

MINUTES

OF THE

ENVIRONMENTAL PROTECTION COMMISSION

MEETING

APRIL 14, 2015

DNR AIR QUALITY
7900 HICKMAN ROAD
WINDSOR HEIGHTS, IOWA

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Mary Boote at 10:00 a.m. on April 14, 2015 at the DNR Air Quality in Windsor Heights, Iowa.

COMMISSIONERS PRESENT

Mary Boote, Chair
Nancy Couser, Secretary
Cindy Greiman
Chad Ingels
Brent Rastetter
Bob Sinclair
Gene Ver Steeg

COMMISSIONERS ABSENT

LaQuanda Hoskins
Max Smith, Vice-Chair

ADOPTION OF AGENDA

Motion was made by Chad Ingels to approve the agenda as presented. Seconded by Bob Sinclair. Motion carried unanimously.

APPROVED AS PRESENTED

APPROVAL OF MINUTES

Motion was made by Gene Ver Steeg to approve the March 17, 2015 EPC meeting minutes. Seconded by Brent Rastetter. Motion carried unanimously.

APPROVED AS PRESENTED

MONTHLY REPORTS

Bill Ehm welcomed the new Water Quality Bureau Chief, Jon Tack. Interviews are being conducted for the vacant Water Supply and Water Engineering Supervisors. After those positions are filled, the process for filling the vacant NPDES Supervisor will begin.

Bill Ehm shared with the Commission that plans for the 401 certification process for nationwide and regional permits has changed. The Corps of Engineers issued a new regional permit allowing NRCS to certify activities without the need for an entity to obtain an individual permit. In the past, these nationwide and regional permits have been brought to the Commission for rule approval but the Department found out Iowa is the only state with this rulemaking process. Other states issue the permit through a certification to the Corps rather than rule. Spring is near and structures are being built so the Department provided this certification to the Corps for this regional permit. There will be more communication with the Commission on this approach.

Bill Ehm thanked Max Smith and Brent Rastetter for their service on the Commission.

Bill Ehm provided an update to the Commission on the progress of the Manure Certification online program. Commissioners expressed interest to view a demonstration at a future meeting.

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. Variance Report
3. Enforcement Status Report
4. Administrative Penalty Report
5. Attorney General Referrals Report
6. Contested Case Status Report

INFORMATION

PUBLIC COMMENT

Deborah Bunka – ICCI

Deborah Bunka shared with the Commission she has been attending EPC meetings almost every month for 2 years and other ICCI members have been coming longer than her to express concerns and provide facts. Today, ICCI is going to share the history of the Clean Water Act and what has transpired since 1972, summarize the takeover of agriculture by large corporations, demonstrate voluntary compliance is not working, that DNR is failing to meet its requirements in the EPA-DNR Work Plan, what is needed to protect Iowa's waters, and ICCI's support for Des Moines Water Works lawsuit. Local control is the key. Most Iowans support the Des Moines Water Works lawsuit. She reminded the Commissioners appointments are not to be based on political considerations and decisions should reflect serving citizens of the state by ensuring clean air, land and water. She asked the Commission to put Iowa's resources ahead of political and financial gain.

Barb Kalbach – ICCI

Barb Kalbach shared with the Commission, in 1972 Richard Nixon signed into law the Clean Water Act to be implemented by each state. Governor Branstad opened Iowa to corporate agriculture in 1995 resulting in impaired waters rising in the 2000's. ICCI went to Washington, DC to tell officials that factory farms and the DNR has failed. Nothing improved so in 2007 the de-delegation petition was

issued to EPA by the Environmental Integrity Project, Sierra Club, and ICCI. Over three years, not much occurred so in 2010, these groups filed a notice of intent to sue.

Shari Hawk – ICCI

Shari Hawk shared with the Commission since the inception of factory farms there has been a rapid transition away from family farms. Since 2010, over 1,000 corporate farms have been permitted. Ten million hogs create the same amount of manure as one million people. The hog manure is placed on our farms. She asked how can the DNR control the volume of manure? She does not believe DNR can control it. Small farmers used to be able to spread a small to moderate amount of manure without impact. But small farmers are unable to operate successfully with corporate farms. The number 1 cause of fish kills is manure which contributes to impaired waters. She asked the DNR and EPC to stop approving any more construction until the manure can be responsibly managed.

Patrick Stall – ICCI

Patrick Stall summarized the EPA 2012 report of the animal feeding operation program. EPA went to field offices and in less than 6 months found the DNR did not have an adequate inspection program. The only inspection was through Google maps. The DNR's mission is to conserve and enhance our natural resources but they only look the other way. When the DNR would respond to spills, they didn't issue fines or penalties. Regular polluters consider DNR penalties as the cost of doing business. The DNR's failures are the EPC's failures. The findings of the EPA report is exactly what ICCI has been telling the Commission for years. ICCI will keep coming back to the Commission until their voices are heard.

Carrie Fisher – ICCI

Carrie Fisher shared with the Commission the clean water campaign history. In 2012, the voluntary nutrient reduction strategy was introduced. The Des Moines Register published an article stating the strategy was flawed with errors and too AG friendly. Iowa is the leading state for the contribution of nitrates and phosphates into Gulf of Mexico's dead zone. The nutrient strategy was written behind closed doors. AG groups would like voluntary action. Taxes and speeding tickets are not voluntary for other citizens. Our air, land, and water quality can't be voluntary.

Brenda Brink – ICCI

Brenda Brink shared with the Commission in September 2012 the DNR tried to get into compliance with EPA requirements which continued to August 2013. The DNR had meetings but only industry representatives were invited. ICCI and citizens were not invited to the meetings. In efforts to get its voice heard, ICCI started meeting with the EPA. In August 2013, Gina McCarthy met with ICCI and two weeks later a work plan was signed. The work plan required all large sized operations to be onsite inspected, medium sized inspected onsite if a sizable spill occurred in the last 5 years or if an open manure pit less than ¼ mile from a US water existed, other medium sized facilities could get a desktop assessment, and DNR was to increase its fines and penalties. She felt that those items have not occurred and she is still waiting for the DNR to perform these requirements.

Sharon Donovan – ICCI

Sharon Donovan shared with the Commission in May 2013 Governor Branstad interjected himself into Clean Water Act negotiations. She felt the Governor had no legitimate role but went over the heads of the DNR to ask the EPA for no burdensome regulations. This was his gift to the AG groups like Farm Bureau. The Governor's letter to EPA downplayed the seriousness for clean water. She felt the Governor was governing by threats and bullying which is unethical. Iowa and Illinois have 9% of the Mississippi River but are accountable for 28% of the gulf dead zone.

Vern Tigges – ICCI

Vern Tigges observed the Clean Water Act rule in May 2014 only had 28 days for public comments which is much shorter than normal periods. Around 97% of the comments asked for the DNR to strengthen the rule but the DNR did nothing. Anti-stringency laws are bogus. EPA's rules should be the "floor" rather than the "ceiling."

Jess Mazour – ICCI

Jess Mazour expressed concern for not what is in the rule but rather what is not in the rule. The rules don't require adequate onsite inspections, tough fines and penalties, or a transparent database. There have been over 700 manure spills, more factory farms built, and more manure created. The DNR can't handle this much manure and regulate it. After the public comment period on the rule was closed, ICCI collected 10,000 petitions for clean water but the EPC shut out the kids who tried to deliver the petitions. The Nutrient Reduction Strategy only agrees with corporate AG and not the citizens who are impacted by the rules. The EPC doesn't listen to environmental organizations or their own DNR employees who say the EPC is not doing enough.

Adam Mason – ICCI

Adam Mason shared with the Commission September 2014 was the one year anniversary of the work plan and a report was due to EPA. In the report, 20% of the inspections were to occur each year to achieve the 5 year goal but only 14% were completed. The DNR documented manure spills but did not issue NPDES permits and only 11 manure spills received fines or penalties. DNR has made the access of the information difficult. The information should be transparent and on behalf of the public.

Stephen Tews – ICCI

Stephen Tews shared with the Commission that protection is defined in the dictionary as preservation. Good laws and rules mean nothing if they are not enforced. Stiffer penalties for violators and progressive discipline needs to occur with a three strikes and you are out of business requirement. A database of inspections and manure spills needs to be transparent and available to the public. The Des Moines Water Works suit to improve the water in Iowa is in line with the recent request from the Corps of Engineers for the Lake Red Rock project. Water goes from Minnesota, past Des Moines, to Lake Red Rock, and then to SE Iowa where he lives.

Barb Lang – ICCI

Barb Lang has been a life long resident of Iowa and has watched the deterioration of the water. She reminded the Commission of its mission to protect water from polluters but feels the Commission and DNR have failed to protect citizens from factory farms. The DNR efforts have been minimal but there are many solutions. One solution is to issue NPDES permits to all confinements. Over 20 million hogs is a problem. A permit provides 5 advantages – broader coverage of enforcement, transparency through public notification, fixed term of 5 years before revision, renewal, or termination, additional operation and maintenance requirements to prevent spills, and increased fines and penalties.

Nathan Malachowski – ICCI

Nathan Malachowski stated change needs to occur regarding local control. Dickinson County sent out a recent survey on this topic. Many county boards want local control. Citizens ask the county boards to not approve factory farms because they destroy air and water quality and general rural life. He did not ask the Commission to step outside of its jurisdiction but asked the Commission to support the county boards if they deny a permit.

Lary Ginter – ICCI

Larry Ginter shared the imagery of farming when he grew up in 1940s. It was green and lush where now everything is dead from the pesticides. It was small barns unlike today where there are huge metal barns. Cows in the pasture are no longer. He hasn't seen a meadow lark in many years. The rotation of crops with alfalfa has been replaced with corn and soybeans from fence row to fence row. Farming now has a get big or get out philosophy. Rational crop production of the 40s has been replaced with reckless production. Nitrates polluting our water systems should be evidence to update our conservation plans. Livestock production is not sustainable. He understand the Commission doesn't set federal farm policy but the Commission can be advocate on why it doesn't work. He asked the Commission to advocate for small farms.

Suzanne Robinson – ICCI

Suzanne Robinson has been following Iowa's polluted waters and was horrified to find over 600 are impaired. The Des Moines Water Works law suit article in the Des Moines Register educated citizen on what the Des Moines Water Works has been doing before it filed suit. It is a bad situation that gets worse and worse. The voluntary reduction strategy is a failure and she supports the Des Moines Water Works law suit.

Janis Elliot – ICCI

Janis Elliot loves her 144 acres of woods in Madison County. She has begun thinking about her legacy. During a visit from her son and grandchildren, they played on the property and she wants her legacy to be for them to appreciate the land, air and water. The EPC has an opportunity to leave a legacy. She asked the Commission to make decisions to make Iowa better for your children and grandchildren and to not let it pass by.

David Hance – ICCI

David Hance graduated from the University to Iowa, was active with 4H, serves on the Board of Directors for the Raccoon River Watershed Association, and knows many of the Commissioners. He uses the internet to monitor the condition of the river. During heavy rains, the nitrate level went up to 20 mg per liter around the city of Jefferson which will reach Van Meter and then Des Moines. We have a problem with people drinking out of wells and small town municipalities drinking 20 mg/l nitrate water. This level is very harmful for pregnant women and young children. He asked the Commission to issue a warning to residents that blue babies may occur from drinking the water. A lawyer salivates when they look at the Commission for breaching its duty to protect citizens. Damages of around \$100 million are likely for the loss of a baby from blue baby syndrome.

Cherie Mortice – ICCI

Cherie Mortice believes the lawsuit launched by Des Moines Water Works did not need to happen. The majority of farmers did not invest in voluntary practices with the high price of corn. A draining pipe from a wastewater plant or factory is regulated. The Des Moines Water Works nitrate monitoring levels have been at a record high. The high cost of removing nitrates from the water is passed on to the citizens. Those working for clean water in Iowa have been working for years to find solutions and to work with all groups. ICCI applauds and supports Des Moines Water Works in its pursuit of clean water.

Chris Petersen – Farmer

Chris Petersen arrived late and did not speak to the Commission but registered in support of clean water.

Written Comments Submitted

None

END OF PUBLIC COMMENT**DIRECTORS REMARKS**

Director Gipp summarized with the Commission activities of the Legislative session including the air quality funding, new commitments, and general fund allotments.

Director Gipp shared with the Commissioners the Air Quality team has been successful in reducing emissions which has affected the revenue. He and many others have been working to educate the Legislature on DNR's air quality permitting and inspection programs.

Director Gipp thanked the Commissioners for its work and presented Brent Rastetter and Max Smith with a certificate of appreciation.

INFORMATION

CONTRACT WITH THE UNIVERSITY OF IOWA ON BEHALF OF THE STATE HYGIENIC LABORATORY – BLACK HAWK LAKE WATERSHED MONITORING 2015

Kyle Ament, Environmental Specialist, of the Watershed Improvement Section of the Water Quality Bureau presented the following item.

Commission approval was requested for a one year-service contract with the University of Iowa on behalf of the State Hygienic Laboratory. The contract will begin on April 15, 2015 and terminate on May 31, 2016. The total amount of this contract shall not exceed \$43,592.04

Funding Source:

This contract will be funded through Section 319 of the Clean Water Act (Federal).

Background:

All watershed projects funded by the Section 319 program need to include a water quality monitoring component as part of their project implementation plans.

Black Hawk Lake was on Iowa’s Section 303(d) list of impaired waters for algae, turbidity, and pathogens. The primary water quality issues with the lake stem from high nutrient concentrations and inorganic suspended solids. Elevated concentrations of phosphorus have contributed to blooms of blue green algae. A TMDL for algae and turbidity at Black Hawk Lake was prepared by IDNR in 2011.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining the Contractor to provide collection and analysis of water monitoring samples. The data collected will be used by DNR to determine if in-lake and tributary load reduction strategies have been effective.

Contractor Selection Process:

The University of Iowa was chosen for this project because of Iowa Code section 455B.103, which allows DNR to contract with “public agencies of the state” for those services.

Commissioner Rastetter inquired into the water quality improvements of the lake. Kyle Ament shared with the Commission Black Hawk Lake is one of the most treated watersheds in Iowa and the 5 year implementation plan has concluded. The next phase of monitoring will assist with determining the trends and outcomes of the work.

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

APPROVED AS PRESENTED

CONTRACT WITH THE UNIVERSITY OF IOWA FOR BEACH MONITORING ANALYTICAL SERVICES 2015

Roger Bruner, Supervisor, of the Water Quality Monitoring and Assessment Section of the Water Quality Bureau presented the following item.

Commission approval was requested for a 1 (one) year-service contract with The University of Iowa –State Hygienic Laboratory of Iowa City, IA. The contract will begin on May 11, 2015 and terminate on September 30, 2015. The total amount of this contract shall not exceed \$27,732.24.

Funding Source:

This contract will be funded through State of Iowa Environment First Appropriations for Water Quality Monitoring.

Background:

Since 2006, the Iowa Department of Natural Resources Beach Monitoring Program has sampled and reported indicator bacteria concentrations at swimming areas throughout the state. Routine monitoring takes place from the week before Memorial Day through Labor Day. The beach monitoring project fits into the mission of the Department by ensuring high quality recreational opportunities within the state park system and by assessing and reporting on the quality of surface waters in the State.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining the Contractor to provide assistance to DNR in the analysis of indicator bacteria samples collected as part of the beach monitoring program. Samples are collected weekly during the monitoring period at up to 40 state park beaches and as many as 35 city and county park beaches. Also, the remoteness of the Iowa Great Lakes region in Dickinson County makes resample collection by DNR staff a time-consuming and cost-prohibitive activity. Therefore, the Contractor will also collect and analyze indicator bacteria samples, in the event of previous high results requiring resampling at beaches in the Iowa Great Lakes region in Dickinson County.

Contractor Selection Process:

The University of Iowa SHL was chosen as contractor based on the Code of Iowa (455B.103), which directs the DNR to contract with public agencies of the state. SHL was also chosen for this project due to their sample analysis expertise.

Contract History:

This is the second year of contracting with SHL to provide analytical services for E. coli testing. In 2014, the contract amount was \$24,413.40; however a recent increase in laboratory analytical costs has resulted in the value of the contract increasing by \$3,319 for a total of \$27,732.24.

Roger Bruner shared with the Commission there have been no trends or correlation with waterfowl and bacteria.

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

APPROVED AS PRESENTED

REFERRALS TO THE ATTORNEY GENERAL

Kelli Book, Attorney, of the Legal Services Bureau presented the following item. To her aid was Kurt Levetzow, Environmental Specialist Senior, with the DNR Field Office 6 in Washington.

The Department requested the referral of the following to the Attorney General for appropriate legal action. Litigation reports have been provided to the commissioners and are confidential pursuant to Iowa Code section 22.7(4). The parties have been informed of this action and may appear to discuss this matter. If the Commission needs to discuss strategy with counsel on any matter where the disclosure of matters discussed would be likely to prejudice or disadvantage its position in litigation, the Commission may go into closed session pursuant to Iowa Code section 21.5(1)(c).

