

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
JULY 15, 2014

IOWA DEPARTMENT OF NATURAL RESOURCES
7900 HICKMAN ROAD
WINDSOR HEIGHTS, IOWA

RECORD COPY

Filename: ADM 1-1-1
Sender's initial: _____

TABLE OF CONTENTS

Call to Order	2
Commissioners Present.....	2
Commissioners Absent	2
Adoption of Agenda	2
Approval of Minutes.....	2
APPROVED AS PRESENTED	2
Directors Remarks	2
INFORMATION.....	3
Contract with Iowa State University for Risk-based Corrective Action (RBCA) Modeling Software Upgrade.....	3
APPROVED AS PRESENTED	4
Cooperative Agreement with Iowa Comprehensive Petroleum UST Fund Board for Funding Risk-based Corrective Action (RBCA) Modeling Software Upgrade	5
APPROVED AS PRESENTED	5
Final Rules – Chapters 22 and 23–Best Management Practices for Grain Elevators and Adoption of Federal Air Toxics Standards	6
APPROVED AS PRESENTED	7
Public Comment	7
Executive Order 80 (EO 80) Stakeholder Group Recommendation on Topsoil Preservation Requirements in Storm Water Construction General Permit no. 2	10
INFORMATION.....	11
Monthly Reports	12
INFORMATION.....	12
General Discussion	12

MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Mary Boote at 10:05 a.m. on July 15, 2014 in the DNR Hickman facility in Windsor Heights, Iowa.

COMMISSIONERS PRESENT

Mary Boote, Chair
Nancy Couser, Secretary
Cindy Greiman
LaQuanda Hoskins
Chad Ingels
Bob Sinclair
Max Smith, Vice-Chair
Gene Ver Steeg

COMMISSIONERS ABSENT

Brent Rastetter

ADOPTION OF AGENDA

Chairperson Mary Boote entertained additions or corrections to the agenda. Seeing none, she accepted the agenda as presented.

APPROVAL OF MINUTES

Motion was made by Chad Ingels to approve the June 17, 2014 EPC meeting minutes. Seconded by Cindy Greiman. Motion carried unanimously.

APPROVED AS PRESENTED

DIRECTORS REMARKS

- Director Gipp shared with the Commission how Iowa has been experiencing severe weather with storms, flooding, and tornados. The Iowa DNR Field Offices can assist with temporary permits to stockpile and burn debris. FEMA will ask for a copy of the permit to be eligible for reimbursement by FEMA.
- Northwest Iowa had open feedlots that discharged during the high rains. The confined facilities operated as constructed to contain the manure. The majority of the facilities that had discharges were open feedlots with NPDES permits.

- The Pattison mine along the Mississippi River has experienced a fire. The Iowa DNR is monitoring the event closely with a concern for stored tires.
- The Iowa DNR Air Quality Bureau received temporary funding from the Legislature to maintain operations. A stakeholder group has been assembled to provide recommendations to develop sustainable funding for the future.
- The Iowa Utilities Board will be reviewing a proposed pipeline crossing Iowa. If a pipeline location and route is selected, the Iowa DNR will review the permit application.

INFORMATION

CONTRACT WITH IOWA STATE UNIVERSITY FOR RISK-BASED CORRECTIVE ACTION (RBCA) MODELING SOFTWARE UPGRADE

Anne Preziosi, Attorney with the Legal Services Bureau presented the following item.

Commission approval was requested for a service contract of approximately two and a half years with Iowa State University (ISU), Ames, Iowa. The contract will begin on August 25, 2014 and terminate on December 31, 2016. The total amount of this contract shall not exceed \$180,000.

Funding Source:

This contract will be funded through an appropriation to the Department from the Iowa Comprehensive Petroleum Underground Storage Tank Fund (Fund) specific to this purpose. Formal approval by the Fund Board of the use of this funding has not yet occurred, and the work to be performed through this Contract is subject to the availability of that funding. Approval for funding is concurrently being sought at the Fund Board's July 15th Strategic Planning Meeting.

Background:

The risk-based corrective action (RBCA) evaluation requirements for Leaking Underground Storage Tank (LUST) sites are regulated by the DNR under Iowa Code 455B.474, and as an authority delegated by the USEPA. IAC Chapter 135 further defines requirements including use of DNR-developed modeling software. The RBCA software is primarily used by DNR staff and Iowa Certified Groundwater Professionals to evaluate public health, safety, and environmental risks associated with over 6,000 LUST sites across Iowa. Nearly 1,000 sites remain open and under investigation, with an average of 50 new LUST sites identified each year. The RBCA software is used for ongoing evaluations of open LUST sites and for the risk assessment of newly reported LUST sites. The software is not only used to predict whether a petroleum release will cause a public or environmental risk, it is also used to calculate site specific target levels or cleanup levels; therefore it is highly relied upon to establish cleanup or remediation goals for individual LUST sites.

The RBCA software was originally developed in 1996 using Visual Basic (VB4) computer language, and subsequently upgraded with the most current version in VB6. The software suite consists of four separate packages (Tier 1 v1.1, Tier 2 v 2.51, Tier 2 v 3.0, and Tier 2 Bedrock v1.1). These are standalone Windows desktop contaminant transport modeling programs (i.e., they are not connected to external databases or files). These programs can be operated under Windows XP or older operating systems; however, because XP is no longer supported, a new version of the code that is compatible with newer operating systems (Windows 7 and newer) is required. Therefore, the primary objective is to convert the existing RBCA suite of software developed in VB4 / VB6 into C#.NET language.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining the Contractor to: (1) update the existing Risk-Based Corrective Action (RBCA) modeling software to be compatible with newer operating systems; (2) assist with modification and documentation of business logic; (3) update the software suite to incorporate changes in regulatory standards (specifically numerical standards for water line risk evaluations); (4) provide full technical documentation of the code; (5) ensure historic files are compatible (can be opened) in all revised versions of RBCA software; and (6) correct the deficiencies identified during testing and from DNR's security scan, in accordance with Departmental IT operating procedures and standards.

Contractor Selection Process:

Iowa Code 455B.103(3) provides that the Department shall contract, with the approval of the commission, with public agencies of the state to provide environmental quality evaluation services necessary to implement rules for which the Department has administrative oversight (i.e., Chapter 135). ISU (and principle programmer Dr. LaDon Jones) was chosen because of the prior experience with and authorship of the RBCA modeling software, and their commensurate ability to economically and efficiently complete these services.

Commissioner Bob Sinclair inquired into the expected lifespan of the modeling software. Anne Preziosi shared with the Commission the current software was relevant for approximately 20 years and it is anticipated the upgraded version will have a similar timeframe for applicable use.

Commissioner Mary Boote inquired into the timing of the contract for the Commission's review prior to the UST Board's review of the 28E Agreement (below). Anne Preziosi shared with the Commission that review by both entities is occurring simultaneously. Elaine Douskey is presenting the 28E Agreement to the UST Board this morning. The contract is written with a requirement that both entities must approve the project before it can be executed. If the EPC or UST Board does not approve the agreement, then the contract will not be executed.

Commissioner Chad Ingels abstained from voting due to his employment with Iowa State University.

Motion was made by Nancy Couser to approve the agenda item as presented contingent upon funding from the UST Board. Seconded by Bob Sinclair. Motion carried unanimously

APPROVED AS PRESENTED

COOPERATIVE AGREEMENT WITH IOWA COMPREHENSIVE PETROLEUM UST FUND BOARD FOR FUNDING RISK-BASED CORRECTIVE ACTION (RBCA) MODELING SOFTWARE UPGRADE

Anne Preziosi, Attorney with the Legal Services Bureau presented the following item.

Commission approval was requested for the Department of Natural Resources (DNR) to enter into an Iowa Code chapter 28E Cooperative Agreement with the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board ('UST Fund'). The purpose of the Cooperative Agreement is to provide financial assistance to DNR so that DNR may contract with a vendor to upgrade the Risk-based Corrective Action (RBCA) modeling software.

Synopsis:

The Iowa DNR and the UST Fund work cooperatively to assist responsible parties of leaking underground storage tank (LUST) sites in complying with the law regarding assessment and corrective actions of petroleum releases. The risks associated with LUST sites are determined through site investigations and use of Department-prescribed contaminant modeling programs. The modeling software is an essential tool used by the DNR, UST Fund administrator's staff and environmental consultants for determining public health and environmental risks, as well as site specific target levels or cleanup goals for individual sites. The DNR and the UST Fund share a joint interest and program objective of appropriately addressing these risks and closing LUST sites in a timely manner.

The current software is antiquated and in need of upgrading to be functional with newer operating systems (Windows 7 and newer). The Department does not have the funds within its current operating budget to timely complete the necessary changes.

The DNR intends to enter into a vendor contract with Iowa State University (ISU) (with principle programmer Dr. LaDon Jones) to complete upgrades for the RBCA software. The DNR is requesting funding assistance from the UST Fund for the project up to a maximum of \$150,000. Approval for funding is concurrently being sought at the Fund Board's July 15th Strategic Planning Meeting. The terms and conditions of this joint effort are outlined in this Iowa Code chapter 28E Cooperative Agreement between the Iowa DNR and the UST Fund Board.

Motion was made by Bob Sinclair to approve the agenda item as presented. Seconded by Cindy Greiman. Motion carried unanimously

APPROVED AS PRESENTED

FINAL RULES – CHAPTERS 22 AND 23–BEST MANAGEMENT PRACTICES FOR GRAIN ELEVATORS AND ADOPTION OF FEDERAL AIR TOXICS STANDARDS

Christine Paulson, Environmental Specialist Senior of the Program Development Section of the Air Quality Bureau presented the following item.

The Department requested permission from the Commission to adopt amendments to Chapter 22 "Controlling Pollution," and Chapter 23 "Emission Standards for Contaminants."

Reason for Rulemaking

The first purpose of the rule changes is to establish best management practices (BMPs) for grain vacuuming at small grain elevators. The BMPs include practical activities that may be used at elevators to minimize dust and possible air quality impacts resulting from vacuuming grain out of storage structures. The BMPs were developed through a stakeholder workgroup jointly organized by the Department of Natural Resources (Department) and Agribusiness Association of Iowa (AAI), and included grain elevator operators and grain vacuum (grain vac) vendors.

The second purpose of the rule changes is to adopt by reference federal air toxics standards for chemical manufacturing plants and for prepared feeds manufacturing (also known as National Emission Standards for Hazardous Air Pollutants or NESHAP). The Commission had originally adopted these standards by reference in 2010. However, Executive Order 72 rescinded adoption of these standards along with rescission of the RICE NESHAP. Subsequent to Executive Order 72, the U.S. Environmental Protection Agency (EPA) revised these NESHAP standards. The revised NESHAP generally provide regulatory relief and clarity from the previous requirements. The Department is now requesting permission to adopt these NESHAP. Upon adoption of the NESHAP, the Department rather than EPA will be the primary implementation authority for these regulations in Iowa, allowing the Department to provide compliance assistance and outreach to affected facilities.

Summary of Rule Changes

Grain Vac BMPs

Prior to 2008, most grain facilities used sweep augers to extract the remaining grain from the bottom of storage bins. Beginning in late 2009, the U.S. Occupational Safety and Health Administration (OSHA) sent letters to grain elevators stating that operators could not be inside a grain bin while an unguarded sweep auger operated inside the bin. The OSHA letters resulted in more facilities using grain vacuuming to remove the remaining grain from storage bins.

With the wider use of grain vac operations, the Department's field offices started receiving dust complaints from residences and businesses located near grain elevators using grain vacs. The Department subsequently partnered with AAI to convene a stakeholder workgroup to develop solutions that address complaints and ensure compliance with air quality regulations. The proposed BMPs are the result of this collaborative effort. The new BMPs will be added to the existing BMPs adopted by reference in 567 IAC Chapter 22

Adoption of Air Toxics (NESHAP) standards for Chemical Manufacturing and Prepared Feeds Manufacturing

In October 2009, EPA finalized the NESHAP for Chemical Manufacturing at Area Sources (Subpart VVVVVV, hereafter referred to as the "6V NESHAP"). The final 6V NESHAP appeared to include ethanol production facilities, but the standards were unclear on several points. In January 2012, EPA agreed to reconsider portions of the 6V NESHAP. On December 21, 2012, EPA issued final amendments to the 6V NESHAP, and extended the compliance date until March 2013. With the assistance of Iowa Renewable Fuels Association (IRFA), the Department determined that current dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP. At this time, the Department has identified a small number of other chemical manufacturing facilities subject to the 6V NESHAP.

In January 2010, EPA finalized the NESHAP for Prepared Feeds Manufacturing at Area Sources (Subpart DDDDDDD, hereafter referred to as the “7D NESHAP”). The final 7D NESHAP appeared to cover all feed mills that used chromium and manganese in production, but several provisions of the final standards were unclear. In 2011, EPA agreed to reconsider some provisions of the 7D NESHAP. EPA finalized its reconsideration on December 23, 2011, revising its standards so that larger feed mills with pellet cooler operations did not need to install new emissions control if the facility had existing control equipment. The 7D NESHAP compliance date for existing feed mills was January 5, 2012.

Public Comments

The Department received formal comments from AAI in support of the rule changes. The Department also received minor comments from EPA Region 7 prior to publishing the Notice of Intended Action. The attached Public Participation Responsiveness Summary provides a summary of the public comments and the Department’s response. The Department did not make any changes to the final rules from what was published in the Notice of Intended Action.

If the Commission approves the final rules, the Adopted and Filed rules will be published on August 6, 2014, and will become effective on September 10, 2014.

The Adopted and Filed rules, Jobs Impact Statement, Fiscal Impact Statement, and Public Participation Responsiveness Summary were provided for review prior to the EPC meeting to the Commissioners and public.

Commissioner Gene VerSteeg thanked the Iowa DNR for cooperating with stakeholders to develop the best management practices.

Motion was made by Gene VerSteeg to approve the agenda item as presented. Seconded by Max Smith. Motion carried unanimously

APPROVED AS PRESENTED

PUBLIC COMMENT

Virginia Soelberg – Sierra Club

She expressed her organization’s support to retain the rule requiring 4 inches of top soil at home developments and building sites. This will reduce erosion and sediment from being deposited in the waterways. Yards without proper top soil have to be fertilized heavily which can run off when it rains. When these practices are not followed, homeowners have to absorb the costs to return their property to manageable conditions.

Corydon Coppola – Erosion Sediment Control Specialist for Stetson Building Products

He expressed concern with the vagueness of rule language for “economically practical” and “best industry practices.” The recommendation from the EO80 Stakeholder group needs to be clarified because the interpretation will vary widely across the industry.

Ron Grubb – Jerry’s Homes

He shared with the Commission that he is insulted when people say the industry is cutting corners. His company puts back into place the top soil at a building site. He supports preserving the top soil at a site and not mandating a numerical standard.

Brian Stineman – City of Davenport

He stated the citizens of Davenport desire 4 inches of top soil to retain and maintain the landscaping. He stated that there was no proof that the stakeholder group reached unanimous consent.

Jan Danielson – Century Farm

She asked the Commission for a stronger Clean Water Act. A hog confinement is planned to be built near her home and she was not notified. The hog facility is 5 miles from the Des Moines River, youth camp, and High Trestle bike trail. The DNR has not been out to the site to evaluate the location. The DNR is taking it on faith the application is accurate. She asked for Brent Rastetter to resign from the Commission. She asked for stronger clean water rules and greater oversight for hog facility siting.

John Crotty – Iowa Environmental Council

His organization supports the 4 inch top soil requirement to maintain urban communities. Adequate top soils may increase the value of a home and in the long run will benefit the state. It would be a bad message to reduce the top soil requirement in light of Iowa's Nutrient Strategy.

Aimee Staudt – Knapp Properties

Her organization supports the EO80 group recommendation to adopt the EPA standard to "preserve topsoil." Moving the soil multiple times increases the cost of a new home. In 2012, for every \$1,000 price increase, about 430 potential home owners are lost. Research shows a \$3,000 increase to the cost of the home by adding 4" of top soil.

Julie Burkhart – Iowa Citizens for Community Improvement

She is a Woodward resident with a family farm next to the hog facility being built. The hog facility will affect the water of the area and she is concerned for children playing in the waters. She asked for higher standards to keep the water clean.

Danielle Wirth – Iowa Citizens for Community Improvement

She believes Brent Rastetter's hog farm will affect the watershed. She showed a map where the manure will be applied in relation to the nearby watersheds. The geology of the area not only moves water down but also horizontally. These watersheds flow to the Des Moines River and the residents of Des Moines will drink this water. She asked the Commission for stronger standards for clean water.

Wade Burkhart – Iowa Citizens for Community Improvement

He is a resident affected by a hog facility. He has a swine management degree from ISU and was a hog operator. The amount of water and food needed for the hogs will create a huge amount of waste. There is a unit already existing near the proposed site that has had some issues in the past. His home has lost \$20,000 worth of value when the first facility was constructed. Now with the second structure, he projects his home losing further value.

Jess Mazour – Iowa Citizens for Community Improvement

She shared with the Commission that there are even more residents of Boone County who are concerned with the proposed hog operation but could not attend today because they had to work. Brent Rastetter has missed a number of meetings and she wondered about the Commission's attendance policy. In reference to the recent rainfall, she said a discharge is a discharge no matter the reasoning. NPDES permits are important because citizens can seek enforcement when there are violations. Every factory farm needs an NPDES permit. The proposed pipeline is not wanted in Iowa. A pipeline is devastating to Iowa and will reduce water quality.

Debbie Bunka – Iowa Citizens for Community Improvement

She is fighting against the construction of a hog facility near Nevada. She showed a video of flooding on the land where the hog facility is proposed. The flooding was not a 100 year flood but a single day's worth of rain. Manure spills may not have occurred if clean water permits were issued. She asked for strong clean water rules.

Brenda Brink – Iowa Citizens for Community Improvement

She felt the Story County Supervisors did a poor job of facilitating a public meeting. The Supervisors don't protect the real stakeholders. At each EPC meeting there is a large contingent of people who show up who are upset with the EPC for not protecting the environment or citizens. She provided an example of a conflict of interest for a scholarship program she is involved with. She feels the EPC members with interests in agricultural operations have a conflict of interest.

Even Burger – Iowa Citizens for Community Improvement

He corrected Director Gipp regarding the open and confined animal facilities that discharged during the recent flooding. He indicated that there were confinements that discharged. There were 20 releases in just one weekend where there was normal rain, not a 100 year flood amount. Every factory farm that doesn't have a permit should receive one. NPDES permits should include provisions that prohibit discharges during "normal" rainfalls.

Vern Tigges – Iowa Citizens for Community Improvement

He has been an ICCI member for 20 years. Susan Heathcote was found not guilty of conflict of interest by the Iowa Supreme Court. She was qualified to be on the Commission. Those on the Commission now are not qualified. The Farm Bureau should not run the Commission.

Jim Yungclas – Iowa Citizens for Community Improvement

In Grinnell, a hog facility was built near his family's century farm. A piece of land near them was not cash rented because it was wet most of the year but a hog facility was built in this environmentally sensitive area. The water quality is not getting better. The Commission is staffed by the industry who provide financial support to the Governor.

Stephen Tews – Iowa Citizens for Community Improvement

There are less than 2.5 million acres of urban lawns and 23 million acres of corn and soybeans. The predominant source of pollution is from the farms and not urban areas. Man does not know when to quit. Regardless of politics, there is no red water or blue water but rather clean or dirty water.

Shari Hawk – Iowa Citizens for Community Improvement

She grew up on a farm with 200 head of hogs. During family events, her mother was always worried about the wind direction of the smell. Now with facilities 10 times larger, the smell has to be overwhelming. Clean water rules need to address the affects on people.

Patti McKee – Iowa Citizens for Community Improvement

She asked for stronger clean water rules and enforcement of the rules. Every time it rains, she sees the rivers turn brown and thick. Our soils and nutrients are going to Louisiana. The nutrients are only good when they are held in the soil and used by plants. DMWW is spending thousands of dollars a day to clean the water. She grew up in an area in the 1980s where a hog facility was built and it tore the community apart. Not having clean water rules enforced doesn't affect just her drinking water but also her recreation.

