



INDIANA ASSOCIATION for FLOODPLAIN and STORMWATER MANAGEMENT

Legislative Committee Report
March 5, 2019

Legislation:

House Bill 1266 – This bill introduced by Representative Miller deals with processing of permits for sediment and erosion control plans. It touches on processing times, introduces a preliminary review to the process, requires certain certifications and registrations for plan reviewers, limits stop-work-orders and notes an MS4 cannot impose requirements on projects not in the MS4 area. The bill has passed the House and will be heard in a Senate Committee on Monday March 11. INAFSM, along with other groups, is working to amend the bill so it is less confusing and will not hamper MS4 efforts to carry out their EPA and IDEM required permit activities.

House Bill 1531 – This bill introduced by Representative Ellington would limit County authority over timber harvesting and mineral extraction (sand and gravel) operations. Since mineral extraction operations can often fall within floodplains, this bill would have put counties in jeopardy of not meeting NFIP requirements to review and approve projects within floodplains. The bill did not get a hearing in the House.

Senate Bill 582 – To address the issues brought about by the recent Indiana Tax Court ruling on the Town of McCordsville stormwater fees. The bill would remove Tax Court jurisdiction over many fees established by statute, including stormwater fees. The bill passed the Senate very quickly and has widespread support.

House Bill 1406/Senate Bill 4 – These bills seek to enhance Indiana's collection of water use data, increase funding for water infrastructure, and will establish a study committee on agricultural and stormwater runoff.

Indiana Construction General Permit:

Rulemaking to implement the Indiana CGP has not yet been initiated. IDEM must still complete rulemaking to allow the general permit to take the place of the current administrative rule.

Indiana MS4 General Permit:

The third Advisory Group meeting for the Indiana MS4 General Permit was held on November 30, 2018. It is anticipated that at least one more Advisory Group meeting will be held. As previously noted, Lori Gates represents INAFSM in this advisory group and continues to provide INAFSM comments on the draft MS4 Permit to IDEM.

IDEM has decided that, due to the connectedness of issues between the permits, the CGP and the MS4 GP will go through the final approval process, with public notice and Environmental Board consideration, at the same time.

Waters of the United States:

On December 11, 2108 EPA and USACE finally, formally proposed new WOTUS language. As expected, the proposed rule and WOTUS definition is narrower than the 2015 rule and definition and would result in fewer streams and wetlands falling under federal jurisdiction. Public comments on the proposed rule will be accepted until April 15, 2019.

Indiana Tax Court Ruling on McCordsville Stormwater Fees:

On December 5, 2018 the Indiana Tax Court ruled that the Town of McCordsville's stormwater fees were in fact taxes and not user fees. This case may have serious implications for MS4's across the State of Indiana as most stormwater fees have been referred to and implemented as user fees and not taxes. See information above on Senate Bill 582 which seeks to remedy the issue via legislation.

Lake Michigan:

The U.S. Supreme Court in February refused to hear an appeal of the Indiana Supreme Court ruling that the State of Indiana, nor local property owners, owns the lakeshore up to the lake's high water mark.