

PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY

FOR

RULEMAKING ON 567 IAC CHAPTER 64

DISADVANTAGED COMMUNITY RULE

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL SERVICES DIVISION

OCTOBER 22, 2012

RESPONSIVENESS SUMMARY

Introduction

This is a summary of and response to the comments received regarding amendments proposed for IAC 567 Chapter 64. The proposed amendments were published as a Notice of Intended Action (NOIA) in the Iowa Administrative Bulletin on August 8, 2012 as **ARC 0270C**. The Administrative Rules Review Committee (ARRC) took no action on the proposed rules at their September 11, 2012 meeting.

The following amendments were proposed in the Notice:

- 64.3(9), 64.3(11), and 64.5(1) - Correct rule references
- 64.7(4) - Change the timeframe for interim compliance scheduled dates from nine months to one year in accordance with the Code of Federal Regulations
- 64.7(5) and 64.7(6) -
 - Add new subrules on compliance schedules in NPDES permits for disadvantaged communities and compliance agreements for unsewered disadvantaged communities
 - Insert criteria from Iowa Code 455B.199B
 - Establish which entities (sewered and unsewered) can qualify for disadvantaged status
 - Require entities who wish to be considered for disadvantaged community status to submit an Disadvantaged Community Analysis
 - Reference the Disadvantaged Community Matrix, used by DNR staff to determine if a community or entity qualifies as disadvantaged, in the rule
 - Establish a schedule of compliance for disadvantaged communities and a compliance agreement for unsewered disadvantaged communities
- 64.7(5) (renumbered as 64.7(7)) - Add language allowing for the submittal of a disadvantaged community analysis as part of a Plan of Action

Five public hearings were held with notice of the hearings sent to various individuals, organizations, and associations, and to statewide news network organizations. The hearings were held in Atlantic on August 29, Storm Lake on August 30, Des Moines on September 5, Independence on September 6, and in Fairfield on September 11, 2012. Written comments were accepted through September 14, 2012.

Four persons provided oral or written comments on the proposed amendments during the public comment period. Two written comments were received on the proposed amendments prior to and after the public comment period. The responsiveness summary addresses all of the comments received during the rulemaking process. The comments received are addressed below in terms of the issue involved. The commentators' names are listed in the Appendix.

In addition, five persons provided oral or written comments during the public comment period that did not pertain to the proposed amendments. A brief summary of these comments has been included.

ISSUE: Comments in Support of the Proposed Amendments

Comments: One comment was received in support of the proposed amendments. It is paraphrased below.

- The proposed amendments represent nearly six years of work. This has been a long and laborious process that involved numerous stakeholders and the result is a strong process for helping Iowa's citizens. Once adopted, these amendments will give the department the necessary authority to provide some relief to those communities and rural areas and their residents who can least afford the increased water and sewer rates that could occur from compliance with more stringent water quality standards. These communities and their citizens are anxiously awaiting this relief and flexibility.

Response: No response needed.

ISSUE: Comments Concerning the Proposed Amendments and Clean Water State Revolving Fund (CWSRF) Loan Interest Rates

Comments: Two comments were received in regards to the proposed amendments and recent revisions to the CWSRF loan interest rates for disadvantaged communities. These comments are paraphrased below.

- Perhaps language could be added to the Disadvantaged Community Analysis to allow communities to refinance a CWSRF loan at the lower rate if they meet the criteria.
- We support the proposed amendments, because our City could see a large savings in interest over the life of their CWSRF loan if they are considered disadvantaged for the purposes of an SRF loan under the proposed rules.

Response: There is no need to add language to the Disadvantaged Community Analysis allowing for loan refinancing, as the DCA is the form that must be submitted if a community or entity wishes to qualify as disadvantaged. The DCA has been changed to note the purpose of the form submittal, so communities and entities can indicate if they wish to be considered as disadvantaged for the purposes of an SRF loan. The CWSRF staff intends to use the DCA and criteria in the propose amendments to determine if a community is disadvantaged for SFR loan interest rate purposes.

ISSUE: Signatory of Disadvantaged Unsewered Community Analysis

Comment: One comment was received regarding the signatory of the Disadvantaged Unsewered Community Analysis (DUCA). It is paraphrased below.