- Marty Feinberg, dba Feinberg Metals Recycling Corp. (Fort Madison) – Solid Waste/Air Quality/Storm Water

Kelli Book shared with the Commission the operations of Feinberg Metals Recycling. Mr. Feinberg owns and operates Feinberg Metals Recycling Corp., a scrap metal recycling facility located in Fort Madison, Iowa. As a recycling facility, Mr. Feinberg is required to have a NPDES General Permit No. 1 or a storm water permit and one of the crucial elements of the storm water permit is that a facility must have a storm water pollution prevention plan or an (SP3). The permit also requires recordkeeping and inspections.

Kelli Book shared in detail the events which lead up to the request for referral to the Attorney General. Summarized, the events include the failure to provide the SP3 in July 2013, improper handling of demanufactured appliances in March 2014, lack of action to remove tire piles from March until July 2014, inadequate smelter controls and no air quality construction permit in July 2014, investigation of a complaint of burning the insulation off of copper wires from July through September 2014.

In addition to the current violations Mr. Feinberg is in violation of a Consent Order, Judgment and Decree entered into with the Attorney General in 2010. The Consent Order enjoined Mr. Feinberg from future violations of his storm water permit. By not having a SP3, Mr. Feinberg is in violation of the consent order. Mr. Feinberg has also been issued two administrative orders in 1994 and 1995 for similar storm water permit violations as those cited in this referral.

The Department requested that the Commission refer Marty Feinberg to the Attorney General's Office for appropriate enforcement action. He operated the aluminum smelter without first obtaining an air quality construction permit and in doing so violated 40 CFR Part 63, Subpart RRR for secondary aluminum production. The smelter would fall under Subpart RRR and would be required to do monitoring, recordkeeping and performance testing. Mr. Feinberg also violated the open burning regulations by continuing to burn the insulation off the copper wiring. Mr. Feinberg maintained a stockpile of more than the permitted 3,500 waste tires on the site. Mr. Feinberg continued to operate without a SP3. The field office made numerous attempts through several visits to assist Mr. Feinberg. However given the past two administrative orders, the violations of the Attorney General's consent decree and the continued violations the Department believes the appropriate enforcement path for Mr. Feinberg is referral to the Attorney General's Office.

Kurt Levetzow fielded questions from the Commission related to the process for a waste tire permit, quantity limits, and method for calculating the estimated number of tires in a pile.

Mr. Feinberg shared with the Commission approximately 95% of aluminum does not get smelted and he explained the different grades of aluminum he has on-site. He continued to discuss the tires, which

have been onsite forever. He expressed concern to the Commission that there is no grant to assist with handling waste tires and he believes the manufacturers should pay for the cleanup.

Mr. Feinberg provided details of his operation which included terminating all the employees who worked for him during the time of the infractions described. Some of those terminated employees may have open burned insulated copper wires but he himself has never open burned insulated copper wires. He now has an entire new staff which he has trained to operate the facility properly.

Mr. Feinberg shared with the Commission that his mother has the SP3 and will send it the DNR. He stated that it has taken 2-3 years to get the plan done because it is only his mother and himself running the facility. The plan is in effect but he forgot to bring it with him.

Mr. Feinberg is considering purchasing a tire grinder to work on getting rid of the tires. He knows the tires are a problem and he needs to deal with it. Once the tires are gone, the grinder can be used for other products like aluminum.

Mr. Feinberg knows the City of Fort Madison does not like him and his business and he is always in the "bad" with them. He is considering moving properties and conducting the business indoors.

Commissioners recognized the importance of the role recyclers play in our environment and their need to properly recycle and dispose of items. Mr. Feinberg shared with the Commission his good working relationship with the DNR.

Motion was made by Chad Ingels to refer Marty Feinberg, dba Feinberg Metals Recycling Corp to the Attorney General. Seconded by Bob Sinclair. Motion carried unanimously

REFERRED

FINAL RULE – CHAPTER 61 – WATER QUALITY STANDARDS (STREAM RECLASSIFICATIONS VIA USE ASSESSMENT AND USE ATTAINABILITY ANALYSES – BATCH #4)

Roger Bruner, Supervisor, of the Water Quality Monitoring and Assessment Section of the Water Quality Bureau presented the following item.

The Commission was asked to approve a final rule to amend the state's water quality standards (WQS). The rule amendments, if approved, would:

1. Revise and list approximately eight stream segments as Class A1 primary contact recreational use designated waters.
2. Revise and list approximately one stream segment as Class A1 primary contact recreational use and Class B(WW-1) warm water—Type 1 aquatic life use designated waters.
3. Revise and list approximately eight stream segments as Class A1 primary contact recreational use and Class B(WW-2) warm water—Type 2 aquatic life use designated waters.
4. Revise and list approximately two stream segments as Class A2 secondary contact recreational use designated waters.
5. Revise and list approximately 36 stream segments as Class A2 secondary contact recreational use and Class B(WW-2) warm water—Type 2 aquatic life use designated waters.
6. Revise and list approximately four stream segments as Class A2 secondary contact recreational use and Class B(WW-3) warm water—Type 3 aquatic life use designated waters.
7. Revise and list approximately five stream segments as Class A3 children's recreational use designated waters.
8. Revise and list approximately 16 stream segments as Class A3 children's recreational use and Class B(WW-2) warm water—Type 2 designated waters.
9. Revise and list approximately two streams to match the U.S. Geological Survey (USGS) title.
10. Revise and list approximately two streams that were adopted in previous EPC rule makings but which were omitted from the Surface Water Classification document.
11. Revise the legal descriptions of approximately 51 stream segments. These are not individually listed as designation changes, but the changes are shown in the Surface Water Classification document.

The concept of Use Assessment and Use Attainability Analysis (UA/UAA) is being applied by the DNR as a step-by-step process to gather site-specific field data on stream features and uses. The DNR then assesses available information to determine if the "presumed" recreational and aquatic life uses are appropriate.

The DNR elected to perform a UA/UAA on any newly designated stream that receives a continuous discharge from a facility with a National Pollutant Discharge Elimination System (NPDES) permit. Prior to issuing a NPDES permit for an affected facility, the DNR must complete a UA/UAA for the receiving stream or stream network.

The stream descriptions provided in the preamble are designed to provide clear notice to the public and may be subject to non-substantive corrections to conform to the format used in the stream classification document. The stream classification document now being adopted by reference also contains non-substantive revisions to previously adopted stream designations to correct typographical or descriptive errors. All designations conform to the previously-approved use designations, as amended by the Commission.

The original Notice of Intended Action (NOIA) was published in the Iowa Administrative Bulletin on February 18, 2015 as **ARC 1877C**. Six public hearings were held across the state in six regional locations. Two persons provided written comments on the proposed WQS revisions. A responsiveness summary has been prepared addressing the comments received in terms of the issues involved. Comments from stakeholder groups and other persons or organizations may be made at the Commission meeting regarding the rule changes.

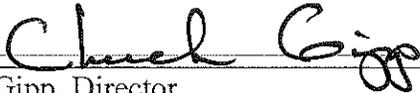
Motion was made by Brent Rastetter to approve the agenda item as presented. Seconded by Bob Sinclair. Motion carried unanimously

APPROVED AS PRESENTED

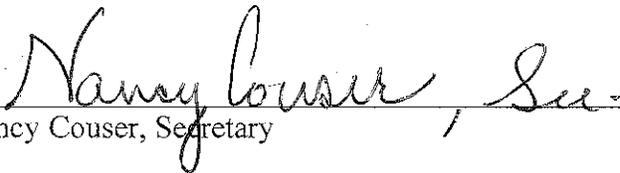
GENERAL DISCUSSION

- Joe Griffin of the DNR NPDES Section provided an update for the top soil rulemaking process since the public comments period has closed.
- Jerah Sheets reminded Commissioners to complete the Personal Financial Disclosure forms by April 30, 2015.

Chairperson Boote adjourned the Environmental Protection Commission meeting at 12:15 p.m., Tuesday, April 14, 2015.

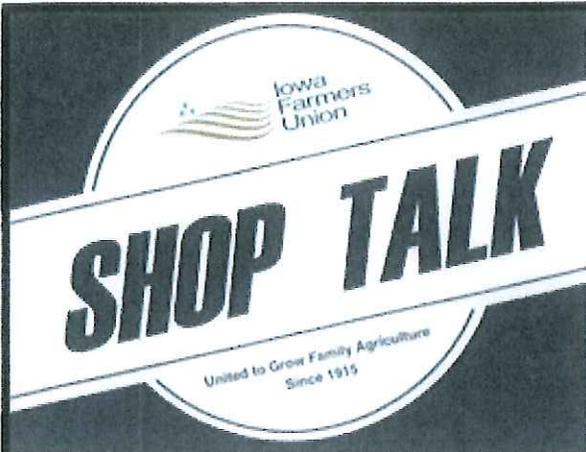


Chuck Gipp, Director



Nancy Couser, Secretary

April 14, 2015
EPC Public Comment



Mark Your Calendars!

MARSH MARIGOLD FESTIVAL (bring your boots!)

Sat., April 18th 2 to 4 pm
Gibraltar Farms - Iowa Falls, IA

Farmer John Gilbert will discuss practices undertaken on his farm that help ensure healthy soil and clean water run-off into the Southfork, a tributary of the Iowa River.

Topics will include: rotational grazing of critical areas, split nitrogen fertilization, diverse rotations and controlled tillage. Includes a short hayride.

Rain date: April 25th
Free Snack & Refreshment Provided

Attendance 50 max.
Please RSVP to (515) 451-8492

Gibraltar Farms is located 1 mile north of Hardin
(cty Rd D-41 on west side of JJ Ave)





**Iowa
Citizens for
Community
Improvement**

We talk. We act. We get it done.

April 14, 2015
EPC Public Comment

2001 Forest Avenue
Des Moines, IA 50311
ph 515.282.0484
fx 515.283.0031
www.iowacci.org

Clean Water Act (CWA) Campaign Info Sheet

Goals:

- Bring factory farms in Iowa into compliance with the Federal CWA
- Hold factory farms accountable for their manure pollution
- Build more power to create an agriculture system that works for everyday people
- Clean up Iowa's waters

Demands:

- Tough enforcement that includes:
 - Tough fines and penalties that deter future pollution
 - Clean Water Act permits to every factory farm in Iowa and a 3 strikes and you're out rule
 - Good inspections that find problems and fix problems
 - Transparent database with manure spill and inspection information

Timeline of campaign:

Oct. 18, 1972 – CWA is signed into law.

2007 – CCI, Environmental Integrity Project (EIP) & Sierra Club legally file to demand the United States Environmental Protection Agency (EPA) take over Department of Natural Resources (DNR) and enforce the CWA.

2011 – CCI, EIP & Sierra Club threaten to sue EPA for failing to respond to the 2007 demand in a meaningful way.

Early 2012 – EPA conducts field investigations at DNR offices across Iowa in response to threat to sue.

July 12, 2012 – EPA releases scathing report alleging:

- 1) Iowa DNR does not have an adequate factory farm inspection program
- 2) Frequently fails to respond to manure spills and other environmental hazards
- 3) Does not assess adequate fines and penalties when violations occur
- 4) Setback distances were not in compliance with CWA

September 11, 2012 – DNR responds to EPA's report and promises to bring Iowa into compliance with CWA.

Dec. 2012- August 2013 – DNR and EPA go back and forth with draft workplan to implement the CWA in Iowa. CCI held a series of meetings with EPA regional officials, EPA national officials, Gina McCarthy (EPA Administrator) and the DNR to push them to adopt a strong workplan.

May 20, 2013 – After a series of private meetings between industry, DNR, EPA and Gov. Branstad, Gov. Branstad issues letter on behalf of corporate ag asking EPA not to require any new 'burdensome' regulations to the industry. CCI exposes Branstad for meddling in the agreement.

Sept. 11, 2013 – CWA workplan signed by DNR and EPA 2 weeks after CCI meets with EPA Administrator Gina McCarthy.

- 1) on-site inspections for all large factory farms
- 2) on-site inspections for medium-sized factory farms if they have had a sizeable spill in the last five years, or store manure in an open pit less than 1/4 mile from a water of the U.S.
- 3) desk surveys for all other medium-sized factory farms
- 4) increased separation distances
- 5) tougher enforcement, including more violations subject to fines and penalties

Nov. 19, 2013 – CCI members deliver 5,344 petition signatures to the Environmental Protection Commission demanding strong enforcement of the CWA.

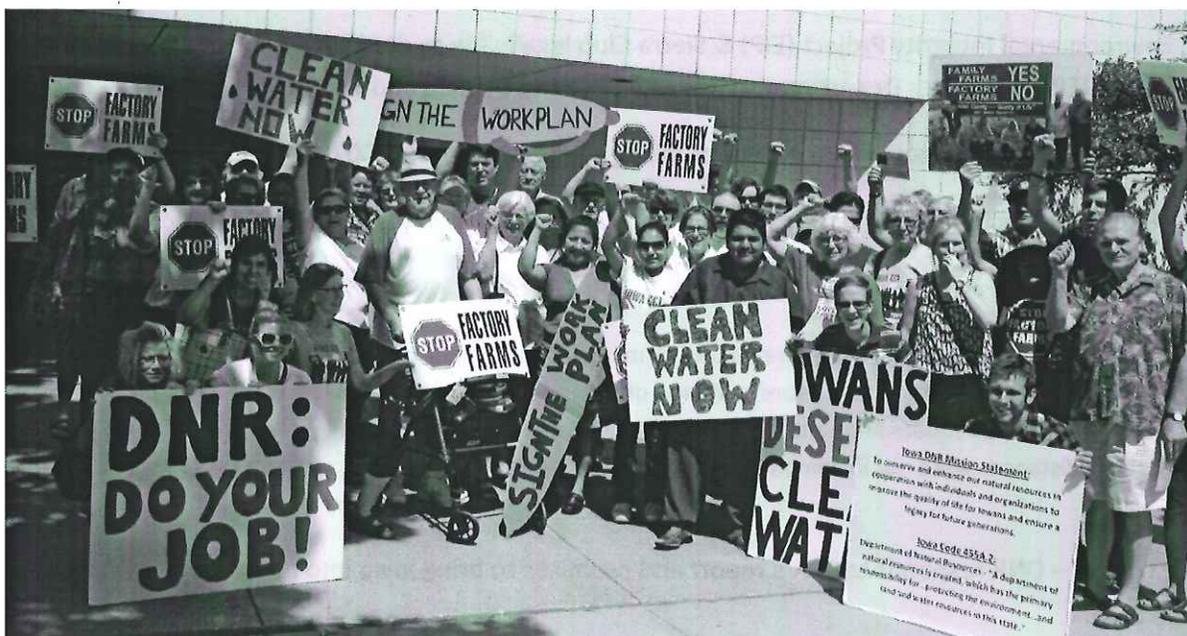
May 2014 – Clean Water Act rule public comment opens for 28 days (shorter than usual public comment periods). Out of 4,965 comments submitted – 4,818 (or 97%) demanded the DNR strengthen the rule. Yet, the DNR did not change anything.

August 19, 2014 – EPC votes to pass the Clean Water Act rule.

October 23, 2014 – Clean Water Act rule goes into effect

September 11, 2014 – DNR misses 1-year benchmarks of Clean Water Act Work Plan

- 1) At least 49 documented manure spills in first year of Work Plan and no CWA permits issued
- 2) DNR was required to complete 20% of inspections in year one and only completed 14%
- 3) Of the 49 documented manure spills in first year, only 11 received a fine or penalty
- 4) DNR has made collecting information, paperwork, reports, etc extremely difficult, time consuming and expensive



April 14, 2015
EPC General Discussion

Comments Received During the Public Comment Period for Rulemaking Addressing Proposed Topsoil Preservation Changes

During the public comment period ending April 1 for the proposed topsoil preservation changes, many comments were submitted verbally and in writing, both e-mail and paper. Many commenters submitted two or more comments. Subtracting the multiple comments, the statistics for all types of comments are as follows:

Those in favor of the proposal:	including form letters: 65	excluding form letters: 50
Those opposed to the proposal:	including form letters: 632	excluding form letters: 140
Both, neither, unknown or other:	7	

The last category includes those whose intent could not be readily discerned.

The numbers may not be exact as the possibility exists that some multiple comments made by the same commenter were not discovered and removed from the statistics. However, it is believed that the numbers above are quite close, if not exact.

Three hearings were held during the comment period in Cedar Rapids, Davenport and Des Moines. Approximately 120-160 people attended the three hearings, combined. Recordings were made of these hearings with copies on the Department's website located here:

<http://www.iowadnr.gov/InsideDNR/RegulatoryWater/NPDESSstormWater.aspx>

The Department is currently transcribing the verbal comments into electronic documents and it is anticipated these will be available at the same link in the near future.

