

MORGAN COUNTY DRAINAGE BOARD

*March 3, 2008
11:00 A.M.*

DRAINAGE BOARD MEMBERS PRESENT WERE: NORMAN VOYLES (Commissioner), JEFF QUYLE (Commissioner), BRIAN GOSS (Commissioner), TERRY BROCK (Surveyor), and PETE FOLEY (County Attorney).

RECONVENE

Pete Foley stated that Hydraulic Press Brick has requested variances regarding two different ordinances. The Stormwater Management Ordinance sets forth a specific variance procedure; first the variance request is sent to the Surveyor, if there is an adverse ruling, the applicant may appeal to the Drainage Board. The Mineral Extraction Ordinance does not state a variance procedure. It is a Commissioner ordinance and it is Mr. Foley's opinion that any variance request must come before the Board of Commissioners.

Norman Voyles called the Drainage Board meeting to order and reconvened the Board of Commissioners meeting.

HYDRAULIC PRESS BRICK

Pete Foley stated that Hydraulic Press Brick has requested a variance to submit a reclamation plan using DNR guidelines rather than IMAA guidelines as outlined in the Mineral Extraction Ordinance. They have also asked for a variance to change the hours of operation. The third variance request, under the provisions of the Stormwater Management Ordinance, must first go to the Surveyor's Office for consideration.

Duane O'Neal, legal counsel for Hydraulic Press Brick, presented photographs of the operation taken in 1988 and 1998. Mr. O'Neal stated that Hydraulic Press Brick (HPB) mines blue shale. They are under jurisdiction of DNR and IDEM. In 2007 HPB acquired an additional 31 acres, which is subject to the Mineral Extraction Ordinance. The process of mining blue shale and converting it to haydite requires a kiln process. The operations run 24 hours a day, seven day a week. The kilns are heated to 2300°F, which takes 24 hours to achieve. Shale storage is only enough for 18-24 hours of production. HPB mines daily because of the fast degrading properties of the shale due to weather elements and they have a special exception from the Town of Brooklyn and made a commitment not to mine from one hour after sunset to one hour before sunrise, except for 10 exceptions during the year. The hours of operation under the mining ordinance creates a cost burden for HPB.

Mr. O'Neal stated that the Mineral Extraction Ordinance requires IMAA guidelines for the reclamation plan; HPB submits their reclamation plan to DNR and would like only one oversight authority. Mr. O'Neal stated that IMAA guidelines are geared more towards sand and gravel operations and mentioned the following differences: setbacks are 50 feet, refers to state and federal permitting, allows for high walls after reclamation, post reclamation mapping, and post mining vegetation. Mr. O'Neal stated that annual sales are approximately \$10 million and adding the cost of double oversight would create significant problems to their ability to be a viable player in the market.

Mr. O'Neal stated that HPB is asking for a variance to the Stormwater Ordinance because the ordinance does not identify IMAA. The ordinance has a definition of a reclamation plan, but does not specify whose standards. HPB is asking that the DNR reclamation plan be recognized by the county as sufficient for both ordinances. Kevin Geier, DNR, stated that they regulate the mining of coal and shale in Indiana. DNR issues permits and HPB must post a reclamation bond. Mr. Geier stated that HPB has a reclamation plan on file and DNR has not had any enforcement or compliant issues with them. Jeff Quyle asked if any part of the site has been reclaimed. Mr. Geier stated that most of the site is still in the development phase. Mr. Geier stated that he inspects the site once a quarter and the inspections are on file in the Jasonville field office.

Mr. O'Neal introduced Judy Cleland, Cleland Environmental Engineering, Inc., who is the stormwater consultant for HPB. Ms. Cleland stated that they prepared a stormwater plan that was delivered Friday. She has reviewed the reclamation plan and some of the DNR requirements are more stringent than those imposed by IMAA. The biggest difference seems to be the sloping requirements; DNR requires 3 to 1 sloping and IMAA allows a vertical slope. HPB is looking into controlling the amount of flow that goes off the site and they are building a larger retention basin. Ms. Cleland stated that HPB is always looking for ways to better manage their stormwater

runoff, they follow the Rule 6 guidelines and report annually to IDEM. Ms. Cleland stated that it would be difficult, if not impossible, to meet the requirements in the Stormwater Management Ordinance due to land restrictions.

Mr. O'Neal stated that HPB is not asking for relief from the ordinance, they are asking that the Board recognize the existing scheme of governmental control as sufficient to protect the general welfare of the community.

John Schwarz, General Manager, stated that HPB has a \$13-14 million capital investment and makes contributions to the community.

Mr. O'Neal stated that the mining ordinance has a grandfather clause and there is a difference of opinion on whether the 31 acres of newly acquired property is the only property that is controlled by this ordinance. There is also a difference of opinion whether this is the only property controlled by the Stormwater Management Ordinance.

