

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

ITEM

20

DECISION

TOPIC

Notice of Intended Action – Chapter 64 – Wastewater Construction and Operation Permits, to include Well Construction and Well Service Wastewater Discharges

The Commission is asked to approve the Notice of Intended Action to initiate rulemaking to amend Chapter 64, “Wastewater Construction and Operation Permits.” These proposed rules will amend Chapter 64 to meet the requirements in Iowa Code 455B.198, adopted in 2008. The new rules will allow for the use of a new General Permit to authorize discharge of wastewater generated during well construction and related well service activities. Through the use of best management practices (BMP’s), the new General Permit will require compliance with general water quality criteria and the monitoring of the wastewater effluent to determine sufficiency of the BMP’s. The new General Permit will authorize the Department to take enforcement action against any permittee or co-permittee who fails to establish or maintain the required BMP’s or meet the general water quality criteria.

The following is a summary of the proposed amendments to Chapter 64:

- Exempt the requirement for a DNR operating permit for water well construction and well services-related discharge that does not reach the waters of the United States.
- Require compliance with General Permit #6 for any water well construction and well services-related discharge that reach waters of the United States.
- Exempt water well construction and well services-related discharges which are authorized by General Permit #6 from the requirement of submitting a Notice of Intent.
- Add the ability of the department to suspend or revoke authorization of General Permit #6 if the well construction and well services-related wastewater is not managed in a manner consistent with General Permit #6.
- Establish effective and expiration dates for the General Permit #6.
- Exempt General Permit #6 from the collection of permitting fees.

Stakeholders participated in the development of these proposed rules. The department also plans to hold six public hearings to obtain additional public comment.

Charles C. Corell, Chief
Water Quality Bureau
Environmental Services Division
May 22, 2009

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 455B.105(3) and 455B.198, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 64, “Wastewater Construction and Operation Permits” of the Iowa Administrative Code.

The purpose of this rulemaking is to develop new rules which will amend Chapter 64 to meet the requirements as stated in Iowa Code 455B.198. The new rules will allow for the use of a new General Permit to authorize discharge through the use of best management practices (BMP’s), require the monitoring of the wastewater effluent to determine compliance of the BMP’s, and take enforcement action against dischargers who fail to establish or maintain the required BMP’s or meet the water quality standards.

Any interested person may file written comments on the proposed amendments on or before August 14, 2009. Written comments or questions regarding the proposed action should be directed to Russell Tell, Water Supply Section, Iowa Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, IA 50309-4611; via fax at 515/725-0348; or via e-mail at Russell.tell@dnr.iowa.gov.

Oral or written comments will also be accepted at the six public hearings that will be held as follows:

- Tuesday, August 4, 2009, 10:00 a.m. at the Cedar Falls Utilities’ Training Room, 1 Utility Parkway, Cedar Falls. Observe posted “Event” signs for Public Hearing parking area and entrance information.
- Tuesday, August 4, 2009, 4:00 p.m. at the Iowa City Public Library, 123 S. Linn Street, Iowa City. Parking is available in the ramp at the corner of Linn and Burlington; the library will validate the parking stub for one hour.
- Wednesday, August 5, 2009, 10:00 a.m. at the North Iowa Area Community College, Muse Norris Conference Center, Rooms 180E & F, 500 College Drive, Mason City

- Wednesday, August 5, 2009, 6:00 p.m. at the Iowa DNR Water Supply Offices, Conference Rooms North and South, 401 SW 7th Street, Suite M, Des Moines.
- Tuesday, August 11, 2009, 9:00 a.m. at the Cherokee Community Center, 530 W. Bluff Street, Cherokee.
- Wednesday, August 12, 2009, 10:00 a.m. at the Atlantic Municipal Utilities' Conference Room, 15 West Third Street, Atlantic. Parking is available in the municipal lot south of the building.

At each hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

Any persons who intend to attend a public hearing and have special requirements, such as hearing or mobility impairments, should contact the Department of Natural Resources to advise of special needs.