The Department has not yet converted the e-mails and paper comments received into a readily accessible electronic format. Should the Commission agree, the Department will assemble the comments into pdf files with a file for each of the categories above. The number of comments of those opposed to the current rulemaking is large enough that it may be divided into two or more smaller files. These will then be placed on the webpage above. If the Commission has a different manner in which it would like the comments in their entirety to be presented, the Department will certainly assemble them in that way. The comment files could be e-mailed directly to the Commissioners' DNR e-mail addresses or printed and presented in hardcopy format, if desired.

Attached in the package received by the Commission today are excerpts of the comments received during the comment period. These comments were chosen as representative of those that addressed issues regarding water quality, cost, and derivation and implementation of both the current and proposed requirements. Some of the comments contained in the package are not the entire comment as received since some are quite lengthy and address issues other than water quality, cost, derivation and implementation. Some of the comments are partially or wholly highlighted in yellow. These indicate questions asked by commenters of the Commission which concern wording, development and implementation issues which may be of especial interest to the Commission.

Public comments made during the meetings of the EO80 stakeholders group last year are still available on the Department's website located here:

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

The following are excerpts of comments received from those who are opposed to the proposed rulemaking that replaces the current requirement to respread 4" of topsoil when feasible with the requirement to preserve topsoil unless infeasible. The comments below represent approximately 8.5% of those received opposed to the proposed rulemaking and were chosen as representative of those comments which addressed water quality, cost, derivation and implementation of the current and proposed requirements. Inclusion of a comment does not imply the Department endorses or has verified any of the statements contained therein. Comments which address questions to the Commission and which are relevant to language contained within the proposal are highlighted in yellow (gray in a black and white copy).

1. **City of Ankeny** - As there is a push to change this rule, I feel it is necessary to point out that the group that will be most impacted by this decision, Iowa homeowners, were not represented on the EO80 Stakeholders Group. I challenge the existing EO80 Group members, the Environmental Protection Commission, and all others involved to consider this as they review the language and listen to comments provided. These changes to our landscape lead to the inability for those property owners to successfully grow grass, trees, shrubs, and perennial plants. This requires the new property owner to water their turf grass continually to keep it alive because roots aren't able to penetrate the compacted soil. Because the compacted soil does not allow water to infiltrate, the water will go through the grass, hit the compacted soil and then move out of the soil onto the street, sidewalks, or driveways. To maintain a green yard, constant watering is required. So we treat our surface water to drinking water standards to water grass with a majority of said water becoming runoff. This system is unsustainable and impractical. In some instances, homeowners plant trees in clay soil that holds water, rots the roots, and eventually kills the tree. Removing or changing the rule to the proposed language has a domino effect: less topsoil means less infiltration of rainwater and limited ability to grow vegetation; less infiltration means more stormwater runoff; more stormwater runoff means more urban flashiness in our streams; more urban flashiness means soil is lost from our streambanks, poorer water quality, and downstream flooding (more water quantity); and these issues lead to the expenses of flooding repair, stream restoration costs, and water quality lost. As the [proposed] language is currently written, how is the City of Ankeny to enforce this requirement in our permit? With a number (4 inches), it was easier to verify the preservation of topsoil to that amount. Will the City of Ankeny be required to verify the amount of topsoil prior to construction to know how much needs to be preserved? If there is a significant amount of topsoil, will the City of Ankeny then be required to have the builder/developer replace at that amount? How are we to determine and verify the validity of a claim that it is 'infeasible' to replace the topsoil? Of residents I have spoken with in Ankeny, there is not one who is unwilling to spend extra money on the purchase of a new house to ensure they have adequate topsoil on their lot. Does this practice take extra time for the developer/builder? Yes. Does it require additional cost? Yes. Does it require extra time and effort for the cities enforcing it? Yes to that too, but most of us feel that it is well worth the effort.
2. **Conservation Districts of Iowa** - Our Soil and Water Conservation Districts with urban areas in their jurisdiction have dealt with the consequences of topsoil removal time and time again. Failure to reapply topsoil after construction causes rainwater to shed off lawns carrying pollutants into our local water bodies. Flooding and streambank erosion is another consequence of this practice as our local water bodies become overwhelmed by the increase in stormwater runoff. These issues create a strain on our state's natural and financial resources.
3. **City of Davenport** - My concern with the proposed language is that it does not accurately reflect a compromise but that of a forced majority due to the partisan way the EO80 subcommittee was selected. Since the committee was slanted in favor of those hoping to change the rule then it

makes sense that the outcome would be in their favor. I think that there is a compromise to be had if both parties and perhaps even other interested entities were allowed a voice in the decision making process. It appears that this was not the case and the decision was made from the beginning. My suggestion is to re-open the discussion and to have the DNR work with multiple interest groups to reach a consensus on what is truly feasible and best for Iowans.

4. **Iowa Land Improvement Contractors Association** - The Iowa Land Improvement Contractors Association is an organization of nearly 500 earth moving contractors who care about the environment and actively promote soil and water conservation. We are concerned with the proposed changes to the general permit #2 regarding topsoil preservation and oppose the change. Iowa's Nutrient Reduction Strategy counts on all of us to practice good land stewardship to reduce nutrients in Iowa's waterways. If the proposed changes are made it will increase the amount of nutrients urban areas contribute to our rivers, streams, and lakes by letting builders decide what "infeasible" topsoil preservation is. We strongly urge you to leave Iowa's topsoil rule as is.
5. **MidAmerican Energy Company** - MidAmerican applauds the department's efforts, evident in the 2012 GP2 reissuance, to help define the vague language regarding topsoil preservation included in the U.S. Environmental Protection Agency's Construction Federal Effluent Guidelines. This approach leads to greater certainty in application of the GP2 requirements on a statewide basis and precludes a broad and variable interpretation of the requirements. It is unclear how the [proposed] topsoil preservation requirement in GP2 is intended to be implemented on linear projects. Therefore, MidAmerican requests a specific clarification in the rule validating the current utility industry practice that preservation of topsoil is achieved when excavated spoil that is temporarily side-cast for the installation of an underground facility is returned as final cover. Should the Environmental Protection Commission revise the rule, MidAmerican believes that the current language is much too broad and vague to be readily enforceable. The proposed revisions lack clear performance standards or definitions by which project owners and proponents can make decisions to ensure compliance.
6. **City of Cedar Rapids Public Works Department** - As part of my role here at the City of Cedar Rapids, I visit a lots of homeowners who struggle with flooding issues, and often in places you wouldn't expect. i.e. far from a floodplain. On June 30th, 2014 a major flash flood that hit the City causing widespread damage in many different areas. The damage was widespread and not focused on a specific area. As a result of this, the City understands that our flood mitigation efforts cannot be limited to the location where flooding does its damage. It must be focused upstream in the watershed. That means restricting runoff. The best way to do this according numerous studies is to restore the soil health and facilitate infiltration at the source, not compromise soil health by allowing topsoil to be removed with weak legal language. We have rules regarding detention to mitigate for additional impervious surface as a result of development. However, the rules assume that areas covered by sod and/or grass seed are previous at their undisturbed water-holding capacities. We see many lots where the builder has attempted to sod a lot where sod is simply placed on compacted impenetrable clay. In order for these areas to act as they should (i.e. pervious area), they need appropriate soil types to hold water. This is how our current detention philosophy works. Otherwise, we should assume that an entire site is impervious and require developers to provide for peaks flows based on that regime instead?
7. **City of Dubuque** - How is the proposal to be enforced? What can the developers/builders do with the topsoil under the proposal? Has the Department evaluated the actual cost of compliance with the current 4" requirement? What, exactly, is the current requirement? Will the proposal be as effective as the current 4" requirement?

8. **Iowa State Soil Conservation Committee** - We, the State Soil Conservation Committee, would like to express our opposition to the proposed amendments to Chapter 64 and the revision of General Permit no. 2 with regards to the preservation of topsoil at construction sites. We feel the proposed changes are vague and leave much to chance and speculation when considering what is acceptable in terms of topsoil depth and compaction following construction. We believe that unless basic guidelines for protecting and retaining topsoil are provided and followed we will continue to create post construction landscapes that cannot absorb rainfall and will shed runoff that contributes to water quality problems and flashy flows in urban streams.
9. **City of Coralville** – The City of Coralville is in favor of keeping the current topsoil GP#2 requirement. Coralville, like many other communities is experiencing impaired water quality in our streams and extreme localized flooding during normal rain events (less than 1.25”). This is caused by the addition of impervious surfaces and the reduction of hydrologically functional landscapes. Topsoil, specially the A and B horizons of the soil is the most important element in retaining hydrologically functional landscapes.
10. **City of Cedar Rapids Utilities Department** - In Cedar Rapids we are actively engaged with upstream Cedar River Watershed land owners and ag producers to encourage and promote soil health; permeability of soil; depth of soil for purpose of absorbing and slowing water. This cooperation is in its beginning phase thru the Regional Conservation Partnership Program (RCPP)! City of Cedar Rapids Utilities staff are leading an effort with help of 16 partner organizations to engage land owners in the Middle Cedar River Watershed over many thousands of acres to engage and act to prevent nutrients from leaving their fields. The practices that keep nutrients on the land also slow storm water runoff, which preserves water quality and reduces flood levels. To reverse the topsoil rule is the wrong direction, wrong message and does damage to the relationships we are building with land owners and producers regarding soil health and effects of storm water runoff. With the pace of development, especially in areas where there is hard clay base, it is vital to water quality in our State waters that we use and keep all of the available “tools” to absorb water and slow runoff. I view the 4 inch topsoil rule as one of the “tools” for storm water runoff control. Cities and farms are all in this fight together, we are dependent on each other, we need to pull in the same direction when it comes to nutrient control and storm water runoff mitigation.
11. **Linn County Soil and Water Commission** - As such I represent the Commissioners on the Board of the Indian Creek Watershed Management Authority. I believe it is rather ironic that at a time when municipalities, both large and small, are being required to upgrade their water treatment facilities at a cost of millions of dollars, and farmers are being asked to implement researched based practices to increase water infiltration and reduce nutrient losses under the Nutrient Reduction Program at a cost of thousands or even hundreds of thousands of dollars to them, that urban developers are declining to spend hundreds or perhaps a few thousand dollars to be leaders and be proactive in increasing rainfall infiltration and decrease urban contributions to the water nutrient problem. What is wrong with this picture of incorporating a research based practice with the idea of a short-term cost for a long-term result? Why is this group not being asked to also contribute to solving the water quality problems in this state as the current law requires instead of fighting this part of the solution?
12. **Iowa Department of Transportation** - The IDOT has concerns whether the proposed language requires an affidavit. Since this item is likely only relevant to MS4 communities, we recommend including it in MS4 permits or city ordinances and not in GP2. Additionally, based on EO80 stakeholder meeting minutes and comments at the July 15, 2014 Environmental Protection Commission meeting, discussion appears to have revolved around residential construction, with no mention of linear projects. We echo comments made by MidAmerican Energy Company

during a previous comment period and would welcome the opportunity to participate in a stakeholder group that more fully represents GP2 permit holders in Iowa.

13. **Iowa Environmental Council** - Urban creeks and streams can be especially vulnerable to bottom scouring and bank erosion due to large precipitation events or sudden snowmelt that contributes to urban flooding. These flood waters cause damage to property and make our cities less attractive places to live. In addition to flooding, urban storm water runoff washes pollutants such as fertilizers and pesticides into our rivers and lakes. This urban runoff is made worse when lawns do not have an adequate layer of topsoil that can absorb and hold water and instead are underlain by compact clay that acts more like concrete than good Iowa soil. At a time when extreme precipitation and flooding events seem to be occurring more frequently in Iowa, we believe it would be unwise to weaken our existing topsoil protections. While compliance with this rule may increase the purchase price of new homes, we believe these costs will be more than made up for over the life of the property. I would encourage you to note the number of Iowans who submitted comments to the stakeholder group complaining of the extra costs for irrigation, fertilizer, and soil amendments they disappointingly discovered were necessary in order to make their lawns grow.
14. **Sierra Club** - Equally troublesome is that rain events will quickly wash fertilizers, also called nutrients, off of lots that have been stripped of topsoil. This puts pollutants in our rivers, lakes, and streams. Furthermore, it is costly for the landowner who must spend extra money for repeat fertilizer applications.
15. **HDR Engineering** - Furthermore, retaining the four inch requirement is consistent with ongoing EPC efforts to reduce nitrates in our drinking water, significantly reduce nutrient discharges to the Gulf of Mexico, and otherwise improve water quality in the State's impaired waters.

Comments from private citizens

16. My current duties as a Civil Engineering professional includes review of new development plans. I have often chosen continuing education coursework with a focus on storm water management requirements and practices. In several of the training and reference materials that I access, the benefits that healthy soils can play in infiltrating storm water and improving storm water quality is emphasized. (As you are likely aware of, an excellent discussion of the benefits of soil quality may be found in Section 2E-5 of the Iowa Stormwater Management Manual). Ensuring that a good layer of topsoil is left behind is one of several facets in an overall strategy we should be implementing in the development process to manage stormwater runoff.
17. From Neil Hamilton's talk at Drake on March 15, 2015: an Iowa Supreme Court ruling on a law requiring landowners to comply with soil loss limits (Woodbury County Soil and Water District vs. Ortner) found "the state has a critical interest in protecting its soil as the greatest of its natural resources, and has the right to do so." By protecting our soils, we are protecting our water quality.
18. In the long run, a 4 inch layer of topsoil will pay for itself in water saving, less fertilizer requirements and less pesticide applications for the homeowner. It will also mean less runoff of rainfall. How do I know that? I was a golf course superintendent for 20 years and I grew grass for a living. I know what 4 inches of topsoil means. It means grass will have a good soil to extend its roots into. Topsoil will hold nutrients and moisture until the grass plant can use it. Not having a good rootzone will mean more rainfall runoff, less water-holding capacity and increased future costs associated with fertilizer, pesticide and watering requirements.

19. The primary objection to the 4" rule by developers and contractors is that the cost is too high and will affect the price of a new home. While there is a cost to the rule the HBA has not provided anything to verify the new \$6500.00 cost estimate. Many of the items listed as expenses are costs to comply with other regulations and are already being done with or without the 4" rule. As a landscape company we can spread up to 4" of topsoil to lots for about \$3500.00 including purchasing topsoil at a cost of \$250.00 per truckload. By inflating the costs builders are able to scare the governor and EPC into eliminating this rule without considering the lifetime cost to homeowners and others affected by the impervious yards they create. Future costs are paid by homeowners in increased maintenance costs, loss of trees and other plants and post construction soil quality restoration (SQR). As federal, state and local governments work to improve water quality they are paying homeowners to improve the soils in their yards. The average cost for SQR which applies .25-.5" of compost to a yard is \$1000.00 with up to 8 applications needed to improve the soil enough to hold as much rainfall as 4" applied at the time of construction. Many communities share up to 50% of this cost using local, state and federal funds. There is also the increasing cost for larger storm drains, water treatment facilities, flooding and of course the pollution caused by runoff. These costs are borne by everyone in order to save the builders the one-time cost of doing the job correctly at the time of construction.
20. The new proposed rule provides for no accountability. The proposed rule states that topsoil should be returned unless it is infeasible. This rule would be ambiguous and would move Iowa back to weak conservation of land and water. The proposed rule provides for no oversight and allows the builder to submit an affidavit that states he or she complied with the topsoil requirement. This proposed rule will make it more difficult for cities to comply with requirements that storm water be retained on the landscape. Adoption of this proposed rule would go back to uncertainty, not what homeowners, the public and the cities want to happen. Unfortunately nothing in the new rule requires the topsoil to be spread across the entire lot. Topsoil is wasted if it's buried in a corner or under a berm.
21. I have reviewed the pertinent language contained in the General Permit 2 on the 4-inch requirement (mainly Paragraph A.(2).(c)). It seems that the topsoil requirement content was thoughtfully prepared to meet the intent of maintaining topsoil onsite while being sensitive to site specific conditions such as situations where minimal topsoil is present prior to construction. It also gives guidance on how and the topsoil managed and is measured with respect to the overall site construction processes. It is helpful to have a numerical basis which can be measured and enforced. A 4-inch minimum seems to be rational basis which would promote vegetative growth and reduce runoff (depending upon soil composition and moisture conditions).
22. The building industry says that preserving topsoil is too expensive for them. I've heard their claims ranging from \$1200 for lot development to \$5000 dollars or more for a \$500,000 home. I would like to hear reasonable cost data from an independent, objective source. And costs the builders don't mention are the new homeowner's costs to attempt to restore healthy soil, and the cost to the community for storm water runoff, poor water quality and increased flooding.
23. And as to preserving topsoil as a "burdensome regulation" our housing industry seems to be doing well. In 2014 Des Moines was Realtor.com's "top 10 hot housing market to watch in 2015, the places where we can expect to see strong housing growth, affordable prices and fast-paced sales." And in *Iowa's Workforce Development and the Economy 2014 Report*, it said "Indicators of a strengthening economy included housing growth, evidenced in the turnaround in the number of housing permits, which increased over the past 2 years by 26.2% and 13.9% , respectively." These were two years in which the 4" topsoil rule was in effect.
24. Four members of the EO80 Stakeholders Group wrote this rule. They formed a majority of the committee and ignored all suggestions and advice from the minority members. Did they ask for

