

**MORGAN COUNTY DRAINAGE BOARD**

*May 5, 2008  
11:00 A.M.*

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

**PETITION FOR REMOVAL OF OBSTRUCTION**

Terry Brock stated that this petition regards an obstruction in the Eminence area off of SR 142. Woody Cheek filed the petition last year, the surveyor's office investigated the complaint and tried to serve Mr. Gash notice to remove the obstruction several times. All notices were refused so they had the Sheriff's Department deliver the notice, but they have not received a response.

Woodson "Woody" Cheek, 9813 W SR 142, Quincy IN, stated that Mr. Gash dammed the natural waterway last June and when it rains he has a large pond on his property. Mr. Cheek stated that the ditch has been there "since time began" and he did not know why Mr. Gash decided to fill it in. Mr. Gash was not present. Mr. Brock showed pictures of the area and presented his findings as follows: 36-9-27.4-3 It is a natural surface watercourse, 36-9-27.4-4 The watercourse is obstructed, 36-9-27.4-15 The obstruction was created intentionally. Jeff Quyle made a motion to find that this is a natural surface watercourse. Seconded by Brian Goss. Motion carried 3-0. Brian Goss made a motion to find that the watercourse is obstructed. Seconded by Jeff Quyle. Motion carried 3-0. Jeff Quyle made a motion to find that the obstruction was created intentionally. Seconded by Brian Goss. Motion carried 3-0. Brian Goss stated that it would probably be best to have the Sheriff's Department deliver the letter since other methods of delivery have not been accepted. Pete Foley stated that he would draft the letter instructing Mr. Gash to remove the obstruction within 30 days. Jeff Quyle made a motion to authorize Norman Voyles to sign the letter to be delivered to Mr. Gash. Seconded by Brian Goss. Motion carried 3-0.

**HYDRAULIC PRESS BRICK**

Terry Brock stated that this issue is a continuation from March. Pete Foley stated that there are two holdover issues; the variance requests for hours of operation and the reclamation plan standards. There is also a new issue regarding a letter Hydraulic Press Brick (HPB) sent requesting a variance from the Stormwater Maintenance Ordinance asserting that the regulations provided under Rule 6 through the state agencies are sufficient and they would like to be entirely exempt from the ordinance. Mr. Foley stated that the hours of operation request is under the Mineral Extraction Ordinance; the reclamation request is under the Mineral Extraction and Drainage Ordinance. Norman Voyles suggested starting with the holdover issues first. Mr. Foley stated that the Surveyor's Office was to put together a comparison of the reclamation plan requirements for IMAA and DNR.

Dana Lynn, an adjoining property owner, asked if these requirements were available online so that she could review them. Bette Conway, Morgan County Surveyor's Office, stated that the IMAA has a website and she would give her that information after the meeting.

Ms. Conway prepared a memorandum comparing the IMAA and DNR standards that refer to the reclamation plans. Ms. Conway read the summary of the memorandum: "... it was determined that the current submittal does not meet the requirements of an IMAA reclamation plan; several deficiencies were noted with regards to IMAA standards, most importantly, the fact that the DNR reclamation plan as submitted does not seem to contain/require the operator to show plans for final reclamation in a mapped comprehensive format. If the operator wishes to benefit from the exemptions available to them under Section 12 of the Mineral Extraction Ordinance, then a reclamation plan should be submitted that would meet/exceed the standards of the IMAA, which is a self-governing private industry body that serves to represent HPB's and other mining entities interests. An IMAA Technical Advisory Committee (TAC) representative has indicated that they are familiar with the DNR Division of Reclamation requirements for shale facilities, as well as HPB's current approved plan, and that they would not approve this or any plan prepared to meet only DNR's requirements." Ms. Conway stated that the submitted plan is not sufficient to allow her to determine the impact to adjoining watersheds, and does not give a clear understanding of what the post mining reclamation would look like.

Duane O'Neal, attorney for HPB, stated that the Mineral Extraction Ordinance and Stormwater Ordinance apply only to the 31 acres that was newly acquired by HPB. Mr. O'Neal stated that