These amendments are intended to implement Iowa Code section 455B.198.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code §17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rulemaking.

The following amendments are proposed.

Item 1. Adopt the following **new** paragraph 64.3(3) “e”:

e. Water well construction and well services related discharge that does not reach a water of the United States.

Item 2. Amend paragraph 64.4(2) “a” as follows:

64.4(2) General permit.

a. The director may issue general permits which are consistent with 64.4(2) “b” and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities:

(1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992).

(2) Private sewage disposal system discharges permitted under IAC 567—Chapter 69 where subsoil discharge is not possible as determined by the administrative authority.

(3) Discharges from water well construction and related well services as where the discharge will reach a water of the United States.

~~(3)~~ (4) For any discharge, except a storm water only discharge, from a mining or processing facility.

Item 3. Amend subrule 64.6(1) as follows:

64.6(1) Contents of a complete Notice of Intent. An applicant proposing to conduct activities covered by a general permit shall file a complete Notice of Intent by submitting to the department materials required in paragraphs “a” to “c” of this subrule except that a Notice of Intent is not required for discharges authorized under General Permit No. 6.

Item 4. Adopt the following **new** paragraph 64.6(3) “c”:

c. The department finds that water well construction and well service discharge is not managed in a manner consistent with the conditions specified in General Permit No. 6.

Item 5. Adopt the following **new** subrule 64.15(6):

64.15(6) “Discharge Associated with Well Construction Activities” NPDES General Permit No. 6, effective *(insert effective date of rule)*.

Item 6. Adopt the following **new** subrule 64.16(6):

64.16(6) “Discharge Associated with Well Construction Activities” NPDES General Permit No. 6. No fees shall be assessed.

IOWA DEPARTMENT OF NATURAL RESOURCES

***NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
(NPDES)***

GENERAL PERMIT NO. 6

EFFECTIVE DATES _____, 2009 THROUGH _____, 2014

FOR

WELL CONSTRUCTION AND WELL SERVICE DISCHARGES

PART I. COVERAGE UNDER THIS PERMIT

A. PERMIT AREA This permit covers all areas of the State of Iowa

B. ELIGIBILITY

1. Except for discharges identified under Part I.B.2, this permit authorizes well construction and well service related discharges to:
 - A. Waters of the United States
 - B. Subsurface drainage tiles.
 - C. Private ponds.

2. **LIMITATIONS ON COVERAGE** The following discharges are **not** authorized by this permit:
 - A. Well construction and well service discharges mixed with sources other than well construction discharges.
 - B. Well construction and well service discharges which include hazardous substances.
 - C. Well construction and well service discharges associated with construction of wells in areas contaminated with hazardous substances.
 - D. Any well construction and well service discharge covered by an existing individual NPDES permit or which is issued an individual permit in accordance with Part I.C. of this permit.
 - E. Discharges from wells not constructed in accordance with 567 IAC Chapter 49.
 - F. Discharges of drilling fluid and drilling mud in a stream (567 IAC 49.11.)
 - G. Stormwater associated with industrial or construction activities
 - H. Discharges from geothermal supply wells that are not under construction or reconstruction

3. **EXCLUSIONS** NPDES permits are not required for well construction and well service discharges that do not reach:
 - A. Waters of the United States
 - B. Subsurface drainage tiles.
 - C. Private ponds.

C. REQUIRING AN INDIVIDUAL PERMIT

1. The department may require any person authorized to discharge under this permit to apply for and obtain an individual NPDES permit. The causes for such a request may include but are not limited to location of the discharge, amount of discharge or history of non-compliance with the general permit. When the Department notifies a discharger to apply for an individual permit, a deadline, not longer than one year, will be established for submitting the application. If a person fails to submit an individual NPDES permit application by the deadline established by the Department under this paragraph, his/her coverage under this general permit is automatically terminated at the end of the day specified for the application submittal.

2. Any person authorized to discharge by this permit may apply for an individual permit from the Department. The application for an individual permit shall include DNR Forms 1, 2 and 5 and all applicable fees and shall be submitted to the Department in accordance with 567 IAC 64.3(4)(a).