- or take advantage of the DNR 's "experience, technical competence, specialized knowledge, and judgment in the adoption of a rule" as prescribed in rulemaking protocol. X.8(3)? It appears that they didn't.
25. The EPC needs to be aware that the topsoil requirements are just starting to be implemented due to Grandfathering of sites. The eastern part of the state amongst other areas does not seem to be having any issues with the current topsoil requirements. Issues seem to be only with a few developers/builders in the Des Moines area. One of those developers in particular has more commercial than residential construction--so really there has been minimal impact.
 26. DNR has a Nutrient Strategy. One of the goals is to reduce the amount of nutrients to local waterbodies. That will be difficult to achieve in urban areas if the topsoil requirements are changed to the developer language--that would result in little topsoil on building sites--this results in more fertilization--more nutrients in runoff--down the street--into the storm drain--into the pipes --into a local stream or lake. I would like to ask the EPC how the proposed developer topsoil language fits in with IDNR's Nutrient Strategy Goals?
 27. The previous EO 80 Stakeholders group did not with 4 members from the building industry did not represent varying interests. Because of the makeup of the group with a strong majority from building trades who opposed the rule there was no incentive for those representatives to consider any alternatives, compromise or to seek a consensus. A new stakeholders group that represents a wider range of perspectives including builders, developers, homeowners, municipalities, recreation, water quality and environmental groups would be more likely to seek a practical solution that will meet the stated goal of the stakeholders group. The lack of balance created a situation where Chairman Cox presented information that reflected his views and the stated position of the Home Builders Association. When asked questions by the EPC Chairman Cox frequently answered with information that was misleading or inaccurate. There were many options and alternatives brought up at the Stakeholders meetings which were not presented to the EPC. In addition the packet and minutes presented to the EPC did not accurately reflect the discussions or votes made by all members of the stakeholders group and were presented under protest by Pat Sauer and me. This resulted in misleading and inaccurate information being presented to the EPC I believe that this misinformation affected the decision made by the EPC.
 28. Does anything in the proposed Rule give assurance that a new homeowner will have adequate topsoil on their lot to infiltrate stormwater and establish a healthy lawn? Are there any guidelines or measurable criteria? Can there be any enforcement if no topsoil remains present? With no independent data, how can the Environmental Protection Agency expectation to "preserve topsoil" be determined, and by whom? An affidavit from the builder is not enough!
 29. If allowed to make their own determination as to what is "feasible," almost all businesses will pick the "cheapest" solution, which in this case is to not put back the currently-required four inches of topsoil, but to merely replace the removed soil (which was likely sold) with just a blanket of sod.
 30. Iowa's Nutrient Reduction Strategy counts on all Iowans to practice good land stewardship to reduce nutrients in Iowa's waterways. This strategy recognizes the continued need for farmers, industry and cities to optimize nutrient management and lessen impacts to streams and lakes. The Nutrient Reduction Strategy includes urban practices. All Iowans have an impact on nutrients in surface water and can play a role in reducing those impacts over time. The Strategy emphasizes Iowans working together in small watersheds including towns and cities, using existing and new frameworks, to make an impact. Preserving topsoil at building sites will make a difference. Soil stewardship is a significant component of water quality.

31. The building industry has given various estimates as to their cost of preserving topsoil on a building lot. Does the DNR have any data that would shed light on actual costs? And how does this fiscal impact compare to the costs of the homeowner, faced with no topsoil, to establish a healthy landscape, to restoring water quality, and to alleviate flooding losses? Does topsoil really make a difference in soaking up and slowing down stormwater? Does it need to "be on top" of the other soils, or will it do any good buried under the hard clay? Are any Iowa cities successfully implementing the 4" topsoil rule and are they able to assess how much topsoil is preserved at the building sites?
32. A builder (Beaver Builders) was quoted in the Times article as saying the current 4" regulation "for his 28-lot subdivision in Bettendorf..required more than \$50,000 in additional site work." The article gave no details or substantiation on the validity of these numbers. **I would like to hear independent, objective data that considers the true additional cost to the industry.** The numbers I've heard range from it will "add \$1,200 to lot development" to "it will cost \$5000 for a \$500,000 home." Even if the \$50,000 figure were accurate for his subdivision, that amount divided up between the 28 homes comes to about \$1780 home. This is just a little over 1/2 of one percent of the cost of a \$319,000 home (a price for a 2014 Beaver Builders home found on the internet.) And at this estimated cost per home, the 28 homeowners would have collectively paid close to nine million dollars for the 28 homes.
33. Retention ponds in subdivisions (the usual "solution" preferred by developers) are not a long-term solution for run-off, because no one is responsible for maintaining them, so they silt in over time and become ineffective; leading to adjacent property owners increasingly finding their backyards (and maybe even their basements) flooded after heavy rains. However, this is well after the developer's contract has expired, so the unlucky homeowner is stuck with fixing the problem themselves. The best long-term solution is to spread out the drainage over the entire subdivision by allowing it to soak into the individual yards. The only way that works is to have a minimum of topsoil between the sod and underlying clay substructure. The current four inch minimum of topsoil requirement was already a compromise between what is best for run-off management and what was "feasible" for developers. To further reduce that requirement, by making it completely voluntary by developers, is not the right thing to do for this community and our state.
34. If the Environmental Commission feels the original rule is too burdensome for the development industry, please strongly consider some kind of standard that must be met. Otherwise the rule will be ignored.
35. The agricultural industry takes the brunt of blame when it comes to protecting our waters, but construction sites and urban, commercial, and residential areas can have severe erosion and runoff problems. Urban and construction conservation is an essential, overlooked, and underfunded area of soil and water conservation. Four inches of topsoil is barely enough to successfully allow water infiltration as it is, especially over the heavily compacted soils at construction sites. Leaving less than four inches will create even greater runoff, pollution, and potential flooding problems. The costs for repairing those problems will be left up to taxpayers; the ecological costs may not ever be able to be recouped.
36. We have experienced this problem personally. We moved into a condo here in Marion in November 2007. In the spring of 2008 we developed a landscaping plan for our unit and planted (or tried to plant) six trees and about 100 shrubs and landscaping plants. Our personal cost was about \$3,500. Under about one inch of topsoil we found rocks and gravel and thus had problems with survival without good soil for root development. We have had to replace a number of the plants and one tree several times at additional cost. Yet we observed our developer removing and stockpiling topsoil for continuing development in the area and saw his and other trucks hauling away this valuable topsoil.

37. I recently built/bought a home and stipulated that the contractor leave the soil. The comparison to my previous build was striking. The new yard absorbs water more easily, the sod and trees are thriving and my use of fertilizer has been minimal.
38. As basements are dug, the soil (primarily clay, not topsoil) is often re-spread on the top of the yard. What remains for the homeowner are soils that have a large amount of clay and a limited amount of organic material. Those organics are what help the soil become like a sponge and soak the water in and grow healthy vegetation.
39. The only way to get any green lawns in our area is to fertilize and water the grass. The heavy rains roll off the hard clay under the grasses and of course head to the local streams much of the time with the soluble components of the fertilizers and eventually to the Mississippi and gulf dead zone.
40. My parents had a home that was built over a swamp in Davenport, IA. There was a lot of run-off and the sump pump frequently filled and over flowed. If replacement of topsoil would reduce this, it would be worth it to replace the topsoil.
41. The frustration and expense homeowners go through is significant, not to mention the damage done to the environment - from poorly managed fertilizer and weed control measures, increased erosion from high-speed runoff, to sediments in our rivers and streams.
42. Even worse is the complete lack of respect for our waterways when the compacted hardpan the contractor leaves behind is incapable of absorbing rain or irrigation water, and the resultant runoff poisons our waterways--and the diverse variety of plants and animals that live there--with the massive amounts of chemicals homeowners apply in a futile attempt to grow lawn grass or anything else on the wasteland left behind by these profiteers as they move on to more and more environmental destruction.
43. I understand the developers concerns, but I feel that if there is no standard to meet, eventually no topsoil will be placed on any development as the infeasible clause will be used excessively.
44. While the runoff from an individual lot may seem small, it is the combined runoff from a development or developments that are funneled into the storm sewer system and discharged to the nearest stream. This is where the problems surface. I have seen it first hand many times. These streams are unable to adjust to the increased flow, and erosion, downcutting and increased total suspended solids occurs. Then city's are on the hook to repair damage downstream to other property owners or infrastructure.
45. Most importantly, Iowa has adopted a Nutrient Reduction Strategy, which counts on all of us to practice good land stewardship to reduce nutrients in Iowa's waterways. By creating a loophole for developers to circumvent this laudable strategy, the DNR would be going against its own rules.
46. The frustration and expense homeowners go through is significant, not to mention the damage done to the environment - from poorly managed fertilizer and weed control measures, increased erosion from high-speed runoff, to sediments in our rivers and streams. Also serious economic damage is done through increased taxes for repair and maintenance of storm water systems, loss of habitat impacting natural resource tourism and fishing revenues, and damage to properties from flooding, when topsoil/organic matter is removed and development sites are left with exposed compacted clay.
47. Please DO NOT change the rule. Topsoil aids in filtration, reduces runoff and certainly reduces the risk of flooding. As a homeowner, the poor soil that remains is very difficult to work with

and grow ANYTHING, including grass. Take away the topsoil and the cost to me increases; reseeding, replanting, efforts to stop the erosion. To others, add the increased cost of fertilizer and chemical to make the lawn grow something! In addition, I am left to pay the costs the city incurs when there are issues with storm drains, streets and waterways.

48. It is infinitely more expensive for a homeowner to restore the topsoil than for a developer to do it in the first place. Furthermore, the price of returning topsoil to a lot would be bundled into a homeowners loan at the time he or she purchased the property. Getting that loan is easier than trying to get a separate loan to complete the work that the contractor did not perform. Topsoil holds water on the land, encourages property beautification through planting, and also holds fertilizer. When the tosoil has been stripped from a lot and not returned, water runs off the land, exacerbating flood risks. To make matters worse, fertilizers do not stay in the ground, instead running into Iowa's lakes, rivers, and streams.
49. In 2012 the IA DNR put in place a state-specific requirement of 4 inches of Topsoil Requirement to rectify a statewide problem. It was for good reason. The dark, organic, matter-rich topsoil provides a healthy medium for the growth of flowers, grass, trees and vegetables. This ground cover soaks up nitrates from chemicals applied to lawns, acts as a filter for sediment carrying phosphorus and allows water to soak into aquifers which replenish our water supplies instead of allowing them to pollute storm sewers and our bodies of water.
50. I've also watched at concrete curbs during storms as rainwater quickly saturates the 2" of sod and supposed underlying topsoil, hitting an impenetrable clay barrier, and moving laterally to the curb. Hydrologists call this "Horton overland flow"; it can occur naturally, but in our suburban developments it is almost entirely a human-caused occurrence. It means that water is running into stormwater systems very quickly, where it can overwhelming local and downstream flood controls.
51. I am writing in support of your proposed rule. Please address this question for me: does the Nutrient Reduction Strategy expect cities(as well as agriculture) to practice good land stewardship and will the proposed rule aid cities in urban conservation practices?
52. I live in a 20-year-old subdivision in the midst of newer subdivisions. In most cases lawns are sodded over compacted, poor quality soil so that heavy fertilization and watering are needed in order to have a nice-looking lawn. I don't care much about lawns myself, having almost none due to native plantings, but others do care. I see rainwater running into the gutters and into the nearby stream that carries the storm water away. Water runs off compacted soil at 90% the rate that it runs off concrete. I know that the runoff is also carrying lawn chemicals that then go to the Gulf of Mexico to create the dead zone. The soil in our neighborhood is mostly either sandy loam or sandy clay. Both will hold water if treated well and given an appropriate topsoil surface. Sod will grow with minimal help. However, when sod is laid over packed clay, with limestone gravel and broken concrete bits mixed, nothing will grow without a lawn service and a watering system—not a good use of the water in the aquifer.
53. Replacing the topsoil layer as part of development will allow the nutrients available in the soil to reduce the perceived need for adding fertilizer. In addition, the topsoil will retain some stormwater, delaying and slowing runoff, reducing the leaching away of any added fertilizer. While development takes place on only a small fraction of Iowa land, it is still a glaring inconsistency to weaken an existing rule to allow development practices that increase transport of nutrients into streams at the same time we are asking farmers to make a nutrient reduction strategy work.

54. The building industry says that preserving topsoil is too expensive for them, but costs the builders don't mention are the new homeowner's costs to attempt to restore healthy soil, and the cost to the community for storm water runoff, poor water quality and increased flooding. These are not one-time, but ongoing costs.

The following are excerpts of comments received from those who are in favor of the proposed rulemaking that replaces the current requirement to respread 4" of topsoil when feasible with the requirement to preserve topsoil unless infeasible. The comments below represent approximately 10.7% of those received in favor of the proposed rulemaking and were chosen as representative of those comments which addressed water quality, cost, derivation and implementation of the current and proposed requirements. Inclusion of a comment does not imply the Department endorses or has verified any of the statements contained therein.

1. **Home Builders Association of Greater Des Moines** - As someone who runs a Home Builders Association I'd like to provide my insight on the four inch topsoil rule. Water quality and storm water runoff is extremely important to our industry and I truly feel that we are being unfairly targeted by this rule. We are already heavily regulated when it comes to storm water runoff requirements, even though our industry is accountable for less than 1% of the problem. We have followed the rules for years with great success, not just in Iowa but throughout the country. The language originally presented by the Environmental Protection Commission is more than sufficient to address minimized soil compaction and water runoff and I'm not sure why Iowa would want to create rules that are more restrictive than the Federal language and decrease home affordability to Iowans? Housing affordability is a topic of conversation in everything we do and regulatory burdens increase the cost of a home in significant ways. Our professional association's estimate of the four inch requirement is between \$3,500 and \$6,000 for every new homeowner. Hard data from the U.S. Census Bureau and our National Association of Home Builders shows that every \$1,000 increase in the price of a new home eliminates 3,126 families. Even at the low end of the estimate (\$3500) **this will eliminate 10,941 Iowa families** from buying a median priced home. It makes no business sense to not use the topsoil on site and there is no reason to move it around anymore than necessary. The cost to move in and operate an excavator on both ends of this scenario plus all of the trucking costs are not a small cost and contrary to popular belief, there is no market for topsoil. The additional cost of dictating exactly where the topsoil gets placed is an unnecessary impediment to affordable housing and is unnecessary to meet the intent of the EPA rule. Not to mention the rule, as written, is extremely impractical and difficult to manage in the real world. All of these added costs couldn't be hitting our industry at a worse time as we continue to climb back from a very difficult new construction Real Estate market. Residential lot development is a very small part of the overall water quality and soil erosion issue and overall, Home Builders have done an outstanding job of reducing the impacts of soil erosion and improving water quality. Please approve the Federal EPA language as stated in the Notice of Intended Action.
2. **Home Builders Association of Iowa** - The Home Builders Association of Iowa represents over 1,900 members throughout the State of Iowa. Water quality and storm water runoff is extremely important to our industry. We are already heavily regulated when it comes to storm water runoff requirements, even though our industry is such a minor percentage of the problem. We have followed the rules for years with great success, not just in Iowa but throughout the country. The language originally presented by the Environmental Protection Commission is more than sufficient to address minimized soil compaction and water runoff - why would Iowa want to create rules that are even more restrictive than Federal language and decrease home affordability to Iowans? Housing affordability is a topic of conversation in everything we do and regulatory burdens increase the cost of a home in significant ways. Our professional association's estimate of the four inch requirement is between \$3,500 and \$6,000 for every new homeowner. Hard data from the U.S. Census Bureau and our National Association of Home Builders shows that every \$1,000 increase in the price of a new home eliminates 3,126 families. Even at the low end of the estimate (\$3500) that will eliminate 10,941 Iowa families from buying a median priced home. Our members do not want to move dirt around anymore than necessary. The additional cost of

dictating exactly where the topsoil gets placed is an unnecessary impediment to affordable housing and is unnecessary to meet the intent of the EPA rule. This is especially true as our industry continues to climb back from the tough market. Residential lot development is only a part of the overall water quality and soil erosion issue. Overall, Home Builders have done an outstanding job of reducing the impacts of soil erosion and improving water quality. Please approve the Federal EPA language as stated in the Notice of Intended Action.

