

Members:

Rep. Mark Kruzan, Chair
Rep. Richard Mangus
Rep. Dale Sturtz
Rep. David Wolkins
Sen. Kent Adams
Sen. Beverly Gard
Sen. Glenn Howard
Sen. Vi Simpson



Lay Members

David Benshoof
Michael Carnahan
Randy Edgemon
John Fekete
Hon. Jack Fowler
Marvin Gobles
William Goffinet
Max Goodwin
John Hamilton
Kerry Michael Manders
Regina Mahoney
David Rector
Gary Reding
Alice Schloss
Lynn Waters

LSA Staff:

Tim Tyler, Attorney for the Council
Kristin Breen, Fiscal Analyst for the Council

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

ENVIRONMENTAL QUALITY SERVICE COUNCIL

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MEETING MINUTES

Meeting Date: November 12, 1998
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 6

Members Present: Rep. Mark Kruzan, Chairperson; Rep. Dale Sturtz; Rep. David Wolkins; Rep. Richard Mangus; Sen. Beverly Gard; Sen. Kent Adams; David Benshoof; Michael Carnahan; Randy Edgemon; John Fekete; Marvin Gobles; Max Goodwin; Regina Mahoney; Kerry Michael Manders; David Rector; Gary Reding; Alice Schloss.

Members Absent: Sen. Vi Simpson; Sen. Glenn Howard; Hon. Jack Fowler; William Goffinet; John Hamilton; Lynn Waters.

Representative Mark Kruzan, Chairperson of the Environmental Quality Service Council (EQSC), called the meeting to order at 1:50 P.M.

Tim Method, Deputy Commissioner of the Indiana Department of Environmental Management (IDEM), distributed copies of the IDEM Commissioner's monthly report to

the EQSC.¹ Mr. Method stated that the documents in the report concerned IDEM outreach, education, and assistance activities, rulemakings, fees collected, permitting activities, media advisories, the November IDEM calendar, and an initiatives update.

In response to questions from Senator Gard and Representatives Kruzan and Wolkins, Mr. Method stated that representatives from IDEM would respond to questions at the December EQSC meeting concerning IDEM's use of dedicated funds as part of the next IDEM biennial budget.

In response to questions from Senator Adams, Mr. Method said a work group had been developing draft rules concerning confined feeding for about one year. He stated the final rules would probably not be ready to present to the Water Pollution Control Board until March 1999 at the earliest.

Representative Kruzan then introduced David Benshoof, the newest member of the EQSC. Representative Kruzan said Mr. Benshoof had been appointed by Governor O'Bannon to replace John Walker. Mr. Benshoof stated he had worked for Best Access Systems, formerly known as Best Lock, for 14 years in the areas of environmental health and safety. He said he had also served on the Water Pollution Control Board.

After a brief discussion by EQSC members, Representative Kruzan stated that the December EQSC meeting would be changed from 1:30 P.M. on December 10, 1998, to 1:30 P.M. on December 3, 1998.

Representative Kruzan then asked the EQSC members to consider including all EQSC Subcommittee Reports in the "Summary of Work Program" section of the EQSC Final Report. He said the inclusion of these subcommittee reports would not indicate that the full EQSC endorsed any findings and recommendations included in the reports. He added that a disclaimer to that effect would be included in the Final Report.

After a brief discussion, the EQSC members voted unanimously (by voice vote) to include the EQSC Subcommittee Reports and the disclaimer in the 1998 EQSC Final Report.

Representative Kruzan then asked Representative Wolkins to present the report of the Underground Storage Tank Subcommittee.² Representative Wolkins stated the Subcommittee met to discuss issues related to the pending December 22, 1998, underground storage tank upgrade deadline imposed by the United States Environmental Protection Agency (EPA). He said two specific issues of interest were studied by the Subcommittee. He said the first issue was how IDEM intended to enforce

¹ A copy of the report 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.

² A copy of this report is on file with the Legislative Information Center (see footnote 1).

the deadline and the second issue was the possibility of expanding Senate Enrolled Act 158 from 1998 concerning the underground storage tank grant program to a small number of tank owners who, because of lack of information about the program, were not able to take advantage of any grants.

Representative Wolkins stated that, with regard to IDEM enforcement, the agency would be sending compliance affidavits to all registered tank owners. He said all registered tank owners would have to indicate on the affidavit how they have complied with the EPA tank upgrade requirements. He said IDEM has indicated that any tank owner who does not return the affidavit would be one of the first to be inspected for compliance. Representative Wolkins said that petroleum suppliers would rely upon these affidavits when delivering their products to tank owners.

Representative Wolkins also stated that IDEM will publish a nonrule policy document, which is included in the Subcommittee report, to provide the regulated community with guidance on how the agency will determine penalties for tank upgrade violations.

Representative Wolkins said the Subcommittee recommended that the EQSC continue to oversee and receive reports of IDEM's progress concerning underground storage tank upgrade requirements during the 1999 interim.