3. When an individual NPDES permit is issued to a discharger, the applicability of this general permit to the individual NPDES permit applicant is automatically terminated on the issuance date of the individual permit. When an individual NPDES permit is denied to a person for a discharge otherwise subject to this general permit, the applicability of this general permit to the individual NPDES permit applicant is automatically terminated on the date of such denial, unless otherwise specified by the Department.

D. AUTHORIZATION

1. Well construction and well service discharges to waters of the United States are authorized so long as the conditions of this permit are satisfied.
2. Permittees shall notify the department within 24 hours of commencing well construction and well service activities on a site. Failure to notify the department is a violation of this General Permit.

PART II. SPECIAL CONDITIONS, MANAGEMENT PRACTICES, AND OTHER NON-NUMERIC LIMITATIONS

A. PROHIBITION ON NON-WELL CONSTRUCTION AND WELL SERVICE DISCHARGES All discharges authorized by this permit shall be composed entirely of well construction and well service discharge.

B. RELEASES IN EXCESS OF REPORTABLE QUANTITIES Any owner or operator identified in the Well Water Pollution Prevention Plan (WWPPP) is subject to the spill notification requirements as specified in 455B.386 of the Iowa Code. Iowa law requires that as soon as possible but not more than six hours after the onset of a "hazardous condition" the Department and local sheriff's office or the office of the sheriff of the affected county be notified. Well construction and well service activities must cease until the WWPPP described in Part III of this permit is modified to provide a description of the release and the circumstances leading to the release and to identify and provide for the implementation of steps to prevent the reoccurrence of such releases and to respond to such releases.

C. COMPLIANCE WITH EXISTING RULES Well construction and well service discharges shall be in compliance with 567 IAC 61.3(2).

PART III. WELL WATER POLLUTION PREVENTION PLANS

A site-specific Well Water Pollution Prevention Plan ("WWPPP") shall be developed or obtained by the permittee prior to commencement of well construction or service activities; plans for public water supply wells must be developed prior to letting bids for the construction project. WWPPPs shall be prepared in accordance with good engineering practices.. The plan shall identify the anticipated quantities of pollution which may reasonably be expected to affect the quality of the well construction and well service discharge. In addition, the plan shall describe and ensure the implementation of controls, identified as Best Management Practices or BMPs, which will be used to reduce the pollutants in well construction and well service discharge at the construction site and to assure compliance with the terms and conditions of this permit. Suggested BMPs are listed in the DNR supplement named "Best Management Practices for Well Construction Discharge" and can be viewed or downloaded on the DNR web site.

A. DEADLINES FOR WELL WATER POLLUTION PREVENTION PLAN PREPARATION AND COMPLIANCE

1. WWPPP PREPARATION DEADLINE The WWPPP shall be completed prior to the commencement of well construction and well service activities; **plans for public water supply wells must be developed prior to letting bids for the construction project.** Plans shall be updated as needed to ensure that the discharge complies with 567 IAC 61.3(2).

2. WWPPP COMPLIANCE DEADLINE The WWPPP shall provide for compliance with the terms and schedule of the plan prior to the commencement of well construction and well service activities.

B. SIGNATURE AND WELL WATER POLLUTION PREVENTION PLAN REVIEW

1. The plan shall be signed in accordance with Part V.G. and be retained according to Part IV of this permit.
2. The permittee shall make plans available to the Department for review upon request, or in the case of a discharge associated well construction and well service activities that discharges through a large or medium municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.
3. The Department may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. After such notification from the Department, the permittee shall make changes to the plan and shall submit to the Department a written certification that the requested changes have been made. Unless otherwise provided by the Department, the permittee shall have seven (7) days after such notification to make the necessary changes.
4. All WWPPPs are considered reports that shall be available to the public under Section 308(b) of the CWA and Chapter 22 of the Code of Iowa. However, the permittee may claim any portion of a WWPPP as confidential in accordance with Chapter 22 of The Code of Iowa and Iowa Administrative Code (561)--2.5.