3. **Knapp Properties, Inc.** - I am writing to provide public comment on the EPC Notice of Intended Action referenced above. The directive by the EPA regarding this issue is to preserve topsoil. The method Iowa is using to achieve this, requiring a measured 4" of topsoil everywhere, is more restrictive than Federal guidelines, more restrictive than our neighboring states, and has proven to be extremely cumbersome, inefficient, and expensive to meet. The physical logistics required to comply with the Iowa rule ultimately result in the topsoil being moved multiple times, resulting in overall shrinkage of topsoil, which in direct conflict to the spirit of the topsoil preservation efforts. In addition, the cost to complete these multiple moves is adding several thousand dollars to each new home constructed, directly contributing to the rise in housing costs, particularly for entry level homes. This is having a huge impact on the ability for lower income and young people to purchase a home. At end of 2014, only 3.5% of new construction listings were under \$200,000. The average sales price of new construction homes was \$316,000 (in 2010 it was \$229,000). The 4" requirement is extremely difficult and costly to satisfy. When the 4" requirement was implemented last year, HBA (Home Builders Association) of Iowa estimated that the additional cost of compliance would be about \$300 - \$400 per lot. After a year of implementation, they 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. The HBA of Iowa has recommended alternative language that is similar to that being used in other states: "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. 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.
4. **Hubbell Realty Company** - I feel the 4" inch topsoil rule currently in place is economically infeasible, and does not serve the environment the way it was intended. Since the rule changed over from the EPA guideline of preserving topsoil on site unless infeasible to the current 4" mandate, I have witnessed more harm than good. After October 2012, I spend significantly more dollars on best management practices, street cleanings, and re-stabilizing ground. Ground, which has been disturbed, compacted, and tracked out by contractors accessing topsoil stock piles. The time and human resources expenditures have also increased in an effort to remain compliant with a regulation we never violated in the first place. We have always kept topsoil on site, never trucked it off, and I hope we can encourage the EPC to approve the rule as proposed, which is to preserve topsoil and not follow an arbitrary measurement. Thank you for your time.
5. **Jerry's Homes** - I don't think that this issue was fully understood prior to the States adoption on a rule that is very much stronger than the Federal EPA language. I can tell you that I was somewhat involved in this when it happened, but didn't understand the total impact as I do today as we are currently living it. Now where the real problem lies is trying to make this happen on lots where we are building homes, and having any sort of measurement so that someone can prove that we have that 4". This is where all the cities stepped in and made a problem rule, an even worse issue by try to require measurements, engineering, ect. They were all afraid they could get caught up in lawsuits by owners that went to plant a tree and found only a couple of

inches. This is something we are also very concerned with as it is financially impossible to have the same amount of top soil thru out the entire lawn. I could go into the logistics of how this all doesn't work, but talk to any Builder, Excavator, or Finish Grade Contractor and they could tell you the hundreds of reasons why. This is unfair cost to the buyer of a new home that if you asked 1000 of them, maybe one would be all for it if they understood they would bear the cost, that person would be the one that could afford it. The cost to do this doesn't justify the lack of result we would get from this action.

6. **McAninch Corporation** – Mandating a specific depth, with proof of depth by measurement, for Topsoil Replacement on grading projects is a very costly addition to overall construction costs. We have always removed and stockpiled topsoil so it could be replaced on the site after the Mass Grading is performed. Project specifications require this procedure and we work hard to make sure we build all our projects to specification. Having a third party make multiple measurements to determine a specific depth is time consuming and adds very little to the quality of construction.
7. **Coldwell Banker Mid-America Group** - I am writing you to consider changing the requirement of the 4 inches of top soil on new construction. Yes, it is driving up costs, but it is more demanding than many federal requirements. Also, there are ways to improve the quality of existing soil on site that would create the same outcome. The addition of natural elements makes the soil more porous and in the end, causes less run off. It doesn't make sense to continue to bring soil in and then have to take the excess soil away from the subject lot. The substitution of soils, in the long run, results in more compaction of the soil and therefore increases run off.

Agenda

Environmental Protection Commission

Tuesday, April 14, 2015
DNR Air Quality Suite 1
7900 Hickman Road
Windsor Heights, Iowa

EPC Business Meeting

- 10:00 AM – EPC Business Meeting begins
- 11:00 AM – Referral Feinberg Metals Recycling
- 12:30 PM – Lunch Jethro's – 1480 22nd Street, West Des Moines

Public Participation¹ – Requests to speak during the business meeting Public Participation must be submitted to Jerah Sheets at Jerah.Sheets@dnr.iowa.gov, 502 East 9th Des Moines, IA 50319, 515-313-8909, or in-person by the start of the business meeting. Please indicate who you will be representing (yourself, an association, etc.), the agenda item of interest, and your stance of For, Opposed, or Neutral.

If you are unable to attend the business meeting, comments may be submitted via mail and email for the public record. The Commission encourages data, reports, photos, and additional information provided by noon the day before the meeting to allow ample time for review and consideration.

Agenda topics

- | | | |
|-----|---|-----------------------------|
| 1 | Approval of Agenda | |
| 2 | Approval of Minutes | |
| 3 | Monthly Reports | Bill Ehm
(Information) |
| 4 | Public Participation | |
| 5 | Director's Remarks | Chuck Gipp
(Information) |
| 6 | Contract with the University of Iowa on behalf of The State Hygienic Laboratory – Black Hawk Lake Watershed Monitoring 2015 | Kyle Ament
(Decision) |
| 7 | Contract with The University of Iowa for Beach Monitoring Analytical Services 2015 | Roger Bruner
(Decision) |
| 8 | Referral Feinberg Metals Recycling | Kelli Book
(Decision) |
| 9 | Final Rule – Chapter 61 – Water Quality Standards (Stream Reclassifications via Use Assessment and Use Attainability Analyses – Batch #4) | Jon Tack
(Decision) |
| 10 | General Discussion | |
| 111 | Items for Next Month's Meeting | |
| | • May 18, 2015 – EPC Education Tour, Scott County | |
| | • May 19, 2015 – EPC Business Meeting, Scott County | |
| | • June 16, 2015 – EPC Business Meeting, Windsor Heights | |

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.

Any person attending the public meeting and has special requirements such as those related to mobility or hearing impairments should contact the DNR or ADA Coordinator at 515-725-8200, Relay Iowa TTY Service 800-735-7942, or Webmaster@dnr.iowa.gov, and advise of specific needs.

Monthly Variance Report
February 2015

Item No.	Facility/City	Program	DNR Reviewer	Subject	Decision	Date
1	Patrick Cowan	Air Quality	Dennis Thielen	variance to tear down house and burn debris on own property	denied	2/9/2015
2	Iowa State University	Flood Plains	Jeff Simmons	variance to freeboard criterion that low chord of bridge must be set 3 feet above 50-year flood elevation.	approved	2/12/2015
3	CORN LP	Air Quality	Dennis Thielen	variance to delay performance testing for opacity for Coal, Lime/Limestone Receiving and Ash Loadout	approved	2/16/2015
4	Little Sioux Corn Processors	Air Quality	Dennis Thielen	variance to allow EP S10 and EP S70 testing earlier than allowed in construction permits.	approved	2/16/2015
5	City of Coralville STP	Wastewater	Brandy Beavers	variance from total suspended solids operation monitoring for sequencing batch reactors.	approved	2/19/2015
6	Roquette American Inc	Air Quality	Reid Bermel	variance to operate temporary back up boiler	approved	2/20/2015

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
April, 2015**

Name, Location and Region Number	Program	Alleged Violation	DNR Action	New or Updated Status	Date
Hoffman, Matt Hinton (3) UPDATED	Animal Feeding Operation	Failure to Submit MMP and Fees	Referred to Attorney General	Referred Petition Filed Motion for Default Judgment Hearing Date Default Judgment Granted (\$20,000 Civil/Injunction)	4/15/14 12/03/14 1/28/15 3/09/15 3/09/15
Kossuth County (2) UPDATED	Animal Feeding Operation	DNR Defendent	Defense	Petition for Judicial Review State's Answer P&J Pork Motion to Intervene Order Granting Motion to Intervene Kossuth County Brief State's Brief District Court Review Without Oral Argument	9/18/14 10/08/14 11/07/14 11/20/14 2/03/15 2/13/15 3/04/15
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
Pet Memories, Inc. Warren Co. (5)	Solid Waste	Judicial Review	Defense	Petition Filed Answer Pet Memories Brief State's Brief Hearing Date	2/05/14 3/05/14 1/16/15 2/17/15 4/13/15

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
April, 2015**

Name, Location and Region Number	Program	Alleged Violation	DNR Action	New or Updated Status	Date
Scallon, Jim Austinville (2)	Solid Waste	Illegal Disposal	Referred to Attorney General	Referred	5/20/14

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

April, 2015

DATE RECEIVED	NAME OF CASE	F.O.	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
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.
3/11/10	Bondurant, City of	5	Order/Penalty	WW	Hansen	7/2013-On hold pending further investigation.
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- 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. 6/20/14- Letter sent to City requesting plan of action and schedule by 8/30/14 for returning to compliance with order. 8/29/14 – New schedule received from City, to be incorporated into proposed consent amendment. 01/26/14- Proposed consent amendment sent to City for review.
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. Communication from appellant 7/22/14. Internal meeting 9/5/14. Letter sent to appellant 12/14 proposing terms of settlement.

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

April, 2015

DATE RECEIVED	NAME OF CASE	F.O.	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
11-21-12	Ag Processing Inc.	6	Permit Conditions	AQ	Preziosi	Continuing negotiations. Last communication with appellant on 5/20/14. Communication from appellant 7/22/14. Internal meeting 9/5/14. Letter sent to appellant 12/14 proposing terms of settlement.
3-04-13	Anderson Excavating Co., Inc.	4	Order/Penalty	SW	Tack	Landfill closure underway. Settlement will occur after closure. Inspection on 8/20/14. Closure to be completed this fall.
6-10-13	Mike Jahnke	1	Dam Application	FP	Schoenebaum	Hearing held 7/30/14. ALJ upheld the permit issued by the Department. Mr. Jahnke appealed but on 11/3/14 he asked that his appeal be put on hold until April, 2015.
10-28-13	Regional Environmental Improvement Commission/Iowa Co. SLF	6	Variance	WW	Tack	2/20/15 – Settlement reached. Awaiting execution.
1-02-14	P & J Pork, LLC		Construction Permit Denial	AFO	Book	6/10/14 – Proposed decision affirming DNR permit denial. 6/18/14 – P & J Pork appeals proposed decision. 8/19/14 – EPC reverses proposed decision. 9/18/14 – Intervenor, Kossuth County, files Petition for Judicial Review in Kossuth County.
1/16/14	Council Bluffs Water Works	4	Permit Conditions	WW	Tack	Hearing continued. Settlement discussions ongoing.
1/21/14	AG Processing, Inc.		Permit Conditions	AQ	Preziosi	Negotiations continuing. Last communication with appellant on 5/20/14. Communication from appellant 7/22/14. Internal meeting 9/5/14.
4/17/14	REIC/Iowa Co. Sanitary Landfill	6	Permit Conditions	WW	Tack	2/20/15 – Settlement reached. Awaiting execution.
9/08/14	Craig Ver Steegh	5	Permit Conditions	WW	Tack	Hearing date requested 2/23/15.
10/01/14	Amsted Rail Company, Inc. (Griffin Wheel Co.)		Permit Conditions	SW	Tack	Negotiating before filing.
11/13/14	Adam Timmerman	3	Order/Penalty	AFO	Book	Negotiating before filing.
1/21/15	Sidney, City of	4	Permit Conditions	WS	Hansen	Negotiating before filing.
2/05/15	Mahle Engine Components USA	4	Order/Penalty	WW	Hansen	Negotiating before filing.

DATE: April, 2015

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
LDR Ranch, Ltd. Keokuk Co. (6)	Animal Feeding Operation	Prohibited Discharge – Confinement; WQ Violations – General Criteria	Consent Order \$4,100	3/02/15
Ayrshire Water Treatment Plant, City of Ayrshire (3)	Wastewater	Prohibited Discharge	Consent Order	3/05/15
Duane Covington Chariton (5)	Drinking Water	Operator Discipline	Revocation of Certification	3/06/15
Larry Holtkamp Wright Co. (2)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Consent Order \$2,500	3/23/15
Winchester Carriage, Inc.; Monarch Enterprises, Inc. Jasper Co. (5)	Animal Feeding Operation	Land Application Separation Distance; Uncertified Applicator	Consent Order \$3,125	3/23/15
Monona, City of (1)	Wastewater	Prohibited Discharge	Consent Order	3/23/15
Aerial Crop Care, Inc.; Tri State Agri Corp.; Hoppe Airspray LLC Lyon Co. (3)	Wastewater	Water Quality Violations – General Criteria	Consent Order \$3,500	3/23/15

IOWA DEPARTMENT OF NATURAL RESOURCES
LEGAL SERVICES BUREAU

DATE: April 1, 2015
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	3,825	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
* Floyd Kroeze (Butler Co.)	AFO	1,500	2-20-01
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	9,745	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
# 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
Jon Knabel (Clinton Co.)	AQ/SW	2,000	12-16-08
# Rick Renken (LeMars)	AFO	996	7-03-09
# Robert Fangmann (Dubuque Co.)	AFO	1,000	7-15-09
# Brian Lill (Sioux Co.)	AFO	2,865	7-18-09
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
# 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

#Animal Feeding Operation
BOLD Entries Have Been Referred to DRF

# Joe McNeill (Kossuth Co.)	AFO	2,460	12-23-10
Gonzalez & Sons Express, Inc. (DeSoto)	WW	8,000	4-20-11
David C. Kuhlemeier (Cerro Gordo Co.)	AQ/SW	1,200	6-30-11
Steve Friesth (Webster Co.)	AQ/SW	7,857	11-26-11
Josh Oetken (Worth Co.)	AQ/SW	8,270	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	1,525	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
Noah Coppess (Cedar Co.)	AQ/SW	7,500	2-23-13
B Petro Corporation (Cedar Rapids)	UT	7,728	5-13-13
Ken Odom (Iowa Co.)	AQ/SW	5,000	4-26-13
Massey Properties, LLC; The Wharf (Dubuque)	WS	10,000	10-05-13
Robert Downing (Mahaska Co.)	AQ/SW	10,000	11-20-13
Shriners Hospital for Children, Inc. (Des Moines)	UT	8,890	12-03-13
Larry Eisenhower (Woodbury Co.)	AQ/SW	4,675	3-01-14
Randy Wise; Wise Construction (Buena Vista Co.)	AQ/SW	3,000	4-10-14
Advanced Electroforming, Inc. (Cedar Co.)	AQ	1,500	4-03-14
Western Iowa Telephone Assoc. (Lawton)	WW	4,000	5-24-14
Wendall Abkes (Parkersburg)	SW	3,000	7-30-14
Donna J. Jensen (Ringsted)	AQ/SW	3,000	10-17-14
Dennis Habben (Sioux Co.)	SW	3,000	11-01-14
Leda Properties, LTD (Dubuque)	WW	5,000	12-12-14
Annie's LLC; Togie Pub (Lime Springs)	WS	3,500	12-22-14
Joel Thys; Thys Chevrolet, Inc. (Benton Co.)	AQ/SW	10,000	1-04-15
West Central Cooperative (Halbur)	WW	4,000	1-04-15
Muscatine County Solid Waste Mgmt. Agency (Muscatine)	SW	6,000	2-11-15
# Terrance Kooima (Sioux Co.)	AFO	500	2-27-15
# Mark Yeggy; Randalyn Yeggy (Washington Co.)	AFO	5,000	3-23-15
	TOTAL	339,230	

The following penalties have been assessed but are not due at this time:

# Benjamin J. Waigand (Union Co.)	AFO	2,500	4-15-15
Aerial Crop Care; Tri State Agri; Hoppe Airspray (Lyon)	WW	3,500	4-23-15
# Winchester Carriage; Monarch Enterprises (Jasper Co.)	AFO	3,125	4-23-15
	TOTAL	9,125	

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
# Jerry Passehl (Latimer)	SW/WW/HC	2,695	7-01-09
Jerry Wernimont (Carroll)	AQ/SW	216	4-19-10
# Ernest Greiner (Keokuk Co.)	AFO	500	10-10-10
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

#Animal Feeding Operation

BOLD Entries Have Been Referred to DRF

Patrick Baker; Stockton Auto (Davenport)	AQ/SW	83	12-15-14
Ellsworth Excavating Co. (Muscatine Co.)	AQ/SW	300	3-01-15
# Steve Grettenberg; Dragster LLC	AFO	1,750	11-20-14
Millard Elston III; The Earthman (Jefferson Co.)	AQ/SW	1,815	2-15-13
Simon Simonson (Kossuth Co.)	SW	3,900	11-30-14
ADA Enterprises, Inc. (Worth Co.)	WW	5,000	8-15-14
Niehouse Cleaners & Draperies, Inc. (Marshalltown)	AQ	2,500	9-15-14
# David Dahlgren (Clarion)	AFO	2,250	12-15-14
	TOTAL	40,370	

The following administrative penalties have been appealed:

Harlan Rudd; Karen Rudd; Rudd Bros. Tires (Drakesville)	UT	10,000	
Bondurant, City of	WW	10,000	
Helen and Virgil Homer; Grandmas Snack Shop; (Aredale)	WS	8,461	
Manson, City of	WS	10,000	
Anderson Excavating Company, Inc. (Pottawattamie Co.)	SW	10,000	
# Adam Timmerman; AT Livestock Ent. South (Cherokee Co.)	AFO	4,250	
Mahle Engine Components USA, Inc. (Atlantic)	WW	10,000	
	TOTAL	62,711	

The following administrative penalties have been collected:

Patrick Baker; Stockton Auto (Davenport)	AQ/SW	83	
# LDR Ranch, Ltd. (Harper)	AFO	4,100	
Finney Industrial Painting, Inc. (Fairfield)	AQ/WW	250	
David C. Kuhlemeier (Cerro Gordo Co.)	AQ/SW	100	
Josh Oetken (Worth Co.)	AQ/SW	25	
Jerry Wernimont (Carroll)	AQ/SW	1,284	
Larry Holtkamp (Dows)	AQ/SW	2,500	
Simon Simonson (Kossuth Co.)	SW	100	
S.L. Baumeier Company, LLC (Marshall Co.)	AQ/SW	5,000	
Shane Rechkemmer (Fayette Co.)	SW	1,000	
Air Advantage, Inc. (Mt. Pleasant)	WW	1,500	
Ellsworth Excavating Co. (Muscatine Co.)	AQ/SW	75	
# Charles and Patricia Henningsen (Ruthven)	AFO	2,000	
# Treven Howard; Northwest Manure Mgmt. (Ocheyedan)	AFO	6,000	
# Terrance Kooima (Sioux Co.)	AFO	2,500	
	TOTAL	26,517	

#Animal Feeding Operation

BOLD Entries Have Been Referred to DRF

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

ITEM

6

DECISION

**TOPIC Contract with THE UNIVERSITY OF IOWA on behalf of THE STATE HYGIENIC LABORATORY –
Black Hawk Lake Watershed Monitoring 2015**

Recommendations:

Commission approval is requested for a one year-service contract with the University of Iowa on behalf of the State Hygienic Laboratory. The contract will begin on April 15, 2015 and terminate on December May 31, 2016. The total amount of this contract shall not exceed \$43,592.04

Funding Source:

This contract will be funded through Section 319 of the Clean Water Act (Federal).

