

The City had an owner of property in our industrial park submitting plans for approval for the development of a building that required asphalt driveway and a retention pond.

During the review it was determined the retention pond was located within the 200' feet set back of our Kercher well field.

On June 13, 2007 the city's mayor, Allan Kauffman and utility engineer, Dustin Sailor contacted Jim Sullivan with IDEM requesting clarification of the MS-4 Rule 13.

IDEM responded by stating the land could be developed and the retention pond would be allowed as long as the developer utilized appropriate per-treatment measures. The measures included but not limited to artificial filter systems, regulated filter, wet land cells and hydrodynamic separators.

The developer was contacted and informed of the requirements and choose not to develop this site.

Sailor, Dustin

From: Kauffman, Allan
Sent: Wednesday, June 13, 2007 5:23 PM
To: 'JSULLIVA@idem.IN.gov'; 'RBRAUN@idem.IN.gov'
Cc: Sailor, Dustin; mayleswo@idem.IN.gov; McCoige, Bob; Marks, Shannon; 'David Daugherty'; 'bgarrett@iedc.in.gov'
Subject: FW: Goshen Engineering - IDEM Discussion

Dear Mr. Sullivan:

Dustin Sailor forwarded your e-mail below to me. How does your instruction dovetail with IC13-18-17-6 which states "The Indiana Wellhead Protection Rule, or any zoning under IC 36-7 to establish protection zones around community water system wells, *may not restrict* any activity by an owner of land, a mineral owner, or a mineral leaseholder of record *unless the owner or leaseholder is sent written notice* of, and has an opportunity to be heard on, the establishment of the zone and the construction of the community water supply system that caused the establishment of the zone"? City of Goshen has not mailed notice to landowners in wellhead protection zones yet. While the protection zones are identified, they are not yet established in a local ordinance. There is a sold project in local industrial park to a California company that, except for city's recent knowledge of "no infiltration practices" statute, would already be under construction using same stormwater regulations as has been applied to other recent projects in the wellhead zone before we became aware of "no infiltration practices" language. It would appear to me that IC13-18-17-6 allows local community the flexibility of applying same standards to this project.

Developer and company wanting to create jobs are understandably upset. In this particular case, City has informed developer that he must line the stormwater retention area to prevent any percolation. Developer did not anticipate this added cost when selling the project. Stormwater system in this industrial park was not adequately designed in 1960 for the area it was to serve. Factories are already being flooded during heavy rain events. Allowing new development to drain to the storm system will only make current flooding worse. Plans are being drawn to improve the system, but that will not happen immediately.

Shall we proceed without requirement to line the retention pond? Your timely response will be appreciated.

Allan Kauffman
Mayor of Goshen

Sailor, Dustin

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From: Sailor, Dustin
Sent: Monday, June 18, 2007 7:26 AM
To: Kauffman, Allan
Subject: RE: Goshen Engineering - IDEM Discussion

Mayor:

Yes, it would appear the my interpretation of Rule 13 was correct; however, I need to talk with Larry because I'm confused by the rule/non-rule issue. I will continue to work on getting a cost for a liner for Eisenhower Drive development.

Regards,

Dustin K. Sailor, P.E.
Administrative City Engineer
City of Goshen Engineering Department
204 E. Jefferson Street, Suite 1
Goshen, IN 46528
Tele: (574) 537-3814
Fax: (574) 533-8626

From: Kauffman, Allan
Sent: Friday, June 15, 2007 7:11 PM
To: Sailor, Dustin
Cc: 'David Daugherty'; McCoige, Bob
Subject: FW: Goshen Engineering - IDEM Discussion

Dustin: For what it's worth, at least IDEM responded. But unless I mis-read it, it does not appear to say it's o.k. to do retention/infiltration in wellhead protection zone same as it has been done in the past. Your original interpretation seems consistent with what IDEM is saying. Is that the way you read it? Allan

From: SULLIVAN, JAMES [mailto:JSULLIVA@idem.IN.gov]
Sent: Friday, June 15, 2007 1:49 PM
To: Kauffman, Allan; BRAUN, RANDY
Cc: Sailor, Dustin; AYLESWORTH, MICHAEL; McCoige, Bob; Marks, Shannon; David Daugherty; Garrett, Barkley; NIXON, JOHN; CARROLL, PAT; FLUM, SANDRA
Subject: RE: Goshen Engineering - IDEM Discussion

Mayor Kauffman,

Thank you for your patience regarding our response to you addressing your Wellhead Protection and Rule 13/MS-4 storm water concerns. This response is a bit lengthy, but I hope we convey our response in a way that it addresses your questions and concerns.