Lee Barclay – Iowa Citizens for Community Improvement

He knows the new hog facility in Woodward is legal but he doesn't think it is moral or ethical. The owner and contractor did not notify anyone near the site. The capacity of 2,480 hogs is just under the 2,500 matrix requirement. We need local control over these confinements because he wants clean water. He noted that Brent Rastetter is absent from the meeting. He is also against the pipeline in Iowa.

Hugh Espey – Iowa Citizens for Community Improvement

He and ICCI members plan to attend the upcoming EPC meetings to demand strong Clean Water Act rules and enforcement. The Commission is likely to approve the CAFO rule in August or September. If the rule is not stringent enough his organization will keep showing up to demand more. The government should serve the citizens and not the industry.

Dave Goodner – Iowa Citizens for Community Improvement

He responded to Director Gipp's statement about flooding and manure releases. Some of the releases occurred at confinements and at facilities without NPDES permits. The pipeline is not wanted in Iowa and the DNR should work with IUB to deny it.

Ross Grooters – Iowa Citizens for Community Improvement

He asked for stronger water rules. What really concerns him is a pipeline running dirty crude oil through the state. There is no safe way to transport oil through our state. This pipeline needs to be stopped.

END OF PUBLIC COMMENT**EXECUTIVE ORDER 80 (EO 80) STAKEHOLDER GROUP RECOMMENDATION ON TOPSOIL PRESERVATION REQUIREMENTS IN STORM WATER CONSTRUCTION GENERAL PERMIT NO. 2**

Governor Branstad issued Executive Order 80 (EO 80) to increase stakeholder involvement and input on administrative processes and rules. The Director, in consultation with the Governor's Office, selected a stakeholder group to make recommendations and consider the need for rule changes in the Iowa Administrative Code (IAC): 567-subrule 64.15(2), which adopts by reference Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit no. 2 (GP2), effective October 1, 2012 to October 1, 2017.

Background: Pursuant to federal law, a NPDES permit is required for construction activities which disturb 1 or more acres of land. Iowa, like other states, has chosen to issue a general permit (GP2) to cover such construction activities. In 2009, the Environmental Protection Agency (EPA) adopted effluent guidelines for construction activities at 40 Code of Federal Regulations (CFR) 450.21 Effluent limitations reflecting the best practicable technology currently available (BPT). These effluent guidelines included the requirement to "unless infeasible, preserve topsoil" with no guidance on the definition of what constitutes preserving topsoil. Shortly after the EPA adoption of the guidelines, the Department began rulemaking efforts to include the guidelines in GP2 which included contacting members of the development community for input. During these discussions, members of the development community recommended that retaining four inches of topsoil spread on the surface could satisfy the federal requirements, eliminate the ambiguity of the federal language and could be economically implemented. The Department agreed and included provisions that excluded from the topsoil preservation requirements already permitted or platted developments and excluded sites unsuited to re-spreading topsoil. The Department also included language that allowed sites with less than four inches of topsoil to retain only the amount that existed prior to development. Members of the development community did not oppose adoption of these requirements into GP2 effective October 1, 2012.

Since the effective date of this rule, some stakeholders have expressed concern with the four inch top soil requirement. These concerns led to the creation of the EO 80 group referenced above. As a result of the information obtained and considered by the EO 80 stakeholder group, the group is now recommending to the Commission that, where the existing GP2 differs from the federal effluent guideline found at 40 CFR 450.21, the Commission amend the rule-adopted GP2 to conform to the federal effluent guideline. 40 CFR 450.21 is attached. [*Note: section 450.21 was amended effective*

May 5, 2014. Pursuant to Clean Water Act section 301(b), permit effluent limitations may not be less stringent than the federal technology-based effluent guidelines.]

Chair Creighton Cox presented a power point presentation highlighting the members of the group, summarized the group's mission, each of the meeting events, and reviewed each recommendation along with the points of agreement and disagreement among the group. He indicated that each member of the group will present additional information in relation to their recommendation.

Each group member spoke as follows:

Chip Classon explained the process and logistics for soil movement related to home construction. There are around 6 steps before construction to evaluate and rank the soils which all come with a cost. In the past, some companies may have sold the soil to local garden centers but most companies now limit the movement of the soil to maintain low costs. He provided an example of a home lot size and the number of dump trucks needed to remove clay and bring in top soil.

Lucy Hershberger presented her perspective and experience working with the industry. Some developments are successful but there are others where soils are mixed with rock and/or clay to provide an environment where vegetation does not grow. She feels the industry does have customers who care about soil preservation and would pay for the cost of proper soils. She discussed some options to the current rule such as creating a range of 3-5 inches or an average of 4" rather than 4" everywhere. On average for a 10,000 sq. lot, it would be \$3,000 to purchase, haul, and spread top soil. If soil is used from the site, it is about \$500.

Joe Pietruszynski expressed concern that the 4" top soil rule would transfer the risk to the developer. He worked through a scenario of additional steps and costs associated with each change in the process.

Pat Sauer provided information and education on the hydrology and water movement with soil. Urban communities have lost around 60% of their absorption ability. She provided examples of poor soil choices leading to run-off and costs to the homeowner to fix/improve their lawns.

Mark Watkins summarized his history and experience over the years with moving soil. The construction rules at the state level should not be stricter than the federal rule. The state rule slows economic growth. He encouraged the Commission to remove the state rule and replace the rule with federal language.

After each member of the EO 80 Stakeholder group spoke, Creighton Cox summarized his evaluation of the group's meetings, concerns, and opportunities. He summarized the NPDES GP2 erosion control requirements and potential financial impacts. He recommended the federal rule to replace the 4" top soil state rule.

Commissioners asked questions of the EO80 Stakeholder group to gain further understanding of the topic. A final decision on this item will occur at a future monthly meeting at which time the Commission may direct the Department to initiate rulemaking or decline to do so.

INFORMATION

MONTHLY REPORTS

Bill Ehm shared with the Commission the following:

- The Legislature appropriated one time funding for the Air Quality program along with convening a stakeholder group to provide recommendations for long term, sustainable funding for the program.
- Project Aware was occurring on the Big Sioux River starting in South Dakota and ending in Iowa.
- Ed Tormey summarized two recent court cases, including an Iowa Supreme Court case that ruled that an EPC Commissioner did not have a conflict of interest when voting on a water quality rule.

The following monthly reports have been posted on the DNR website under the appropriate meeting month:

<http://www.iowadnr.gov/InsideDNR/BoardsCommissions.aspx>

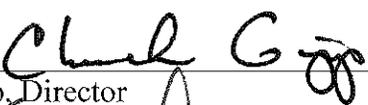
1. Rulemaking Status Report
2. Enforcement Status Report
3. Administrative Penalty Report
4. Attorney General Referrals Report
5. Contested Case Status Report

INFORMATION

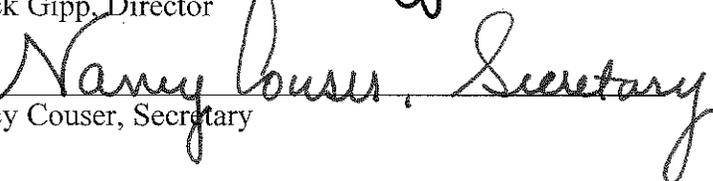
GENERAL DISCUSSION

Chairperson Boote asked for Chad Ingels to provide his view point on the 4" top soil conversation. Mr. Ingles recommended the Commission request additional information and potentially conduct a site visit tour. Chairperson Boote asked the Commissioners to provide questions, needs, etc. to Jerah Sheets before or at the August EPC meeting.

Chairperson Boote adjourned the Environmental Protection Commission meeting at 2:00 p.m., Tuesday, July 15, 2014.



Chuck Gipp, Director



Nancy Couser, Secretary

To: Environmental Protection Commission & the People of Iowa

"The permittee(s) shall minimize soil compaction and, unless infeasible, preserve topsoil. "Infeasible" shall mean not technologically possible, or not economically practicable and achievable in light of the best industry practices."

1. Infeasible-
 - a. Not Technologically Possible-
 - i. Top Soil Reclamation
 - ii. Hydraulic Growth Mediums have enabled this to be technologically possible virtually everywhere.
 - b. Not Economically Practicable & achievable in the light of best industry standards.
 - i. Above what dollar amount makes this not economically practicable?
 1. Must set a minimum limit.
 - a. \$15k per acre current costs to separate, stack, and respreads.
 - b. \$20K- \$25K per acre to transport in. Depending on location of accessible and available topsoil.
 - ii. In light of best industry standards-
 1. Who is setting these standards?
 - a. DNR
 - b. DOT
 - c. Contractor?
 2. What industry?

These two points seem extremely vague, and appear to leave a lot of room for contractors to define their own terms as to whether costs are justified as not being economically practicable.

Minimum Costs per acre needs to be set as a level to preserve our soils.

Standards need to be defined, and open to new technology enabling less expensive solutions. Acceptable by industry standards seems to leave room for newer technology to be not recognized as options. Review process?

Iowa Soils are something we are all proud of. I appreciate your openness to expanding the points discussed above to enable our soils to continue to be the envy of others.

Thanks for your time.

Corydon Coppola, CPESC

Corporate Engineering Division Manager

Stetson Building Products

Corydon.coppola@stetsons.com

515-577-6763

Sheets, Jerah [DNR]

From: Michelle Sillman <mtswrites@gmail.com>
Sent: Sunday, July 13, 2014 11:58 AM
To: Sheets, Jerah [DNR]
Subject: Fwd: Your message to the DNR Webmaster has been received.
Attachments: image001.jpg; image005.jpg; image006.jpg

Adam and EO 80 Workgroup--

I am writing in support of the General Permit number 2 rule that requires developers and home contractors to replace 4 inches of topsoil onto non-paved areas after building is complete.

The recent flash flooding across the state demonstrates the need to keep policies in place that improve and impact water absorption in Iowa. It will take a menu of options working together to improve water absorption across the state. Finger pointing at groups who could do more and using the excuse of less profit should not allow this group of stakeholders to duck responsibility for maintaining the quality of life, quality of land and quality of water in Iowa.

The costs of flooding in terms of hardship, money and impact on wildlife and the environment are high. These costs are passed on to Iowans, homeowners, taxpayers, and state and federal government. Every time a basement or home floods, homeowners pay hundreds and sometimes thousands of dollars to make repairs. Every time a trail gets washed out, flash flooding causes power outages and road damage, fish kills occur because of flood pollutants, etc., we all pay the price of poor water absorption. Let's continue working toward mitigating flooding, paying the cost before the destruction occurs. Developers building new homes and neighborhoods should take responsibility for building neighborhoods that don't flood or contribute to flooding in our communities. Please keep this rule in place so we can continue adding to the improvements/solutions for better water absorption in our state, for our state. Thank you for representing my views at the EPC business meeting on Tuesday, July 14, 2014.

Michelle Sillman
405 Wilton Dr. NE
Cedar Rapids, Iowa 52402
319-640-7192
mtswrites@gmail.com

----- Forwarded message -----

From: **Webmaster [DNR]** <Webmaster@dnr.iowa.gov>
Date: Sun, Jul 13, 2014 at 10:31 AM
Subject: Your message to the DNR Webmaster has been received.
To: "mtswrites@gmail.com" <mtswrites@gmail.com>

Your message has been received by the Iowa Department of Natural Resources. Please allow up to two business days for a DNR customer service representative to research and respond to your message. If you need immediate assistance, we ask that you contact us directly at [\(515\) 281-5918](tel:5152815918) during regular business hours. Our hours are Monday-Friday, 8:00 a.m.- 4:30 p.m. CST, with the exception of state holidays.

Iowa Department of Natural Resources

Sheets, Jerah [DNR]

From: John Hanson <johnlhanson@hotmail.com>
Sent: Wednesday, July 09, 2014 12:49 PM
To: Sheets, Jerah [DNR]
Subject: My comments for the EPC meeting on July 10

My comments for the EPC meeting on July 10, I am unable to attend.

Dear Commission members,

Please keep the topsoil replacement rule as a requirement. The science is overwhelming that topsoil is a benefit to water quality and to homeowner value. Leaving topsoil decisions to builders and developers is an indicator of shirking your duty.

Sincerely,

-john

Dr. J. Lawrence Hanson
2610 Northview Drive
Marion, IA 52302

EO80 Stakeholder Group

Purpose: To Discuss and Make Recommendations Regarding the Topsoil Preservation Requirements in the Storm Water General Permit no. 2 for Construction Activities

A Brief Description and History of the Storm Water Topsoil Preservation Requirements

From where does the topsoil preservation requirement come?

On December 1, 2009, the EPA published final rulemaking in the Federal Register that included provisions regarding sediment and erosion control on construction sites that are required to have storm water permit coverage. These requirements were published by EPA as effluent guidelines. These usually take the form of numeric effluent limits but in this case, most of the requirements are descriptive. Despite being termed "guidelines", effluent guidelines published in the Federal Register and, thus, subsequently adopted in the Code of Federal Regulations (CFR), are requirements that must be included in discharge permits for facilities and sites described in the guidelines. These regulations became effective February 1, 2010.

One of the effluent guidelines included in the Federal Register notice and which is now in 40 CFR 450.21(a)(7) mandates the preservation of topsoil at construction sites required to have storm water permit coverage. Specifically, this requires that permittees design, install and maintain effective erosion and sediment controls that, at a minimum "Minimize soil compaction and, unless infeasible, preserve topsoil" with no further guidance on the definition of what constitutes minimizing soil compaction and the preservation of topsoil. A copy of the requirement is attached.

How was the 4-in topsoil requirement for Iowa developed?

The EPA generally allows states to defer adopting requirements into general permits until those permits are next renewed. The expiration date of the storm water construction General Permit no. 2 (GP2) extant when the requirements became effective was October 1, 2012. Shortly after the Federal Register notice, the Department began rulemaking efforts to renew its three storm water general permits including GP2. As the Department was fully aware of the potential wide impact of the topsoil compaction and preservation requirements, it contacted members of the development community to solicit their input prior to commencement of the official rulemaking comment period.

During these discussions with the developers and homebuilders, a number of options to effectively implement the federal requirements were discussed. Considerations included cost, ability to implement and effectiveness. Though discussed at length, it was decided that mandating any specific requirements for de-compacting the soil after construction was infeasible so the exact, ambiguous federal language was reluctantly retained. The stakeholders asserted that the phrase "preserve topsoil" was too vague and should be defined, if possible. The Department agreed the lack of specificity could make compliance difficult as different inspectors; city, DNR and EPA, could have different interpretations of how compliance would be achieved.

After several discussions, the stakeholders suggested that perhaps retaining four inches of topsoil would be sufficient to meet the federal requirements. This was chosen since the guidelines for the minimum thickness of concrete for residential sidewalks and driveways is four inches which would minimize the difficulty of the process of placing both the topsoil and the concrete for the sidewalks and driveways in place. The four inches would also retain a significant amount of water to reduce runoff of water and the loss of nutrients from lawn fertilizers in the water and their subsequent entrainment in streams, rivers and

lakes. The Department and the development community agreed to this solution to the ambiguity of the federal language. It was also agreed that the "four inch requirement" would be written so that it would not be applied to sites that had less than four inches of topsoil present prior to current development nor on areas where ultimate land use would preclude topsoil preservation. Sites that had less than four inches of topsoil present prior to current development would only be required to retain that thickness of topsoil already in place.

When was the 4-inch topsoil preservation requirement adopted into Iowa Administrative Code?

The Department proceeded with the re-adoption of GP2 with the new topsoil preservation requirements without objection from the development community. The new GP2 became effective October 1, 2012. The requirements are found in Part IV.D.2.(A)(2)(c), and are attached.

Why was this stakeholder group called together and what is its purpose?

In the summer of 2013, representatives of the development community approached the Department with concerns about the cost of implementing the four inch requirement. The Department later met with their representatives and other stakeholders in an effort to find a way to cost effectively implement the requirement but was unable to come to a consensus.

It was then decided that a stakeholder group be formed consistent with the requirements of Executive Order 80 to consider alternative topsoil preservation requirements that will satisfy the federal requirement, maintain locally expected levels of soil preservation and surface water protection from sediment and nutrients and minimize costs associated with these requirements. The group is to then make recommendations to the Department based upon its findings.

Notice of EO-80 Stakeholder Group

- Notices: IAB 1/22/14 Pages 1640 – 1642
- “Subject: Review of topsoil preservation requirements for activities covered by National Pollutant Discharge Elimination System (NPDES) General Permits No. 2 for Storm Water Discharges Associated with Construction Activities.”
- “The stakeholder group will consider alternative topsoil preservation requirements that would satisfy the federal requirement, maintain locally expected levels of surface water protection and soil preservation, and minimize costs associated with these standards.”

Stakeholder Process

- Stakeholders Appointed by the Governor and DNR
- Met 3 times on April 24th, May 2nd, & May 29th
- Requested written Public Comment through DNR
 - June 11th – approximately 190 comments had been received
 - Approximately 110 in favor of the Federal Language
 - Approximately 80 in favor of the 4 inch rule
- Held Public Forum at IDNR on May 29th
 - 12 individuals spoke in favor of Federal language
 - 6 individuals spoke in favor of the 4 inch rule
- Formal vote held May 29th
 - Recommendation was approved 7-0
 - Following review of minutes:
 - 2 Stakeholders objected to the Recommendation
 - 5 Stakeholders approved Recommendation as presented on May 29th

Proposal For GP2

A.(2).(c). Unless infeasible, the following measures shall be implemented at all sites: utilize outlet structures that withdraw water from the surface when discharging from basins, provide and maintain natural buffers around surface waters, direct storm water to vegetated areas to increase sediment removal and maximize storm water infiltration. The permittee(s) shall minimize soil compaction and, unless infeasible, preserve topsoil. "Infeasible" shall mean not technologically possible, or not economically practicable and achievable in light of the best industry practices. "Unless infeasible, preserve topsoil" shall mean that, unless infeasible, topsoil from any areas of the site where the surface of the ground for the permitted construction activities is disturbed, shall remain within the area covered by the applicable General Permit No. 2. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed. The permittee(s) shall control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges and shall control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. An affidavit to the city signed by the permittee(s) that verifies compliance with these requirements shall satisfy the terms of this paragraph.

For construction activity which is part of a larger common plan of development, such as a housing or commercial development project, in which a new owner agrees in writing to be solely responsible for compliance with the provisions of this permit for the property which has been transferred or in which the new owner has obtained authorization under this permit for a lot or lots (as specified in subrule 567-64.6(6) of the Iowa Administrative Code), the topsoil preservation requirements described above must be met no later than at the time the lot or lots have reached final stabilization as described in this permit.

The topsoil preservation requirement described above shall be implemented for projects that have not received an authorization under this permit prior to October 1, 2012. The topsoil preservation requirements are not required to be implemented for projects that have been authorized prior to October 1, 2012. In residential and commercial developments, a plat is considered a project. For other large areas that have been authorized for multiple construction sites, including those to be started at a future date, such as those located at industrial facilities, military installations and universities, a new construction project not yet surveyed and platted out is considered a project. This stipulation is intended to be interpreted as requiring the topsoil preservation requirements on development plats and construction activities on other extended areas that may have several construction projects permitted under the same authorization to be implemented on those projects not yet surveyed and platted out prior to October 1, 2012 even if other plats and construction activities in the same development or other extended area were authorized prior to October 1, 2012.

Lucy Hershberger

Finally I would also like to state for the record that I did not vote to present to the board any changes in the wording of the GP2 rule. The vote as I understood it was to present; items which the EO-80 group were in agreement and disagreement on, a sample affidavit from Waukee and public comments. I feel the information that was presented was an attempt to give the impression that there was unanimous support for changing the rule to wording written by Chairman Cox.

At 3:49 on May 30th Chairman Cox emailed notifying us of what he would be submitting to the EPC. Pat Sauer and I protested including revisions to the GP2 proposal in the submission. Chairman Cox stated that because he wrote the items which we agreed to submit on his copy of the revised version of the GP2 proposal and we did not review what he had written that he believed that is what we approved. You will see his notes on the enclosed copy of his revised version of the Proposal for GP2 with his hand written notes referring to A1, A2 and A3.

