues to be address in the rules include whether wetlands restrictions should be embodied in deed restrictions, whether a permit applicant must document wetland activities on the tract, whether references to other regulatory programs are appropriate, and the means by which exemptions to wetland permitting should be reviewed and approved.

Mr. Method commented that IDEM recognizes the need for coordination on wetlands issues with county surveyors and local drainage boards.

With respect to the other study items, Mr. Method indicated that IDEM's current focus is on the implementation of the recently enacted state wetlands statutes, and that there is no significant information to report with respect to the items that deal with aspects of federal law. Efforts to define terms have also focused on the wetlands statutes, and not on the more generally applicable definition of waters. Although there is some tension between existing programs for wetlands protection and for local drainage, IDEM has generally been able to resolve issues by working with local officials.

Final Report and Recommendations. The EQSC considered and voted on proposed recommendations for inclusion in the final report, and approved the final report by voice vote of a majority of members appointed to the EQSC.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

A. The following recommendations were approved by voice vote of a majority of members appointed to the EQSC. The EQSC recommends that legislation should be adopted for the following:

1. Notice to Parents of School Children. When a school corporation is notified of contamination or potential contamination of the school corporation's drinking water supply, the school corporation should notify the schoolchildren's parents of the contamination or potential contamination.

2. Biofuels. The state should be required to use blended biodiesel fuel in state vehicles and tractors when feasible.

3. Brownfields. With respect to the conduct of remediation activity on a brownfield property,

IDEM should expedite the process for issuance of a covenant not to sue. The issuance of covenants more quickly will increase brownfield development activity by making that activity more attractive to participants in the development process.

4. EQSC and Compliance Advisory Panel. The statutory expiration date of the EQSC should be eliminated, and the EQSC should be consolidated with the Compliance Advisory Panel.

B. The EQSC also considered the following recommendation, which failed to receive a sufficient number of votes to be considered an official recommendation.

1. Introduction of Invasive Species by Release of Ballast Water. International ships should not be allowed to dump ballast, bilge, and galley water in Indiana harbors.

WITNESS LIST

Tom Baker, IDEM
Don Blinzinger, Bose Treacy Associates
Pat Carroll, IDEM
Miriam Dant, Baker & Daniels
Tonya Galbraith, IDEM
Bill Grant, LaGrange County Health Department
Barton Jones, Strand Associates Inc.
Andre Joseph, International Longshoremen's Association
Lori Kaplan, IDEM Commissioner
Steve Lucas, Indiana Natural Resources Commission
Tim Method, IDEM
Stephen Mosher, Ports Director, Burns Harbor
William Niemier, Ports of Indiana
Chris Novak, Indiana Soy Bean Board
Bruce Oertel, IDEM
Andrew Pelloso, IDEM
Glenn Pratt
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