C. KEEPING WELL WATER POLLUTION PREVENTION PLANS CURRENT The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance which has a significant effect on the potential for the discharge of pollutants to a water of the United States, subsurface drainage tile or private pond and which has not been addressed in the plan, or if the plan proves to be ineffective in significantly minimizing pollutants from well construction and well service activity, or in otherwise achieving the general objectives of controlling pollutants in discharge associated with well construction and well service activity. In addition, the plan shall be updated to identify any change or transfer of the permit and permit responsibilities or, if required, by the occurrence of a hazardous condition (as defined in Part VII.F of this permit). Amendments to the plan may be reviewed by the Department of Natural Resources in the same manner as Part III.B.2. The department retains the right to request and review the plan before or during the well construction and well service and for a period of six months after permit authorization as noted in Part I. D.

D. CONTENTS OF THE WELL WATER POLLUTION PREVENTION PLAN The WWPPP shall include the following items:

1. **SITE DESCRIPTION** Each plan shall provide a description of the following:
 - A. A description of the planned activity. For example, construction of a water supply well approximately 400 feet in depth and the types of constituents generated and products used in the well construction and well service activities that may be present in the wastewater discharge, e.g. bentonite drilling fluid, polymers, foaming agents, and other chemicals or products needed in well construction and well services that may be discharged with the wastewater.
 - B. Estimates of the total amount of well construction and well service wastewater to be discharged.

- C. A site map indicating drainage patterns and approximate slopes, the location of structural and non-structural controls identified in the WWPPP, surface waters (including wetlands), and locations where well construction and well service wastewater is discharged to a surface water; and
- D. The location of the discharge, the point of entrance into the water body, and the name of the receiving water(s).

2. CONTROLS Each plan shall include a description of Best Management Practices that will be implemented at the well construction and well service site. The plan will clearly describe the appropriate BMPs and the timing during the well construction and well service process that the measures will be implemented. (For example, retention ponds with a minimum of 10 minutes retention time will be utilized for air drilling, followed by retention ponds with 3 minutes retention time will be utilized for test pumping.)The description of BMPs shall address the following minimum components:

A. EROSION AND SEDIMENT CONTROLS

- 1. **STABILIZATION PRACTICES** A description of temporary and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed areas are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures.
- 2. **STRUCTURAL PRACTICES** A description of structural practices to the degree attainable, to divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the site. Such practices may include silt fences, earth dikes, brush barriers, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins.

B. OTHER CONTROLS

- 1. **WASTE DISPOSAL** All wastes composed of building materials or other solid or hazardous substances must be removed from the site for disposal in permitted disposal facilities. No such wastes or unused building materials shall be buried, dumped, or discharged at the site.
- 2. Off-site vehicle tracking of sediments shall be minimized.
- 3. The plan shall ensure and demonstrate compliance with applicable State or local waste disposal, sanitary sewer or septic system regulations.

3. INSPECTIONS Qualified personnel (provided by the discharger) shall inspect all control measures at least once every 6 hours during drilling activity.

- A. Based on the results of the inspection, the description of potential pollutant, the types of pollutants to be treated as identified in the plan in accordance with paragraph III.D.1 of this permit and pollution prevention measures identified in the plan in accordance with paragraph III.D.2. of this permit shall be revised as appropriate as soon as practicable after such inspection.
- B. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, the time of inspection, major observations relating to the implementation of the BMPs, and actions taken in accordance with paragraph XX.X.X.X of the permit shall be made and retained as part of the WWPPP. The report shall be signed in accordance with Part V.G. of this permit.
- C. Any discharge deficiencies that are found during inspection that are not consistent with this permit require immediate corrective action and modification of the WWPPP.

4. CONTRACTORS

- A. **CO-PERMITTEE** The WWPPP must clearly identify for each measure in the plan and the contractor(s), engineer(s) and/or subcontractor(s) that will implement the measure. All contractors, engineers and subcontractors identified in the plan must sign a copy of the certification statement in Part III.D.4.B. of this permit in accordance with Part V.G. of this permit. Upon signing the

certification, the contractor, engineer or sub-contractor is a co-permittee with the owner and other co-permittee contractors. All certifications must be included in the WWPPP.

