

NATURAL RESOURCES COMMISSION

Minutes - November 16, 1999

MEMBERS PRESENT

Michael J. Kiley, Chair
Larry Macklin, Secretary
John Goss
Damian Schmelz
Jane Ann Stautz
Jerry Miller
Steve Cecil
Joe Siener
Lori Kaplan

NATURAL RESOURCES COMMISSION STAFF PRESENT

Steve Lucas
Sylvia Wilcox
Jennifer Kane
Tawnya Whittington

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Paul Ehret	Executive Office
Carrie Doehrmann	Executive Office
Angie James	Executive Office
Brent Shike	Executive Office
Jerry Pagac	State Parks and Reservoirs
Gwen White	Soil Conservation
James Slutz	Oil and Gas
Mike Nickolaus	Oil and Gas
Deborah Lawrence	Special Projects

GUESTS

Myra Spicker	Office of the Attorney General
Nat Noland	
Don Mann	
Brian Wright	
Sean Griggs	
Ann McIver	IDEM
Barry Ledbetter	

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular monthly meeting of the Natural Resources Commission at 6:58 p.m., on November 16, 1999 in Newman Hall at Saint Meinrad Archabbey and Seminary, St. Meinrad. With the presence of nine members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of October 26, 1999. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Larry Macklin provided the Director's report. Macklin began by saying, "Let me extend our sincere thanks to Father Damian and to St. Meinrad for extending an invitation to be here." Regarding the new Indiana State Museum project, he said that a meeting in New York with Ralph Appelbaum and Associates went well and there is great progress being made on the exhibit designs. He also stated that meetings are continuing with the division directors. He said, "this is a good way to help us better understand how to better serve our constituents."

Director Macklin indicated the DNR received the balance of the \$10 million legislative appropriation of funds to restore several agency owned dams. He said there are 16 dams on the priority list, and many are "in dire need of work."

Director Macklin said he, Steve Lucas, and several staff members from DNR and IDEM participated last week in the Marine Sanitation Devices Workshop in Hammond. The Great Lakes Commission sponsored the workshop, and although largely focused on Lake Michigan, had a larger regional scope. The workshop brought together the affected States and Canadian Provinces to review the impact of waste discharges through Marine Sanitation Devices. Macklin thanked Steve Lucas for his work in this area and said Lucas was "a catalyst to this project."

Paul Ehret, Deputy Director for the Bureau of Resource Regulation, said the DNR's television pilot was shown to the advisory council and was very well accepted. The pilot has been prepared to be shown on Indiana Outdoors.

BUREAU OF LANDS AND CULTURAL RESOURCES PERMANENT APPOINTS AND PERSONNEL INTERVIEW

Personnel Interview for Property Manager IV at Wyandotte Caves

Steve Cecil presented this item. Cecil reported that he, Rick Cockrum and Terri Moore met to discuss the two applicants. He said, "as always, the highly qualified members made it tough for us to make a recommendation." He reported that after deliberations the Personnel Committee recommended Leland T. Webb as the Property Manager at Wyandotte Caves.

Jane Ann Stautz moved to approve Leland T. Webb as the Property Manager of the Wyandotte Caves. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

**BUREAU OF RESOURCE MANAGEMENT
DIVISION OF FISH AND WILDLIFE**

Consideration of a Request for a Water-line Easement across Bedford Public Access Site.

Paul Ehret, Deputy Director, presented this item. He reflected this is a request for a 16-foot wide easement to install an eight-inch water main. Ehret indicated the Division of Fish and Wildlife recommends the easement be granted and South Lawrence Utilities, Inc. pay the going rate for the easement.

Damian Schmelz moved to approve the request for an easement across Bedford Public Access Site. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF OIL AND GAS

Informational Item: Addressing Oil Spill Reporting and Clean-up

Mike Nickolaus of the Division of Oil and Gas presented this informational item. He said DNR is working very closely with IDEM to coordinate a draft rule. He reported that the need for a rule because Indiana was "speaking with two voices" when regulating oil and saltwater spills at oilfield sites. DNR and IDEM have, in the past, taken "independent and sometimes inconsistent actions" with respect to spills of oil and saltwater at oilfield sites. The rule would allow for effective definition of the lines of authority between DNR and IDEM.

After a lengthy negotiation including representatives from IDEM and DNR, common terms were agreed upon that would be consistent between DNR's rule and IDEM's existing rules. These common terms included things such as "facility," "waters of the state," and "oil." The discussion also focused on how spills needed to be reported, handled, contained, and removed.

There was also a discussion on "how clean is clean." A determination was needed when a cleanup process can be considered finished. Nickolaus said this discussion became a major sticking point between the two agencies. The agencies are now negotiating a cleanup standard for crude oil that is protective of human health, yet can be implemented at the field level by oil and gas operators.