- Unincorporated communities do not have public officials, and the Disadvantaged Unsewered Community Analysis needs to be more specific with regards to who can sign and submit the form.

Response: If an unincorporated community wishes to obtain disadvantaged status for a project affecting their community, a DUCA must be submitted under the proposed amendments. The signatory requirements of the DUCA are not specified in the proposed amendments, but the entities who may submit a DUCA are specified. Under the proposed amendments, the DUCA can be submitted by the entity that will own the proposed wastewater project. In the case of an unincorporated community, it is likely that either the county or a local rural water agency will own the proposed wastewater facility; thus the DUCA would be submitted by these entities. The signatory

language in the DUCA has been changed to better clarify who can sign the DUCA, according to the language in the proposed amendments regarding who may submit a DUCA.

ISSUE: Comments in Opposition to the Proposed Amendments

Comments: Some of the comments were in opposition to the proposed amendments. They are paraphrased below.

- No community has the right to pollute. Exemptions or delays for meeting state and federal wastewater regulations should not be allowed. Giving a pass on polluting is bad practice.
- The proposed rules only delay the need for the community to install expensive wastewater treatment.
- Communities who achieve disadvantaged community status may view it as a way to let compliance slide.
- How will a set of rules delaying the treatment of raw wastewater help reduce pollution?
- If pollution is to be reduced, there needs to be appropriate funding available for the planning, design, and construction of improvements.

Response: The intent of the proposed amendments is to allow communities and entities who qualify as disadvantaged more time to comply with wastewater compliance, so they can do so in an affordable manner. Wastewater treatment can be expensive, and the proposed amendments will allow those who qualify as disadvantaged more time to seek alternative sources of funding and consider other possible wastewater treatment options. The proposed amendments do require disadvantaged communities to come into compliance with wastewater regulations. Specific schedules of compliance are established in the proposed amendments for disadvantaged communities, and compliance with the scheduled dates will be enforced. The proposed amendments ensure that wastewater pollution will continue to be reduced in a manner that is affordable to all. We agree that appropriate funding needs to be available for wastewater projects, and we will continue to work with our funding partners (Clean Water State Revolving Fund, Iowa Finance Authority, USDA, and the Iowa Economic Development Authority) to assist communities in financing wastewater projects.

ISSUE: Comments that do not pertain to the Proposed Amendments

Comments: The comments that did not pertain to the proposed amendments are paraphrased below.

- SRF is implementing a program where the interest payments from a community can be used for other projects in that same community. These funds could be put into a separate pot and used to fund projects in unsewered communities, rather than giving the interest money back to the same community.
- I am opposed to the new sewer system for the City of Richmond that the county wants to put in.
- Richmond has adequate septic systems and a lagoon is not necessary.
- Washington County Supervisors insist on installing a system that is far overpriced and very unnecessary. They report false information to force this project on a community where it will cause hardship for many.
- No valid testing of the water around Richmond has been done.
- There are other alternatives for Richmond that should be considered.

Response: The comment regarding the use of the interest payments from SRF loans does not pertain to the proposed amendments and has been directed to DNR CWSRF staff for consideration. The comments regarding the planned wastewater treatment system for the community of Richmond do not pertain to the proposed amendments, as the amendments are not specific to any one community.

**APPENDIX:
Commentators**

Following is a list of individuals that submitted comments before, during, and after the public comment period. The list includes those who submitted comments relating to the proposed amendments and those who did not. The commentators are listed in no particular order.

John Hanson; Marion, Iowa
Melanie Carlson PE & LEEP AP; French-Reneker-Associates, Inc.
Dave Fredericks, PE; French-Reneker-Associates, Inc.
Evelyn Johnson, City Administrator; City of Prairie City
Chad Cooper; Richmond, Iowa
Luella Harland; Richmond, Iowa
Terry and Deb Strabala; Richmond, Iowa
Linda Davis; Kalona, Iowa
Bob Haug, Executive Director; Iowa Association of Municipal Utilities
Alan Kemp, Executive Director; Iowa League of Cities
Greg Huff, CEO; Iowa Rural Water Association