DNR and IDEM will always have oversight and they would like to avoid adding the oversight of the county because they feel there will be differences of interpretation that will put them in an awkward position. HPB has asked to substitute the DNR plan because they feel it achieves the same goal, to have the property reclaimed at the end of the day. Mr. O'Neal stated that shale mining is similar to coal mining and they are governed by IDEM and DNR requirements. Mr. O'Neal asked that the Response to Morgan County Surveyor's Office be entered into the record. Mr. O'Neal asked that the DNR reclamation plan be substituted for the IMAA / Mineral Extraction Ordinance reclamation plan. When asked if the ordinance would apply to the whole 120 acre site or just the newly acquired 31 acres, Ms. Conway responded that the Mineral Extraction Ordinance, Section 1, states that "Any existing earth movement or removal site in operation at the effective date of this ordinance which does not comply with these operational requirements shall be grandfathered with regard to such deficiencies, except there shall be no grandfathered rights regarding the duty to control dust under the dust control plan and the hours of operation provisions under the noise minimization plan. The grandfathered provisions of this subsection shall only apply to existing operations in current use, any expansion of an existing area must be treated as a new application and all provisions of the ordinance apply." Ms. Conway stated that the Stormwater Ordinance also requires a reclamation plan. Pete Foley stated that the Mineral Extraction Ordinance exempts the existing site, but the Stormwater Maintenance Ordinance reclamation plan requirement applies to both the existing and new area (Section 1.3). Duane O'Neal asked if Mr. Foley would review 1.2.10 of the Stormwater Ordinance. Mr. Foley read the section regarding 14 objectives of the ordinance. Mr. O'Neal stated that HPB is regulated by IDEM Rule 6. Bette Conway stated that HPB is in violation of IDEM Rule 6 and read the violation letter. Mark Thacker, Director of Operations, stated that they have addressed the issues that were in violation and it is his understanding that the state is comfortable with their operation. Ms. Conway presented a letter written to the Drainage Board, addressing HPB's variance requests. Mr. O'Neal stated that the county's ordinances would be in addition to regulations already imposed upon them and this would be a burden for the facility. It would be difficult to map out a reclamation plan because there are no permanently inactive areas. A discussion followed regarding mining operations and overburden ratios. Mr. O'Neal stated that HPB has approximately 15 feet of overburden and a 60 to 70-foot seam of shale. Mr. O'Neal stated that he would like time to respond to Ms. Conway's letter, but would need time to do that. Norman Voyles stated that he did not know if he would be able to make an informed decision regarding the variance requests without looking at the site. Mr. O'Neal stated that they would welcome the Board and thought that this was a great idea. Pete Foley stated that this is a complicated, technical issue and some of the issues are intertwined.

Dana Lynn requested that she be allowed to respond in writing to some of the comments. Mr. Voyles stated that she could submit her response to the Surveyor's Office.

A discussion followed regarding a site visit date. Ms. Conway reminded the Board that this issue initiated in November 2007 when HPB began operating in the new area without a permit and they were given 60 days to respond to the review.

Jeff Quyle made a motion to table the Stormwater and Mineral Extraction Ordinance issues regarding Hydraulic Press Brick until the Drainage Board has made a site visit on Wednesday, May 21, 2008 at 8 a.m. Seconded by Brian Goss. Motion carried 3-0.

Pete Foley stated that the next regularly scheduled Drainage Board meeting will be rescheduled, but the date has not been set. Mr. Foley stated that the date for the next meeting will be set at the next Commissioner's meeting, May 19<sup>th</sup> and HPB will be notified.

#### MINUTES

Jeff Quyle made a motion to approve the March 3, 2008 minutes. Seconded by Brian Goss. Motion carried 3-0.

#### STORMWATER COORDINATOR / MINERAL EXTRACTION UPDATE

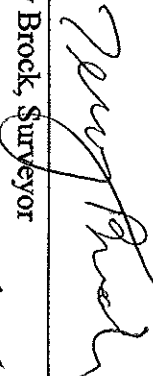
Bette Conway stated that it has been a busy spring; they have had several permit reviews, erosion control issues, and have issued several stop work orders. Ms. Conway stated that there has been improvement at the Sand Creek development, but the order will not be lifted until all items in the inspection report have been addressed. Terry Brock stated that the cleaning of Sartor Ditch will be complete this week and he drove by Jewell Hurt's residence, where they had a drainage issue a year ago, and it looks great. Ms. Conway stated that IDEM gave her an overview of the requirements for the MS4 evaluation and the permit is due in September. Norman Voyles stated that the sidewalk next to Sartor Ditch on Columbus Street has collapsed and it looks like the


water is going beside the culvert. Mr. Brock stated that this area was cleaned earlier and he would check on it.

ADJOURNMENT


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

MORGAN COUNTY DRAINAGE BOARD


  
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Terry Brock, Surveyor

  
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Norman Voyles, Commissioner

  
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Jeff Quyle, Commissioner

  
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Brian Goss, Commissioner

ATTEST:

  
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Brenda Adams, Morgan County Auditor