Bette Conway, Stormwater Coordinator, stated that Section 1-2-10 of the Stormwater Ordinance states that stormwater runoff, rates and volumes, soil erosion, and non-point source pollution must be reduced wherever practical from lands that were developed without stormwater management controls. Ms. Conway outlined the requirements of the Rule 6 guidelines and stated that she toured HPB with Allison Bynet, who heads the Rule 6 program. During that tour, Ms. Bynet stated that she had questions about some of the discharge sites and the amount of haydite and material leaving the site via ditches and streams would not be in compliance with the Rule 6 permit. Ms. Conway stated that there are some areas of the Stormwater Management Ordinance that are stricter than what IDEM requires.

Ms. Conway stated that the Surveyor's Office has received noise and dust complaints regarding the facility and while she can understand HPB's concern about shutting down their kilns and heating them back up, the noise and dust issue doesn't seem to be related to the ovens, but to the physical mining of the shale product.

Ms. Conway stated that Section 12 of the mineral extraction ordinance requires that a reclamation plan that is current with IMAA standards be submitted. Ms. Conway mentioned some of the requirements of the IMAA reclamation plan and mentioned her concerns in regard to sediment in the drainage areas leaving the site.

Tim Rodgers stated that Section 12 of the Mineral Extraction Ordinance allows for operation 24/7 except for several named holidays. If HPB is asking to operate under Section 12, then the only thing that needs to be addressed is the issue of the holidays. Mr. Rodgers stated he has copies of the required permits, with the exception of one that recently expired. The only thing that is missing in order for them to operate under Section 12 is a reclamation plan that meets or exceeds IMAA standards. Mr. Rodgers stated that he agrees that it would be difficult to be regulated by two governmental agencies with two different sets of standards. However, if there are two different standards, the most restrictive set of standards would apply. Mr. Rodgers stated that IMAA would review the reclamation plan and would decide if the plan meets standards for that type of operation. Mr. Rodgers stated that the Surveyor's Office received the packet of information submitted by Hydraulic Press Brick on Friday and he has not had a chance to review all of it; after reviewing the documents, this issue could be a moot point.

Pete Foley stated that on Friday, the application and plans were submitted, including a reclamation plan using DNR guidelines. The Surveyor's Office has not had a chance to review or comment on this plan. The variance request concerns the standard under which this plan will be Reviewed – IMAA or DNR. Mr. Foley stated that it is his opinion that it may be difficult for the Board to make an informed decision without having a fair comparison of what has been submitted and where the deficiencies lie. A variance is a case-by-case basis and the Board must have facts to evaluate. Mr. Foley asked that the staff submit a comparison and indicate what IMAA requirements are met or lacking.

Mr. O'Neal stated that they asked to appear before the Board because HPB had received a notice of violation from the Surveyor's Office and there was concern that they might be closed down on March 12th. Mr. Brock stated that the notice of violation was issued because HPB had not submitted the drainage plan and application, which was asked for several times.

Danny Miller, whose daughter is an adjoining property owner, stated that he did not have a problem with the kiln operating 24 hours a day, but did not think the digging and bulldozing

should be allowed 24 hours a day. Mr. Miller stated that the shale makes a lot of dust and he can hear the operation a mile away.

Brian Goss made a motion to table the issue until April 7, 2008. Seconded by Jeff Quyle. Motion carried 3-0.

AMENDMENT – STORMWATER MANAGEMENT ORDINANCE

Jeff Quyle made a motion to approve the amendment to the Stormwater Management Ordinance as discussed in the Commissioner meeting. Seconded by Brian Goss. Motion carried 3-0.

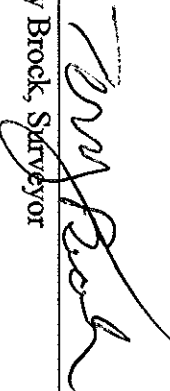
MINUTES


Brian Goss made a motion to approve the December 3, 2007 and January 7, 2008 minutes. Seconded by Jeff Quyle. Motion carried 3-0.

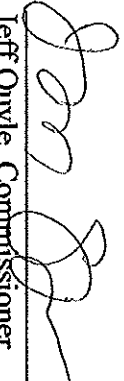
ADJOURNMENT

Jeff Quyle made a motion to adjourn the Drainage Board and Commissioner meeting. Seconded by Brian Goss. Motion carried 3-0.

MORGAN COUNTY DRAINAGE BOARD


Terry Brock, Surveyor


Norman Voyles, Commissioner


Jeff Quyle, Commissioner


Brian Goss, Commissioner

ATTEST:


Brenda Adams, Morgan County Auditor