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Rep. Dale Sturtz  
Rep. David Wolkins  
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Sen. Beverly Gard  
Sen. Glenn Howard  
Sen. Vi Simpson



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## **ENVIRONMENTAL QUALITY SERVICE COUNCIL**

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**Authority:** P.L.248-1996 (SEA 138)

### **SUBCOMMITTEE MEETING SUMMARY**

**Meeting Date:** August 27, 1998  
**Meeting Time:** 8:30 A.M.  
**Meeting Place:** State House, 200 W. Washington St.,  
Room 156-A  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 2

**Members Present:** Rep. David Wolkins; Sen. Beverly Gard; Sen. Kent Adams;  
Sen. Vi Simpson; Sen. Glenn Howard; Kerry Michael Manders.

**Members Absent:** None.

#### **UNDERGROUND STORAGE TANKS**

Representative Wolkins convened the meeting at 8:40 A.M. and asked Mike Pitts from the Indiana Petroleum Marketers and Convenience Store Association to comment on any unresolved issues discussed at the first Underground Storage Tank Subcommittee meeting.

Mr. Pitts said he would like to hear a summation from the Indiana Department of Environmental Management (IDEM) concerning where IDEM and the regulated community are in terms of compliance and how the December 22, 1998, underground storage tank upgrade deadline will be enforced. Mr. Pitts said that the federal Environmental Protection Agency (EPA) indicates they will engage in "vigorous enforcement" of the deadline which means that the EPA will step in if a state is not adequately enforcing underground storage tank regulations.

Mr. Pitts continued by stating that rulemaking was still in progress and Indiana's underground storage tank program had not been "fully approved" by the EPA. Mr. Pitts said that without a fully approved program, the EPA could take a more active role in Indiana. He said the people he represented would rather deal with IDEM and not the EPA.

Mr. Pitts also said the people he represented had spent considerable sums of money to come into compliance before December 22, 1998, and they wanted to see the deadline enforced.

In response to questions from Senator Adams, Dave Hensel from the IDEM Underground Storage Tank Enforcement Division stated that tank owners and operators had the option of complying with the deadline by temporarily closing their tanks by December 22. He said that meant tank owners and operators would have to "cease doing business out of their tanks" until the tanks are upgraded or properly closed.

In response to questions from Representative Wolkins, Mary Beth Tuohy, Assistant IDEM Commissioner from the Office of Environmental Response, stated that approximately 30% of underground storage tank owners who owned less than 12 tanks were in compliance and another 30% planned to comply. She said this compared to 80% of the "middle marketers" who owned 13 to 60 tanks who were in compliance and 80% of persons who owned more than 60 tanks who were in compliance.

Mr. Pitts stated that he estimated 85% to 90% of the members of his association were in compliance. However, he said most of the members owned more than 12 tanks.

Ms. Tuohy stated that the trend among municipalities that owned and operated tanks was to close the tanks and institute a credit card system to purchase petroleum products. Senator Adams indicated it would be difficult for a governmental entity to justify not being in compliance with the law. Stan Pinegar from the Indiana Petroleum Council added that the Indiana Department of Transportation "pulled" their tanks and went to a credit card system two years ago.

Mr. Hensel said that the IDEM policy concerning municipalities that owned tanks was that while enforcement action would be taken, municipalities would probably receive a "big break" on fines.

Mr. Hensel then distributed an IDEM Nonrule Policy Document<sup>1</sup> that contained IDEM's policy for determining penalties for violations after the December 22 underground storage tank upgrade requirements went into effect. He said that IDEM would use a "days of noncompliance multiplier" that would increase penalties every 90 days a person continued to be out of compliance. For example, he said a person that was not

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<sup>1</sup> A copy of this document is on file with the Legislative Information Center, Room 230, State House, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 W. Washington St., Suite 301, Indianapolis, Indiana 46204-2789.

in compliance 90 days after the deadline would have their penalty increased by 25%. However, he said a person who was still out of compliance more than one year after the deadline would have their penalty doubled.

In response to questions from Subcommittee members, Mr. Hensel added that the EPA will provide Indiana some funding to help IDEM staff the underground storage tank program. He also said a violator's ability to pay is taken into consideration when a penalty is calculated.

Mr. Pinegar said that he had heard that the EPA had intervened in Georgia because Georgia did not have enough underground storage tank inspectors. In response to questions from Mr. Pinegar, Ms. Tuohy said IDEM's underground storage tank staff was probably "at capacity." She said that, if necessary, some staff from other programs could be moved into the underground storage tank program during the winter. She added that, in general, Indiana had engaged in more "outreach" programs than many other states and was not certain what had happened in Georgia.

In response to questions from Senator Howard, Mr. Hensel stated that an underground storage tank that had not been properly upgraded or closed that was still in the ground after December 22, 1998, would be in violation of the law even if it was not being used.

In response to questions from several Subcommittee members, Mr. Hensel stated that IDEM was going to use an affidavit system for underground storage tank owners to prove compliance instead of a system where a sticker or similar item was physically placed on a tank. He stated that any owner who did not return an affidavit to IDEM would move immediately to the top of the "hit list."

Mr. Hensel continued by stating that IDEM would build a database with the affidavit information they get back from tank owners. He said this information would be available to suppliers of petroleum products.

Mr. Hensel also stated that in addition to people who had not yet upgraded their tanks, there were still a few underground storage tanks that had not yet been registered with IDEM. He said that he knew many tank owners were playing a "waiting game" to see who "weathers the storm" before they decide whether or not to spend money on a tank upgrade. He also said he expected many business competitors of persons who have not upgraded or registered tanks to turn these people in to IDEM.

In response to questions from Mr. Manders, Mr. Hensel said that IDEM was going to use the affidavit system instead of the sticker system because of concerns about IDEM's authority to operate the sticker program and because of concerns that the program could be misconstrued. He added that one person in the regulated community had told him that either an affidavit or a sticker program to show compliance was "nonsense" because many delivery drivers won't check to see if a tank is in compliance anyway.

Mr. Pitts stated that he did not think anyone in the retail petroleum products business

had a legitimate basis for saying they did not know about the December 22 underground storage tank requirements deadline.

Representative Wolkins then asked Courtney Tobin from the Indiana Development Finance Authority (IDFA) to discuss the current status of the underground storage tank guaranty program and fund.

Ms. Tobin stated that IDFA had received 96 applications and had awarded 44 grants. She said that the available money in the fund had been proportioned among Indiana's 10 Congressional Districts and that, while two of the Congressional Districts were out of money, the other eight still had funds available. Ms. Tobin continued by stating that the First, Sixth, and Tenth Congressional Districts still had "quite a bit" of money available.

Ms. Tobin said that IDFA was continuing to take applications and was trying to give applicants "every break possible" to receive grants. She added that the average grant was approximately \$9,000 to \$10,000.

In response to questions from Senator Howard, Ms. Tobin said that if underground storage tanks had been abandoned, cities, counties, and towns could obtain money through the Brownfield program instead of a grant through IDFA to remove the tanks.

Representative Wolkins adjourned the meeting at 9:42 P.M.