Background:

All watershed projects funded by the Section 319 program need to include a water quality monitoring component as part of their project implementation plans.

Black Hawk Lake was on Iowa's Section 303(d) list of impaired waters for algae, turbidity, and pathogens. The primary water quality issues with the lake stem from high nutrient concentrations and inorganic suspended solids. Elevated concentrations of phosphorus have contributed to blooms of blue green algae. A TMDL for algae and turbidity at Black Hawk Lake was prepared by IDNR in 2011.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining the Contractor to provide collection and analysis of water monitoring samples. The data collected will be used by DNR to determine if in-lake and tributary load reduction strategies have been effective.

Contractor Selection Process:

The University of Iowa was chosen for this project because of Iowa Code section 455B.103, which allows DNR to contract with "public agencies of the state" for those services.

Contract History:

New Contract

Kyle Ament, Environmental Specialist
Watershed Improvement Section, Water Quality Bureau
Environmental Services Division
April 14, 2015

Attachment(s): Scope of Work from the Special Conditions for Contract

Obligation	Task Milestone Date
<p>Task 1: In-lake sample analysis Description: Contractor shall analyze lake grab samples collected for the parameters listed in Table 1. The contractor shall analyze samples for up to a total of 9 events. For analytical results below the quantitation limit, the test quantitation limit shall be reported as “less than.”</p>	<p>Samples shall be analyzed no later than holding times established by QA/QC documentation agreed upon by both parties prior to sample analysis. For purposes of invoices, the effective Task Milestone Date shall be the last day of each month.</p>
<p>Task 2: Tributary grab sample collection and analysis Description: Contractor shall collect and analyze stream grab samples collected for the parameters listed in Table 2. The contractor shall analyze samples for up to a total of 7 events. For analytical results below the quantitation limit, the test quantitation limit shall be reported as “less than”.</p>	<p>Samples shall be analyzed no later than holding times established by QA/QC documentation agreed upon by both parties prior to sample analysis. For purposes of invoices, the effective Task Milestone Date shall be the last day of each month.</p>
<p>Task 3: Sample Collection for 2 Event Sites Description: Contractor shall collect one composited sample from each site from a maximum of 8 events between May 1, 2015, and October 31, 2015, unless temperatures prohibit sample collection prior to October 31, 2015. All samples shall be composited according to Charles Ikenberry’s instructions. No more than one set of samples shall be collected from the automated samplers per week, and no event sample collection will occur without authorization from Iowa DNR.</p>	<p>No later than October 31, 2015.</p>
<p>Task 4. Sample analysis for 2 Event Sites Description: Contractor shall analyze all samples collected under Task 3 for the parameters listed in Table 3. For analytical results below the quantitation limit, the test quantitation limit shall be reported as “less than.”</p>	<p>Samples shall be composited according to Iowa DNR instructions and analyzed no later than holding times established by QA/QC documentation agreed upon by both parties prior to sample analysis. For purposes of invoices the effective Task Milestone Date shall be the last day of each month.</p>
<p>Task 5. Equipment Repair Description: Contractor shall repair existing equipment in order to complete the tasks listed above.</p>	<p>No later than December 30, 2015</p>
<p>Task 6. Event sample stage/discharge date compilation Description: Contractor shall organize and summarize stage/discharge data from continuous stream monitoring. Contractor shall calculate mean daily flows for each of two event monitoring sites using 15-min increments (or smallest increments available). Rating curves, underlying assumptions, and notes regarding datum changes or missing data shall be included in the spreadsheets.</p>	<p>No later than February 1, 2016</p>
<p>Task 7. Quality Assurance/Quality Control Description: Contractor shall submit information on data quality requirements and assessments (such as detection limit, quantitation limit, estimated accuracy and accuracy protocol, estimated precision and precision protocol) to DNR for any sample upon request. Information on the analytical reference method, sample preservation and holding time also shall be provided if requested. Contractor shall provide copies of revised Methods Manuals and Standard Operating Procedure Manual to the DNR upon request. Copies of manual and procedures shall be available from the laboratory.</p>	<p>No later than 30 days after a request has been made by DNR.</p>
<p>Task 8: Data Transfer Description: SHL shall make the data generated pursuant to this Contract available to DNR electronically through the State Hygienic Laboratory OpenELIS database web portal. Data shall be available for download by DNR staff in a mutually agreeable format. The available sample information shall include the STORET station identification number, which will be provided by DNR for all station locations. Data shall be retrievable via the web portal by DNR staff.</p>	<p>Analytical chemistry data shall be made available to DNR staff no later than 15 calendar days following the end of the month of collection. If the contractor determines that extra time is needed to complete required analyses, then a written notification shall be made to the DNR submitter or contract manager. The notification shall include the reason for the delay and the specific analytical chemistry data requiring delayed reporting. The notification shall occur as soon as possible after the contractor has determined the need for a reporting delay.</p>

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

ITEM

7

DECISION

TOPIC

Contract with The University of Iowa for Beach Monitoring Analytical Services 2015

Recommendations:

Commission approval is requested for a 1 (one) year-service contract with The University of Iowa –State Hygienic Laboratory of Iowa City, IA. The contract will begin on May 11, 2015 and terminate on September 30, 2015. The total amount of this contract shall not exceed \$27,732.24.

Funding Source:

This contract will be funded through State of Iowa Environment First Appropriations for Water Quality Monitoring.

Background:

Since 2006, the Iowa Department of Natural Resources Beach Monitoring Program has sampled and reported indicator bacteria concentrations at swimming areas throughout the state. Routine monitoring takes place from the week before Memorial Day through Labor Day. The beach monitoring project fits into the mission of the Department by ensuring high quality recreational opportunities within the state park system and by assessing and reporting on the quality of surface waters in the State.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining the Contractor to provide assistance to DNR in the analysis of indicator bacteria samples collected as part of the beach monitoring program. Samples are collected weekly during the monitoring period at up to 40 state park beaches and as many as 35 city and county park beaches. Also, the remoteness of the Iowa Great Lakes region in Dickinson County makes resample collection by DNR staff a time-consuming and cost-prohibitive activity. Therefore, the Contractor will also collect and analyze indicator bacteria samples, in the event of previous high results requiring resampling at beaches in the Iowa Great Lakes region in Dickinson County.

Contractor Selection Process:

The University of Iowa SHL was chosen as contractor based on the Code of Iowa (455B.103), which directs the DNR to contract with public agencies of the state. SHL was also chosen for this project due to their sample analysis expertise.

Contract History:

This is the second year of contracting with SHL to provide analytical services for E. coli testing. In 2014, the contract amount was \$24,413.40; however a recent increase in laboratory analytical costs has resulted in the value of the contract increasing by \$3,319 for a total of \$27,732.24.

Roger Bruner
Supervisor, Water Quality Monitoring and Assessment Section
Commission Date April 14, 2015

Attachment(s): Scope of Work from the Special Conditions for Contract

15-ESDWQB-MSKOP0002

<u>Task*</u>	<u>Total Amount of compensation allotted to Task** (Variable** Payment)</u>	<u>Task Milestone Date</u>	<u>Invoice Due No Later Than:</u>
Task 1. Analysis of water samples from state park beaches for indicator bacteria.	\$ 10,240	Contractor shall conduct sample analysis and, when requested by DNR Contract Manager, Contractor also shall conduct sample set-up, on a weekly basis beginning no later than May 18, 2015, and continuing for 16 weeks. SHL shall make completed data and results available to DNR via the SHL OpenELIS Web portal not later than 2 hours after completion of sample analysis.	Monthly, no later than thirty (30) days following the end of each month.
Task 2: Analysis of state beach bacteria resamples Description:	\$ 555	Contractor shall conduct sample analysis, and when requested by DNR Contract Manager, Contractor also shall conduct sample set-up, on a weekly basis beginning no later than May 18, 2015, and continuing for 16 weeks. SHL shall make completed data and results available to DNR via the SHL OpenELIS web portal not later than 2 hours after completion of sample analysis.	Monthly, no later than thirty (30) days following the end of each month.
Task 3: Analysis of QA/QC samples Description:	\$ 1,984	Contractor shall conduct sample analysis and, when requested by DNR Contract Manager, Contractor also shall conduct sample set-up, on a weekly basis beginning no later than May 18, 2015, and continuing for 16 weeks. SHL shall make completed results available to DNR via the SHL OpenELIS web portal not later than 2 hours after completion of sample analysis.	Monthly, no later than thirty (30) days following the end of each month.
Task 4: Assemble and ship bacteria sample kits to city/county beaches	\$ 0	SHL shall complete this task no later than one week prior to beginning of the Contract and continuing weekly throughout the monitoring season (May 18 – September 4, 2015)	N/A
Task 5: Return shipping and analysis of city/county beach bacteria samples	\$ 12,179	SHL shall complete this task weekly, beginning week of May 18, 2015, and continuing for 16 weeks.	Monthly, no later than thirty (30) days following the end of each

		SHL shall make completed results available to DNR via the SHL OpenELIS web portal not later than close of business on Thursday of each week of the monitoring season (May 18 – Sept 4, 2015).	month.
Task 6: Dickinson County beach resample collection and analysis	\$ 720	Resample collection and analysis shall occur at request of the DNR Contract Manager, beginning the week of May 18, 2015 and ending September 4, 2015. SHL shall make completed results available to DNR via the SHL OpenELIS web portal not later than 28 hours after receipt of the sample.	Monthly, no later than thirty (30) days following the end of each month.
Task 7: Data Transfer	\$ 0	SHL shall make completed results available to DNR via the SHL OpenELIS web portal at the times designated in the tasks above.	N/A
Sub-totals	\$ 25,678.00		
Facilities and Administrative Costs @ 8%	\$ 2,054.24		
Total	Not to exceed: \$ 27,732.24		

Table 1 – State Park Beaches**Park Names and Contact Information (Collected by DNR)**

<u>Park</u>	<u>Beach Name</u>	<u>Contact</u>	<u>Address</u>	<u>City</u>	<u>Zip</u>
Backbone State Park	Backbone Beach	Mary Shea	1347 129 th St	Dundee	52038
Beed's Lake State Park	Beed's Lake Beach	Scott Doesher	1422 165 th St	Hampton	50441
Big Creek State Park	Big Creek Beach	Chad Kelchen	8794 NW 125 th Ave	Polk City	50226
Black Hawk State Park	Black Hawk Beach	Ryan O'Neill	228 S Blossom St	Lake View	51450
Black Hawk State Park	Denison Beach	Ryan O'Neill	228 S Blossom St	Lake View	51450
Brushy Creek State Recreation Area	Brushy Creek Beach	Amber O'Neill	3175 290 th St	Lehigh	50557
Clear Lake State Park	Clear Lake Beach	Josh Rembe	2730 S Lakeview Dr	Clear Lake	50428
Crandall's Beach	Crandall's Beach	Tim Richey	1500 Harpen St	Milford	51351
Emerson Bay State Recreation Area	Emerson Bay Beach	Tim Richey	1500 Harpen St	Milford	51351
Geode State Park	Geode Beach	Ulf Konig	3249 Racine Ave	Danville	52623
George Wyth Memorial State Park	George Wyth Beach	Lori Eberhard	3659 Wyth Rd	Waterloo	50703
Green Valley State Park	Green Valley Beach	Alan Carr	1480 130 th St	Creston	50801

Gull Point State Park	Gull Point Beach	Tim Richey	1500 Harpen St	Milford	51351
Honey Creek Resort State Park	Honey Creek Resort Beach	Mike Godby	12633 Resort Dr	Moravia	52571
Lacey-Keosauqua Sate Park	Lacey-Keosauqua Beach	Justin Pedretti	22895 Lacey Trail	Keosauqua	52565
Lake Ahquabi State Park	Lake Ahquabi Beach	Josh Shipman	16510 118 th Ave	Indianola	50125
Lake Anita State Park	Lake Anita Beach	Joshua Peach	55111 750 th St	Anita	50020
Lake Darling State Park	Lake Darling Beach	Merrill Lucas	111 Lake Darling Rd	Brighton	52540
Lake Keomah State Park	Lake Keomah Beach	Chad Malone	2720 Keomah Ln	Oskaloosa	52577
Lake Macbride State Park	Lake Macbride Beach	Ron Puettmann	3525 Hwy 382 NE	Solon	52333
Lake Manawa State Park	Lake Manawa Beach	Dan Jacobs	1100 S Shore Dr	Council Bluffs	51501
Lake of Three Fires St. Park	Lake of Three Fires Beach	Doug Sleep	2303 Lake Rd	Bedford	50833
Lake Wapello State Park	Lake Wapello Beach	Ron Moore	15248 Campground Rd	Drakesville	52552
Lewis & Clark State Park	Lewis and Clark (Blue Lake) Beach	Johnathon McAndrew	21914 Park Loop	Onawa	51040
Marble Beach State Rec Area	Marble Beach	Tim Richey	1500 Harpen St	Milford	51351
Park	Beach Name	Contact	Address	City	Zip
McIntosh Woods State Park	McIntosh Woods Beach	Tammy Domonoske	1200 E Lake St	Ventura	50482
Nine Eagles State Park	Nine Eagles Beach	Bud Taylor	23678 Dale Miller Rd	Davis City	50065
Pike's Point State Park	Pike's Point Beach	Tim Richey	1500 Harpen St	Milford	51351
Pine Lake State Park	Lower Pine Lake Beach	Don Primus	22620 Co Hwy S56	Eldora	50627
Pleasant Creek State Recreation Area	Pleasant Lake Beach	Joan Flecksing	4530 McClintock Rd	Palo	52324
Prairie Rose State Park	Prairie Rose Beach	Michelle Reinig	680 Co Rd M47	Harlan	51537
Red Haw State Park	Red Haw Beach	Mike Schrader	24550 US Hwy 34	Chariton	50049
Rock Creek State Park	Rock Creek Beach	Kory Kinnick	5627 Rock Creek E St	Kellogg	50135
Springbrook State Park	Springbrook Beach	Carolyn Hack	2437 160 th Rd	Guthrie Center	50115
Triboji Beach	Triboji Beach	Tim Richey	1500 Harpen St	Milford	51351
Twin Lakes State Park	East Beach	Ryan O'Neill	6685 Twin Lakes Rd	Rockwell City	50579
Twin Lakes State Park	West Beach	Ryan O'Neill	6685 Twin Lakes Rd	Rockwell City	50579
Union Grove State Park	Union Grove Beach	Roger Thompson	1215 220 th St	Gladbrook	50635
Viking Lake State Park	Viking Lake Beach	Todd Carrick	2780 Viking Lake Rd	Stanton	51573

Table 2 – City/County Park Beaches**Park Names and Contact Information (Collected or Delivered by DNR)**