Our legal council has reviewed your question regarding IC 13-18-17-6 and how they might apply to Rule 13/MS-4 storm water issues, and has stated the following:

IC 13-18-17-6 provides that rules adopted by the Water Pollution Control Board to establish protection zones around community water system wells may not restrict any activity by a land owner, mineral owner, or mineral leaseholder of record. The Wellhead Protection Rule, 327 IAC 8-4.1, indeed, does not restrict any such activity. The MS4 Stormwater Rule, 327 IAC 15-13, may restrict certain activities. However, there is no statutory provision preventing the MS4 Rule

from making those restrictions. Any restrictions or modifications to proposed activities suggested by IDEM are based on implementing the MS4 Rule, and do not arise from IDEM's enforcing the provisions of the Wellhead Protection Rule.

Regarding your questions as to how to proceed with meeting Rule 13 requirements:

The Rule allows MS4s to choose from a variety of storm water quality measures, including any combination of storage, infiltration, filters, or vegetative measures that will reduce the impact of pollutants in storm water run-off to receiving waters (327 IAC 15-13-16 (c)). However, the Rule restricts the use of infiltration measures in wellhead protection areas (327 IAC 15-13-16 (c) (1)). Based on this language, the infiltration measure may be allowed provided it is not used for the treatment of pollutants. The infiltration basin may still be used to control storm water quantity. The pollutants that will be associated with runoff from the proposed land use should utilize appropriate pre-treatment measures that target the pollutants that are inherent to the final land use. These measures include, but are not limited to artificial filter systems, vegetated filters, wetland cells, and hydrodynamic separators. The type of measure that is selected should be based on the projected pollutants and include an operation and maintenance plan.

Regarding your questions regarding the geology and hydrogeology of your area:

We understand your questions regarding the complexities of how water flows be it to a stream/lake or migrating down to ground water. The movement of water once it percolates into the soil is a complex science. A number of factors come into play when trying to determine the direction water might take as it infiltrates the soil. Within your wellhead protection area a large percentage of the water infiltrating near the surface will find its way down into your aquifer serving your community wells. The other major pathways would include uptake of water by plants in the vegetative zone and ground water migrating to streams/rivers near your wellfield.

Indiana's Wellhead Protection Program was developed with communities like Goshen, Elkhart and South Bend in mind. Your area of the state is considered highly vulnerable to the potential of contamination reaching the ground water due to the abundance of sands gravels without much of a barrier of clay confining the migration of fluids downward to the aquifer. Your area has also been designated by EPA as a Sole Source Aquifer, named the St. Joseph Aquifer System. Goshen, Elkhart and South Bend all are within the limits defined within the St. Joseph Aquifer System. EPA defines a sole source aquifer as supplying at least 50% of the drinking water consumed in the area by the aquifer and an area may not have an alternative drinking water source(s) that could physically, legally and economically supply those that depend on the aquifer for drinking water. Taking an active role in protection of water resources in your area is a valuable pursuit.

Please contact us if you have any further questions or concerns and IDEM staff will assist you. The primary contacts for this issue are Randy Braun, Storm Water Program Manager (317-234-3980), and myself at (317)-308-3388.

Thanks again, and we look forward to working with you on a feasible solution.

Jim

James Sullivan, Chief
Ground Water Section
IDEM
317/308-3388
317/308-3340 fax

From: Kauffman, Allan [mailto:allankauffman@goshencity.com]
Sent: Thursday, June 14, 2007 5:19 PM
To: SULLIVAN, JAMES; BRAUN, RANDY
Cc: Sailor, Dustin; AYLESWORTH, MICHAEL; McCoige, Bob; Marks, Shannon; David Daugherty; Garrett, Barkley; NIXON, JOHN; CARROLL, PAT; FLUM, SANDRA
Subject: RE: Goshen Engineering - IDEM Discussion