The portion of the May 2, 2014 minutes referenced were not available to review at the May 29 meeting because Joe Pietruszynski had not had the time to get the correct views expressed by members, or something similar. I was emailed those on June 4th and the May 29th minutes on June 5th nearly a week after I received an email from Creighton Cox and stated that I did not approve including the GP2 revisions. At 4:00 PM on June 4th I received the minutes from the May 2nd meeting then at 2:30 June 5th the May 29th minutes. Both of which clarified chairman Cox's statements as he had said they would. It appears that Chairman Cox had the minutes for the May 2nd meeting to include in the packet on May 30th more than a week before they were approved and 5 days before they were sent to me.

Both Pat Sauer and I made multiple amendments to the minutes such as including submissions by the DNR legal advisor and correcting the statements made by us.

I have included some of the conversations which were emailed between the members of the stakeholders group to help clarify my concerns with the final report presented to the EOC and the minutes as they were submitted. I believe that this was an attempt to mislead the EPC into thinking that there was unanimous agreement on changing the wording on the Proposal for GP2 when in fact we objected every time that Chairman Cox presented his version of the proposal.

I have attached the email conversation with some of the signature detail removed to reduce the length. Because it was copied from forwarded emails it is in reverse chronological order.

Creighton Cox CCox@desmoineshomebuilders.com Fri 5/30/2014 3:49 PM

EO-80 group members - Please review the attached cover letter to go with the approved packet to be submitted as the EO-80 groups recommendation.

I'd like to file this with DNR staff on Monday if possible.

Thank you for everyone's input during this process, I am pleased we were able to find unanimous consent, including the points of disagreement, within our recommendation.

CREIGHTON COX

Executive Officer

Home Builders Association of Greater Des Moines

The attachments to the packet is what was presented and is what we voted on, and passed 7-0.

CREIGHTON COX

Executive Officer

Home Builders Association of Greater Des Moines

From: Lucy Hershberger [<mailto:lucyh@forevergreengrows.com>]

Sent: Wednesday, June 04, 2014 11:48 AM

To: Creighton Cox; 'Sauer, Pat'; 'Schnieders, Adam [DNR]'; 'Pietruszynski, Joe @ Hubbell Realty'; ChipC@jerryshomes.com; MWatkins@mcaninchcorp.com; 'Ingels, Chad [DNR]'

Cc: 'McCoid, Corey [DNR]'; 'Griffin, Joe [DNR]'; 'Grapp, Shelli [DNR]'

Subject: RE: EO 80 - Topsoil Preservation Requirements Public Comments

Creighton,

I did not agree that you would present the language you stated at the May 2nd meeting to rewrite the GP2 rule. I have stated at all of the meetings and in emails that I do not agree with the language that you presented. I did not have a chance to see what you gave to Joe Griffin so I cannot speak to whether it is what we agreed to or not. I am still waiting to see minutes so hopefully those will clarify previous conversations.

Thank you

Lucy Hershberger

FOREVER GREEN

From: Creighton Cox [<mailto:CCox@desmoineshomebuilders.com>]
Sent: Wednesday, June 04, 2014 9:29 AM
To: Sauer, Pat; Lucy Hershberger; 'Schnieders, Adam [DNR]'; 'Pietruszynski, Joe @ Hubbell Realty'; ChipC@jerryshomes.com; MWatkins@mcaninchcorp.com; 'Ingels, Chad [DNR]'
Cc: 'McCoid, Corey [DNR]'; 'Griffin, Joe [DNR]'; 'Grapp, Shelli [DNR]'
Subject: RE: EO 80 - Topsoil Preservation Requirements Public Comments

Pat & Lucy, the packet that was scanned was exactly what we voted on and was passed 7-0. Nothing was added that wasn't voted on at the meeting. The only thing I added to the packet was the cover letter that labels each piece.

I'm sure the meeting minutes that Joe will provide will list the items we voted on and approved unanimously. I began the recommendation process by stating I wanted to present the language I had presented at our May 2nd meeting to the EPC, and add the portion of the minutes from May 2nd that listed our points of agreement and points of disagreement, along with the Affidavit and the Public Comments to be supplied by IDNR staff. I was very clear, and I recall I stated that at least 3 times, including when I described what the recommendation was to IDNR staff. The recommendation was moved, seconded, and approved with a unanimous final vote of 7-0. I signed the front page, labeled the addendums, handed the packet to Joe Griffin, and subsequently was given the packet back to scan in and create a cover letter to provide to the EPC. I don't see how there is any confusion of what was unanimously approved.

As they are public record, the minutes of each meeting are open to the EPC for review, but we did not include meeting minutes in the recommendation packet. Again, I am sure the meeting minutes from last Thursday will clarify that.

CREIGHTON COX

Executive Officer

Home Builders Association of Greater Des Moines

From: Sauer, Pat [<mailto:PSauer@iamu.org>]
Sent: Wednesday, June 04, 2014 9:12 AM
To: Lucy Hershberger; Creighton Cox; 'Schnieders, Adam [DNR]'; 'Pietruszynski, Joe @ Hubbell Realty'; ChipC@jerryshomes.com; MWatkins@mcaninchcorp.com; 'Ingels, Chad [DNR]'
Cc: 'McCoid, Corey [DNR]'; 'Griffin, Joe [DNR]'; 'Grapp, Shelli [DNR]'
Subject: RE: EO 80 - Topsoil Preservation Requirements Public Comments

I agree with Lucy's comments. We are not to submit proposed GP#2 language-we had those discussions at our meetings. That is for IDNR. I would like to see the meeting minutes as well.

Pat

Pat Sauer, CPESC, CPSS
director Iowa stormwater education program

Iowa association of municipal utilities

From: Lucy Hershberger [<mailto:lucyh@forevergreengrows.com>]
Sent: Wednesday, June 04, 2014 9:08 AM
To: 'Creighton Cox'; 'Schnieders, Adam [DNR]'; Sauer, Pat; 'Pietruszynski, Joe @ Hubbell Realty'; ChipC@jerryshomes.com; MWatkins@mcaninchcorp.com; 'Ingels, Chad [DNR]'
Cc: 'McCoid, Corey [DNR]'; 'Griffin, Joe [DNR]'; 'Grapp, Shelli [DNR]'
Subject: RE: EO 80 - Topsoil Preservation Requirements Public Comments

I don't think that we decided to submit amended wording for the GP 2 rule at our meeting. We discussed this at each meeting and have not agreed on the amended wording. I understood that what we submit would be a statement of what the group agreed on and what we didn't agree on, with the affidavit, and minutes from all meetings. I would still like to have copies of the minutes from all of the meetings approved before we submit anything. I do not have copies of the meetings minutes, don't know if I missed them or they didn't go out yet but I believe that is needed before anything is submitted .

Thank you

Lucy Hershberger

FOREVER GREEN

From: Creighton Cox [<mailto:CCox@desmoineshomebuilders.com>]
Sent: Friday, May 30, 2014 3:49 PM
To: Schnieders, Adam [DNR]; Sauer, Pat; Pietruszynski, Joe @ Hubbell Realty; ChipC@jerryshomes.com; lucyh@forevergreengrows.com; MWatkins@mcaninchcorp.com; Ingels, Chad [DNR]
Cc: McCoid, Corey [DNR]; Griffin, Joe [DNR]; Grapp, Shelli [DNR]
Subject: RE: EO 80 - Topsoil Preservation Requirements Public Comments

EO-80 group members - Please review the attached cover letter to go with the approved packet to be submitted as the EO-80 groups recommendation.

I'd like to file this with DNR staff on Monday if possible.

Thank you for everyone's input during this process, I am pleased we were able to find unanimous consent, including the points of disagreement, within our recommendation.

CREIGHTON COX

Executive Officer

Home Builders Association of Greater Des Moines

Environmental Protection Commission
Iowa Department of Natural Resources
7900 Hickman Road
Windsor Heights, Iowa

Thursday, May 29th

Environmental Protection Commissioners:

On behalf of the Executive Order 80 Workgroup for Topsoil Preservation Requirements in NPDES General Permit #2, I formally submit the unanimous recommendation for the consideration of the commission.

1. Proposal for GP2: Language available for the Commission to consider under the revised rule
2. (A.1) Minutes of May 2, 2014: Portions 14 – 17, including items of unanimous agreement and items of contention. Additional: statement in support of “best management practices”
3. (A.2) Sample Affidavit from Waukee, Iowa “Certification of Completion of IDNR General Permit #2 Topsoil preservation Requirement”. The EO-80 group recommends the addition of the affidavit within the language of NPDES General Permit #2 to allow for uniform certification of completion in multiple jurisdictions to limit cost and allow for jurisdictional protection of liability.
4. Public Comments: Provided by DNR Staff
 - a. Written Comments submitted to DNR
 - b. Oral Comments from Public Forum on May 29th, 2014

Respectfully submitted:

Creighton Cox, Chair
Executive Order 80 Workgroup for Topsoil Preservation Requirements in NPDES
General Permit #2

Recommendation to EPC From EO-80 Group

May 29, 2014

Chair.

Proposal For GP2

[Handwritten signature]

A.(2).(c). Unless infeasible, the following measures shall be implemented at all sites: utilize outlet structures that withdraw water from the surface when discharging from basins, provide and maintain natural buffers around surface waters, direct storm water to vegetated areas to increase sediment removal and maximize storm water infiltration and minimize soil compaction. ~~Topsoil shall be preserved at all construction sites unless land use precludes the practice. The requirement to preserve topsoil shall be met only when the depth of topsoil after soil disturbing activities have been completed and final stabilization achieved for the permitted activity is equal to, or greater than, 4.0 inches, including soil contained in sod, on all areas of the site where the surface of the ground disturbed for the permitted construction activities is exposed and not covered by concrete, asphalt, gravel or other such material and where 4.0 inches or more of topsoil existed prior to the commencement of soil disturbing activities that are permitted under the current permit authorization for the site. On areas where less than 4.0 inches of topsoil existed prior to the commencement of soil disturbing activities that are permitted under the current permit authorization for the site, the minimum depth of topsoil after soil disturbing activities have been completed and final stabilization achieved for the permitted activity shall be equal to, or greater than, the depth of topsoil that existed prior to the commencement of soil disturbing activities that are permitted under the current permit authorization for the site.~~ The permittee(s) shall minimize soil compaction and, unless infeasible, preserve topsoil. "Infeasible" shall mean not technologically possible, or not economically practicable and achievable in light of the best industry practices. "Unless infeasible, preserve topsoil" shall mean that, unless infeasible, topsoil from any areas of the site where the surface of the ground for the permitted construction activities is disturbed, shall remain within the area covered by the applicable General Permit No. 2. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed. The permittee(s) shall control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges and shall control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. An affidavit to the city signed by the permittee(s) that verifies compliance with these requirements shall satisfy the terms of this paragraph.

~~The final topsoil depth is to be measured after the soil has been compacted in a fashion generally considered adequate for an established lawn and so that the expected settling that will occur after measurement will be minimal and shall include the soil contained in any sod that has been placed on the site. The type of topsoil at the site after soil disturbing activities have been completed and final stabilization achieved for the permitted activity shall be similar to that which exists or existed in the general area of the site.~~

For construction activity which is part of a larger common plan of development, such as a housing or commercial development project, in which a new owner agrees in writing to be solely responsible for compliance with the provisions of this permit for the property which has been transferred or in which the new owner has obtained authorization under this permit for a lot or

lots (as specified in subrule 567-64.6(6) of the Iowa Administrative Code), the topsoil preservation requirements described above must be met no later than at the time the lot or lots have reached final stabilization as described in this permit.

~~For sites where less than 4.0 inches of topsoil is to be in place after soil disturbing activities have been completed and final stabilization achieved for the permitted activity, a soil survey conducted by properly qualified personnel who regularly conduct soil surveys as part of their normal job duties must be conducted prior to commencement of soil disturbing activities that are permitted under the current permit authorization for the site. The results of the soil survey shall become part of the Pollution Prevention Plan and shall indicate the depth of topsoil at a suitable number of points on the site commensurate with standard engineering practices established for the size of the site.~~

The topsoil preservation requirement described above shall be implemented for projects that have not received an authorization under this permit prior to October 1, 2012. The topsoil preservation requirements are not required to be implemented for projects that have been authorized prior to October 1, 2012. In residential and commercial developments, a plat is considered a project. For other large areas that have been authorized for multiple construction sites, including those to be started at a future date, such as those located at industrial facilities, military installations and universities, a new construction project not yet surveyed and platted out is considered a project. This stipulation is intended to be interpreted as requiring the topsoil preservation requirements on development plats and construction activities on other extended areas that may have several construction projects permitted under the same authorization to be implemented on those projects not yet surveyed and platted out prior to October 1, 2012 even if other plats and construction activities in the same development or other extended area were authorized prior to October 1, 2012.

A.1. Addendum of agreement + disagreement

A.2. Affidavit Example "Wauke" "

A.3 - Public Comments

7-0 Unanimous Vote.

A. 1

**From Minutes of May 2, 2014 EO-80 Working Group
As addendum to Recommendation**

14. Chad Ingels recommended that the group find consensus on what is agreed upon and what is not. Ingles stated that the commission will weigh in on these perspectives, both for and against. Ingles stated he did not believe the workgroup will take a shared perspective on all points made. The workgroup was in agreement with Ingels perspectives.
15. The workgroup is in agreement that top soil shall be preserved on-site, soil should be used to minimize storm water velocity and erosion, a developer should be allowed to manage soil under reasonable soil logistics methods, there should be accountability in the development and homebuilding process, and that federal guidelines shall be met.
16. The group was not in unanimous consensus on the 4-inch rule being kept in place, uniform spreading requirements, absolute measurements, and interpretation of federal requirements as it pertains to the state law exceeding federal law.
17. It was moved by Joe Pietruszynski and seconded by Chad Ingels that the consensus items be adopted as the group's shared position. The vote was unanimous in favor of the consensus items.

~~17.~~

17. We believe Best management practices should be taken into account by Builders, Developers + Cities.

A.2



Certification of Completion of IDNR General Permit #2 Topsoil Preservation Requirement

I hereby certify that the topsoil preservation requirements of the Iowa Department of Natural

Resources General Permit No. 2, _____ (IA DNR Authorization Number)

Part IV.D.2.A.(2).(c) for _____ (PROJECT NAME)

_____ (PROJECT, ADDRESS)

have been met on _____ (DATE)

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations".

Print Name

General Permit No. 2 Holders Signature

Title

Date



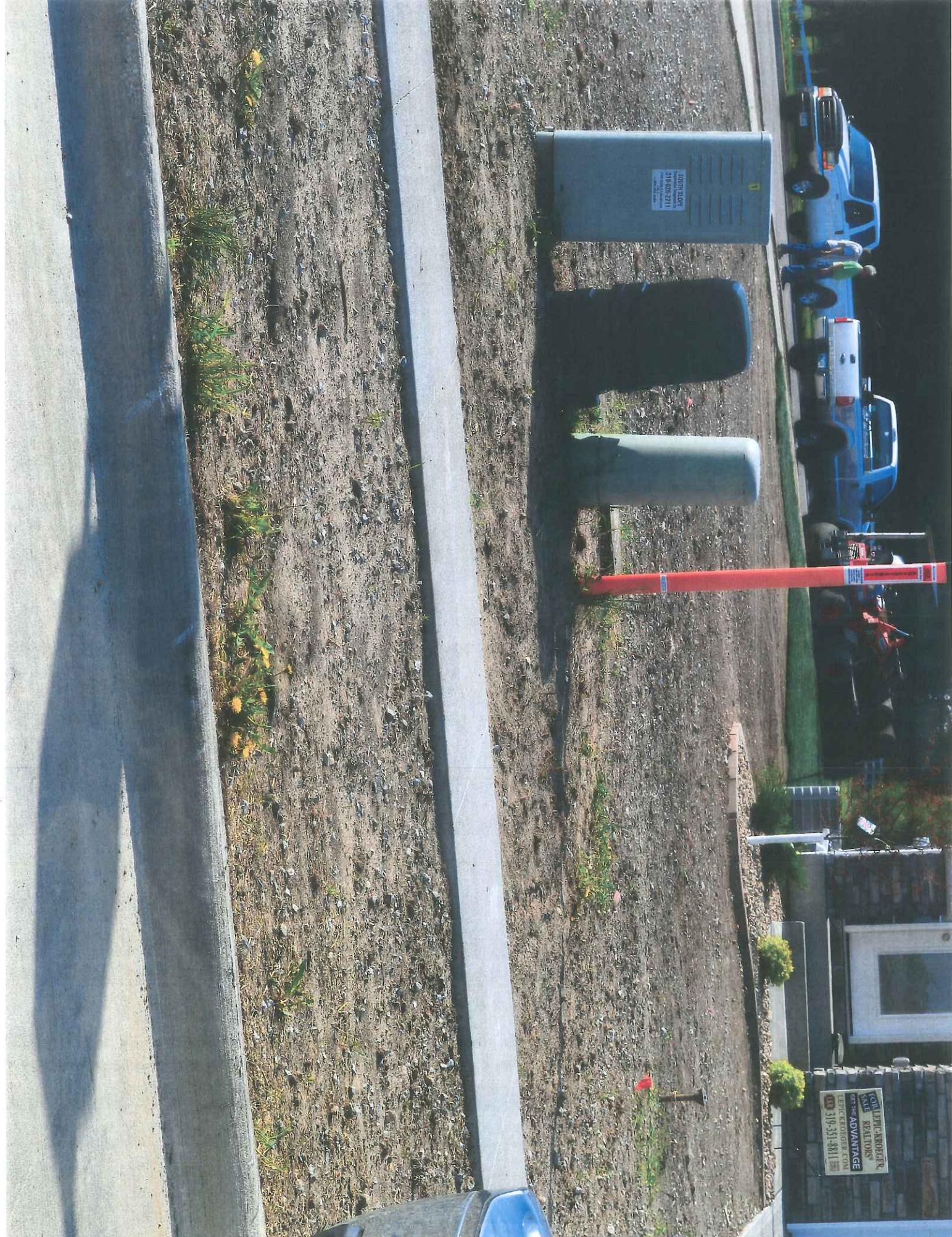
Lucy Hushberger



Lucy Horshover



Lucy Hurshberger



Lucy Harshberger

Environmental Protection Commission

Tuesday, July 15, 2014

**Executive Order 80 (EO 80) Stakeholder
Group Recommendation on
Topsoil Preservation Requirements in
Storm Water Construction General
Permit no. 2**

Stakeholders

- **Chair: Creighton Cox, Home Builders Association of Greater Des Moines**
- **Chip Classon, Jerry's Homes**
- **Lucy Hershberger, Forever Green Nursery**
- **Chad Ingels, Environmental Protection Commission**
- **Joe Pietruszynski, Hubbell Realty Company**
- **Pat Sauer, Iowa Storm Water Education Program**
- **Mark Watkins, McAninch Corporation**

Stakeholder Process

- Stakeholders Appointed by the Governor and DNR
- Met 3 times on April 24th, May 2nd, & May 29th
- Requested written Public Comment through DNR
 - June 11th – approximately 190 comments had been received
 - Approximately 110 in favor of the Federal Language
 - Approximately 80 in favor of the 4 inch rule
- Held Public Forum at IDNR on May 29th
 - 12 individuals spoke in favor of Federal language
 - 6 individuals spoke in favor of the 4 inch rule
- Formal vote held May 29th
 - Recommendation was approved 7-0
 - Following review of minutes:
 - 2 Stakeholders objected to the Recommendation
 - 5 Stakeholders approved Recommendation as presented on May 29th

Recommendation of Revised Language

- The permittee(s) shall minimize soil compaction and, unless infeasible, preserve topsoil. "Infeasible" shall mean not technologically possible, or not economically practicable and achievable in light of the best industry practices. "Unless infeasible, preserve topsoil" shall mean that, unless infeasible, topsoil from any areas of the site where the surface of the ground for the permitted construction activities is disturbed, shall remain within the area covered by the applicable General Permit No. 2. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed. The permittee(s) shall control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges and shall control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. An affidavit to the city signed by the permittee(s) that verifies compliance with these requirements shall satisfy the terms of this paragraph.