Finally, the draft rule would establish the use of a cleanup approach known as bioremediation as the preferred method of cleaning up an oil spill. Nicklaus indicated that

bioremediation works by applying nutrients and organic amendments such as wood chips or mulch to the soil. These added nutrients accelerate the growth rate of the native oil-eating bacteria. The soil is then disked to work the nutrients into the soil and to introduce oxygen into the near subsurface. Oxygen is needed to promote the metabolic process of the bacteria in the soil. These bacteria actually eat the crude oil. In the process, the bacteria break down the oil into simple hydrocarbons that are less toxic than raw crude oil. The bacteria also excrete relatively non-harmful waste byproducts such as carbon dioxide, water, and fatty acids. To monitor this process, periodic samples are taken and analyzed.

Nicklaus said one advantage to the draft rule is that it would approve positive action to remove contaminants from the environment and it protects human health. The rule also would take advantage of the best available technologies to manage spills. Since bioremediation is conducted in place and materials are not transferred to landfills, landfill space is conserved. It is also much more cost effective. The cost of a cubic yard in a landfill approaches the cost of \$60, bioremediation can cost as little as \$25 per cubic yard.

Steve Cecil inquired as to what would be done with salt water. Nicklaus indicated that that is something different and would be dealt with in two phases.

Damian Schmelz asked what happened to the bacteria after the petroleum is gone. Nicklaus said these bacteria are always present in the soil. These bacteria feed on carbon and hydrogen where they can find it, breaking more complex molecules into less complex and less toxic molecules. After the petroleum is consumed, the numbers of this type of bacteria decrease.

DIVISION OF RECLAMATION

Informational Item: The Status of Hoosier Environmental Council v. DNR and Foertsch Construction Company; 7 Caddnar 162

Myra Spicker, Deputy Attorney General, presented this informational item. She prefaced her remarks by explaining that not every issue decided by the Administrative Law Judge and the Natural Resources Commission on administrative review were also argued on judicial review. Only two issues in front of the trial court.

Spicker said the first issue before the trial court dealt with the volume restriction to coal combustion waste. She reminded the Commission that the ALJ had developed a quantity restriction but the Commission changed the amount of the restriction during argument on objections. Initially, the Administrative Law Judge, set the restriction at one ton of CCW for every four tons of coal mined, a 1:4 ratio. Upon the motion of John Goss, the Commission had changed the restriction to reflect a 1:2 ratio. Spicker said the trial court found it was within the authority of the Commission to establish policy concerning the

CCW to coal ratio, particularly since the Commission's CCW guidance document did not previously address this issue.

The second issue presented to the trial court was the propriety of decisions by the Administrative Law Judge concerning the protection of groundwater. The trial court upheld the ALJ's determination in this regard.

John Goss asked how many other permits to authorize the disposal of coal combustion waste in surface coal mines had been challenged. Spicker said two other permits were taken on judicial review, but these were disposed on procedural grounds without considering the merits. A half dozen additional cases are pending on administrative review.

Chairman Kiley asked if any of the parties in Foertsch have filed motions to correct error directed to the trial court decision. Spicker responded that no one has has filed a motion to correct errors or initiated review by the Indiana Appeals Court. The time for appeal has expired.

Informational Item: Status of Rule Amendments to Govern the Disposal of Coal Combustion Waste in Surface Coal Mines (Including a Discussion of Incorporation of Groundwater Quality Standards from the Water Pollution Control Board); Administrative Cause Number 97-223R; LSA #98-133

Deborah Lawrence presented this informational item. Lawrence said she has had several conferences with the Attorney General's office, and based on those conferences, she must conclude the draft CCW disposal rule has fundamental problems. The draft given preliminary adoption by the Commission and published in the INDIANA REGISTER refers to IDEM's water quality standards, but the Water Pollution Control Board has not yet given these standards final adoption. Lawrence said she did not anticipate the WPCB could realistically give the standards final adoption within the time-period necessary to give final adoption to the CCW rules.

Lori Kaplan agreed that IDEM's water quality standards would not be in place soon enough for incorporation in the current proposal for the disposal of coal combustion waste. She said comments on the proposed water quality standards are currently being reviewed, and more work needs to be done before they can be finalized.

Lawrence outline five options that have been put forth concerning disposition of the proposed CCW rules:

Option 1: The rules could be finally adopted as presently written.

Option 2: The rules could be given final adoption with insertion of IDEM's proposed water quality rules.

Option 3: Finally adopt the rule with changes made to the portions of 310 IAC 16 that deal with ground water classification, ground water designations, and corrective action.

Option 4: Begin again and draft a new rule with IDEM's preliminary groundwater quality standards included.

Option 5: Finally adopt the CCW rules and refer to the general groundwater standards in Federal SMCRA rather than the IDEM standards.

Option 6: Discontinue CCW rule adoption until the Water Pollution Control Board gives final adoption to groundwater quality standards.