Site	Contact	Street Address/P.O.Box	City	Zip Code
Airport Lake Park	Brian Moore	1811 240th Street	Ionia	50645
Alwaysis Park	Kim Niday	433 Vilas Road	Storm Lake	50588
Bel Air Beach	Kim Niday	433 Vilas Road	Storm Lake	50588
Big Hollow Recreation Area	Chris Lee	13700 Washington Rd	West Burlington	52655
Big Sioux Recreation Area	Jessica Van Oort	4051 Cherry Avenue	Hawarden	51023
Bobwhite State Park	Bonnie Friend	2301 Bob White Rd	Allerton	50008
Brown's Lake/Bigelow Park	Bill Anderson	722 Bigelow Park Road	Salix	51052
Casino Beach	Kim Niday	433 Vilas Road	Storm Lake	50588
Central Park	John Klein	12515 Central Park Road	Center Junction	52212
Chautauqua Park	Kim Niday	433 Vilas Road	Storm Lake	50588
Crescent Beach	Scott Peterson	305 Main Street	Lake View	51450
Don Williams Park	Andy Hockenson	610 H Ave	Ogden	50212
Easter Lake Park	Dean Bruscher	2830 Easter Lake Drive	Des Moines	50320
Edson Park	Kim Niday	433 Vilas Road	Storm Lake	50588
F.W. Kent Park	Larry Gullett	2048 Highway 6 NW	Oxford	52322
Fairfield Waterworks Park	Carl Chandler	700 Waterworks Road	Fairfield	52556
Gray's Lake Park	Ron Burt	3226 University Ave	Des Moines	50311
Hannen Lake Park	Zach Parmater	5718 20th Avenue Dr	Vinton	52349
Hickory Grove Park	Beau Hoppe	67464 250th Street	Ames	50056
Lake Iowa Park	Mike Bode	2550 G Ave	Ladora	52251
Lake Pahoja Recreation Area	Craig Van Otterloo	1831 Buchanan Avenue	Inwood	51240
Little River Recreation Area	Richard Erke	20401 NW Little River Road 2308 255th Street P.O. Box 68	Leon	50144
Malone Park	Walt Wickham		Grand Mound	52751
Mormon Trail	Kevin Blazek	705 NE 6th Street, Suite A	Greenfield	50849
Old Water Plant	Kim Niday	433 Vilas Road	Storm Lake	50588
Oldham Recreation Area	Doug Kuhlmann	318 East Iowa Ave	Onawa	51040
Orleans Beach Area	Lee Sorenson	2279 170th St	Okoboji	51355
Pollmiller Park	Clint Oldfield	2652 US Highway 61	Montrose	52639
Sandy Hollow Recreation Area	Jessica Van Oort	4051 Cherry Avenue	Hawarden	51023
Split Rock Park	Brian Moore	1811 240th Street	Ionia	50645
Treman Park	Keith Roos	1228 High Street	Rockwell City	50579
West Lake Park	Roger Larson	14910 110th Avenue	Davenport	52804
Willow Lake Recreation Area	Byron Vennink	2725 Easton Trail	Woodbine	51579

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

ITEM

8

DECISION

TOPIC

Referrals to the Attorney General

The Director requests the referral of the following to the Attorney General for appropriate legal action. Litigation reports have been provided to the commissioners and are confidential pursuant to Iowa Code section 22.7(4). The parties have been informed of this action and may appear to discuss this matter. If the Commission needs to discuss strategy with counsel on any matter where the disclosure of matters discussed would be likely to prejudice or disadvantage its position in litigation, the Commission may go into closed session pursuant to Iowa Code section 21.5(1)(c).

- Marty Feinberg, dba Feinberg Metals Recycling Corp. (Fort Madison) – Solid Waste/Air Quality/Storm Water

Edmund J. Tormey, Chief
Legal Services Bureau

March 23, 2015

LITIGATION REPORT

Prepared By: Kelli Book
Date: March 23, 2015

I. Summary

The DNR seeks referral of Marty Feinberg d/b/a Feinberg Metals Recycling Corp. to the Attorney General's Office for an appropriate enforcement action. This referral includes the following violations: 1) open burning; 2) failure to obtain an air quality construction permit; 3) failure to comply with the emission standards and other requirements for hazardous air pollutants for secondary aluminum production; 4) failure to comply with the waste tire storage limits; 5) failure to comply with the facility's storm water discharge permit; and 6) failure to comply with Consent Order, Judgment and Decree - Law No. CVEQ005399.

II. Alleged Violator

Marty Feinberg
Feinberg Metals Recycling Corp.
1510 18th Street
Fort Madison, Iowa 52627

III. Description of Facility

Marty Feinberg owns and operates Feinberg Metals Recycling Corp., a scrap metal recycling facility located in Fort Madison, Iowa. Mr. Feinberg is currently working to move the facility to another location in Fort Madison.

IV. Alleged Violations

a. Facts

1. Mr. Feinberg's facility was issued a storm water National Pollutant Discharge Elimination System (NPDES) General Permit No. 1 (storm water permit). The storm water permit requires the facility to implement a storm water pollution prevention plan (SP3). The storm water permit also requires inspections and recordkeeping.

2. On July 26, 2013, DNR Field Office 6 field office personnel visited the Feinberg facility to conduct a storm water compliance inspection. Mr. Feinberg was not available at the time of the inspection and the facility employee did not know where the SP3 was. The field office personnel returned on August 23, 2013, to conduct the storm water compliance inspection. Mr. Feinberg was not available at the time of the inspection. On August 29, 2013, a DNR Field Office 6 inspector contacted Mr. Feinberg about the facility's SP3 and Mr. Feinberg stated he would send the field office a copy of the SP3. On October 2, 2013, DNR Field Office 6 issued a Notice of Violation letter to Mr. Feinberg for failing to submit a complete SP3. The letter stated that the SP3 was to be submitted by November 4, 2013 and if the plan was not received by that date further enforcement may follow. To date the SP3 has not been submitted to DNR Field Office 6.

3. On March 6, 2014, DNR Field Office 6 received a complaint regarding the facility. The complaint stated that discarded appliances and vehicles were not being properly demanufactured and processed on site. Prior to investigating the complaint the field office personnel checked the storm water database and noted that the facility did not have a valid storm water permit to operate a scrap metal recycling facility. The permit was no longer valid because of unpaid permit fees.

4. On March 21, 2014, DNR Field Office 6 personnel conducted an complaint investigation at the facility and met with Mr. Feinberg. The field office personnel walked around the facility and noted several areas of concern, including: 1) improper handling of non-demanufactured appliances; 2) more waste tires than allowed by 567 Iowa Administrative Code (IAC) chapter 117; 3) solid waste piles that needed to be disposed of; 4) oil stained ground that needed to be removed; and 5) the lack of a storm water permit. The facility held an Iowa Department of Transportation (DOT) permit for waste tires allowing it to store up to 3,500 waste tires; the field office estimated that the facility was storing in excess of 3,500 waste tires. The field office personnel discussed their findings with Mr. Feinberg and explained they would return in a few weeks and he would need to improve the conditions of the facility or possible enforcement may be pursued.

5. On April 2, 2014, DNR Field Office 6 personnel returned to the facility. Mr. Feinberg had made some progress in the areas of noncompliance and had paid the storm water permit fees. The storm water permit was reissued by the DNR on April 2, 2014; with an expiration date of September 30, 2014. DNR Field Office 6 reminded Mr. Feinberg that it was important he needed to update the SP3. On April 8, 2014, DNR Field Office 6 sent Mr. Feinberg a letter with the areas of noncompliance noted during the inspections. The letter informed Mr. Feinberg that further violations would likely result in an enforcement action. On May 30, 2014, DNR Field Office 6 personnel stopped at the facility to observe the status of the improvements at the facility. They noted that there was very little scrap metal in the general scrap handling area and there were only two discarded appliances onsite. However, the facility had done nothing with the waste tires onsite.

6. On July 3, 2014, DNR Field Office 6 made a routine stop at the facility. It was noted that the waste tire pile had not diminished in size and also noted some

crushed appliances onsite that did not appear to have been demanufactured. The field office personnel observed a burn area with charred copper wire. Additionally, the field office personnel observed a warehouse stockpiled with scrap aluminum. There was a natural gas fired aluminum smelter vented directly outdoors through a duct approximately 30 inches in diameter. There was no control equipment associated with the smelter and the equipment did not have an air quality construction permit.

7. On July 22, 2014, DNR Field Office 6 received a complaint about the Feinberg facility burning insulation off of copper wires. On July 24, 2014, DNR Field Office 6 personnel investigated the complaint, including meeting with Mr. Feinberg about the aluminum smelter. The field office personnel noted more aluminum stockpiled in the warehouse but Mr. Feinberg stated that the aluminum smelter had not been operated in four or five years. The field office personnel observed evidence of open burning of plastic insulated copper wire on the ground near the loading dock. They observed an area of charred earth with small pieces of copper wire free of insulation lying in and around the charred area. During the July 3 visit the field office noted a large pile of insulated copper wiring, suggesting the dock was a staging area for the insulated wire prior to burning it. The field office personnel also noted that the pile of stockpiled waste tires at the facility were in excess of the allowable maximum number. The field office personnel estimated the pile contained approximately 5,000 waste tires. The field office personnel also asked Mr. Feinberg to review the SP3 associated with the facility's General Permit #1 storm water permit for the facility. Mr. Feinberg stated that the SP3 was not at the facility and that it must have been submitted to the DNR's Storm Water Permitting Section along with the permit fees. The field office personnel reminded Mr. Feinberg that he is required to have the SP3 onsite and readily available for review. As the field office personnel were leaving the facility they noted discarded appliances laying on their sides strewn around in the general scrap metal pile.

8. On August 5, 2014, DNR issued a Notice of Violation letter to Mr. Feinberg for the ongoing violations observed at the facility. The letter included an explanation of the violations and regulations. Mr. Feinberg was also put on notice that the violations were being forwarded for further enforcement.

9. On August 8, 2014, DNR Field Office 6 personnel observed the exterior of the warehouse where the aluminum smelter was located. They used a FLIR infrared camera to observe the building and the camera indicated an extreme temperature differential; suggesting the smelter on the inside of the building was operating. The field office personnel also noted a large LP tank outside of the building staged directly under the aluminum smelter's emission point. The tank was not onsite during the July 3 visit and was not needed for heating the building in the middle of the summer. On August 12, 2014, DNR Field Office 6 personnel spoke to Mr. Feinberg regarding the operation of the aluminum smelter. Mr. Feinberg stated he had not operated the aluminum smelter in years and did not plan to operate it in the future. Mr. Feinberg stated the field office could stop at the facility any time to verify his story and when asked when would be a good time for a visit Mr. Feinberg stated in three weeks because he was busy.

10. On September 9, 2014, DNR Field Office 6 received a complaint regarding the operation of the aluminum smelter and the burning of insulation off copper wire. The complainant was concerned with the ongoing burning and use of the smelter. On the same day, Eddie McGlasson with EPA's Criminal Investigation Division contacted DNR Field Office 6 regarding complaints that EPA had received regarding the Feinberg facility. The field office personnel and the EPA personnel agreed to meet at the facility on September 10, 2014.

11. On September 10, 2014, DNR Field Office 6 personnel and Mr. McGlasson met at the Feinberg facility. They did not observe any evidence that the smelter was being operated on this day. On September 11, 2014, DNR Field Office 6 personnel and Mr. McGlasson met again near the facility. Mr. McGlasson stated he had observed a forklift operator moving aluminum ingots from building to building at the facility. Mr. McGlasson and the field office personnel then observed and documented visible emissions venting from the smelter building. They also used the FLIR infrared camera to document the temperature difference between the emission point and the wall around the emission point. The field office personnel and Mr. McGlasson proceeded to the facility and met with Mr. Feinberg. Mr. McGlasson asked Mr. Feinberg if the smelter had been operated and Mr. Feinberg stated it had not been operated. Mr. McGlasson stated that he and the field office personnel had observed smoke exiting the building vents earlier in the day. Mr. McGlasson also asked where the aluminum ingots were stored and Mr. Feinberg stated he did not have many at the facility. Mr. McGlasson then told Mr. Feinberg he observed the aluminum ingots being moved earlier in the day as well. At this point, Mr. Feinberg admitted that the aluminum smelter had been used a few times to clean up the aluminum stockpile. Mr. McGlasson asked Mr. Feinberg to show the field office personnel and him the smelter and the warehouse where the aluminum ingots were stored. They observed a warehouse where a semi-trailer of aluminum ingots was stored. The semi-trailer was holding approximately 14-16 pallets of aluminum ingots, with each pallet stacked approximately 22 inches tall. They also went to the building where the smelter was housed and noted that the smelter was hot and the wall fans were still operating. There was still an orange-red glow of hot metal inside the smelter. The field office personnel noted the large pile of scrap aluminum observed on July 3 and July 24 was gone.

12. On September 22, 2014, DNR issued a Notice of Violation letter to Mr. Feinberg for the violations observed during the September inspection. The letter informed Mr. Feinberg that the violations were being referred for further enforcement.

b. Past Enforcement Actions

1. On April 26 1994, Mr. Feinberg was issued Administrative Order No. 94-SW-04/HC-04 due to the illegal disposal of waste oil and the failure to clean up contaminated soils caused by the illegal disposal of the waste oil. Some or all of the waste oil was generated from the salvage of electrical transformers and contained Polychlorinated Biphenyls (PCBs). The administrative order also included illegal open burning of solid waste. The administrative order required Mr. Feinberg to cease the illegal disposal of waste oil, to clean up all contaminated soil, and to cease all illegal

burning of solid waste. No administrative penalty was assessed with this administrative order.

2. On April 27, 1995, Mr. Feinberg was issued Administrative Order No. 95-HC-02/WW-08 due to the failure to clean up oil and PCB-contaminated soil and failure to obtain a storm water discharge permit. Mr. Feinberg was required to comply with both administrative orders, to remove all contaminated soil, to apply for a storm water permit, and to pay an administrative penalty of \$10,000. The administrative order was appealed and the appeal was resolved with the payment of a \$1,000 administrative penalty.

3. In 2010, the Iowa Attorney General's Office and Mr. Feinberg entered into a Consent Order, Judgment and Decree for violations relating to illegal demanufacturing of discarded appliances and improper disposal of hazardous substances. Mr. Feinberg was enjoined from further violations of 567 IAC 64.3(1), 118.4(1), 118.4.(2), 122.8(4), and 122.8(5) and NPDES General Permit No. 1 and any SP3 required by the permit. Mr. Feinberg was also enjoined from demanufacturing appliances without a permit and from utilizing certain equipment to handle or process appliances which have not previously been properly demanufactured. Mr. Feinberg was required to do the following: 1) maintain written records for the disposal of all appliances; 2) complete, maintain and implement a SP3 as required by the NPDES General Permit No. 1; 3) properly remove all contaminated soil; 4) properly notify of all hazardous conditions; and 5) pay a civil penalty of \$42,000.

b. Law

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (EPC) shall establish rules governing the quality of air and emission standards. The EPC has adopted 567 IAC chapters 20-35 relating to air quality.

2. Pursuant to Iowa Code sections 455B.133 and 455B.134, 567 IAC 22.1(1) was established, which requires that a person who constructs, installs, reconstructs or alters equipment or control equipment that is not exempt must first obtain an air quality construction permit from the DNR. During several visits by DNR Field Office 6 it was determined that Mr. Feinberg had constructed and was using an unpermitted aluminum smelter. The above-stated facts demonstrate noncompliance with these provisions.

3. 40 Code of Federal Regulations Part 63 Subpart RRR– Emission standards for hazardous air pollutants for secondary aluminum production was adopted by reference at 567 IAC 23.1(4)(bp) and the rule requires emission standards on emission sources such as the smelter at Mr. Feinberg's facility. Emission sources subject to Subpart RRR are also subject to numerous monitoring and recordkeeping requirements. Additionally, performance tests are required of emission sources subject to Subpart

RRR. Mr. Feinberg has failed to comply with the requirements of Subpart RRR for the operation of the smelter. The above-stated facts demonstrate noncompliance with these provisions.

4. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). On several visits DNR Field Office 6 personnel observed evidence of open burning at the Feinberg facility. The field office personnel observed an area of charred earth with small pieces of copper wire free of insulation lying in and around the charred area at the Feinberg facility. The above-stated facts demonstrate noncompliance with this provision.

5. 567 IAC 117.4(2)(a) states that any tire collector, business or individual storing more than 500 passenger tire equivalents on any one site must obtain a waste tire stockpile permit. An authorized vehicle recycler, as licensed by the Iowa DOT, may store up to 3,500 passenger tire equivalents without a waste tire stockpile permit. Storage beyond this amount shall require full compliance with this rule. Mr. Feinberg holds an Iowa DOT permit and DNR Field Office 6 observed on several occasions that Mr. Feinberg was storing at least 5,000 waste tires on site. The above-stated facts demonstrate noncompliance with this provision.

6. Iowa Code 455B.173 provides that the EPC shall establish rules for the prevention, control, and abatement of water pollution. The EPC has adopted such rules at 567 IAC Chapters 60-69.

7. 567 IAC 60.2 and 64.2(4) require that any facility involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards must have a storm water permit.