Minutes of May 2, 2014: Points of consent & disagreement

- 14. Chad Ingels recommended that the group find consensus on what is agreed upon and what is not. Ingels stated that the commission will weigh in on these perspectives, both for and against. Ingels stated he did not believe the workgroup will take a shared perspective on all points made. The workgroup was in agreement with Ingels perspectives.

Points of consent

- 15. The workgroup is in agreement:
 - It is important that top soil be preserved on-site
 - Soil should be used to minimize storm water velocity and erosion
 - Developer should be allowed to manage soil under reasonable soil logistics methods
 - Accountability in the development and homebuilding process

Points of disagreement

- 16. The group was not in unanimous consensus on:
- 4-inch rule being kept in place
- Uniform spreading requirements
- Absolute measurements
- Interpretation of federal requirements as it pertains to the state law exceeding federal law requirements

Presentation by Stakeholders

- **Chip Classon, Jerry's Homes**
- **Lucy Hershberger, Forever Green Nursery**
- **Joe Pietruszynski, Hubbell Realty Company**
- **Pat Sauer, Iowa Storm Water Education Program**
- **Mark Watkins, McAninch Corporation**
- **Chair: Creighton Cox, Home Builders Association of Greater Des Moines**

Federal Language

- **Federal Register March 6, 2014, page 12667**
 - (1) Control stormwater volume and velocity
 - (2) Control stormwater discharges
 - (6) Provide and maintain natural buffers
 - (7) Minimize soil compaction.
 - (8) Unless infeasible, preserve topsoil.

Erosion Control Requirements

- Additional GP2 Erosion Controls Requirements
 - Silt Fences
 - Detention Basins
 - Gravel/Rock access
 - Control Track Out/Streets Cleaned Daily
 - Erosion Control Socks
 - Mandatory Seeding of disturbed areas
 - Inspection Required every 7 days

Post-Construction Controls & Cooperative enhancements

- Post-Construction Run-off must not exceed Pre-Construction Levels
- Parkland Dedication
- Green Space
- Blue Zones – Protect Established Water Ways
- Trees & Shrubs
- Bio-Swails
- Prairie areas

Economic Impact

- Cost of the 4 inch requirement is between \$3,500 and \$6,000 for every new homeowner.
- Data from the U.S. Census Bureau & NAHB:
 - \$1,000 increase = 3,126 families
- \$3500= 10,941 Iowa families

Pre-4 inch rule: Lawns are green & plush

Urbandale



West Des Moines



Pre-4 inch rule: Lawns are green & plush

Johnston



Des Moines



EO-80 Stakeholders group reviewing the 4" Topsoil rule.

Alternative recommendations to satisfy federal requirements and ease costs and burden on construction community.

*Presented by: Lucy Hershberger EO-80 member
Owner Forever Green Landscaping & Garden Center*

Examples of 2014 construction sites without the 4" topsoil rule.



Subsoil scraped and compacted does not have the ability to absorb rainfall. After sodding this problem is hidden to homeowners who are left with the expense of correcting the problem on their own when they discover what was done.

Examples of 2014 construction sites without the 4" topsoil rule.



Rock dumped in the yard is graded into the soil adding to the problem of compacted clay with no topsoil. This could be resolved by educating subcontractors to dump rock where the driveway will be located.

Examples of 2014 construction sites without the 4" topsoil rule.



Grass planted in compacted clay is not able to send roots deep enough to survive extended drought. Fertilizer and herbicides applied to these yards is more likely to runoff due to the inability of the soil to retain nutrients.

Examples of 2014 construction sites without the 4" topsoil rule.



This yard is finish graded and is being sodded. The rocks and weeds will be covered up with sod becoming a permanent part of the landscape. Contractors have followed these practices for years and have resisted recommendations to make changes even when those changes would result large benefits to homeowners and the environment.

Addressing concerns expressed by Home Builders Association

1. Developers and builders are already heavily regulated when it comes to storm water runoff requirements. These are expensive and time consuming requirements that have been followed for years with great success, not just in Iowa but around the country.
The success of the existing regulations has not been good resulting in increased runoff from heavily compacted soils which have had topsoil removed and not replaced on the lot. The rule requires that soil is replaced throughout the development not just in areas where it is easier and less expensive to leave it. Not requiring soil to be spread throughout the development will result in topsoil placed in areas that do not benefit stormwater management such as berms.
2. The federal rule requires that a builder or developer "unless infeasible, preserve topsoil." There appears to be a misconception that builders/developers routinely strip the site of topsoil and then sell it or ship it off to other sites. This simply isn't true. It is HBA's understanding that, unless the soil cannot physically remain on the site (such as when doing building development in a downtown), topsoil is retained within the plat and used where it will serve the best purpose for the development.
The 4" rule requires that soil is replaced throughout the development. Not requiring soil to be spread throughout the development will allow the practice of placing topsoil in areas that may not benefit stormwater management such as berms with the excess removed as infeasible to continue.
3. The federal rule does not, in any way, address the issue of how many inches of topsoil is required at any particular location. It simply says "unless infeasible, preserve topsoil." A requirement that compels the builder/developer to maintain a certain number of inches at a particular location goes well beyond the federal requirement.
As stated in the memo from Jon Tack Legal Service Bureau presented to the Stakeholders group at the May 29 meeting the rule does not go beyond the federal requirement. It defines and limits the requirement to the 4" of topsoil.

Addressing concerns expressed by Home Builders Association

4. The 4" requirement is extremely difficult and costly to satisfy. When the 4" requirement was implemented last year, HBA estimated that the additional cost of compliance would be about \$300 - \$400 per lot. After a year of implementation, we have discovered that the actual cost of the requirement is more than 10 times that original estimate – and in some places as high as \$5,000 per lot. Since all of the topsoil is left on site, the additional cost of dictating exactly where the topsoil gets placed is an unnecessary impediment to affordable housing. This is especially true at a time that the industry is trying to get back on its feet.

There was a lot of discussion during the meetings about the difficulties in complying with the specifics of the 4" rule. Some concerns expressed were:

- Contractors are failing inspections because small areas did not measure at 4".
- Difficulties keeping the area at a 4" depth due to compaction from equipment or natural settling.
- Delays and costs for inspections due to understaffing in cities.
- Large stockpiles vs. stockpiling or spreading on lots prior to construction, and cleanup costs.

Alternatives that were discussed to ease the burden on builders and developers include:

- Adapting the rule to a range of depth such as 3-5".
- Using an average measurement throughout the yard that would equal 4".
- A volume measurement such as one cubic yard of top soil per 100' square spread throughout the yard.
- Allowing an affidavit signed by a trained soil inspector, the builder or developer stating that they have complied with the rule instead of inspections.

During discussion there was agreement that there is a value to topsoil on the lots and that these suggestions would ease the burden on contractors. These suggestions were not included in the proposal to the EOC on the insistence of members representing the construction industry that any measurable requirement, or statement that soil be spread throughout the development was not acceptable.

Cost estimates for adding topsoil during construction based on bidding by Forever Green in Coralville.

Based on a 12,000' sq. lot with approximately 9,000' of yard area.

During construction without soil retained on site the cost to purchase and apply 4" of top soil on a yard is:

Top soil cost	\$2500.
Labor to spread soil	\$ 500.
Total cost	\$3000.00

During construction with soil on site the cost to spread 4" of topsoil is \$ 500.00.
 If soil was stockpiled nearby add Hauling cost to bring to site. \$ 550.00

Total	\$1100.00
--------------	------------------

Additional options

Chisel plow	\$ 300-500 to reduce compaction from construction.
-------------	--

Sod would add an additional 1/2" of topsoil to the yard reducing the soil needed.

Soil quality restoration cost estimate

- Deep tine aeration followed by spreading .25-.5" of compost.
- Approximate cost for an average 10,000' sq. yard \$2000.00 per .5" application.
- Recommended 4-8 applications for maximum benefit total cost up to \$8000.00.
- Cost share for these projects are paid to homeowners in many Iowa cities including Ankeny Ames, Coralville and Iowa City with state & federal funds from programs such as Reap, WIRB, EPA-319.





There is a cost when we choose to do nothing





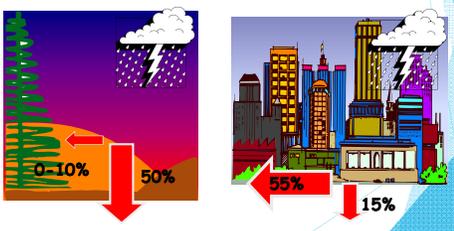


Why the 4" Rule is Important: Pat Sauer

- ▶ Director Iowa Stormwater Education Program
- ▶ Representing: 35 MS-4, City members, 94% in favor of keeping 4" rule
- ▶ Representing: The soils of the state: Professional Soil Scientist



Historic Hydrology vs. Modern Hydrology (the native ecosystem model)



Hydrology Type	Runoff	Infiltration
Historic Hydrology	0-10%	50%
Modern Hydrology	55%	15%

Historic Landscapes vs. Present Urban Landscapes



- Prairie soils had 8-10% organic matter, high fertility and 45% pore space.
- Loss of topsoil in urban areas after construction--Now soils have .5 - 2% OM, low fertility.
- Less OM and compacted subsurface soils on construction sites.
- Soils have lost 60-80% of their ability to absorb and infiltrate rainfall events.
- Landscapes initiate runoff sooner; shed more runoff.
- Flashier hydrology - more runoff - water quality degradation.



Common Development Practices



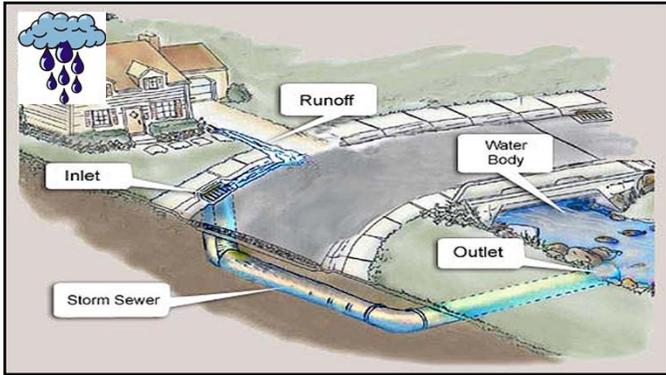
What Does the Homeowner Inherit?



- ▶ Disfunctional soils!
- ▶ Highly compacted subsurface (b-horizon soils)
- ▶ Low fertility, low organic matter content
- ▶ High inputs of water, fertilizers
- ▶ Compacted soil acts like concrete; more runoff, more nutrients runoff

What Do Iowa Cities Inherit?





Impervious Surfaces

- ▶ One inch of rain, falling on one acre, delivers 27,152 gallons of water!
- ▶ Compacted soils with low organic matter do not absorb significant amounts of precipitation.

Development: Johnston 86th St & 70th Ave.

Slide provided by Lori McDaniel, DNR

4" Topsoil vs. Compacted Subsoil with 1" Topsoil

- ISU Learning Farm Urban rainfall Simulation
- Runoff in subsoil with 1" topsoil tray occurred 5 minutes before tray with 4" topsoil
- Volume of runoff....see for yourself

4" Topsoil 1" Topsoil + 3" subsoil

ISU and NRCS Research: Dynamic Soil Properties Across a Suburban Landscape

- ▶ Ankeny, Iowa
- ▶ Pre 1939-2005
- ▶ 90 sampling sites

Legend:

- 1939-1950
- 1950-1960
- 1960-1970
- 1970-1980
- 1980-1990
- 1990-2005

Results:

- ▶ Bulk density or compaction increased with time of development
- ▶ Organic matter content decreased with time of development

Response from HBA during Hearing:
Put in BIGGER PIPES!
Get it to the stream even faster....
Opportunity to educate Iowa's developers and builders



Confirm Requirements: Prevent Myths

- ▶ ≥ 4 " of topsoil is required on sites that had ≥ 4 " of topsoil to start with; this includes $\frac{3}{4}$ " of topsoil in sod
- ▶ On sites with < 4 " topsoil return \geq to the amount of topsoil that existed prior to soil disturbance, soil survey to confirm amounts
- ▶ Topsoil should not have to be trucked into sites unless there was none across the entire site to begin with and some is need for sod or seed



Role of EPC: Protect our environment, soils, water
Please keep the 4" topsoil requirement

Come up with a compromise:
Recommend that language be changed to: an average of 4" across the site

Agenda

Environmental Protection Commission

Tuesday, July 15, 2014
DNR Air Quality Suite 1
7900 Hickman Road
Windsor Heights, Iowa

Monday, July 14, 2014 – Educational Tour – Princeton Community Center 428 River Dr, Princeton

Tour of Lost Grove Lake

12-1 PM – Lunch at Princeton Community Center

1-3:30 PM – Shuttle departs from Princeton Community Center for driving tour

Tuesday, July 15, 2014 – EPC Business Meeting – 7900 Hickman Road, Windsor Heights

10:00 AM – EPC Business Meeting begins

10:30 AM – Public Participation¹ – Requests to speak must be submitted to Jerah Sheets at

Jerah.Sheets@dnr.iowa.gov or 515-313-8909 prior to the meeting or at the meeting prior to the start of Public Participation

11:00 AM – Executive Order 80 (EO 80) Stakeholder Group Recommendation on Topsoil Preservation Requirements in Storm Water Construction General Permit No. 2

Agenda topics

- 1 Approval of Agenda
- 2 Approval of Minutes
- 3 Director's Remarks
- 4 Contract with Iowa State University for Risk-based Corrective Action (RBCA) Modeling Software Upgrade Anne Preziosi (Decision)
- 4A Cooperative Agreement with Iowa Comprehensive Petroleum UST Fund Board for Funding Risk-based Corrective Action (RBCA) Modeling Software Upgrade Anne Preziosi (Decision)
- 5 Final Rules – Chapters 22 and 23–Best Management Practices for Grain Elevators and Adoption of Federal Air Toxics Standards Christine Paulson (Decision)
- 6 Executive Order 80 (EO 80) Stakeholder Group Recommendation on Topsoil Preservation Requirements in Storm Water Construction General Permit no. 2 Creighton Cox (Information)
- 7 Monthly Reports Bill Ehm (Information)
- 8 General Discussion
- 9 Items for Next Month's Meeting
 - August 19, 2014 – EPC Business Meeting, Windsor Heights
 - September 15, 2014 – EPC Education Tour, Sioux County
 - September 16, 2014 – EPC Business Meeting, Sioux County

For details on the EPC meeting schedule, visit

<http://www.iowadnr.gov/InsideDNR/BoardsCommissions.aspx>.

¹ Comments during the public participation period regarding proposed rules or notices of intended action are not included in the official comments for that rule package unless they are submitted as required in the Notice of Intended Action.

**Environmental Protection Commission
Iowa Department of Natural Resources**

ITEM

4

DECISION

TOPIC

Contract with Iowa State University for Risk-based Corrective Action (RBCA) Modeling Software Upgrade

Recommendations:

Commission approval is requested for a service contract of approximately two and a half years with Iowa State University (ISU), Ames, Iowa. The contract will begin on August 25, 2014 and terminate on December 31, 2016. The total amount of this contract shall not exceed \$180,000.

Funding Source:

This contract will be funded through an appropriation to the Department from the Iowa Comprehensive Petroleum Underground Storage Tank Fund (Fund) specific to this purpose. Formal approval by the Fund Board of the use of this funding has not yet occurred, and the work to be performed through this Contract is subject to the availability of that funding. Approval for funding is concurrently being sought at the Fund Board's July 15th Strategic Planning Meeting.

Background:

The risk-based corrective action (RBCA) evaluation requirements for Leaking Underground Storage Tank (LUST) sites are regulated by the DNR under Iowa Code 455B.474, and as an authority delegated by the USEPA. IAC Chapter 135 further defines requirements including use of DNR-developed modeling software. The RBCA software is primarily used by DNR staff and Iowa Certified Groundwater Professionals to evaluate public health, safety, and environmental risks associated with over 6,000 LUST sites across Iowa. Nearly 1,000 sites remain open and under investigation, with an average of 50 new LUST sites identified each year. The RBCA software is used for ongoing evaluations of open LUST sites and for the risk assessment of newly reported LUST sites. The software is not only used to predict whether a petroleum release will cause a public or environmental risk, it is also used to calculate site specific target levels or cleanup levels; therefore it is highly relied upon to establish cleanup or remediation goals for individual LUST sites.

The RBCA software was originally developed in 1996 using Visual Basic (VB4) computer language, and subsequently upgraded with the most current version in VB6. The software suite consists of four separate packages (Tier 1 v1.1, Tier 2 v 2.51, Tier 2 v 3.0, and Tier 2 Bedrock v1.1). These are standalone Windows desktop contaminant transport modeling programs (i.e., they are not connected to external databases or files). These programs can be operated under Windows XP or older operating systems; however, because XP is no longer supported, a new version of the code that is compatible with newer operating systems (Windows 7 and newer) is required. Therefore, the primary objective is to convert the existing RBCA suite of software developed in VB4 / VB6 into C#.NET language.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining the Contractor to: (1) update the existing Risk-Based Corrective Action (RBCA) modeling software to be compatible with newer operating systems; (2) assist with modification and documentation of business logic; (3) update the software suite to incorporate changes in regulatory standards (specifically numerical standards for water line risk evaluations); (4) provide full technical documentation of the code; (5) ensure historic files are compatible (can be opened) in all revised versions of RBCA software; and (6) correct the deficiencies identified during testing and from DNR's security scan, in accordance with Departmental IT operating procedures and standards.

Contractor Selection Process:

Iowa Code 455B.103(3) provides that the Department shall contract, with the approval of the commission, with public agencies of the state to provide environmental quality evaluation services necessary to implement rules for which the Department has administrative oversight (i.e., Chapter 135). ISU (and principle programmer Dr. LaDon Jones) was chosen because of the prior experience with and authorship of the RBCA modeling software, and their commensurate ability to economically and efficiently complete these services.

Elaine Douskey
Underground Storage Tank Section Supervisor
Land Quality Bureau, Environmental Services Division

**Environmental Protection Commission
Iowa Department of Natural Resources**

ITEM

4A

DECISION

TOPIC **Cooperative Agreement with Iowa Comprehensive Petroleum UST Fund Board for Funding Risk-based Corrective Action (RBCA) Modeling Software Upgrade**

Recommendations:

Commission approval is requested for the Department of Natural Resources (DNR) to enter into an Iowa Code chapter 28E Cooperative Agreement with the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board ('UST Fund'). The purpose of the Cooperative Agreement is to provide financial assistance to DNR so that DNR may contract with a vendor to upgrade the Risk-based Corrective Action (RBCA) modeling software.

Synopsis:

The Iowa DNR and the UST Fund work cooperatively to assist responsible parties of leaking underground storage tank (LUST) sites in complying with the law regarding assessment and corrective actions of petroleum releases. The risks associated with LUST sites are determined through site investigations and use of Department-prescribed contaminant modeling programs. The modeling software is an essential tool used by the DNR, UST Fund administrator's staff and environmental consultants for determining public health and environmental risks, as well as site specific target levels or cleanup goals for individual sites. The DNR and the UST Fund share a joint interest and program objective of appropriately addressing these risks and closing LUST sites in a timely manner.

The current software is antiquated and in need of upgrading to be functional with newer operating systems (Windows 7 and newer). The Department does not have the funds within its current operating budget to timely complete the necessary changes.

The DNR intends to enter into a vendor contract with Iowa State University (ISU) (with principle programmer Dr. LaDon Jones) to complete upgrades for the RBCA software. The DNR is requesting funding assistance from the UST Fund for the project up to a maximum of \$150,000. Approval for funding is concurrently being sought at the Fund Board's July 15th Strategic Planning Meeting. The terms and conditions of this joint effort are outlined in this Iowa Code chapter 28E Cooperative Agreement between the Iowa DNR and the UST Fund Board.

Elaine Douskey
Underground Storage Tank Section Supervisor
Land Quality Bureau, Environmental Services Division
July 15, 2014

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

5

DECISION

TOPIC **Final Rules – Chapters 22 and 23–Best Management Practices for Grain Elevators and Adoption of Federal Air Toxics Standards**

The Department is requesting permission from the Commission to adopt amendments to Chapter 22 "Controlling Pollution," and Chapter 23 "Emission Standards for Contaminants."

