



INDIANA ASSOCIATION for FLOODPLAIN and STORMWATER MANAGEMENT

Legislative Committee Report
May 8, 2019

Indiana Construction General Permit:

Rulemaking to implement the Indiana CGP has not yet been initiated. IDEM is in the process of rulemaking to allow the general permit to take the place of the current administrative rule, 327 IAC 15-5. The second comment period for the rule to allow the General Permit has closed but no public hearing date for the rulemaking has been set.

Indiana MS4 General Permit:

The expected last meeting of the Advisory Group for the Indiana MS4 General Permit has still not yet been scheduled. 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 that 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 were accepted until April 15, 2019 and nearly 9,000 comments were submitted to EPA.

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. The tax/fee portion of the ruling was upheld upon appeal. See information below on Senate Bill 582 which seeks to remedy the issue via legislation.

Lake Michigan:

As noted previously, 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.

Legislation:

Senate Bill 4 Storm Water Management Task Force:

The Storm Water Management Task Force (SWMTF) is established under Senate Enrolled Act 4 (Senate Bill 4) authored by senator Ed Charbonneau. The SWMTF is directed to "study issues related to storm water management systems" and submit a report of its findings and recommendations by December 1, 2019.

The naming of the SWMTF is an outgrowth from work of the 2018 Water Infrastructure Task Force that only had time to discuss drinking water and sanitary sewer matters and recommended that task force should be re-established to discuss stormwater and agricultural stormwater runoff.

Per the adopted legislation, the SWMTF consists of at least eleven (11) members:

Two (2) members of the Senate, one (1) from each party

Two (2) members of the House of Representatives, one (1) from each party

One (1) or more Governor appointees who are officers or employees of the State

One (1) or more Governor appointees who represent operators of storm water management systems

One (1) or more Governor appointees who are engineers or other professionals with expertise in design and construction of storm water management systems

One (1) or more Governor appointees who represent landowners and others who constitute the source of funding for storm water management systems

Two (2) Governor appointees who have expertise in agricultural storm water management

One (1) or more Governor appointees who are members of the general public and not described above

Senate Bill 582 User Fees:

Senate Bill 582, also authored by Senator Ed Charbonneau, generally establishes that rates, fees, charges established or fixed under the following statutes are specifically user fees:

- IC 8-1.5-3 (Municipally Owned Utilities)
- IC 8-1.5-4 (Departments of Waterworks)
- IC 8-1.5-5 (Departments of Storm Water Management)
- IC 13-21-13 and IC 13-21-14 (Solid Waste Management)
- IC 13-26-11 (Various Water and Sewer Rates and Charges)
- IC 14-33-5 (Conservancy Districts)
- IC 36-9-23 (Municipal Sewer Works)
- IC 36-9-25 (Sanitation Departments)
- IC 36-9-27 (Regulated Drains)
- IC 36-9-30 (Solid Waste)
- IC 36-9-31 (Solid Waste)
- IC 36-7-4-1311 (Planning/Zoning Impact Fees)

House Bill 1266 – Local Construction Plan Review

House Bill 1266 was authored by Representative Doug Miller and sponsored in the Senate by Senator Blake Doriot. Representative Miller is a home builder and Senator Doriot is a surveyor. The legislation has the following requirements for local/MS4's and local/MS4 plan reviewers:

- MS4's may not require erosion and sediment control measures more stringent than those required by Rule 5 of the future CGP.

- Plan reviewers must be a Trained Individual or someone working directly under a trained Individual. A Trained Individual is someone who is “trained and experienced in the principles of storm water management, including erosion and sediment control, as demonstrated by (1) the completion of course work; (2) state registration; (3) professional certification; or (4) annual training; that enables the individual to make judgments concerning storm water management, storm water treatment, and storm water monitoring. This requirement does not apply to anyone employed on July 1, 2019 as a stormwater plan reviewer. This requirement also does not apply to IDEM staff.
- Plan Review timing requirements for Large Construction Activity Sites (5 acres or more disturbed), and Small Construction Activity Sites (at least 1 acre disturbed but less than 5 acres disturbed): **Preliminary and/or conclusive determinations of project completeness** must be made for Large site projects within 14 days and for Small site projects within 10 days. If determined to be preliminarily complete, construction may begin within 48 hours and the NOI may be submitted to IDEM. Notification must be made as to preliminary and/or conclusive determinations within the stated timeframes or construction may begin.
- Very Small Construction Activity Sites (less than 1 acre disturbed) can still be regulated by an MS4. However, the required erosion and sediment control measures can be no more stringent than Rule 5 or CGP requirements and the review timing follows the Small Construction Activity Site guidelines.
- Stop Work Orders may only be issued after notice is provided and 72 hours have passed without resolution of the inadequacies included in the notification. Projects may be stopped immediately if a public health or safety hazard is created.
- The CGP must include language from the legislation on: the prohibition of local, more stringent sediment and erosion control construction measures on projects within an MS4; provisions on when construction work may begin; Trained Individual requirements, and; limitations on Stop Work Orders.

House Bill 1270 – Kankakee River Basin and Yellow River Basin Development Commission

This bill abolishes the existing Kankakee River Basin Commission and, in its place, forms the Kankakee River Basin and Yellow River Basin Development Commission. The new commission will have expanded and more flexible powers to undertake projects and raise monies. This reformation was supported by the existing participants on the current commission.