B. CERTIFICATION STATEMENT All contractors, engineers and subcontractors identified in a WWPPP in accordance with Part III.D.4.A. of this permit shall sign a copy of the following certification statement before conducting any professional service at the site identified in the WWPPP:

"I certify under penalty of law that I understand the terms and conditions of National Pollutant Discharge Elimination System (NPDES) general permit #6 that authorizes well construction and well service discharges from the construction or well services site. Further, by my signature, I understand that I am becoming a co-permittee, along with the owner(s) and other contractors, engineers and subcontractors signing such certifications, As a co-permittee, I understand that I, and my company, are legally required under the Clean Water Act and the Code of Iowa, to ensure compliance with the terms and conditions of the Well Water Pollution Prevention Plan developed under this NPDES permit and other terms and conditions of this NPDES permit."

The certification must include the name and title of the person providing the signature; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

PART IV. RETENTION OF RECORDS

A. The permittee shall retain copies of the WWPPP for a period of at least six months from the date of the completed well services as required in Part I.D. of this permit.

If there is a construction trailer, shed, portable document mailbox or other covered structure located on the property the permittee shall retain a copy of the WWPPP required by this permit at the construction site from the date of project initiation to the date of completion. If there is no construction trailer, shed or other covered structure located on the property, the permittee shall retain a copy of the plan at a readily available alternative site and provide it for inspection upon request. If the plan is maintained at an off-site location such as a corporate office, it shall be provided for inspection no later than three hours after being requested.

B. ADDRESSES Any written correspondence required by the Department should be sent to the following address:
Water Well Discharge Coordinator
Iowa Department of Natural Resources
502 E. 9th St.
Des Moines, IA 50319-0034

PART V. STANDARD PERMIT CONDITIONS

A. DUTY TO COMPLY The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Code of Iowa and the Clean Water Act and is grounds for enforcement action; for termination of coverage under this general permit; or, for denial of a request for coverage under a reissued general permit.

B. CONTINUATION OF THE EXPIRED GENERAL PERMIT This permit expires on XX,XX, XXXX. An expired general permit continues in force until replaced by adoption of a new general permit.

C. NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

- D. DUTY TO MITIGATE** The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- E. DUTY TO PROVIDE INFORMATION** The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine compliance with this permit. The permittee shall also furnish to the Department upon request copies of records required to be kept by this permit.
- F. OTHER INFORMATION** When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in any report to the Department, he or she shall promptly submit such facts or information.
- G. SIGNATORY REQUIREMENTS** All Well Water Pollution Prevention Plans, certifications or other information either submitted to the Department or that this permit requires be maintained by the permittee, shall be signed in accordance with rule 567--64.3(8) of the Iowa Administrative Code as follows:
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64.3(8) Identity of signatories of permit applications. The person who signs the application for a permit shall be:

a. Corporations. In the case of corporations, a responsible corporate officer. A responsible corporate officer means:

- (1) A president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs similar policy- or decision-making functions; or
- (2) The manager of manufacturing, production, or operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. Partnerships. In the case of a partnership, a general partner.

c. Sole proprietorships. In the case of a sole proprietorship, the proprietor.

d. Municipality, state, federal, or other public agency. In the case of a municipal, state, or other public facility, either the principal executive officer or the ranking elected official. A principal executive officer of a public agency includes:

- (1) The chief executive officer of the agency; or
 - (2) A senior executive officer having responsibility for the overall operations of a unit of the agency.
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- H. CERTIFICATION** Any person signing documents under paragraph V.G. shall make the following certification:

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

- I. OIL AND HAZARDOUS SUBSTANCE LIABILITY** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