Reason for Rulemaking

The first purpose of the rule changes is to establish best management practices (BMPs) for grain vacuuming at small grain elevators. The BMPs include practical activities that may be used at elevators to minimize dust and possible air quality impacts resulting from vacuuming grain out of storage structures. The BMPs were developed through a stakeholder workgroup jointly organized by the Department of Natural Resources (Department) and Agribusiness Association of Iowa (AAI), and included grain elevator operators and grain vacuum (grain vac) vendors.

The second purpose of the rule changes is to adopt by reference federal air toxics standards for chemical manufacturing plants and for prepared feeds manufacturing (also known as National Emission Standards for Hazardous Air Pollutants or NESHAP). The Commission had originally adopted these standards by reference in 2010. However, Executive Order 72 rescinded adoption of these standards along with rescission of the RICE NESHAP. Subsequent to Executive Order 72, the U.S. Environmental Protection Agency (EPA) revised these NESHAP standards. The revised NESHAP generally provide regulatory relief and clarity from the previous requirements. The Department is now requesting permission to adopt these NESHAP. Upon adoption of the NESHAP, the Department rather than EPA will be the primary implementation authority for these regulations in Iowa, allowing the Department to provide compliance assistance and outreach to affected facilities.

Summary of Rule Changes

Grain Vac BMPs

Prior to 2008, most grain facilities used sweep augers to extract the remaining grain from the bottom of storage bins. Beginning in late 2009, the U.S. Occupational Safety and Health Administration (OSHA) sent letters to grain elevators stating that operators could not be inside a grain bin while an unguarded sweep auger operated inside the bin. The OSHA letters resulted in more facilities using grain vacuuming to remove the remaining grain from storage bins.

With the wider use of grain vac operations, the Department's field offices started receiving dust complaints from residences and businesses located near grain elevators using grain vacs. The Department subsequently partnered with AAI to convene a stakeholder workgroup to develop

solutions that address complaints and ensure compliance with air quality regulations. The proposed BMPs are the result of this collaborative effort. The new BMPs will be added to the existing BMPs adopted by reference in 567 IAC Chapter 22

Adoption of Air Toxics (NESHAP) standards for Chemical Manufacturing and Prepared Feeds Manufacturing

In October 2009, EPA finalized the NESHAP for Chemical Manufacturing at Area Sources (Subpart VVVVVV, hereafter referred to as the “6V NESHAP”). The final 6V NESHAP appeared to include ethanol production facilities, but the standards were unclear on several points. In January 2012, EPA agreed to reconsider portions of the 6V NESHAP. On December 21, 2012, EPA issued final amendments to the 6V NESHAP, and extended the compliance date until March 2013. With the assistance of Iowa Renewable Fuels Association (IRFA), the Department determined that current dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP. At this time, the Department has identified a small number of other chemical manufacturing facilities subject to the 6V NESHAP.

In January 2010, EPA finalized the NESHAP for Prepared Feeds Manufacturing at Area Sources (Subpart DDDDDDD, hereafter referred to as the “7D NESHAP”). The final 7D NESHAP appeared to cover all feed mills that used chromium and manganese in production, but several provisions of the final standards were unclear. In 2011, EPA agreed to reconsider some provisions of the 7D NESHAP. EPA finalized its reconsideration on December 23, 2011, revising its standards so that larger feed mills with pellet cooler operations did not need to install new emissions control if the facility had existing control equipment. The 7D NESHAP compliance date for existing feed mills was January 5, 2012.

Public Comments

The Department received formal comments from AAI in support of the rule changes. The Department also received minor comments from EPA Region 7 prior to publishing the Notice of Intended Action. The attached Public Participation Responsiveness Summary provides a summary of the public comments and the Department’s response. The Department did not make any changes to the final rules from what was published in the Notice of Intended Action.

If the Commission approves the final rules, the Adopted and Filed rules will be published on August 6, 2014, and will become effective on September 10, 2014.

The Adopted and Filed rules, Jobs Impact Statement, Fiscal Impact Statement, and Public Participation Responsiveness Summary are attached.

Christine Paulson
Environmental Specialist Senior
Program Development Section, Air Quality Bureau
Memo date: June 23, 2014

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission (Commission) hereby amends Chapter 22, “Controlling Pollution,” and Chapter 23, “Emission Standards for Contaminants,” Iowa Administrative Code.

First, the Commission in this rule making establishes in Chapter 22 best management practices (BMPs) for grain vacuuming operations at small grain elevators. The BMPs include practical activities that owners and operators may use at grain elevators to minimize dust and possible air quality impacts resulting from vacuuming grain out of storage structures. The BMPs were developed through a stakeholder workgroup that was jointly organized by the Department of Natural Resources (Department) and Agribusiness Association of Iowa (AAI) and that included grain elevator operators and grain vacuum (grain vac) vendors.

Second, the Commission adopts changes to Chapter 23 to adopt by reference federal air toxics standards for chemical manufacturing plants and for prepared feeds manufacturing (also known as National Emission Standards for Hazardous Air Pollutants, or NESHAP).

The Commission had originally adopted these standards by reference in 2010. However, Executive Order (EO) 72 rescinded the adoption of these standards concurrent with the rescission of the RICE NESHAP. EO 72 stated that the RICE NESHAP was too costly for small utilities that maintain and operate rarely used emergency engines, and the RICE NESHAP requirements could increase electricity rates for consumers. In response to the concerns from Governor Branstad as expressed in EO 72 and concerns from other stakeholders, the U.S. Environmental Protection Agency (EPA) agreed to reconsider the RICE NESHAP. Consequently, EPA updated the RICE NESHAP to provide more circumstances for emergency

engines and for engines that participate in electricity management programs to operate under nonemergency conditions. The Commission adopted the updated RICE NESHAP in a previous rule making (see **ARC 1014C**, IAB 9/16/13).

Subsequent to EO 72, EPA updated the NESHAPs adopted in this rule making. The revised NESHAPs generally provide regulatory relief and clarify the previous requirements. The Commission is now adopting these NESHAPs. Upon adoption of the NESHAPs, the Department rather than EPA will be the primary implementation authority for these regulations in Iowa, allowing the Department to provide compliance assistance and outreach to affected facilities as soon as possible.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 14, 2014, as **ARC 1458C**, and a public hearing was held on June 16, 2014, in Windsor Heights, Iowa. The Department received no comments at the public hearing. The Department received two written comments prior to the June 16, 2014, deadline for public comments. One written comment supported the amendments. The other comment, from EPA Region 7, recommended providing clarification in the preamble to the adopted rules. The Commission provides clarification in the preamble, in response to EPA's comments, as noted in the explanation for Item 3 and Item 4 below. The Commission did not make any changes to the adopted amendments from what was published in the Notice of Intended Action. The Department's Public Participation Responsiveness Summary is available from the Department upon request.

Item 1 amends subparagraph 22.10(3)“a”(2) to revise the BMPs for grain elevators currently adopted by reference. The BMPs for grain elevators are designed to reduce emissions of particulate matter that is less than 10 microns in diameter (PM₁₀), especially dust that crosses the property line and that may adversely affect air quality at nearby businesses or residences. The

BMP document includes both facilitywide and equipment-specific practices that apply to both new and existing equipment. The amendment will add to the current BMP document a list of management practices for grain vacuuming operations at grain storage bins. The management practices were developed and recommended by a stakeholder workgroup jointly coordinated by the Department and AAI. The changes to the BMP document are available from the Department, upon request, and at the Department's Web site at <http://www.iowadnr.gov/InsideDNR/RegulatoryAir/StakeholderInvolvement.aspx> (under the Public Input section).

Background

In 2007, the Department worked with AAI and other stakeholders to develop flexible groupings for grain elevators. This collaboration resulted in rules that allowed over 800 owners and operators of small grain elevators (classified as "Group 1" elevators) to complete a one-page registration form rather than apply for an air construction permit. Additionally, the adopted rules (published in the 2/13/08 IAB as **ARC 6599B**) established the BMPs for small grain elevators.

Prior to 2008, most grain facilities used sweep augers to extract the remaining grain from the bottom of storage bins. Beginning in late 2009, the U.S. Occupational Safety and Health Administration (OSHA) sent letters to grain elevators stating that operators could not be inside a grain bin while an unguarded sweep auger operated inside the bin. As a result of the OSHA letters, more facilities use grain vacuuming to remove the remaining grain from storage bins.

With the wider use of grain vacuuming operations, the Department's field offices started receiving dust complaints from residences and businesses located near grain elevators using grain vacs. The Department became concerned about PM₁₀ emissions and dust from increased use of grain vac operations. The Department subsequently partnered with AAI to convene a

stakeholder workgroup to develop solutions that address complaints and ensure compliance with air quality regulations. The amendment is the result of this collaborative effort.

Stakeholder Involvement

The Grain Vac Workgroup convened in August 2011. The workgroup consisted of ten participants in addition to representatives from AAI, the Department and the Iowa Department of Agriculture and Land Stewardship. The facility and business participants included representatives from grain elevators and grain vac vendors. The workgroup met two times between August 2011 and June 2012. In addition, the Department conducted three onsite visits to observe grain vac operations.

The amendment revises the document, “Best Management Practices for Grain Elevators (December 2007),” adopted by reference in subparagraph 22.10(3)“a”(2). The revisions incorporate management practices for grain vac operations. AAI provided written comments to the Notice of Intended Action in support of the BMPs. The BMPs for grain vac operations will become applicable on the effective date of the adopted amendment (September 10, 2014).

Affected Facilities

The amendment revises the current BMPs for “Group 1” grain elevators and provide the option to include revised BMPs in the permits for new or modified “Group 2” grain elevators.

Group 1 grain elevators are specifically defined as facilities with PM₁₀ emissions less than 15 tons per year (567—22.10(455B)). Group 1 elevators are typically smaller grain elevators and are often “country grain elevators” that receive 50 percent or more of their grain from nearby farmers during harvest season. The owner or operator of a Group 1 elevator may use the BMP document and the streamlined registration process provided in rule 567—22.10(455B) rather than applying for an air construction permit.

Group 2 grain elevators have potential PM₁₀ emissions between 15 and 50 tons per year. In lieu of using the regular construction permit process, an owner or operator of a Group 2 elevator may complete a shorter application form specific to Group 2 elevators. The facility will receive a Group 2 permit that allows the facility to make certain changes without having to modify the permit. The BMPs included in the Group 2 permit are identical to the BMP document for Group 1 facilities. The amendment will affect only new or modified Group 2 facilities that apply for a new or revised Group 2 permit.

The amendment adds BMPs specific to grain vac operations to the current BMP document. Grain elevators that are not classified as Group 1 or Group 2 elevators are not covered by the proposed amendments. Grain elevators classified as Group 3 or Group 4 in rule 567—22.10(455B), as well as other grain elevators not covered by rule 567—22.10(455B), must obtain air construction permits. Construction permits include requirements specific to the facility, and may require BMPs similar to those in the BMPs for Group 1 or Group 2 facilities.

Item 2 amends the introductory paragraph of subrule 23.1(4) to reflect the most current amendment date to 40 Code of Federal Regulations (CFR) Part 63 adopted by reference in Chapter 23. The revised date reflects the amendments described below in Item 3 and Item 4.

Item 3 amends paragraph 23.1(4)“ev” to adopt the federal NESHAP for Chemical Manufacturing at Area Sources (40 CFR Part 63, Subpart VVVVVV). The Commission originally adopted this NESHAP by reference in 2010. However, EO 72 rescinded the adoption of this standard concurrent with the rescission of the RICE NESHAP. Subsequent to EO 72, the EPA revised this NESHAP to provide clarity and regulatory relief to stakeholders. The Commission is now adopting this standard for chemical manufacturing facilities.

Background

In October 2009, EPA finalized the NESHAP for Chemical Manufacturing at Area Sources (Subpart VVVVVV, hereafter referred to as the “6V NESHAP”). The final 6V NESHAP appeared to include ethanol production facilities, but the standards were unclear on several points. In January 2012, EPA agreed to reconsider portions of the 6V NESHAP. On December 21, 2012, EPA issued final amendments to the 6V NESHAP and extended the compliance date until March 2013. With the assistance of the Iowa Renewable Fuels Association (IRFA), the Department determined that current dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP. At this time, the Department has identified a small number of other chemical manufacturing facilities subject to the 6V NESHAP.

Stakeholder Involvement

Since EPA issued the original 6V NESHAP in October 2009, the Department has worked with IRFA to discuss outstanding applicability issues concerning the federal regulations. The Department met with IRFA to discuss EPA’s revised standards (issued on December 21, 2012) and the potential implications for ethanol production facilities in Iowa. IRFA agreed to work with its members and its national association to gather data on emissions from ethanol production that could potentially trigger 6V NESHAP applicability. Based on the data and analysis that IRFA provided to the Department in May and June 2013, the Department concurred with IRFA that current dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP.

Affected Facilities

Based on information and analysis compiled by IRFA, the Department has determined that dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP, and therefore would not have regulatory costs associated with the 6V NESHAP. Five other chemical

manufacturing facilities have notified the Department and EPA that they are subject to the 6V NESHAP. Based on information available, it appears that two of these facilities are already complying with the 6V NESHAP. One of the facilities is currently under construction. The compliance status of the other two facilities is unknown.

Prior to publication of the Notice of Intended Action, EPA Region 7 provided informal recommendations that the Department note in the preamble for the adopted rules that EPA retains concurrent authority to enforce the 6V NESHAP once Iowa becomes the delegated authority. Upon adoption of the 6V NESHAP, the Department rather than EPA will be the primary authority to implement these regulations in Iowa, allowing the Department to provide compliance assistance and outreach to affected facilities as soon as possible. However, EPA retains concurrent authority to implement and enforce the 6V NESHAP in Iowa.

Item 4 amends paragraph 23.1(4)“fd” to adopt the recently amended federal NESHAP for Area Source Standards for Prepared Feeds Manufacturing (40 CFR Part 63, Subpart DDDDDDD, hereafter referred to as the “7D NESHAP”). The Commission originally adopted this NESHAP by reference in 2010. However, EO 72 rescinded the adoption of this standard concurrent with the rescission of the RICE NESHAP. Subsequent to EO 72, the EPA revised this NESHAP standard to provide clarity and regulatory relief to stakeholders. The Commission is now adopting the 7D NESHAP.

Background

In January 2010, EPA published the 7D NESHAP. The 7D NESHAP appeared to cover all feed mills that used chromium and manganese in production, but several provisions of the final standards were unclear. In 2011, EPA agreed to reconsider some provisions of the 7D NESHAP. EPA finalized its reconsideration on December 23, 2011, revising the 7D NESHAP so

that feed mills with pellet cooler operations were not required to install new emissions control if the facility had existing control equipment. The 7D NESHAP compliance date for existing feed mills was January 5, 2012.

Stakeholder Involvement

The Department has worked with AAI since EPA issued the original 7D NESHAP in January 2010. EPA issued final amendments on December 23, 2011, that generally allowed affected feed mills to comply with the 7D NESHAP by following basic housekeeping requirements and using existing emissions control equipment.

Affected Facilities

Based on notifications submitted to EPA and the survey that the University of Northern Iowa (UNI) air emissions assistance program conducted, the Department estimates that approximately 90 facilities in Iowa are subject to the 7D NESHAP. The majority of these facilities are subject only to basic housekeeping requirements. The Department estimates that 20 of these facilities are required to control particulate emissions (a surrogate for manganese and chromium emissions) from pellet cooling operations. Most of these facilities have submitted the required notifications to EPA and the Department indicating the facilities are in compliance with the 7D NESHAP. The 7D NESHAP requires all subject facilities to undertake additional monitoring, record keeping, and reporting.

Prior to publication of the Notice of Intended Action, EPA Region 7 provided informal recommendations that the Department note in the preamble for the adopted rules that EPA retains concurrent authority to enforce the 7D NESHAP once Iowa becomes the delegated authority. Upon adoption of the 7D NESHAP, the Department rather than EPA will be the primary authority to implement these regulations in Iowa, allowing the Department to provide

compliance assistance and outreach to affected facilities as soon as possible. However, EPA retains concurrent authority to implement and enforce the 7D NESHAP in Iowa.

Jobs Impact Statement

The following is a summary of the jobs impact statement. The complete jobs impact statement is available from the Department upon request.

After analysis and review, the Department has determined that the amendments will have no impact on private sector jobs and employment opportunities in the state.

Grain Vac BMPs

Grain elevator owners and operators will likely entail costs to control particulate emissions during grain vac operations. However, these costs should be minimal and should not negatively impact jobs at grain elevators. First, the activities listed in the BMP document are simply examples. The grain elevator owner or operator may determine if management activities are necessary to reasonably prevent dust from grain vac operations from crossing the property line and whether any of the examples included in the BMP document are appropriate for the facility. The owner or operator may choose to employ different management practices. Second, the BMPs were developed by a stakeholder group consisting of representatives from both grain elevator and grain vac vendors. The workgroup developed practical, cost-effective practices that are already being successfully implemented at some grain elevators. Third, the Department expects that grain elevator owners and operators will choose to implement BMPs only as necessary and will not implement practices at such a frequency or cost to adversely impact jobs at their facilities.

6V NESHAP

Based on information and analysis compiled by IRFA, the Department has determined

that dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP and therefore would not have regulatory costs associated with the 6V NESHAP. The five other facilities potentially affected by the 6V NESHAP may have additional regulatory requirements, but these are not expected to be significant enough to impact jobs.

7D NESHAP

The 7D NESHAP requires all subject facilities to undertake additional monitoring, record keeping, and reporting. However, these requirements are not expected to be sufficient to negatively impact jobs at these facilities.

These amendments are intended to implement Iowa Code section 455B.133.

These amendments will become effective on September 10, 2014.

The following amendments are adopted.

ITEM 1. Amend subparagraph **22.10(3)"a"(2)**, as follows:

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement best management practices (BMP) for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. The owner or operator shall implement BMP according to the department manual, Best Management Practices (BMP) for Grain Elevators (December 2007; revised July 15, 2014), as adopted by the commission on January 15, 2008, and July 15, 2014, and adopted by reference herein (available from the department, upon request, and on the department's Internet Web site). No later than March 31, 2009, the owner or operator of an existing Group 1 facility shall fully implement applicable BMP, except that BMPs for grain vacuuming operations shall be fully implemented no later than September 10, 2014. Upon startup of equipment at the facility, the owner or operator of a new

Group 1 facility shall fully implement applicable BMP.

ITEM 2. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~September 19, 2011~~, December 21, 2012, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses (except for paragraph 23.1(4) “cz,” which specifies a later date for adoption by reference). 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners

or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 3. Amend paragraph 23.1(4)"ev," as follows:

ev. Emission standards for hazardous air pollutants for area sources: chemical manufacturing. ~~Rescinded IAB 9/19/12, effective 10/24/12.~~ This standard applies to chemical manufacturing at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart VVVVVV)

ITEM 4. Amend paragraph 23.1(4)"fd," as follows:

fd. Emission standards for hazardous air pollutants for area sources: prepared feeds manufacturing. ~~Rescinded IAB 9/19/12, effective 10/24/12.~~ This standard applies to prepared feeds manufacturing that produces animal feed products (not including feed for cats or dogs) and uses chromium or manganese compounds at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart DDDDDDD)

Date

Chuck Gipp, Director

(**Note:** Adopted revisions are shown in strikethrough and underline text)

Best Management Practices (BMPs) for Grain Elevators

(Adopted 12/4/07; Revisions adopted July 15, 2014)

Applicability

The BMPs listed in this document shall apply at all country grain elevators, country grain terminal elevators, and grain terminal elevators as defined below. This document has been adopted by reference in 567 Iowa Administrative Code (IAC) 22.10(455B) and can only be modified or updated after completion of an administrative rulemaking conducted in accordance with the Iowa Administrative Procedure Act (Iowa Code chapter 17A). Facility-wide and equipment specific BMPs are included that apply to both existing equipment and new equipment, unless specified otherwise.

Where requirements for BMPs in construction or operating permits exist that are more stringent than those specified in this document, the more stringent BMPs shall be implemented. The applicable requirements provided in 40 Code of Federal Regulations (CFR) Part 60, Subpart DD, “Standards of Performance for Grain Elevators,” as adopted in 567 IAC 23.1(2)“ooo,” shall apply for subject grain terminal elevators and grain storage elevators, in addition to the BMPs provided in this document.

