

SECTION 1.3

BACKGROUND

The publication and distribution of the Indiana Drainage Handbook is one of the major recommendations of a 1994 legislatively-created task force which examined issues related to permitting of drainage improvement projects in Indiana. The following is a summary of major events leading to the initiation of this handbook.

1994 Legislative Session: During the 1994 Legislative Session, Senate Bill (SB) 321 was introduced. This bill would have generally stripped the Indiana Department of Natural Resources (IDNR) and the Indiana Department of Environmental Management (IDEM) of regulatory overview of County Regulated Drain projects. SB 321 was eventually set aside and a temporary compromise was reached: Senate Concurrent Resolution (SCR) 38. SCR 38 urged that an interim study committee task force be established to examine state and local laws regarding drainage and make recommendations back to the legislators. This interim study committee formally became the Drainage Task Force.

Drainage Task Force: Working through the Water Resource Study Committee (WRSC), the Drainage Task Force began meeting in June of 1994. The Task Force was comprised of representatives of county surveyors, state and federal regulatory agencies, agricultural interest groups, and environmental interest groups. The task force met through the month of September 1994 and grappled with many issues, including: permit processing time and conditions, wetland definitions, property rights, agency coordination, and consistency between the agencies, just to name a few. A final report dated October 3, 1994 was presented to the WRSC on December 15, 1994. A copy of this report is provided as Appendix "B".

Task Force Recommendations: The Final Report of the Drainage Task Force was presented to the WRSC on December 15, 1994 with eight recommendations: (Although not specifically pointed out in the Task Force Report, references to the "permitting agencies" were made in the recommendations with the understanding that the Indiana General Assembly did not have control over Federal permitting agencies and could therefore only "encourage" rather than "require" these agencies to take certain actions.)

1. A Memorandum of Understanding (MOU) should be developed between county surveyors/drainage boards, IDNR, IDEM and if possible the U.S. Army Corps of Engineers (COE) and the U.S. Fish and Wildlife Service (USFWS) to allow early coordination through consultations and on-site visits conducted prior to formal permit application.
2. Permitting agencies should be required to consider each project on the basis of its own merits. Agencies should evaluate the potential positive and negative cumulative impacts of both implementing and not implementing a project.
3. A small technical work group should be created to develop a manual of technical and administrative measures related to drainage projects.
4. Permitting agencies should work with permittees to establish procedures allowing for two-phase permitting of projects:
 - Phase A: Formal permit procedure (similar to current process).

- Phase B: After final inspection, all **maintenance** activities would be under the control of the permittee.
5. State regulatory agencies should work with county surveyors/drainage boards to devise a regulated drain classification system.
 6. If it is determined that amelioration of environmental impacts results in an environmental "enhancement" beneficial to persons outside the project area, then the costs of the enhancement should be borne by the environmentally-benefited public at large.
 7. Efforts to provide wetland delineator training should be encouraged and supported.
 8. Agencies should develop a consistent policy for wetland mitigation with respect to impacts arising from land improvement, particularly with respect to drainage maintenance and reconstruction activities in Indiana.

At its December 15, 1994 meeting, the WRSC specifically endorsed Recommendation No. 3 through Preliminary Draft (PD) 3912.

1995 Legislative Session: During the 1995 Legislative Session, two separate measures were introduced that dealt with county surveyor/drainage boards and the state regulatory agencies. These measures were Senate Enrolled Act (SEA) 303 and SEA 368. SEA 368 was a rebirth of SB 321 and sought to exclude drainage board projects from IDNR and IDEM regulatory oversight. Through the hearings regarding this act, SEA 368 was modified into a formal early coordination process for county drainage board projects and mandated certain responses from the state regulatory agencies. The final version of SEA 368 also, under certain conditions, prohibited IDNR from requiring specific conditions on county drainage board project applications.

SEA 303 was the formal legislative version of PD 3912 which would create a work group authorized to produce the recommended handbook. After much discussion and debate, SEA 303 was passed by both chambers of the legislature and signed into law. SEA 303 mandated the creation of a "work group to develop a technical and administrative handbook for drainage projects." A copy of the act is included as Appendix "C".

Work Group: The 11-member work group created by SEA 303 included four (4) representatives from county surveyors and drainage boards (appointed by the governor), one (1) representative from an environmental organization (appointed by the governor), one (1) representative from an agricultural organization (appointed by the governor), and one (1) representative from each of the following agencies: IDEM, IDNR, COE, USFWS, and the Natural Resource Conservation Service (NRCS). A list of the members is provided in Appendix "D". As specified in SEA 303, the work group would be directed by an individual contracted by the IDNR who will facilitate the work group, write/edit the handbook, conduct public meetings, and issue reports. In late November, 1995, IDNR selected Christopher B. Burke Engineering, Ltd. (CBBEL) to put together the Indiana Drainage Handbook with the help of the work group.

Legislatively-mandated Topics to be Discussed in the Indiana Drainage Handbook: As stated in SEA 303, the handbook is to include, at least:

1. Technical descriptions of drainage project construction techniques.
2. Best Management Practices (BMPs) for drainage projects.
3. Explanations of agency permitting processes and procedures.
4. Addresses and telephone numbers of agency employees who are responsible for permitting.
5. Descriptions of compensatory measures for unavoidable environmental damage.
6. Descriptions of projects that are exempt from state or federal regulation.
7. A description of the process that allows clear and timely access by applicants to supervisors in agencies.
8. Any other information the work group considers necessary.