- J. PROPERTY RIGHTS** The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

- K. SEVERABILITY** The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

- L. **TRANSFERS** This permit is not transferable to any person except after submitting written notice to the department. The notice must contain the public or private well permit number, the current permit holder contact information, the date on which the current permittee terminates ownership to the permit, complete contact information for the new permittee, and a certification statement from the new permittee which states:

"I certify under penalty of law that I understand the terms and conditions of National Pollutant Discharge Elimination System (NPDES) general permit #6 that authorizes well construction and well service discharges from the well construction or well services site. I understand that I will become the permittee and owner of the general permit #6 for which my signature attests. I understand that it is my responsibility to obtain authorizing signatures for co-permittees who work on the permitted site as found in Part III.D.4.B. I understand that I am legally required under the Clean Water Act and the Code of Iowa, to ensure compliance with the terms and conditions of the Well Water Pollution Prevention Plan developed under this NPDES permit and all other terms and conditions of this NPDES permit."

The notice shall be submitted to the address as noted in IV.B of this permit within 7 days of the transfer of responsibility.

- M. **PROPER OPERATION AND MAINTENANCE** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of the Well Water Pollution Prevention Plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of this permit.

- N. **INSPECTION AND ENTRY** The permittee shall allow the Department or an authorized representative of EPA, the State, county, or, in the case of a facility which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment); and
4. Sample any discharge of pollutants.

- O. **PERMIT ACTIONS** Coverage under this permit may be terminated for cause. The notification of planned changes or anticipated noncompliance does not stay any permit condition.

- P. **ENVIRONMENTAL LAWS** No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

PART VI. ADDITIONAL PERMITTING CLAUSE

If there is evidence indicating potential or realized impacts to water quality due to any discharge from an authorized well construction and well service activity covered by this permit, the owner of such system may be required to obtain an individual permit in accordance with Part I.C. of this permit.

PART VII. DEFINITIONS

- A. ***"Best Management Practices"*** ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States, subsurface drainage tiles, and private ponds. BMPs also include treatment requirements, operating procedures,

and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

- B. "CWA" or "Clean Water Act"** means the Federal Water Pollution Control Act.
- C. "Department"** means the Iowa Department of Natural Resources.
- D. "Drilling Fluid and Drilling Mud"** means naturally developed and/or artificially mixed colloidal, polymer, or other water based fluids used in the drilling process to enhance the carrying capacity of the fluid to lift borehole cuttings to the ground surface and stabilize the well borehole.
- E. "Hazardous Condition"** means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance on to the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. 455B.381(2) 1991, Code of Iowa.
- F. "Hazardous Substance"** means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that, in confinement, generates pressure through decomposition, heat, or other means. The following are examples of substances which, in sufficient quantity may be hazardous: acids; alkalis; explosives; fertilizers; heavy metals such as chromium, arsenic, mercury, lead and cadmium; industrial chemicals; paint thinners; paints; pesticides; petroleum products; poisons, radioactive materials; sludges; and organic solvents. "Hazardous substances" may include any hazardous waste identified or listed by the administrator of the United State Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the Hazardous Materials Transportation Act (49 CFR 172.101). 455B.381(1) , 1991 Code of Iowa, and 40 CFR Part 116 pursuant to section 311 of the Clean Water Act.
- G. "Municipality"** means a city, town, borough, county, parish, district, association, or other public body created by or under State law.
- H. "Permittee"** means the owner of the water supply well.
- I. "Plan"** means Well Water Pollution Prevention Plan (WWPPP)₂
- J. "Well construction and well service discharge"** means all wastewater generated during well construction and well service, well development, well repair, or well test pumping on a water well or geothermal supply well.
- K. "Waters of the United States"** means:
- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
 - (b) All interstate waters, including interstate "wetlands;"
 - (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
 - (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
 - (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
 - (f) The territorial sea; and
 - (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.
- Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR §423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. (See Note 1 of this section.)