As for the second issue, Representative Wolkins recommended that the underground storage tank grant program established in SEA 158-1998 be expanded and funded to allow approximately eight to 12 tank owners who closed their tanks before the grant program took effect on July 1, 1998, to receive grants. He said these owners were not aware of the grant program and may have qualified for a grant had they waited until after July 1, 1998, to pull their tanks. He said since the average tank closure cost was \$10,000, it would take approximately \$100,000 more for these owners to obtain a grant.

In response to questions from Mr. Manders, Tim Method from IDEM indicated that the agency was prepared to enforce the December 22, 1998, deadline.

Mike Pitts, representing the Indiana Petroleum Marketers and Convenience Store Association, stated his industry wants to see the December 22 deadline enforced. He said IDEM's enforcement strategy was contingent upon IDEM "being out there" and following up on reports of noncompliance. He also said he hopes the EQSC will stay on top of the issue and monitor IDEM's enforcement.

In response to questions from Representative Kruzan, Representative Wolkins said the "regulated community and the regulators" eventually came to agreement on most issues by the final Subcommittee meeting. He said the regulated community would still like to know IDEM's "order of enforcement."

After a brief discussion, the EQSC members voted unanimously (by voice vote) to adopt the Underground Storage Tank Subcommittee Report and recommendations.

Representative Kruzan then asked Senator Adams to present the report of the Risk

Integrated System of Cleanups (RISC) Subcommittee.³ Senator Adams stated the Subcommittee met for a second time on October 29, 1998. He said IDEM updated the Subcommittee on the status of RISC development and agency plans leading up to RISC implementation. He said testimony from interested parties was also taken at the meeting. Senator Adams then asked Mr. Gobles to present the RISC Subcommittee recommendations to the EQSC.

Mr. Gobles said the RISC Subcommittee made the following recommendations:

- *A formal 90 day comment period should be established upon the issuance of the revised RISC Technical Manual and Draft User Guides.
- *A longer transitional period than three months should be considered for full implementation of RISC.
- *IDEM should identify outside interest parties to participate in its internal RISC groups to receive more diverse input.
- *At the conclusion of the implementation of RISC, IDEM should provide a report to the EQSC regarding the successes and failures of RISC.
- *RISC should be consistent with Indiana statutes.

After a brief discussion, the EQSC members voted unanimously (by voice vote) to adopt the RISC Subcommittee Report and recommendations.

Senator Gard, Chairperson of the Triennial Review and Audit Privilege Subcommittee, then stated that IDEM would present an Indiana audit privilege law update at the December EQSC meeting. Representative Kruzan then asked if there were any public comments concerning the triennial review of water quality recommendations that the Subcommittee presented at the October EQSC meeting.

The first person to testify was Scott Schutte, Senior Project Manager from the City of Indianapolis. Mr. Schutte said he was representing the Intermunicipal Task Force (ITF). He stated the ITF has reviewed the recommendations of the Triennial Review Subcommittee and agreed with the general concepts.

Mr. Schutte continued by stating IDEM must devote more time and effort toward collecting water quality data to enable the agency to make informed decisions. He said IDEM should use local knowledge and data to better evaluate the conditions of streams.

Mr. Schutte continued by saying legislation is needed that gives IDEM the authority to reasonably deal with wet weather situations, including the ability to have tiered permitting. Mr. Schutte also said wetland policy needs to be decided at the state level and the antidegradation policy needs to be improved.

Mr. Schutte continued by stating that the designation of a body of water as an

³ A copy of this report is on file with the Legislative Information Center (see footnote 1).

Outstanding Natural Resource Water should not be made without the approval of the General Assembly. He also said a technical advisory group should be formed to review the manner in which special designations are created and applied.

Mr. Schutte concluded by stating further study is needed to understand the interactions between sediment and the water column and that biocriteria should not be a standard that is used in permit requirements. Mr. Schutte then submitted a copy of his remarks to the EQSC.⁴

The next person to testify was Glenn Pratt. Mr. Pratt said IDEM needed the authority to issue tiered permits and legislation should be passed if necessary. Mr. Pratt also said there were numerous problems with cities separating combined sewer overflows. He said separating sewers can cause cities to have difficulties addressing urban runoff problems.

The next person to testify was Bill Hayden representing the Sierra Club. Mr. Hayden distributed a letter to the EQSC asking the EQSC to reject the recommendation of the Triennial Review Subcommittee that IDEM cease further action on its proposed Wetlands Water Quality Standards rules.⁵

Mr. Hayden indicated that the letter encourages the EQSC to urge the General Assembly to provide adequate state funding to both the Indiana Department of Natural Resources (DNR) and IDEM to carry out their roles and responsibilities related to wetlands conservation and protection. Mr. Hayden added that wetlands must be part of Indiana water quality standards. He also said water quality rules must include biocriteria.

Representative Kruzan then asked if there were public comments on any additional issues.