8. 567 IAC 64.3 requires that a storm water discharge permit holder develop and implement a Pollution Prevention Plan (SP3) and have that plan and any maintenance records available on-site for review. In 2013, DNR Field Office 6 personnel requested a SP3 from Mr. Feinberg. This request was repeated on several field office visits to the facility and at no point was an SP3 on site and to date an SP3 has not been submitted to DNR. The above-stated facts demonstrate noncompliance with this provision and with the facility's storm water permit.

9. The Consent Order, Judgment and Decree issued on December 12, 2010 enjoined Mr. Feinberg from further violating 567 IAC 64.3(1) and the facility's storm water permit. Additionally it required Mr. Feinberg to complete, maintain and

implement a SP3. In 2013, DNR Field Office 6 personnel requested a SP3 from Mr. Feinberg. This request was repeated on several field office visits to the facility and at no point was an SP3 on site and to date an SP3 has not been submitted to DNR. The above-stated facts demonstrate noncompliance with the Consent Order, Judgment and Decree.

V. Witnesses

Kurt Levetzow, DNR Field Office 6 environmental specialist senior, will be available during the April 14 EPC meeting to answer additional questions.

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

ITEM

9

DECISION

TOPIC

**Final Rule – Chapter 61 – Water Quality Standards (Stream
Reclassifications via Use Assessment and Use Attainability Analyses –
Batch #4)**

The Commission will be asked to approve a final rule to amend the state’s water quality standards (WQS). The rule amendments, if approved, would:

1. Revise and list approximately eight stream segments as Class A1 primary contact recreational use designated waters.
2. Revise and list approximately one stream segment as Class A1 primary contact recreational use and Class B(WW-1) warm water—Type 1 aquatic life use designated waters.
3. Revise and list approximately eight stream segments as Class A1 primary contact recreational use and Class B(WW-2) warm water—Type 2 aquatic life use designated waters.
4. Revise and list approximately two stream segments as Class A2 secondary contact recreational use designated waters.
5. Revise and list approximately 36 stream segments as Class A2 secondary contact recreational use and Class B(WW-2) warm water—Type 2 aquatic life use designated waters.
6. Revise and list approximately four stream segments as Class A2 secondary contact recreational use and Class B(WW-3) warm water—Type 3 aquatic life use designated waters.
7. Revise and list approximately five stream segments as Class A3 children’s recreational use designated waters.
8. Revise and list approximately 16 stream segments as Class A3 children’s recreational use and Class B(WW-2) warm water—Type 2 designated waters.
9. Revise and list approximately two streams to match the U.S. Geological Survey (USGS) title.
10. Revise and list approximately two streams that were adopted in previous EPC rule makings but which were omitted from the Surface Water Classification document.
11. Revise the legal descriptions of approximately 51 stream segments. These are not individually listed as designation changes, but the changes are shown in the Surface Water Classification document.

The concept of Use Assessment and Use Attainability Analysis (UA/UAA) is being applied by the DNR as a step-by-step process to gather site-specific field data on stream features and uses. The DNR then assesses available information to determine if the “presumed” recreational and aquatic life uses are appropriate.

The DNR elected to perform a UA/UAA on any newly designated stream that receives a continuous discharge from a facility with a National Pollutant Discharge Elimination System (NPDES) permit. Prior to issuing a NPDES permit for an affected facility, the DNR must complete a UA/UAA for the receiving stream or stream network.

The stream descriptions provided in the preamble are designed to provide clear notice to the public and may be subject to non-substantive corrections to conform to the format used in the stream classification document. The stream classification document now being adopted by reference also contains non-substantive revisions to previously adopted stream designations to correct typographical or descriptive errors. All designations conform to the previously-approved use designations, as amended by the Commission.

The original Notice of Intended Action (NOIA) was published in the Iowa Administrative Bulletin on February 18, 2015 as **ARC 1877C**. Six public hearings were held across the state in six regional locations. Two persons provided written comments on the proposed WQS revisions. A responsiveness summary has been prepared addressing the comments received in terms of the issues involved. Comments from stakeholder groups and other persons or organizations may be made at the Commission meeting regarding the rule changes.

Jon Tack, Chief
Water Quality Bureau
Environmental Services Division

April 3rd, 2015

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission (EPC) hereby amends Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

This rulemaking adopts by reference the updated and amended Surface Water Classification document which lists the use designations for Iowa streams. Stream redesignations are based upon the Department of Natural Resources (DNR) conducting a Use Assessment and Use Attainability Analysis (UA/UAA) which is a step-by-step process to gather site-specific field data on stream features and uses. The DNR then assesses available information to determine if the “presumed” recreational and aquatic life uses are appropriate. The listed amendments are the recommended designated use classifications for stream segments that have undergone the UA/UAA process.

The Surface Water Classification changes are summarized as follows:

1. Class A1 Stream Segments

	Stream Name	UAA ID	Basin	Class A1 Stream Segment Length (miles)	Aquatic Stream Segment Length (miles)
1	Blue Creek (Benton/Linn Counties)	508	Iowa-Cedar	5.5	NA
2	Camp Creek (Calhoun County)	1416	Des Moines	8.3	NA
3	Dye Creek (Story County)	1461	Skunk	1.0	NA
4	East Indian Creek (Story County)	1460	Skunk	8.2	NA
5	Price Creek (Iowa County)	NA	Iowa-Cedar	0.3	NA

6	South English River (Poweshiek/Mahaska/Keokuk/Washington Counties)	1453	Iowa-Cedar	10.6	NA
7	West Fork Camp Creek (Calhoun County)	1415	Des Moines	7.0	NA
8	White Fox Creek (Wright/Hamilton Counties)	1466	Des Moines	12.1	NA

2. Class A1, B(WW-1) Stream Segments

	Stream Name	UAA ID	Basin	Class A1 Stream Segment Length (miles)	B(WW-1) Aquatic Stream Segment Length (miles)
1	Saylor Creek (Polk County)	1466	Des Moines	<0.1	<0.1

3. Class A1, B(WW-2) Stream Segments

	Stream Name	UAA ID	Basin	Class A1 Stream Segment Length (miles)	B(WW-2) Aquatic Stream Segment Length (miles)
1	Cub Creek (Poweshiek County)	1427	Iowa-Cedar	<0.1	<0.1
2	Drainage Ditch 29 (Fonda, City of, STP) (Pocahontas County)	1419	Des Moines	0.5	0.5
3	Dry Run (O'Brien County)	1473	Western	8.8	8.8
4	East Branch Blue Creek (Linn County)	1499	Iowa-Cedar	4.0	4.0
5	Fox Creek (Dallas County)	1457	Des Moines	2.4	2.4
6	Unnamed Creek (Firestone Agricultural Tire Company) (Polk County)	1485	Des Moines	0.9	0.9
7	Unnamed Creek (Lanesboro, City of, STP) (Carroll County)	1413	Des Moines	0.1	0.1
8	Unnamed Creek (Pella Corp.) (Marion County)	1422	Des Moines	<0.1	<0.1

4. Class A2 Stream Segments

	Stream Name	UAA ID	Basin	Class A2 Stream Segment Length (miles)	Aquatic Stream Segment Length (miles)
1	Chihaks Creek (Howard County)	NA	Northeastern	1.1	NA
2	Deep River (Poweshiek/Iowa Counties)	1429	Iowa-Cedar	7.5	NA

5. Class A2, B(WW-2) Stream Segments

	Stream Name	UAA ID	Basin	Class A2 Stream Segment Length (miles)	B(WW-2) Aquatic Stream Segment Length (miles)
1	Brushy Creek (Carroll/Audubon/Guthrie Counties)	1071	Des Moines	4.0	4.0
2	Cub Creek (Poweshiek County)	1426	Iowa-Cedar	3.3	3.3
3	Drainage Ditch (Adair, City of, STP) (Adair County)	1495	Des Moines	0.2	0.2
4	Drainage Ditch 2 (I35-105 Interchange Commercial District) (Worth County)	1409	Iowa-Cedar	9.4	9.4
5	East Branch Blue Creek (Linn County)	1500	Iowa-Cedar	4.2	4.2
6	Granger Creek (Dubuque County)	1476	Northeastern	0.5	0.5
7	Little Creek (Iowa/Keokuk Counties)	1455	Iowa-Cedar	6.1	6.1
8	Middle English River (Iowa County)	1452	Iowa-Cedar	10.2	2.8
9	Painter Creek (Madison/Warren Counties)	1420	Des Moines	7.9	7.9
10	Soap Creek (Lee County)	949	Skunk	0.9	0.9
11	South English River (Poweshiek/Mahaska/Keokuk/Washington Counties)	1454	Iowa-Cedar	21.8	6.1
12	Spring Creek (Des Moines County)	NA	Iowa-Cedar	3.8	3.8
13	Unnamed Creek (Country Living Court, LLC) (Story County)	1462	Skunk	0.2	0.2
14	Unnamed Creek (Deep River, City of, WWTP) (Poweshiek County)	1428	Iowa-Cedar	1.5	1.5
15	Unnamed Creek (Earling, City of, STP) (Shelby County)	1498	Western	<0.1	<0.1
16	Unnamed Creek (East Iowa Bible Camp) (Iowa County)	1450	Iowa-Cedar	2.9	2.9
17	Unnamed Creek (Fonda, City of, WWTP) (Pocahontas County)	1417	Des Moines	0.2	0.2
18	Unnamed Creek (Kwik Star #303) (Poweshiek County)	1425	Iowa-Cedar	1.9	1.9
19	Unnamed Creek (Lanesboro, City of, STP) (Carroll County)	1414	Des Moines	1.2	1.2
20	Unnamed Creek (Pella Corp.) (Marion County)	1421	Des Moines	0.5	0.5
21	Unnamed Creek (Primghar, City of, STP) (O'Brien County)	1472	Western	<0.1	<0.1
22	Unnamed Creek (Webster City, City of, WWTP)	1501	Des Moines	<0.1	<0.1
23	Unnamed Creek (Wendling Quarries – Robins Facility) (Linn County)	1479	Iowa-Cedar	0.3	0.3
24	Unnamed Creek #1 (Des Moines International Airport Outfall #2) (Polk County)	1490	Des Moines	0.8	0.8

25	Unnamed Creek #1 (New Albin, City of, STP) (Allamakee County)	979	Northeastern	0.5	0.5
26	Unnamed Creek #2 (Adair, City of, STP) (Guthrie County)	1496	Des Moines	1.4	1.4
27	Unnamed Creek #2 (Atkins, City of, WTF) (Benton County)	1502	Iowa-Cedar	1.2	1.2
28	Unnamed Creek #2 (Des Moines International Airport Outfall #2) (Polk County)	1491	Des Moines	0.2	0.2
29	Unnamed Creek #2 (John Deere Engine Works) (Black Hawk County)	1481	Iowa-Cedar	<0.1	<0.1
30	Unnamed Creek #2 (Neal Smith National Wildlife Refuge) (Jasper County)	1516	Des Moines	2.0	2.0
31	Unnamed Creek #3 (Adair, City of, STP) (Adair/Guthrie Counties)	1497	Des Moines	1.9	1.9
32	Unnamed Creek #3 (Macksburg, City of, STP) (Madison County)	1489	Southern	0.3	0.3
33	Unnamed Creek #4 (Des Moines International Airport Outfall #2) (Polk County)	1493	Des Moines	<0.1	<0.1
34	West Fork Big Creek (Ringgold County)	1471	Southern	10.2	10.2
35	West Jackson Creek (Wayne County)	1487	Southern	2.5	2.5
36	White Fox Creek (Wright/Hamilton Counties)	1467	Des Moines	15.8	15.8

6. Class A2, B(WW-3) Stream Segments

	Stream Name	UAA ID	Basin	Class A2 Stream Segment Length (miles)	B(WW-3) Aquatic Stream Segment Length (miles)
1	Rock Creek (Jefferson/Wapello Counties)	NA	Skunk	12.0	8.5
2	Unnamed Creek (Iowa DOT – 21, 22 & I-80 Rest Stop) (Dallas County)	1456	Des Moines	0.4	0.4
3	Unnamed Creek (New Hartford, City of, WWTP) (Butler County)	1470	Iowa-Cedar	0.1	0.1
4	Unnamed Creek #1 (West Point, City of, STP) (Lee County)	1284	Skunk	0.9	0.9

7. Class A3 Stream Segments

	Stream Name	UAA ID	Basin	Class A2 Stream Segment Length (miles)	Aquatic Stream Segment Length (miles)
1	Buttermilk Creek (Wright County)	1465	Des Moines	0.5	NA
2	Dry Creek (Linn County)	1480	Iowa-Cedar	8.2	NA

3	West Branch Floyd River (Plymouth/Sioux Counties)	1401	Western	4.4	NA
4	West Branch Floyd River (Plymouth/Sioux Counties)	1403	Western	3.4	NA
5	West Branch Floyd River (Plymouth/Sioux Counties)	1405	Western	2.7	NA

8. Class A3, B(WW-2) Stream Segments

	Stream Name	UAA ID	Basin	Class A2 Stream Segment Length (miles)	B(WW-2) Aquatic Stream Segment Length (miles)
1	Blackhawk Creek (Scott County)	833	Northeastern	5.5	5.5
2	Coon Creek (Tama County)	1468	Iowa-Cedar	0.5	0.5
3	Gypsum Creek (Webster County)	1463	Des Moines	1.3	1.3
4	Soap Creek (Lee County)	948	Skunk	2.8	2.8
5	Unnamed Creek (aka, 7th Ward Ditch) (Polk County)	152	Des Moines	5.2	5.2
6	Unnamed Creek (Clow Valve) (Mahaska County)	1424	Skunk	1.0	1.0
7	Unnamed Creek (Corn LP) (Wright County)	1464	Des Moines	0.3	0.3
8	Unnamed Creek (Des Moines International Airport Outfall #3) (Polk County)	1459	Des Moines	1.0	1.0
9	Unnamed Creek (Nevada, City of, WWTP) (Story County)	1412	Skunk	<0.1	<0.1
10	Unnamed Creek (Pella Corp.) (Marion County)	1423	Des Moines	0.3	0.3
11	Unnamed Creek (Tama Paperboard) (Tama County)	1474	Iowa-Cedar	0.7	0.7
12	Unnamed Creek (University of Northern Iowa) (Black Hawk County)	1469	Iowa-Cedar	0.2	0.2
13	Unnamed Creek #2 (Atkins, City of, WTF) (Benton County)	1503	Iowa-Cedar	0.3	0.3
14	Unnamed Creek #3 (John Deere Engine Works) (Black Hawk County)	1482	Iowa-Cedar	1.2	1.2
15	Unnamed Creek #4 (John Deere Engine Works) (Black Hawk County)	1484	Iowa-Cedar	0.5	0.5
16	Yeader Creek (Polk County)	1458	Des Moines	0.5	0.5

9. Administrative Name Changes

	Stream Name	UAA ID	Basin	Stream Segment Length (miles)	Aquatic Stream Segment Length (miles)
1	Chialk Creek to Chihaks Creek (Howard County)	1268	Northeastern	NA	NA

2	West Indian Creek (Story County)	1002	Skunk	NA	NA
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10. Omitted Stream Segments*

	Stream Name	UAA ID	Basin	Stream Segment Length (miles)	Aquatic Stream Segment Length (miles)
1	Middle Branch Boone River (Wright/Hancock Counties)	NA	Des Moines	11.5	4.0
2	Unnamed Creek #1 (Calmar, City of, STP) (Winneshiek County)	NA	Northeastern	1.4	1.4

*Stream segments that were previously approved by EPC but omitted from the Surface Water Classification document.

The stream descriptions provided in this preamble are designed to provide clear notice to the public and may have non-substantive differences from the Surface Water Classification document. The Surface Water Classification document also contains non-substantive revisions to previously adopted stream designations to correct typographical or descriptive errors. All designations conform to the previously-approved use designations, as amended by the Commission.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 18, 2015, as **ARC 1877C**. Two written comments on the proposed WQS revisions were received. A responsiveness summary has been prepared addressing the comments in terms of the issues involved. The comments did not result in changes to the proposed rule. This amendment is identical to the Notice of Intended Action.

Additional information on Iowa’s Water Quality Standards and the Department's rules can be found on the Department’s Web site at

<http://www.iowadnr.gov/InsideDNR/RegulatoryWater/WaterQualityStandards/Rules.aspx>.

This amendment may have an impact upon small businesses.

This amendment is intended to implement Iowa Code chapter 455B, division III, part 1.

This amendment shall become effective June 17, 2015.

The following amendment is adopted.

Amend subrule 61.3(5) as follows:

61.3(5) Surface water classification. The department hereby incorporates by reference “Surface Water Classification,” effective ~~December 22, 2010~~ June 17, 2015. This document may be obtained on the department’s Web site at

<http://www.iowadnr.com/water/standards/index.html>

<http://www.iowadnr.gov/InsideDNR/RegulatoryWater/WaterQualityStandards/Rules.aspx>.

Date

Chuck Gipp, Director