May 22, 2009

EPC Information – Rules drafted per Iowa Code 455B.198 - Wastewater Discharge from Well Drilling Sites Well contractor: Stakeholder concerns

Well contractor representatives of the Iowa Water Well Association (IWWA) participated in drafting the proposed rules for Wastewater Discharge from Well Drilling Sites and are generally in agreement with their structure and content. There is one significant area, however, that the IWWA representatives do not support. At the May 19, 2009, EPC meeting, Commissioners requested the following additional information regarding that issue.

The proposed rules state that best management practices (BMP's) must be adequate so that the discharges from well drilling sites meet the general water quality criteria in 567 IAC 61.3(2). The IWWA representatives have indicated that the standards cannot be met at some sites, despite the use of even the most rigorous BMP's. Below you will find statements regarding this issue and the corresponding Departmental positions.

1. General Water Quality Criteria

- a. Contractor position - The wastewater generated and discharged for a single well site is normally a one time event which occurs during the construction and development of the well. The short term nature of this discharge should warrant the use of a standard less stringent than the general water quality criteria when well discharges reach a Water of the U.S.
- b. Department position – Department staff discussed discharge duration, effluent characteristics and BMP's with the well contractors and researched existing laws and rules in an effort to identify alternatives that would address the well contractors' concerns. Staff reached the conclusion that existing rules written to comply with the Clean Water Act must be enforced even for these short duration events. Specifically, 567 IAC 61.3(2) states, "The following criteria are applicable to **all surface waters** including general use and designated use waters, **at all places and at all times** for the uses described in 61.3(1)"a". The Department does not intend to change the existing criteria; they are protective of the state's water resources and their beneficial uses. Additionally, to exempt a single industry's wastewater from compliance with these criteria would be unfair to other industries who must comply with the current rules and standards and detrimental to the Department's enforcement of these criteria. Should the Department's position change, leading to a change in the criteria, it would be a lengthy process requiring EPA approval and would need to be an effort separate from this rulemaking process.

2. "Hold Harmless" or "Safe Harbor"

- a. Contractor position – If a reasonable effort is made to control the discharge with BMP's, yet pollutants still reach waters of the U.S., the DNR should consider it a compliant discharge even if the general water quality criteria are not met. Notices of violations should only be issued if there is a failure to deploy or maintain a minimum level of BMP's.
 - b. Department position - This conflicts with state laws and rules written to comply with Clean Water Act requirements. The general water quality criteria do not allow for exception based on attempt or effort. As noted above, the Department does not intend to change the existing criteria; they are protective of the state's water resources and their beneficial uses.
3. Well Siting
- a. Contractor position – The Department should be more restrictive of the locations allowed for public well sites so that the chance of pollutants reaching the stream is minimized.
 - b. Department position - There are many instances when it is necessary to construct near a stream or other sensitive area. Many of our state's most highly productive aquifers are located within areas that could potentially be restricted under this scenario. The cost associated of altering the well location and then building the infrastructure to use the well could be far greater than implementing BMP's in a well site location that is deemed sensitive. Rather than limit where groundwater resources can be accessed, the Department proposes additional and ongoing dialogue with well owners, consulting engineers and well contractors to identify limitations of any given well site and to stress the need for proper well siting and adequate BMP's during the project design phase and during initial Departmental well site reviews. Additionally, the Department has included proposed language requiring that the pollution prevention plans be developed prior to bidding public well projects to ensure that needed BMP's are included in the planning phase. For private wells that could potentially discharge wastewater into waters of the U.S., the well contractor and homeowner would be responsible to implement and manage BMP's.
4. Responsible Party
- a. Contractor's position - Well contractors should not be the sole party responsible for ensuring that well discharges meet standards. Well owners and consulting engineers make decisions that impact the ability to meet the discharge standards and should also be held accountable.
 - b. Department position - The Department is proposing that the well owner, consulting engineer and well contractor all be identified as co-permittees on new General Permit #6. This would vest all involved parties in working together to solve the well discharge issues. The IWWA representatives have stated that this may not adequately address their concern.

All of these issues were discussed at length with the IWWA representatives, and staff communicated the Department's positions. Staff will continue to consider the contractors' concerns as we move forward with the rulemaking process and have discussions with other stakeholders.