Mr. Sullivan: I stand corrected. Our engineering department says the Great Lakes aquifer from which Goshen draws drinking water is 150' deep, not 400'. Sorry about my mistake. Allan Kauffman

From: SULLIVAN, JAMES [mailto:JSULLIVA@idem.IN.gov]
Sent: Thursday, June 14, 2007 10:26 AM
To: Kauffman, Allan; BRAUN, RANDY
Cc: Sailor, Dustin; AYLESWORTH, MICHAEL; McColge, Bob; Marks, Shannon; David Daugherty; Garrett, Barkley; NIXON, JOHN; CARROLL, PAT; FLUM, SANDRA
Subject: RE: Goshen Engineering - IDEM Discussion

Mayor Kauffman,

I have forwarded your question to our legal council for his attention. I believe IC 13-18-17-6 refers to board powers given to Water Pollution Control Board's ability to adopt rules establishing protection zones around community water systems...basically Indiana's Wellhead Protection Rule (327 IAC 4.1). The Wellhead Protection Rule does include the establishment of protection zones (wellhead protection areas). The Wellhead Protection Rule (327 IAC 4.1) did not incorporate any zoning restrictions. I know at issue is the Rule 13/ MS4 community restricted use of infiltration measures in wellhead protection areas (327 IAC 15-13-16 (c) (1)), but I don't know if or how IC 13-18-17-6 would apply. That's the question I've referred out our legal council to explain. Once I get an answer I'll forward it onto you...

We intend to continue to work with you on a feasible solution to your stormwater issue that is protective of your future drinking water resources and your planned development.

Thanks
Jim

James Sullivan, Chief
Ground Water Section
IDEM
317/308-3388
317/308-3340 fax

From: Kauffman, Allan [mailto:allankauffman@goshencity.com]
Sent: Wednesday, June 13, 2007 5:23 PM
To: SULLIVAN, JAMES; BRAUN, RANDY
Cc: Sailor, Dustin; AYLESWORTH, MICHAEL; McColge, Bob; Marks, Shannon; David Daugherty; Garrett, Barkley
Subject: FW: Goshen Engineering - IDEM Discussion

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Mayor of Goshen

From: Sailor, Dustin
Sent: Wednesday, June 13, 2007 4:19 PM
To: Kauffman, Allan; McCoige, Bob
Subject: Goshen Engineering - IDEM Discussion

Mayor:

As requested the forwarded e-mail below.

Regards,

Dustin K. Sailor, P.E.
Administrative City Engineer
City of Goshen Engineering Department
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From: SULLIVAN, JAMES [mailto:JSULLIVA@idem.IN.gov]
Sent: Wednesday, June 13, 2007 10:08 AM
To: Sailor, Dustin
Subject: discussion

Rule 13 requires local MS4s to develop a program to address pollutants that are associated with post construction runoff. The Rule allows MS4s to choose from a variety of storm water quality measures, including any combination of storage, infiltration, filters, or vegetative measures that will reduce the impact of pollutants in storm water run-off to receiving waters (327 IAC 15-13-16 (c)). However, the Rule restricts the use of infiltration measures in wellhead protection areas (327 IAC 15-13-16 (c) (1)). Based on this language, the infiltration measure may be allowed provided it is not used for the treatment of pollutants. The infiltration basin may still be used to control storm water quantity. The pollutants that will be associated with runoff from the proposed land use should utilize appropriate pre-treatment measures that target the pollutants that are inherent to the final land use. These measures include, but are not limited to artificial filter systems, vegetated filters, wetland cells, and hydrodynamic separators. The type of measure that is selected should be based on the projected pollutants and include an operation and maintenance plan. It is suggested that measures should be coordinated with those responsible for the implementation of Goshen's Wellhead Protection Plan (WHPP, Phase II). Likewise, local efforts to reduce the potential of impacts of pollutants to ground water resources should be noted within Goshen's Wellhead Protection Plan for future reporting purposes (Goshen's WHPP, Phase II reporting is due to IDEM on October 27, 2010).

IDEM staff is available to assist the city as they begin to evaluate their options. The primary contacts for this issue are Jim Sullivan, Groundwater Section Chief (317-308-3388) and Randy Braun, Storm water Program Manager (317-234-3980).

Randy J. Braun, CPESC

Storm Water Program Manager

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