As provided for in 567 IAC 23.3(2)“c,” the department may, upon notification to the grain elevator’s owner or operator, require the owner or operator to implement additional practices and measures not already being implemented as precautions to prevent the discharge of visible emissions of fugitive dust beyond the property line of the facility which the emissions originate on. Additionally, visible emissions from equipment or air pollution control equipment operating at a grain elevator shall not equal or exceed 40 percent opacity (567 IAC 23.3(2)“d”), or the opacity specified in a permit if the equipment is permitted, whichever is lower.

Definitions

For the purposes of this document, the terms “country grain elevator,” “country grain terminal elevator,” and “grain terminal elevator” shall have the same meaning as defined in 567 IAC 22.10(1).

General Maintenance, Upkeep and Repair

-Maintain and operate equipment and air pollution control equipment at all times in a manner consistent with good practice for minimizing emissions. Air pollution control equipment includes but is not limited to, quick closing doors, enclosures, air curtains, wind deflectors, grain oiling equipment, loadout socks and drop-down spouts or sleeves, baghouses and vent filters, and cyclones.

-Equipment and air pollution control equipment malfunctions shall be remedied in an expeditious manner so as to minimize the amount and duration of excess emissions.

-Air pollution control equipment shall be operated when the air emission source is in operation and shall be checked daily for proper operation. This requirement does not apply on days that the air emission source does not operate.

-Routine maintenance of equipment and air pollution control equipment shall be scheduled during periods of process shutdown to the maximum extent possible.

(**Note:** Adopted revisions are shown in strikethrough and underline text)

-Clean internal and external areas, including floors, roofs and decks, as necessary to minimize dust to the atmosphere when the facility is receiving, transferring, or loading out grain.

-Clean the yard, ditches and curbs as necessary to minimize accumulation of grain, chaff, and grain dust.

Grain Handling Equipment

Grain handling equipment includes but is not limited to bucket elevators or legs, scale hoppers, turn heads, scalpers, cleaners, trippers, and headhouse and other such structures.

-Grain handling equipment shall be cleaned, enclosed, or controlled as necessary to minimize visible dust emissions to the atmosphere to 5% or less opacity when the equipment is being operated.

-Operation of aeration fans shall be minimized during loading of grain into storage bins to the extent possible.

Grain Unloading Stations (Dump Pits) and Grain Loading Stations (Loadouts)

-Dump pits with enclosures shall be maintained and operated so as to minimize the emissions of dust to the atmosphere resulting from the dumping and handling of grain.

-Dump pits with induced draft fans installed must use fans with a capacity of at least 50 cfm/sq. ft. of airflow at the effective grate surface, where the area of the effective grate surface is the area of the dump pit grate through which air passes, or would pass, when aspirated.

-If feasible, loadouts shall use socks and drop-down spouts or sleeves, or equivalent, which extend at least 6 inches below the sides of the receiving container to minimize grain free-fall distance, except for topping off.

-To the extent possible, the flow of the grain through the spout shall be regulated so as to minimize dust emissions from the receiving container when the container is empty to only partially full.

-If grain oiling is used, grain should be oiled after receipt at the grain unloading station and prior to transfer to bin storage to allow for the maximum control effectiveness. Grain oiling applied elsewhere in the process, instead of at the grain unloading station, will result in a lower control effectiveness and less credit for control in the PTE calculation tool.

Grain Dryers

-Column dryers shall have screen perforations on replacement screens or new dryer screens no greater than 0.094 inch.

-Grain inlets and grain outlets to dryers shall be enclosed.

-Rack dryers shall have a maximum screen house filter size of 50 mesh on replacement screen house filters or new dryer screen house filters.

-The volume of grain passing through the dryer shall not exceed the manufacturer's recommended capacity.

-Dryer screens should be inspected before each dryer start-up.

(Note: Adopted revisions are shown in strikethrough and underline text)

Grain Vacuuming (Grain Vac) Operations

Grain vac operators must employ best management practices as necessary to reasonably prevent the discharge of visible emissions of fugitive dusts beyond the lot line of the property on which the grain vac is being operated. These BMP are examples of reasonable practices to minimize the generation of fugitive dust emissions from grain vac operations:

-For grain loadouts use socks and drop-down spouts or sleeves, or equivalent, which extend at least 6 inches below the sides of the receiving container to minimize grain free-fall distance, except for topping off.

-Operate the vac at times when the wind direction and speed would minimize offsite impact.

-Vary the speed of the vac operations to minimize dust emissions.

-Utilize directional discharge to minimize offsite impact.

-Evaluate the use of additional control measures, such as add on controls, if needed to comply with 567 IAC 23.3(2)"c".

Recordkeeping Requirements

All grain elevators subject to these BMPs shall record BMPs used during times of grain vac operation. In addition, wind speed and direction and date and time of grain vac operation shall be noted.

~~While~~ With the exception of grain vac operations, there are no other specific recordkeeping requirements associated with BMP for Group 1 facilities. However owners or operators of Group 1 facilities are encouraged to maintain records as appropriate to demonstrate that applicable BMP are being implemented.

**Administrative Rules
JOBS IMPACT STATEMENT**

1. BACKGROUND INFORMATION

Agency:	Environmental Protection Commission/ Department of Natural Resources
IAC Citation:	567 IAC Chapters 22 and 23
Agency Contact:	Christine Paulson at (515) 725-9510
Statutory Authority:	Iowa Code section 455B.133
Objective:	<p>The Department of Natural Resources (Department) is adopting rule changes to amend the best management practices (BMPs) for grain elevators currently adopted by reference in administrative rules (567—22.10 (455B)). The BMPs for grain elevators are designed to reduce particulate matter emissions, especially dust that crosses the property line and may adversely affect air quality at nearby businesses or residences. The rulemaking adds to the current BMP document a list of management practices for grain vacuuming (grain vac) operations at grain storage bins. The management practices were developed and recommended by a stakeholder workgroup jointly coordinated by the Department and the Agribusiness Association of Iowa (AAI).</p> <p>The Department is also adopting by reference federal air toxics standards for chemical manufacturing plants and for prepared feeds manufacturing (also known as National Emission Standards for Hazardous Air Pollutants, or NESHAP).</p> <p>The Environmental Protection Commission (Commission) had originally adopted these standards by reference in 2010. However, Executive Order (EO) 72 rescinded adoption of these standards along with rescission of the RICE NESHAP. EO 72 stated the RICE NESHAP was too costly for small utilities that maintain and operate rarely used emergency engines, and the RICE NESHAP requirements could increase electricity rates for consumers. In response to the concerns from Governor Branstad as expressed in EO 72 and concerns from other stakeholders, EPA agreed to reconsider the RICE NESHAP. Consequently, EPA updated the RICE NESHAP to provide more circumstances for emergency engines and for engines that participate in electricity management programs to operate under non-emergency conditions. The Commission adopted the updated RICE NESHAP in a previous rulemaking (see Iowa Administrative Bulletin, September 16, 2013, ARC 1014C).</p> <p>Subsequent to EO 72, the U.S. Environmental Protection Agency (EPA) revised the NESHAP standards proposed for adoption in this rulemaking. The revised NESHAP generally provide regulatory relief and clarity from the previous requirements. The Department is now requesting permission to adopt these NESHAP. Upon adoption of the NESHAP, the Department</p>

	<p>rather than EPA will be the primary authority to implement these regulations in Iowa, thereby allowing the Department to provide compliance assistance and outreach to affected facilities as soon as possible.</p>
<p>Summary:</p>	<p>Grain Vac BMPs</p> <p>In 2007, the Department worked with AAI and other stakeholders to develop flexible groupings for grain elevators. This collaboration resulted in rules that allowed over 800 owners and operators of small grain elevators (classified as “Group 1” elevators) to complete a one-page registration form rather than applying for an air construction permit. Additionally, the rules finalized in 2007 established the BMPs for small grain elevators.</p> <p>These rule changes amend the current BMPs for “Group 1” grain elevators, and provide the option to include revised BMPs in the permits for new or modified “Group 2” grain elevators. Group 1 grain elevators are specifically defined as facilities with potential emission of less than 15 tons per year of particulate matter less than 10 microns in diameter (PM₁₀) (567 IAC 22.10). Group 1 elevators are typically smaller grain elevators and are often “country grain elevators” that receive fifty percent or more of their grain from nearby farmers during harvest season. The owner or operator of a Group 1 elevator may use the BMP document and the streamlined registration process provided in 567 IAC 22.10 rather than apply for an air construction permit.</p> <p>Group 2 grain elevators have potential emissions of between 15 and 50 tons per year of PM₁₀. In lieu of using the regular construction permit process, an owner or operator of a Group 2 elevator may complete a shorter application form specific to Group 2 elevators. The facility will receive a Group 2 permit that allows the facility to make certain changes without having to modify the permit. The BMPs included in the Group 2 permit are identical to the BMP document for Group 1 facilities. The rulemaking will affect only new or modified Group 2 facilities that apply for a Group 2 permit after the effective date of the adopted amendments.</p> <p>The rulemaking adds to the current BMP document management practices specific to grain vac activities. Grain elevators that are not classified as Group 1 or Group 2 elevators are not covered under the proposed rule changes. Grain elevators classified as Groups 3 or 4 in 567 IAC 22.10, as well as other grain elevators not covered by 567 IAC 22.10, must obtain air construction permits. Construction permits include requirements specific to the facility, and may require practices similar to those in the BMPs for Group 1 or Group 2 facilities.</p>

	<p>NESHAP Adoption</p> <p>On December 21, 2012, EPA completed its reconsideration of the NESHAP for Chemical Manufacturing at Area Sources (hereafter referred to as the “6V NESHAP”), and issued final amendments. With the assistance of Iowa Renewable Fuels Association (IRFA), the Department determined that current dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP. The Department has identified a small number of other chemical manufacturing facilities subject to the 6V NESHAP.</p> <p>On December 23, 2011, EPA finalized its reconsideration of the NESHAP for Prepared Feeds Manufacturing at Area Sources (hereafter referred to as the “7D NESHAP”). The 7D NESHAP affects feed mills and other facilities that use chromium and manganese in the production of animal feed. However, the revised federal regulations clarified that larger feed mills with pellet cooler operations did not need to install new emissions control if the facility had existing control equipment.</p> <p>The Department is now adopting these revised NESHAP standards.</p>
--	---

2. JOB IMPACT ANALYSIS

Fill in this box if impact meets these criteria:

No Job Impact on private sector jobs and employment opportunities in the State.

Job Impact cannot be determined.

After analysis and review, the Department has determined that the amendments will have no impact on private sector jobs and employment opportunities in the State.

Grain Elevator BMPs

Grain elevator owners and operators will likely incur costs to control particulate emissions during grain vac operations. However, these costs should be minimal and should not negatively impact jobs at grain elevators. First, the activities listed in the BMP document are simply examples. The grain elevator owner or operator may determine if management activities are necessary to reasonably prevent dust from grain vac operations from crossing the property line, and whether any of the examples included in the BMP document are appropriate for the facility. The owner or operator may choose to employ different management practices. Second, the BMPs were developed by a stakeholder group consisting of representatives from both grain elevator and grain vac vendors. The workgroup developed practical, cost-effective practices that are already being successfully implemented at grain elevators. Third, the Department expects that grain elevator owners and operators will choose to implement BMPs only as necessary, and will not implement practices at such a frequency or cost to adversely impact jobs at their facility. AAI supports the Department’s amended rules for grain vac BMPs.

6V NESHAP

Based on information and analysis compiled by IRFA, the Department has determined that dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP, and therefore would not have regulatory costs associated with the 6V NESHAP. IRFA supports the Department adopting the 6V NESHAP.

Five other chemical manufacturing facilities have notified the Department and EPA that they are subject to the 6V NESHAP. Based on information available, it appears that two of these facilities are already complying with the 6V NESHAP. One of the facilities is currently under construction. The compliance status of the other two facilities is unknown at this time. The Department does not expect these five facilities to experience any jobs impacts resulting from the 6V NESHAP.

7D NESHAP

Based on notifications submitted to EPA and the survey that the University of Northern Iowa (UNI) air emissions assistance program conducted, the Department estimates that approximately 90 facilities in Iowa are subject to the 7D NESHAP. The majority of these facilities have only basic housekeeping requirements. The Department estimates that 20 of these facilities are also required to control particulate emissions (a surrogate for manganese and chromium emissions) from pellet cooling operations. Most of these facilities have submitted the required notifications to EPA and the Department indicating the facilities are in compliance with the 7D NESHAP. The 7D NESHAP requires all subject facilities to undertake additional monitoring, recordkeeping, and reporting requirements. However, these requirements are not expected to negatively impact jobs at these facilities. AAI supports the Department adopting the 7D NESHAP.

Fill in this box if impact meets either of these criteria:

____ Positive Job Impact on private sector jobs and employment opportunities in the State.

____ Negative Job Impact on private sector jobs and employment opportunities in the State.

Description and quantification of the nature of the impact the proposed rule will have on private sector jobs and employment opportunities:

Categories of jobs and employment opportunities that are affected by the proposed rule:
Country grain elevators and other grain elevators that meet the criteria for Group 1 or Group 2 elevators under rule 567 IAC 22.10. Feed mills, chemical manufacturing facilities, and other facilities potentially affected by the 6V or 7D NESHAPs.

Number of jobs or potential job opportunities:
Cannot be determined at this time.

Regions of the state affected:
The 6V and 7D NESHAP will apply in all regions of the state. The grain vac BMPs will apply in all areas of the state except Polk and Linn Counties. (Polk County and Linn County have their own state-approved air quality programs that do not include special permitting or BMPs for grain elevators.)

Additional costs to the employer per employee due to the proposed rule: (if not possible to determine, write "Not Possible to Determine.")
Not possible to determine.

3. COST-BENEFIT ANALYSIS

The Agency has taken steps to minimize the adverse impact on jobs and the development of new employment opportunities before proposing a rule. See the following Cost-Benefit Analysis:

No other less intrusive or expensive method exists for achieving the purpose of the rule change. The Department worked with stakeholders to determine the best way to address air quality concerns from grain vac operations at grain elevators. The workgroup determined that revising the BMP manual adopted by reference into state rules was the best method for achieving this goal. The Department worked closely with IRFA and AAI to resolve potential applicability issues with the 6V NESHAP and the 7D NESHAP, and waited until EPA completed its reconsiderations before proposing re-adoption of these standards. AAI and IRFA support the Department's new rules.

Administrative Rule Fiscal Impact Statement

Date: February 28, 2014

Agency: Environmental Protection Commission/Department of Natural Resources

IAC Citation: 567 IAC subparagraph 22.10(3)"a"(2) and subrule 23.1(4)

Agency Contact: Christine Paulson

Summary of the Rule:

Grain Elevators

The Department of Natural Resources (Department) is adopting rule changes to amend the best management practices (BMPs) for grain elevators currently adopted by reference in administrative rules (567—22.10 (455B)). The BMPs for grain elevators are designed to reduce particulate matter emissions, especially dust that crosses the property line and may adversely affect air quality at nearby businesses or residences. The rulemaking adds to the current BMP document a list of management practices for grain vacuuming (grain vac) operations at grain storage bins. The management practices were developed and recommended by a stakeholder workgroup jointly coordinated by the Department and the Agribusiness Association of Iowa (AAI).

In 2007, the Department worked with AAI and other stakeholders to develop flexible groupings for grain elevators. This collaboration resulted in rules that allowed over 800 owners and operators of small grain elevators (classified as "Group 1" elevators) to complete a one-page registration form rather than applying for an air construction permit. Additionally, the rules finalized in 2007 established the BMPs for small grain elevators.

The rulemaking will amend the current BMPs for "Group 1" grain elevators, and will provide the option to include revised BMPs in the permits for new or modified "Group 2" grain elevators. Group 1 elevators are typically smaller grain elevators and are often "country grain elevators" that receive fifty percent or more of their grain from nearby farmers during harvest season. An owner or operator of a Group 1 elevator may use the BMP document and the streamlined registration process provided in rule 567 IAC 22.10 rather than applying for an air construction permit. In lieu of using the regular construction permit process, an owner or operator of a Group 2 elevator may complete a shorter application form specific to Group 2 elevators. The facility will receive a Group 2 permit that allows the facility to make certain changes without having to modify the permit. The BMPs included in the Group 2 permit are identical to the BMP document for Group 1 facilities. The rulemaking will affect only new or modified Group 2 facilities that apply for a Group 2 permit.

Summary of the Rule (con't.):

Air Toxics Standards

The Department is also adopting by reference federal air toxics standards for chemical manufacturing plants and for prepared feeds manufacturing (also known as National Emission Standards for Hazardous Air Pollutants, or NESHAP).

The Environmental Protection Commission (Commission) had originally adopted these standards by reference in 2010. However, Executive Order (EO) 72 rescinded adoption of these standards along with rescission the RICE NESHAP. EO 72 stated the RICE NESHAP was too costly for small utilities that maintain and operate rarely used emergency engines, and the RICE NESHAP requirements could increase electricity rates for consumers. In response to the concerns from Governor Branstad as expressed in EO 72 and concerns from other stakeholders, EPA agreed to reconsider the RICE NESHAP. Consequently, EPA updated the RICE NESHAP to provide more circumstances for emergency engines and for engines that participate in electricity management programs to operate under non-emergency conditions. The Commission adopted the updated RICE NESHAP in a previous rulemaking (see Iowa Administrative Bulletin, September 16, 2013, ARC 1014C).

Subsequent to EO 72, the EPA revised the NESHAP standards proposed for adoption in this rulemaking. EPA's updated standards provide improved clarity and regulatory flexibility over the previous standards.

On December 21, 2012, EPA completed its reconsideration of the NESHAP for Chemical Manufacturing at Area Sources (hereafter referred to as the "6V NESHAP"), and issued final amendments. With the assistance of the Iowa Renewable Fuels Association (IRFA), the Department determined that current dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP. The Department has identified a small number of other chemical manufacturing facilities subject to the 6V NESHAP.

On December 23, 2011, EPA finalized its reconsideration of the NESHAP for Prepared Feeds Manufacturing at Area Sources (hereafter referred to as the "7D NESHAP"). The 7D NESHAP affects feed mills and other facilities that use chromium and manganese in the production of animal feed. However, the revised federal regulations clarified that feed mills with pellet cooler operations did not need to install new emissions control if the facility had existing control equipment.

The Department is now requesting permission to adopt these revised NESHAP standards. The revised NESHAP generally provide regulatory relief and clarity from the previous requirements. Additionally, upon adoption of the NESHAP, the Department rather than EPA will be the primary authority to implement these regulations in Iowa, thereby allowing the Department to provide compliance assistance and outreach to affected facilities as soon as possible.

Fill in this box if the impact meets these criteria:

No Fiscal Impact to the State.

Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.

Fiscal Impact cannot be determined.

Brief Explanation: The Department will use existing budget and resources to implement the rule.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2011)</u>	<u>Year 2 (FY 2012)</u>
Revenue by Each Source:		
GENERAL FUND	0\$	0\$
FEDERAL FUNDS	0\$	0\$
Other (specify)	0\$	0\$
	<hr/>	<hr/>
	0\$	0\$
TOTAL REVENUE		
Expenditures:		
GENERAL FUND	0\$	0\$
FEDERAL FUNDS	0\$	0\$
Other (specify) Air Contaminant Fee		
	<hr/>	<hr/>
TOTAL EXPENDITURES		

NET IMPACT

This rule is required by State law or Federal mandate.

Please identify the state or federal law:

The specific rule changes for grain elevators are not required. However, the rule changes are authorized under Iowa Code section 455B.133. The NESHAP are authorized under the U.S. Clean Air Act Section 112, as codified in 40 Code of Federal Regulations Part 63.

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

The Department will utilize existing resources at this time.