The first person to testify was Jeff Langbehn, Director of the Lake County Solid Waste Management District, representing all solid waste management districts in the state. Mr. Langbehn stated that more composting programs would help the state reduce the amount of solid waste disposed of in Indiana landfills by 50% before the 2001 target date.

Mr. Langbehn asked the EQSC to look into the possibility of "streamlining" the ability of private sector entities to receive grants from IDEM to develop these composting programs.

In response to questions from Mr. Fekete, Mr. Langbehn stated the authority for IDEM to provide these grants to private entities could not be found in any statute. Mr.

⁴ A copy of Mr. Schutte's remarks is on file with the Legislative Information Center (see footnote 1).

⁵ A copy of Mr. Hayden's letter is on file with the Legislative Information Center (see footnote 1).

Langbehn said he was aware that there was a problem with providing money to the private sector in that IDEM did not have the same ability to "keep track" of the money when it went to a private entity as opposed to a government entity.

Tom Neltner from IDEM agreed that a major issue concerning IDEM providing grants to private sector entities involved "due diligence." He also said IDEM would be concerned about possibly preempting the solid waste priorities of local governments and solid waste management districts. Mr. Neltner said IDEM could discuss this issue further at the December EQSC meeting.

In response to questions from Mr. Gobles, Mr. Langbehn said loans may not be as encouraging to small business people as "absolute grants" would be.

In response to questions from Mr. Manders, Mr. Langbehn said the creation of lien interests might help secure the state's interests under the terms of a grant. He said solid waste management districts would be willing to facilitate this approach to a grant program.

Louise Hawthorne, representing a "number of solid waste management districts," added that the genesis of the idea concerning composting facility development grant programs came from proposed legislation Representative Wolkins had drafted for the 1998 legislative session.

The next person to testify was Rae Schnapp from the Hoosier Environmental Council (HEC). Ms. Schnapp distributed a petition to the EQSC regarding the proposed IDEM reorganization.⁶

Ms. Schnapp said this IDEM reorganization would merge the Office of Environmental Response and the Office of Solid and Hazardous Waste Management into a new "Office of Land." She said this merger was not consistent with recommendations made by the IDEM Staffing Subcommittee and amounted to a "shell game."

Ms. Schnapp continued by stating she felt the merger would aggravate long standing staffing and management problems at IDEM and result in a decrease in IDEM efficiency and effectiveness. She asked the EQSC to encourage IDEM to delay a final decision on the merger and have the external analysis of IDEM staffing performed as recommended by the IDEM Staffing Subcommittee.

Tim Method from IDEM stated that the merger would allow IDEM to take the best advantage of its resources. He said the merger would allow IDEM to organize "functionally" rather than "programmatically." Mr. Method said that while the merger plans were moving ahead, IDEM would willing to sit down and talk to anybody about the merger and its effects.

⁶ A copy of the petition is on file with the Legislative Information Center (see footnote 1).

In response to questions from Mr. Gobles, Mr. Method said the plans for the new "Office of Land" should be in place by the end of the year.

Mr. Goodwin said that while IDEM staffing may not be adequate, it was better than DNR's Division of Reclamation. He said the EQSC should consider recommending that IDEM be given some oversight over the practice of power plants dumping ash in coal mines.

Mr. Goodwin said he had represented the HEC as an attorney in an action concerning this matter. He said the action resulted in the Natural Resources Commission (NRC) recognizing that more controls and regulation over this practice were needed. He said an administrative decision by the Natural Resources Commission asked for draft rules to be written to address this issue.

Mr. Goodwin said that a year and a half after the NRC made this administrative decision, the draft rules as written would actually weaken regulation of electric power plants dumping ash in coal mines. He said the process had been a "complete waste and a double cross."

Mr. Goodwin added some of this ash was coming in from outside Indiana. He said IDEM had to put back in this regulatory process somewhere.

Mr. Carnahan said he was "the complete opposite" of Mr. Goodwin on this matter. Mr. Carnahan said he thought this ash was already a permitted waste and "not quite as bad as we think."

Mr. Hayden said the draft rules gave the appearance of regulation without providing any substance. He said there was nothing in the draft rules that really regulates anything. Mr. Hayden added that the draft rule was not what the work group who drafted it was directed to do by the NRC. He concluded by saying he saw a "war over this" issue coming.

The next person to testify was Glenn Pratt. Mr. Pratt said he supported a resolution or legislation to address the issue of low flow in streams before it became a major problem during the next drought. Mr. Pratt also said he supported Rae Schnapp's comments concerning the IDEM reorganization.

In response to questions from Mr. Manders concerning pilot watershed quality committees, Tim Method from IDEM stated that the two year Wildcat Creek pilot program would conclude in June of 1999. Mr. Method said that at the end of this two year period, IDEM would have some experience with these programs to use in other areas of the state. However, Mr. Method said other groups could discuss these programs with IDEM before June of 1999.

Representative Kruzan adjourned the meeting at 3:24 P.M.