Lawrence indicated the problem with using Option 1 through 5 is that the rule is too vague, since the rule references water quality standards that are not yet in existence. Steve Cecil asked if the Commission was operating under a time limit. Carrie Doehrmann replied that there are time restrictions. If the Governor does not sign the rule by April 2000, the Commission must start again from the beginning.

John Goss asked whether permits for the disposal of CCW in coal mines were being held until this rule is approved. Paul Ehret said there are no new applications waiting to be approved, other than those already on administrative review. Ehret said he did not anticipate the DNR "being inundated with applications for disposal" even after the rule is approved.

Chairman Kiley opened the floor for public comment. He also explained the Commission would not hear arguments on final adoption of the rule because the current item was only for informational purposes.

J. Nathan Noland, President of the Indiana Coal Council, urged that the water quality standards in Federal SMCRA be cross-referenced in the CCW rule if IDEM's water quality standards cannot be approved in a timely fashion. He said the time has come, and this rule "needs to be adopted." Noland said that while he agreed with Ehret's statement the agency would "not be inundated" with new applications for the disposal of CCW in surface coal mines, he was aware of several companies wishing to file new applications. Noland said he had discouraged companies from filing new applications while the rule adoption process was ongoing and before regulatory certainty had been established. He encouraged the Commission to look seriously at Option 5, agreeing with Lawrence that Options 1 through 4 were probably not legally viable.

Steve Cecil asked if Option 5 might be a workable solution, since Federal SMCRA exists now, as opposed to IDEM's water quality standards that are still only preliminary. Lawrence agreed that Federal SMCRA exists, but she said incorporating its water quality standards still posed difficulties because Federal SMCRA has only general narrative language that assumes the existence of specific standards elsewhere. In Indiana, these specific standards do not exist.

Brian Wright, representing Hoosier Environmental Council, said his organization does not believe the proposed CCW rules can adequately protect groundwater if there are not groundwater standards in place. He presented handouts he said showed 61 cases of surface water contamination in proximity to CCW disposal sites, and he urged the Commission to be well-informed before making a decision.

Chairman Kiley asked if the handout regarding surface water contamination sites was brought to the CCW public hearings. Wright responded it was not, as the information was just recently compiled.

Sean Griggs, representing Indiana Electric Association, said he believed that Options 1 through 4 should be taken off the table. Griggs indicated that he believes that Options 5 and 6 were acceptable.

Jane Ann Stautz expressed the perspective that, if Option 5 is pursued, doing so will pose problems in the future.

Chairman Kiley said an executive decision needs to be made within the next 30 to 45 days as to whether the DNR wishes the Commission to consider the CCW rules, or any portion of them, for final adoption.

LEGAL PROCEEDINGS DIVISION OF HEARINGS

Consideration of Report of Hearing Officer, in the Matter of Recodification of Rules Governing Emergency Regulation of Surface Water Rights (from 310 IAC 6-3 to 312 IAC 11-6); Administrative Cause Number 99-097N; LSA #99-101

Jennifer Kane, Hearing Officer, introduced this item. She said the rule package is a recodification of the rules that protect surface rights of freshwater lake owners from adverse impacts of significant water withdrawal facilities. Kane said the proposed rule is a simple reorganization with no substantive changes. She recommended final adoption of 312 IAC 11-6, together with the repeal of 310 IAC 6-3.

Damian Schmelz moved to give final adoption to the recodification of the emergency regulation of surface rights at 312 IAC 11-6, which simultaneously repeals 310 IAC 6-3. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Consideration for Adoption of a Nonrule Policy Document Providing DNR Wetland Conservation Guidelines; Administrative Cause Number 99-093S

Gwen White, Aquatic Biologist for the Division of Soil Conservation, presented this item. She said wetlands are complex ecological systems that provide challenges to a complex regulatory context. White indicated opinions regarding wetland management

range widely in the general public and among agencies. No single entity in the DNR, or any other state agency, is responsible to wetland management. White indicated that several DNR divisions have responsibilities related to wetland management. Each division has a slightly different central mission related to wetland management.

White explained that Dave Herbst, former Deputy Director, identified a need for the DNR divisions to develop a written consensus regarding a unified departmental philosophy on appropriate wetland management strategies. Development of the document in 1995 was followed by creation of a statewide Wetland Conservation Plan. White reported that recent products of the Wetland Conservation Plan include development of a "Focus Area Sourcebook and Directory" and an "Outreach Presentation Guide" to assist local wetland conservation efforts. She also referenced the publication of proceedings from a regional conference on wetland assessment methods.

Chairman Kiley said, "This is a very important document. We appreciate your efforts." Damian Schmelz moved to approve the "Proposed Nonrule Policy Document to Provide Wetland Conservation Guidelines Within the DNR." Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

ADJOURNMENT

The meeting adjourned at 8:28 p.m.