Fiscal impact to persons affected by the rule):

Grain Vac BMPs

Grain elevator owners and operators will likely incur costs to control particulate emissions during grain vac operations. However, these costs should be minimal. First, the activities listed in the BMP document are simply examples. The grain elevator owner or operator may determine if management activities are necessary to reasonably prevent dust from grain vac operations from crossing the property line, and whether any of the examples included in the BMP document are appropriate for the facility. The owner or operator may choose to employ different management practices. Second, the BMPs were developed by a stakeholder group consisting of representatives from both grain elevator and grain vac vendors. The workgroup developed practical, cost-effective practices that are already being successfully implemented at some grain elevators. Third, the Department expects that grain elevator owners and operators will choose to implement BMPs only as necessary, and will not implement practices at such a frequency or cost to overly burden their facility. AAI supports the grain vac BMPs.

6V NESHAP

Based on information and analysis compiled by IRFA, the Department has determined that dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP, and therefore would not have regulatory costs associated with the 6V NESHAP. Five other chemical manufacturing facilities have notified the Department and EPA that they are subject to the 6V NESHAP. Based on information available, it appears that two of these facilities are already complying with the 6V NESHAP. One of the facilities is currently under construction. The compliance status of the other two facilities is unknown at this time. IRFA supports the Department adopting the 6V NESHAP.

7D NESHAP

Based on notifications submitted to EPA and the survey that UNI conducted, the Department estimates that up to 80 facilities in Iowa are subject to the 7D NESHAP. The majority of these facilities have only basic housekeeping requirements. The Department estimates that 20 facilities are required to control particulate emissions (a surrogate for manganese and chromium emissions) from pellet cooling operations. Most of these facilities have submitted the required notifications to EPA and the Department indicating the facilities are in compliance with the 7D NESHAP. The 7D NESHAP requires all subject facilities to undertake additional monitoring, recordkeeping, and reporting requirements. AAI supports the Department adopting the 7D NESHAP.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):

Grain Elevators: The Department expects minimal or no impact to counties or cities because local government entities typically do not operate grain elevators. However, if a local government entity not located in either Polk or Linn County does operate a grain elevator, the fiscal impact will be the same as described above for privately or cooperatively operated grain elevators. (Polk County and Linn County have their own state-approved air quality programs that do not include special permitting or BMPs for grain elevators.)

Air Toxics Standards: Impacts to facilities in Linn or Polk County potentially affected by the 6V or 7D NESHAP would be the same as noted above for other facilities in the state.

**PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY
FOR
567 IOWA ADMINISTRATIVE CODE
CHAPTER 22, “CONTROLLING POLLUTION,” AND CHAPTER 23,
“EMISSION STANDARDS FOR CONTAMINANTS”**

Introduction

The first purpose of the rule changes is to establish best management practices (BMPs) for grain vacuuming at small grain elevators. The BMPs include practical activities that may be used at elevators to minimize dust and possible air quality impacts resulting from vacuuming grain out of storage structures. The BMPs were developed through a stakeholder workgroup jointly organized by the Department of Natural Resources (Department) and Agribusiness Association of Iowa (AAI), and included grain elevator operators and grain vacuum (grain vac) vendors.

The second purpose of the rule changes is to adopt by reference federal air toxics standards for chemical manufacturing plants and for prepared feeds manufacturing (also known as National Emission Standards for Hazardous Air Pollutants or NESHAP). The Commission had originally adopted these standards by reference in 2010. However, Executive Order 72 rescinded adoption of these standards along with rescission of the RICE NESHAP. Subsequent to Executive Order 72, the U.S. Environmental Protection Agency (EPA) revised these NESHAP standards. The revised NESHAP generally provide regulatory relief and clarity from the previous requirements. The Department is now requesting permission to adopt these NESHAP.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 14, 2014, as ARC 1458C, and a public hearing was held on June 16, 2014, in Windsor Heights, Iowa. The Department received no comments at the public hearing. The Department received two written comments prior to the June 16, 2014, deadline for public comments.

Public Comment Summary

Submitted by e-mail from Joel Brinkmeyer and Tracy Gathman, Agribusiness Association of Iowa, Des Moines, Iowa:

Agribusiness Association of Iowa (AAI) expressed strong support for the Department’s adoption of the proposed Grain Vac BMPs. AAI recommended adopting the amendments as written.

Department Response

The Department is appreciative of AAI’s public comments on the rulemaking.

Recommended Action

Proceed with final rules as proposed in the Notice of Intended Action (no changes from what the Department proposed).

Public Comment Summary

Submitted by e-mail from Sara HertzWu, U.S. Environmental Protection Agency (EPA) Region VII, Lenexa, Kansas:

EPA suggest using the following language in the preamble for the final rules: “Upon adoption of the 6V NESHAP, the Department will have primary enforcement and implementation authority for these regulations in Iowa... .”

Department Response

The Department is appreciative of EPA’s public comments on the rulemaking. The Department agrees with EPA’s observation that the Department does not have sole implementation authority for the NESHAP in Iowa.

Recommended Action

The Department will provide a clarifying explanation in the preamble for the adopted amendments that the Department and EPA have concurrent authority for implementing and enforcing the NESHAP in Iowa. No changes to the adopted rules are needed in response to these comments.

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

6

INFORMATION

TOPIC

Executive Order 80 (EO 80) Stakeholder Group Recommendation on Topsoil Preservation Requirements in Storm Water Construction General Permit no. 2

The Topsoil Preservation Requirements Stakeholder Group will be presenting their final recommendations to the Environmental Protection Commission and the Department of Natural Resources.

Governor Branstad issued Executive Order 80 (EO 80) to increase stakeholder involvement and input on administrative processes and rules. The Director, in consultation with the Governor’s Office, selected a stakeholder group to make recommendations and consider the need for rule changes in the Iowa Administrative Code (IAC): 567-subrule 64.15(2), which adopts by reference Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit no. 2 (GP2), effective October 1, 2012 to October 1, 2017.

Background: Pursuant to federal law, a NPDES permit is required for construction activities which disturb 1 or more acres of land. Iowa, like other states, has chosen to issue a general permit (GP2) to cover such construction activities. In 2009, the Environmental Protection Agency (EPA) adopted effluent guidelines for construction activities at 40 Code of Federal Regulations (CFR) 450.21 Effluent limitations reflecting the best practicable technology currently available (BPT). These effluent guidelines included the requirement to “unless infeasible, preserve topsoil” with no guidance on the definition of what constitutes preserving topsoil. Shortly after the EPA adoption of the guidelines, the Department began rulemaking efforts to include the guidelines in GP2 which included contacting members of the development community for input. During these discussions, members of the development community recommended that retaining four inches of topsoil spread on the surface could satisfy the federal requirements, eliminate the ambiguity of the federal language and could be economically implemented. The Department agreed and included provisions that excluded from the topsoil preservation requirements already permitted or platted developments and excluded sites unsuited to respreading topsoil. The Department also included language that allowed sites with less than four inches of topsoil to retain only the amount that existed prior to development. Members of the development community did not oppose adoption of these requirements into GP2 effective October 1, 2012.

In the summer of 2013, members of the development community approached the Department with concerns about the cost of implementation of the topsoil preservation requirements. These concerns resulted in a request for and the formation of a stakeholder group pursuant to EO 80.

The stakeholder group met on April 24, May 2 and May 29 with a public hearing being held on May 29.

Members of this committee and the representation the members provided are as follows:

<i>Name</i>	<i>Organization</i>	<i>Representing</i>
Creighton Cox	Homebuilders Association of Greater Des Moines	Homebuilders
Chip Classon	Jerry's Homes, Inc.	Homebuilding company
Joe Pietruszynski	Hubbell Realty Company	Homebuilding and development company
Mark Watkins	McAninch Corporation	Earth moving company
Pat Sauer	Iowa Association of Municipal Utilities	Cities that enforce storm water requirements
Lucy Hershberger	Forever Green, Inc.	Landscaping company
Chad Ingels	Environmental Protection Commission	State agency

As a result of the information obtained and considered by the EO 80 stakeholder group, the group is now recommending to the Commission that, where the existing GP2 differs from the federal effluent guideline found at 450.21, the Commission amend the rule-adopted GP2 to conform to the federal effluent guideline. 40 CFR 450.21 is attached. *[Note: section 450.21 was amended effective May 5, 2014. Pursuant to Clean Water Act section 301(b), permit effluent limitations may not be less stringent than the federal technology-based effluent guidelines.]*

The Commission will receive the recommendation of the stakeholder group for consideration and will be presented with a decision item at a future monthly meeting at which time the Commission may direct the Department to initiate rulemaking or decline to do so. Related information is attached to this brief.

Public comments received throughout this process and additional information (listed below) can be found at <http://www.iowadnr.gov/InsideDNR/RegulatoryWater.aspx>

- Initial Notice in the Iowa Administrative Bulletin for NPDES GP No. 2
- Stakeholder Group Members for NPDES GP No. 2
- Draft Meeting Agenda for 5/2/2014 Soil Preservation Requirements EO80 Stakeholder Group
- Public Comments - Batch 1
- Public Comments - Batch 2
- EO80 Workgroup Meeting Minutes (4-24-2014)
- EO80 Workgroup Meeting Minutes (5-2-2014)
- EO80 Workgroup Meeting Minutes (5-29-2014)
- Addendum 2 - Waukeel NPDES No 2 Affidavit
- Federal Register March 6, 2014 Page 12667

**Environmental Protection Commission
Iowa Department of Natural Resources
7900 Hickman Road
Windsor Heights, Iowa**

Wednesday, June 11th

Environmental Protection Commissioners:

On behalf of the Executive Order 80 Workgroup for Topsoil Preservation Requirements in NPDES General Permit #2, I formally submit the unanimous recommendation for the consideration of the commission.

- 1. Proposal for GP2: Language available for the Commission to consider under the revised rule and Federal Register March 6, 2014, page 12667**
- 2. (A.1) Minutes of May 2, 2014: Portions 14 – 17, including items of unanimous agreement and items of contention. Additional: statement in support of “best management practices”**
 - a. “We believe best stormwater management practices should be taken into account by Builders, Developers, and Cities.”**
- 3. (A.2) Sample Affidavit from Waukee, Iowa “Certification of Completion of IDNR General Permit #2 Topsoil preservation Requirement”. The EO-80 group recommends the addition of the affidavit within the language of NPDES General Permit #2 to allow for uniform certification of completion in multiple jurisdictions to limit cost and allow for jurisdictional protection of liability.**
- 4. Public Comments: Provided by DNR Staff**
 - a. Written Comments submitted to DNR**
 - b. Oral Comments from Public Forum on May 29th, 2014**

Respectfully submitted:

**Creighton Cox, Chair
Executive Order 80 Workgroup for Topsoil Preservation Requirements in NPDES
General Permit #2**

Proposal For GP2

A.(2).(c). Unless infeasible, the following measures shall be implemented at all sites: utilize outlet structures that withdraw water from the surface when discharging from basins, provide and maintain natural buffers around surface waters, direct storm water to vegetated areas to increase sediment removal and maximize storm water infiltration and minimize soil compaction. ~~Topsoil shall be preserved at all construction sites unless land use precludes the practice. The requirement to preserve topsoil shall be met only when the depth of topsoil after soil disturbing activities have been completed and final stabilization achieved for the permitted activity is equal to, or greater than, 4.0 inches, including soil contained in sod, on all areas of the site where the surface of the ground disturbed for the permitted construction activities is exposed and not covered by concrete, asphalt, gravel or other such material and where 4.0 inches or more of topsoil existed prior to the commencement of soil disturbing activities that are permitted under the current permit authorization for the site. On areas where less than 4.0 inches of topsoil existed prior to the commencement of soil disturbing activities that are permitted under the current permit authorization for the site, the minimum depth of topsoil after soil disturbing activities have been completed and final stabilization achieved for the permitted activity shall be equal to, or greater than, the depth of topsoil that existed prior to the commencement of soil disturbing activities that are permitted under the current permit authorization for the site.~~ **The permittee(s) shall minimize soil compaction and, unless infeasible, preserve topsoil. “Infeasible” shall mean not technologically possible, or not economically practicable and achievable in light of the best industry practices. “Unless infeasible, preserve topsoil” shall mean that, unless infeasible, topsoil from any areas of the site where the surface of the ground for the permitted construction activities is disturbed, shall remain within the area covered by the applicable General Permit No. 2. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed. The permittee(s) shall control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges and shall control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. An affidavit to the city signed by the permittee(s) that verifies compliance with these requirements shall satisfy the terms of this paragraph.**

~~The final topsoil depth is to be measured after the soil has been compacted in a fashion generally considered adequate for an established lawn and so that the expected settling that will occur after measurement will be minimal and shall include the soil contained in any sod that has been placed on the site. The type of topsoil at the site after soil disturbing activities have been completed and final stabilization achieved for the permitted activity shall be similar to that which exists or existed in the general area of the site.~~

For construction activity which is part of a larger common plan of development, such as a housing or commercial development project, in which a new owner agrees in writing to be solely responsible for compliance with the provisions of this permit for the property which has been transferred or in which the new owner has obtained authorization under this permit for a lot or lots (as specified in subrule 567-64.6(6) of the Iowa Administrative Code), the topsoil preservation

requirements described above must be met no later than at the time the lot or lots have reached final stabilization as described in this permit.

~~For sites where less than 4.0 inches of topsoil is to be in place after soil disturbing activities have been completed and final stabilization achieved for the permitted activity, a soil survey conducted by properly qualified personnel who regularly conduct soil surveys as part of their normal job duties must be conducted prior to commencement of soil disturbing activities that are permitted under the current permit authorization for the site. The results of the soil survey shall become part of the Pollution Prevention Plan and shall indicate the depth of topsoil at a suitable number of points on the site commensurate with standard engineering practices established for the size of the site.~~

The topsoil preservation requirement described above shall be implemented for projects that have not received an authorization under this permit prior to October 1, 2012. The topsoil preservation requirements are not required to be implemented for projects that have been authorized prior to October 1, 2012. In residential and commercial developments, a plat is considered a project. For other large areas that have been authorized for multiple construction sites, including those to be started at a future date, such as those located at industrial facilities, military installations and universities, a new construction project not yet surveyed and platted out is considered a project. This stipulation is intended to be interpreted as requiring the topsoil preservation requirements on development plats and construction activities on other extended areas that may have several construction projects permitted under the same authorization to be implemented on those projects not yet surveyed and platted out prior to October 1, 2012 even if other plats and construction activities in the same development or other extended area were authorized prior to October 1, 2012.

Monthly Variance Report
May 2014

Item No.	Facility/City	Program	DNR Reviewer	Subject	Decision	Date
1	Fleck Farm & Feedlot	Animal Feeding Operations	Paul Petitti	allow private well less than required 400 foot to an open lot runoff control basin.	approved	5/2/2014
2	Matthw Helgeson	Sovereign Lands	Kelly Poole	allow placement and utilization of weed roller on property	approved	5/6/2014
3	South Troy Park Recreation Bridge over Dry Creek	Flood Plains	Karen Smith	variance from freeboard criterion from 3 feet above 50 year flood elevation to equal to 50 flood elevation. variance from backwater criterion.	approved	5/8/2014
4	Fort Madison City of STP	Wastewater Construction	Larry Bryant	variance to allow directional bore installation of gravity sewer in lieu of open trench installation procedures.requirements.	approved	5/8/2014
5	Gable Corp	Air Quality	Brian Hutchins	variance to install 91 emergency generators	approved	5/13/2014
6	CHS Inc	Air Quality	Dennis Thielen	requesting extension to perform stack tesing	approved	5/14/2014
7	Muscatine Power & Water	Air Quality	Reid Bermel	request for trial burn/feasibility test of wood material chip material fuel blend	partially approved	5/19/2014
8	McCloud Place NE	Flood Plains	Karen Smith	variance from freeboard criterion from 3 feet above 50 year flood elevation to equal to 50 flood elevation. variance from backwater criterion.	approved	5/20/2014
9	Country Estates MHP	Water Supply Construction	AJ Montefusco	variance from legal control of land for a 200-foot radius around public water supply well and separation distances for chemical application to ground services from deep well.	approved	5/22/2014
10	Clinton City of STP	Wastewater	Anne Hildebrand	variance from monitoring frequencies	approved	5/22/2014
11	Bridge Replacement BRF 030	Flood Plains	Jim Hallmark	variance from freeboard criterion from 3 feet above 50 year flood elevation to equal to 50 flood elevation. variance from backwater criterion.	approved	5/27/2014
12	City of Wall Lake	Water Supply Construction	Jennifer Bunton	variance fro fuel tank separation distance from well	approved	5/28/2014
13	City of Coralville STP	Wastewater	Mark Valmore	variance to allow horizontal directional drilling installation of gravity sewer in lieu of open trench installation procedures requirements.	approved	5/30/2014
14	DNR	Service Contracting	Kelley Myers	DNR waived the Duration of Service Contracts rule, as articulated in 11 IAC 106.11(8A), for proposed contract with vendor to develop and manage DNR's electronic licensing system.	approved	7/7/2007

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
July, 2014**

Name, Location and Region Number	Program	Alleged Violation	DNR Action	New or Updated Status	Date
BCB Ag, LLC Inwood (3)		Uncertified Applicator; Lack of Signage for Manure Service on Vehicle	Referred to Attorney General	Referred	4/15/14
Grain Processing Corporation Muscatine (6)	Air Quality Wastewater	Construction Without (PSD) Permit; Failure to Have Proper Control Technology; Excess Emissions; Other Air Permit Violations; Failure to Comply With MON; Failure to Report Actual Emissions; Construction Without WW Permit; Untimely Notice of Wastewater Spill	Referred to Attorney General	Referred Petition Filed Answer CLAM Motion to Intervene Hearing on Intervention Ruling Granting CLAM Intervention Amended and Substituted Petition Consent Decree (\$1,500,000 Civil Penalty, Conversion to Natural Gas, Corrective Action and Permanent Injunction	4/19/11 12/01/11 1/10/12 1/24/12 4/03/12 6/25/12 7/24/13 3/27/14
Hoffman, Matt Hinton (3)	Animal Feeding Operation	Failure to Submit MMP and Fees	Referred to Attorney General	Referred	4/15/14
Iowa Farm Bureau Federation et. al. Polk Co. (5)	Wastewater	Judicial Review of Antidegradation Rules	Attorney General	Petition Filed State's Answer Motion to Intervene by Sierra Club Motion to Intervene by Iowa Environmental Council and Environmental Law & Policy Center Hearing on Intervention Ruling Granting Intervention State's Motion for Summary Judgment; Undisputed Facts; Affidavits; Appendix and Memorandum Hearing on Petitioners' Motions Ruling Denying Petitioners' Motions Petitioner's Application for Interlocutory Appeal Petitioner's Motion for Stay State's Resistance to Application State's Resistance to Motion for Stay Hearing on Motion for Stay Supreme Court Denial of Interlocutory Appeal Petitioners' Motion for Stay Hearing Withdrawn Petitioners' Motion for Summary Judgment and Cross-Motion for Summary Judgment Hearing on Motions for Summary Judgment Ruling Granting State's Motion for Summary Judgment Notice of Appeal Petitioner's Proof Brief State's Proof Brief	10/04/10 10/27/10 11/03/10 12/15/10 1/20/11 2/03/11 4/29/11 9/30/11 10/14/11 10/31/11 11/08/11 11/14/11 11/16/11 11/30/11 11/23/11 11/30/11 12/21/11 1/18/12 3/29/12 4/26/12 9/28/12 11/28/12

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
July, 2014**

Name, Location and Region Number	Program	Alleged Violation	DNR Action	New or Updated Status	Date
				State's Designation of Appendix	11/28/12
				Appendix Filed	1/23/13
				Respondent-Intervenors' Proof Brief	12/03/12
				Petitioners' Proof Reply Brief	2/05/13
				Petitioner's Final Brief	2/06/13
				Petitioner's Final Reply Brief	2/06/13
				State's Final Brief	2/06/13
				Respondent-Intervenor's Final Brief	2/08/13
				Oral Argument before Iowa Supreme Court	10/09/13
McMains, Phil Appanoose Co. (5)	Air Quality Solid Waste	Open Burning Illegal Disposal	Referred to Attorney General	Referred Petition Filed Answer Motion for Leave to Amend Petition Trial Date	6/19/12 8/08/13 9/03/13 1/02/14 12/03/14
North Central Iowa Regional SWA Fort Dodge (2)	Solid Waste	Operating Permit Violations	Referred to Attorney General	Referred	9/17/13
North Iowa Area Solid Waste Agency Sheldon (3)	Solid Waste	Unapproved Leachate Collection System	Referred to Attorney General	Referred Petition Filed Answer Third Party Petition Against Elliot Waddell and Five States Engineering, PLC State's Resistance to Demand for Jury Trial Hearing Regarding Jury Trial Demand Ruling Denying Jury Demand Motion to Clarify Ruling Nunc Pro Tunc Order Jury Demand Allowed for 3 rd Party Defendant State's Motion to Strike or Sever 3 rd Party Petition Resistance to Motion to Strike Application for Default Judgment Order Granting Default Judgment Against 3 rd Party Defendant Trial Date	1/15/13 9/26/13 10/11/13 10/11/13 10/23/13 11/25/13 1/17/14 1/23/14 1/28/14 2/11/14 2/24/14 3/12/14 3/13/14 3/31/15
Peeters Development Co., Inc.; Mt. Joy Mobile Home Park Davenport (6)	Wastewater	Monitoring/Reporting; Compliance Schedule; Discharge Limits; Operation Violations; Certified Operator Discipline	Referred to Attorney General	Referred	3/18/14
Scallon, Jim Austinville (2)	Solid Waste	Illegal Disposal	Referred to Attorney General	Referred	5/20/14

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
July, 2014**

Name, Location and Region Number	Program	Alleged Violation	DNR Action	New or Updated Status	Date
Sioux-Preme Packaging Co. Sioux Center (3)	Wastewater	Prohibited Discharge; Operation Violations; WQ Violations – General Criteria	Referred to Attorney General	Referred	9/17/13
Van Beek, Vern Inwood (3)	Animal Feeding Operation	Prohibited Discharge	Referred to Attorney General	Referred Petition Filed Consent Decree (\$12,000/Civil Penalty; Injunction)	10/16/12 5/22/14 5/22/14

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
CONTESTED CASES**

July, 2014

DATE RECEIVED	NAME OF CASE	F.O.	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
11/27/01	Dallas County Care Facility	5	Order/Penalty	WW	Hansen	10/03 – Letter to County attorney regarding appeal resolution. 1/04 – Letter to attorney regarding appeal. 4/04 – Dept. letter to attorney regarding appeal. 9/04 – Dept. letter to attorney regarding appeal. 6/26/07 – Appeal resolved. Facility connected to City WWTF. Consent order to be issued. 1/29/13 – Order amendment drafted.
10/29/09	Harlan Rudd; Karen Rudd; dba Rudd Brothers Tires	6	Order/Penalty	UT	Brees	Informal negotiation. CADR was submitted, partially rejected with options. Settlement letter sent 2/24/10.
12/16/09	Guy Thomas	4	Order/Penalty	UT	Brees	Oral agreement for tank removal prior to April 1, 2010. Continued negotiation on final settlement.
2/25/10	Higman Sand & Gravel Inc.	3	Order/Penalty	FP	Clark	6/13/14 – Higman President agrees to have its engineer document completion of mitigation work and to pay penalty in Order upon his return to Iowa and execution of consent amendment to Order.
3/11/10	Bondurant, City of	5	Order/Penalty	WW	Hansen	7/2013-On hold pending further investigation.
11/3/2010	Wendall Abkes	2	Order/Penalty	SW	Schoenebaum	Settlement phone call held. Mr. Abkes indicated he would enter into a settlement. 6/12/13 -- Offer to settle sent via certified mail. Letter was returned as unclaimed.
12/29/10	Griffin Pipe Products Co., Inc.	4	Permit Conditions	AQ	Preziosi	Last communication with appellant 5/6/14.
1/31/11	Griffin Pipe products Co., Inc.	4	Tax Certification Request	AQ	Preziosi	Settled in concept 1/28/14. Last communication with appellant 5/6/14.
2/28/11	Manson, City of	3	Order/Penalty	WS	Hansen	4/1/11 – Settlement conference held with City. 6/22/11- Settlement offer received from City attorney. 6/28/11- More information requested from City attorney concerning the settlement proposal. 11/29/11- Settlement meeting with City regarding new well project. 12/2011 – City proceeding with project. 6/2012- Contractor worked on new well to remove debris in well. Test pump to be installed to do test of well capacity. 07/2012- City to abandon new well and select new site for well to increase PWS capacity. 10/2012- Water plant work to be done week of 12/10/12. 5/2013- New well project & appeal on hold, pending USDA funding decision. 6/2/13 – USDA funding decision received. 6/26/13 – New bid date for well project. . 7/2013-

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
CONTESTED CASES**

July, 2014

DATE RECEIVED	NAME OF CASE	F.O.	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
						Tentative schedule for new well received from City's engineer. 8/13 – Drilling on test well begun by contractor. 9/13 – Test well not productive, new well site approved by Dept. New test well to be drilled. 10/13- Test well drilled but not successful. Test well abandoned. City Council to decide on next step. 1/24/14 – City's engineer sent revised construction schedule for another test well and production well. 5/23/14- Test well drilled but not successful. City Council to determine next step.
8-27-12	Ag Processing, Inc.; Sergeant Bluff	4	Permit Conditions	AQ	Preziosi	Met with appellant 1/31/14. Met with appellant 3/12/14. Negotiations continuing. Appellant to submit further information in April. Settled in concept. Last communication with appellant on 5/22/14.
11-21-12	Ag Processing Inc.	6	Permit Conditions	AQ	Preziosi	Continuing negotiations. Last communication with appellant on 5/20/14.
3-04-13	Anderson Excavating Co., Inc.	4	Order/Penalty	SW	Tack	Negotiating before filing.
6-20-13	Joseph and Carol Jahnke	1	Dam Application	FP	Schoenebaum	Proposed decision 1/8/14. 1/21/14 – EPC affirmed decision. Decision final
6-10-13	Mike Jahnke	1	Dam Application	FP	Schoenebaum	Hearing scheduled for April 9, 2014, Mr. Jahnke requested a continuance. Status conference with Judge was held April 23, 2014; another status conference is scheduled to be held June 4, 2014; at this time a new hearing date may be selected.
9-09-13	David Hansen; Debra D. Imhoff	6	Order/Penalty	FP	Schoenebaum	Appeal filed 9/9/13.
10-28-13	Regional Environmental Improvement Commission/Iowa Co. SLF	6	Variance	WW	Tack	Negotiating before filing.
11-07-13	Linn County Conservation Board Pinicon Ridge Park	6	Permit Conditions	WS	Hansen	2/27/14 – Settlement offer sent. 3/24/14 – Response received from Linn Co. 4/2014- Linn County in agreement to install chlorination/construction permit application submitted to Dept. Permit amendment to be issued. 5/2014- Construction permit issued by Dept.; construction to be completed 5/2014.
1-02-14	P & J Pork, LLC		Construction Permit Denial	AFO	Clark	6/10/14 – Proposed decision affirming DNR permit denial.
1/16/14	Council Bluffs Water Works	4	Permit Conditions	WW	Tack	Negotiating before filing.

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
CONTESTED CASES**

July, 2014

DATE RECEIVED	NAME OF CASE	F.O.	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
1/21/14	AG Processing, Inc.		Permit Conditions	AQ	Preziosi	Negotiations continuing. Last communication with appellant on 5/20/14.
4/17/14	REIC/Iowa Co. Sanitary Landfill	6	Permit Conditions	WW	Tack	Negotiating before filing.
6/09/14	Lost Nation, City of	6	Permit Conditions	WS	Hansen	New case.

DATE: July, 2014

TO: EPC

FROM: Ed Tormey

RE: Enforcement Report Update

The following new enforcement actions were taken during this reporting period:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Toronto, City of (6)	Wastewater	Monitoring/Reporting; Compliance Schedule; Discharge Limits; Prohibited Discharge	Consent Order \$5,000	6/05/14
United Church of Diagonal Ringgold Co. (4)	Air Quality Solid Waste	Open Burning; Asbestos; Illegal Disposal	Consent Order \$1,500 \$4,500 SEP	6/06/14
Foreman, Rex Sioux Co. (3)	Solid Waste	Illegal Disposal	Consent Order Stipulated Penalty	6/12/14
H & W Contracting, LLC Storm City (3)	Drinking Water	Construction Without Permit	Consent Order \$3,000	6/20/14
Grant Wells Pocahontas Co. (3)	Animal Feeding Operation	Prohibited Discharge – Confinement; WQ Violations – General Criteria	Consent Order \$1,500 \$22,149/Fish	6/20/14
ADA Enterprises, Inc. Worth Co. (2)	Wastewater	WQ Violations – General Criteria	Consent Order \$10,000	6/20/14

Name, Location and
Field Office Number

Program

Alleged Violation

Action

Date

IOWA DEPARTMENT OF NATURAL RESOURCES
LEGAL SERVICES BUREAU

DATE: July 1, 2014
TO: Environmental Protection Commission
FROM: Ed Tormey
SUBJECT: Summary of Administrative Penalties

The following administrative penalties are due:

NAME/LOCATION	PROGRAM	AMOUNT	DUE DATE
Robert and Sally Shelley (Guthrie Center)	SW	1,000	3-04-91
Daryl & Karen Hollingsworth d/b/a Medora Store(Indianola)	UT	3,826	3-15-96
Greg Morton; Brenda Hornyak (Decatur Co.)	SW/AQ/WW	3,000	11-04-98
James Harter (Fairfield)	WW	1,336	8-01-01
Wisconsin North dba National Petroleum, Inc. (Clinton)	UT	5,000	8-04-01
# Practical Pig Corporation (Clinton Co.)	AFO	2,000	5-26-02
Midway Oil Co.; David Requet (Davenport)	UT	5,355	9-20-02
Midway Oil Co.; David Requet; John Bliss	UT	44,900	2-28-03
Green Valley Mobile Home Park (Mt. Pleasant)	WW	5,000	4-23-03
Midway Oil Company (West Branch)	UT	7,300	5-03-03
Midway Oil Company (Davenport)	UT	5,790	5-03-03
Albert Miller (Kalona)	AQ/SW	9,785	9-26-03
Mike Messerschmidt (Martinsburg)	AQ/SW	500	4-13-04
Interchange Service Co., Inc., et.al. (Onawa)	WW	6,000	5-07-04
# Dunphy Poultry (Union Co.)	AFO	1,500	6-27-04
# Cash Brewer (Cherokee Co.)	AFO/SW	10,000	8-25-04
# Doorenbos Poultry; Scott Doorenbos (Sioux Co.)	AFO	1,500	10-09-04
Rock N Row Adventures (Eldora)	WS	3,000	10-23-04
# Doug Sweeney (O'Brien Co.)	AFO	375	12-21-04
Harold Linnaberry (Clinton Co.)	SW	1,000	5-18-05
# Joel McNeill (Kossuth Co.)	AFO	2,460	1 21-06
Affordable Asbestos Removal, Inc. (Monticello)	AQ	7,000	4-28-06
# Troy VanBeek (Lyon Co.)	AFO	3,500	10-16-06
Larry Bergen (Worth Co.)	AQ/SW	257	11-01-06
# Joshua Van Der Weide (Lyon Co.)	AFO	3,500	2-25-08
Karl Molyneux (What Cheer)	AQ/SW	960	7-19-08
George Kramer (Clinton Co.)	AQ/SW	1,500	11-09-08
Jon Knabel (Clinton Co.)	AQ/SW	2,000	12-16-08
Stuart Yoder (Johnson Co.)	AQ/SW	224	2-11-09
# Robert Fangmann (Dubuque Co.)	AFO	396	6-01-09
# Rick Renken (LeMars)	AFO	996	7-03-09
# Brian Lill (Sioux Co.)	AFO	3,342	7-18-09
# Lane Bachman (Calhoun Co.)	AFO	3,885	10-08-09
Denny Geer (New Market)	SW	9,476	10-31-09
Shrey Petroleum; Palean Oil; Profuel Three (Keokuk)	UT	10,000	3-19-10
Melvin Wellik; Wellik-DeWitt Implement (Britt)	AQ/SW	2,900	4-08-10
Alchemist USA, LLC; Ravinder Singh (Malcom)	UT	8,260	5-03-10
# LJ Unlimited, LLC (Franklin Co.)	AFO/AQ/SW	3,500	5-27-10
Bret Cassens; J & J Pit Stop (Columbus Junction)	UT	8,700	6-20-10

#Animal Feeding Operation

BOLD Entries Have Been Referred to DRF

# Christopher P. Hardt (Kossuth Co.)	AFO	2,000	7-07-10
AKD Investments, LLC; H.M. Mart, Inc. (Blue Grass)	UT	6,900	8-06-10
Eastern Hills Baptist Church (Council Bluffs)	WS	1,250	11-29-10
James Bailey; James Bailey Construction (Douds)	AQ/SW	634	12-01-10
# Joe McNeill (Kossuth Co.)	AFO	2,500	12-23-10
Gonzalez & Sons Express, Inc. (DeSoto)	WW	8,000	4-20-11
David C. Kuhlemeier (Cerro Gordo Co.)	AQ/SW	2,000	6-30-11
Steve Friesth (Webster Co.)	AQ/SW	7,857	11-26-11
Josh Oetken (Worth Co.)	AQ/SW	8,495	3-11-12
Jeffrey G. Gerritson (O'Brien Co.)	SW	2,000	4-16-12
Bhupinder Gangahar/Saroj Gangahar/International Business	UT	7,935	4-20-12
Finney Industrial Painting, Inc. (Fairfield)	AQ/WW	3,775	4-23-12
Terry Philips; TK Enterprises (Washington Co.)	AQ/WW	3,000	5-30-12
# Boerderij De Vedhoek, LLC (Butler Co.)	AFO	8,500	11-16-12
James L. Heal; A-1 Imports (Homestead)	WW/SW	1,800	1-08-13
Sun-Jon, Inc.; Iowa Poultry (Johnson Co.)	WW	3,000	1-08-13
Noah Coppess (Cedar Co.)	AQ/SW	7,500	2-23-13
Shane Rechkemmer (Fayette Co.)	SW	1,000	3-01-13
Jeff Grooms; Floris One Stop (Floris)	UT	3,500	3-01-13
Keith Durand; Durand Construction (Lee Co.)	WW	500	3-07-13
B Petro Corporation (Cedar Rapids)	UT	7,728	5-13-13
Bernard Michelson (Hancock Co.)	AQ/SW	2,500	4-26-13
Ken Odom (Iowa Co.)	AQ/SW	3,000	4-26-13
Jacob Reed (Mahaska Co.)	AQ/SW	1,500	6-10-13
River Trading Company, Ltd. (Muscatine)	WW	3,000	9-15-13
Robert Downing (Mahaska Co.)	AQ/SW	10,000	11-20-13
# Steve and Paul Groth; Groth Farms (Mitchell Co.)	AFO	3,000	11-17-13
Shriners Hospital for Children, Inc. (Des Moines)	UT	8,890	12-03-13
Larry Eisenhauer (Woodbury Co.)	AQ/SW	4,675	3-01-14
Randy Wise; Wise Construction (Buena Vista Co.)	AQ/SW	3,000	4-10-14
Quality Mat Co., Inc. (Black Hawk Co.)	AQ	3,000	4-03-14
Advanced Electroforming, Inc. (Cedar Co.)	AQ	1,500	4-03-14
Bob Lehmen; Permeate Refining, Inc. (Delaware Co.)	AQ	1,500	4-03-14
Warren Garrett; Garrett Painting & Sandblasting (DM Co.)	AQ	1,500	5-24-14
Audra Early; Mid-States Mfg. & Engr. (Van Buren Co.)	AQ	2,500	4-03-14
Western Iowa Telephone Assoc. (Lawton)	WW	4,000	5-24-14
# Larrell DeJong; Jodi DeJong (Osceola Co.)	AFO	2,250	6-20-14
Humboldt, City of	WS	10,000	6-23-14
Toronto, City of	WW	5,000	7-05-14
United Church of Diagonal (Ringgold Co.)	AQ/SW	1,500	7-06-14
	TOTAL	353,212	

The following penalties have been placed on payment plans:

* Reginald Parcel (Henry Co.)	AQ/SW	110	4-23-05
* Country Stores of Carroll, Ltd. (Carroll)	UT	1,408	6-06-05
* Douglas Bloomquist (Webster Co.)	AQ/SW	3,500	12-01-07
* Jack Knudson (Irwin)	UT	10,000	1-15-08
* Craig Burns (Postville)	WW	950	7-15-08
# Jerry Passehl (Latimer)	SW/WW/HC	2,695	7-01-09
Jerry Wernimont (Carroll)	AQ/SW	1,500	4-19-10
# Ernest Greiner (Keokuk Co.)	AFO	500	10-10-10
Quad City Drum Recycling Co., Inc. (Davenport)	AQ	125	9-01-12
John Kletsch (Superior)	AQ	600	11-01-12

#Animal Feeding Operation

BOLD Entries Have Been Referred to DRF

Jim Scallon (Butler Co.)	SW	700	4-15-13
R.H. Hummer Jr., Inc.; 2161 Highway 6 Trail (Iowa Co.)	AQ/SW	3,643	9-15-13
Patrick Baker; Stockton Auto (Davenport)	AQ/SW	664	7-15-14
Air Advantage, Inc. (Mt. Pleasant)	WW	3,000	4-01-14
Ellsworth Excavating Co. (Muscatine Co.)	AQ/SW	975	6-01-14
# Steve Grettenberg; Dragster LLC	AFO	3,500	1-20-14
Mid River Marine Service and Storage (North Liberty)	WS	5,720	9-30-13
Lonnie Bryant; Sierra Bryant; Bryant's MHP (Keokuk)	WW	100	5-01-14
Stephan A. Palen (Wapello Co.)	AQ	1,352	7-01-13
Millard Elston III; The Earthman (Jefferson Co.)	AQ/SW	2,000	2-15-13
Simon Simonson (Kossuth Co.)	SW	4,900	6-30-14
	TOTAL	47,942	

The following administrative penalties have been appealed:

Dallas County Care Facility (Adel)	WW	5,000	
Guy Thomas (Council Bluffs)	UT	10,000	
Harlan Rudd; Karen Rudd; Rudd Bros. Tires (Drakesville)	UT	10,000	
Bondurant, City of	WW	10,000	
Higman Sand and Gravel, Inc. (Plymouth Co.)	FP	10,000	
Helen and Virgil Homer; Grandmas Snack Shop; (Aredale)	WS	8,461	
Manson, City of	WS	10,000	
Wendall Abkes (Parkersburg)	SW	7,000	
Pet Memories, Inc. (Cedar Co.)	SW	10,000	
Anderson Excavating Company, Inc. (Pottawattamie Co.)	SW	10,000	
David Hansen; Debra Imhoff (Wilton)	FP	6,000	
	TOTAL	96,461	

The following administrative penalties have been collected:

Simon Simonson (Kossuth Co.)	SW	100	
# Darwin Rieck (Benton Co.)	AFO	4,750	
Marvin G. Moeller (Henry Co.)	AQ/SW	5,000	
Martin Moeller (Henry Co.)	AQ/SW	5,000	
Stephan A. Palen (Wapello Co.)	AQ	104	
Stephan A. Palen (Wapello Co.)	AQ	104	
Stephan A. Palen (Wapello Co.)	AQ	104	
Ellsworth Excavating Co. (Muscatine Co.)	AQ/SW	75	
# John Fluit Jr. (Lyon Co.)	AFO	9,000	
Storm Lake, City of	WS	2,000	
Patrick Baker; Stockton Auto (Davenport)	AQ/SW	83	
# Doug Schmitz; Dan Schmitz (Osceola Co.)	AFO	2,500	
# Brad Harms (O'Brien Co.)	AFO	1,500	
Lonnie Bryant; Sierra Bryant; Bryant's MHP (Keokuk)	WW	100	
Daryl & Karen Hollingsworth d/b/a Medora Store (Indianola)	UT	50	
Albert Miller (Kalona)	AQ/SW	5	
Finney Industrial Painting, Inc. (Fairfield)	AQ/WW	250	
	TOTAL	30,725	

#Animal Feeding Operation

BOLD Entries Have Been Referred to DRF