MINUTES

OF THE

ENVIRONMENTAL PROTECTION COMMISSION

MEETING

OCTOBER 14, 2008

INGRAM OFFICE BUILDING
7900 HICKMAN ROAD
URBANDALE, IOWA

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Henry Marquard at 10:10 a.m. on October 14, 2008 in the Ingram Office Building, Urbandale, Iowa.

COMMISSIONERS PRESENT -

Charlotte Hubbell, Vice-Chair
David Petty
Susan Heathcote
Henry Marquard, Chair
Paul Johnson
Martin Stimson
Shearon Elderkin

COMMISSIONERS ABSENT

Suzanne Morrow, Secretary

ADOPTION OF AGENDA

Move up Items 11 – NOIA: Chapter 22 and 23 and 12 – Proposed rule: Chapters 21, 22, 23, 25 and 34 to after the Director's remarks.

Motion was made by Charlotte Hubbell to approve the agenda as amended. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS AMENDED

APPROVAL OF MINUTES

August 19, 2008 minutes
Page 7 – add IAC Chapter **567-65**
Page 21 – Change **subtle** to **stubble** (2nd to last paragraph)
Page 33 – Under Randy Clark's comments change **a** portion to **several** portions of that would relate to water quality.
Page 34 – Under Randy Clark's comments change **bond** to **bound**
Page 35 - Under Charlotte Hubbell's comments - **reasonably be expected**[bold] **will cause** [bold] (1st paragraph)
Page 39 – Under Henry Marquard's comments - referenced **455B.2**, it should be **455A.2**
Page 36 – Regarding the discussion of the two year capture zone. We need an explanation and discussion on the interpretation by the department.

Motion was made by Charlotte Hubbell to approve the minutes of the August 19, 2008 minutes as amended. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS AMENDED

September 9, 2008 minutes

Page 7 – In the motion – Change **Marty Atkins** to **Marty Stimson**

Page 19 – Charlotte Hubbell would like to be added after Susan Heathcote's comments: *Charlotte Hubbell made comments about Iowa's high quality waters list and expressed her concern about the considersation of removing them from the 2 ½ tier protection. And putting the burden on the public to add them back in one by one.*

Page 1 – Change **- Hayward Farms** to **Haywood Farms**

Motion was made by Shearon Elderkin to approve the September 9, 2008 minutes as amended. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS AMENDED

Closed Session – October 2, 2008 minutes

Motion was made by Shearon Elderkin to approve the October 2 minutes as presented. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS APPROVED

Henry Marquard mentioned the letter received from the Floyd County attorney about the handling of a letter from the Farm Bureau at the August meeting. The legal department did prepare a brief response stating that the issue was handled appropriately.

DIRECTORS REMARKS

Director Leopold gave a brief update on the following items:

- Have been in contact with the Governor's office regarding the open commissioner position. We expect a decision soon, perhaps within the next two weeks.
- Continuing the State's Energy plan, which is expected to be submitted by year's end.
- Climate Change Advisory Board will have a report and recommendations by year's end.
- Governor's office implemented Enterprise Planning Teams (EPT) teams. The Department's team is the Energy and Environment team. A number of state agencies are participating.
- Linda Hanson, Management Services Division Administrator, will be retiring at the end of this month. Interviews have been taking place for this position.
- Flood damage assessment and costs continue. We have a number of lost revenue streams. We are working on financial recovery through a variety of ways.
- The State Natural Resources Agency leaders symposium will be held on November 16 – 18, 2008 at Honey Creek Resort State Park. This is a distinguished group of state leaders that will come together to discuss climate change and sustainable practices, as well as

possibly forming a national organization to represent all state interests. (parks, forests, lands, energy, etc.).

- Honey Creek Resort State Park is open! The ribbon cutting ceremony will take place this weekend. The resort has been very successful and busy even in the first three weeks of business.
    - Susan Heathcote mentioned her concern that the construction site should be meeting all of the storm water runoff requirements.
- Paul Johnson asked if the DNR could give more legislative updates and inform the commission on how they can be more involved. Also suggested that when important conferences and seminars arise, Commissioners should have at least one representative attend.
    - Sharon Tahtinen, legislative liaison will help with the tracking.

Henry Marquard mentioned that the Commission sent a letter in support of the DNR's budget requests.

INFORMATIONAL ONLY

PUBLIC PARTICIPATION

Henry Marquard noted that letters from Steve Veysey regarding the on-site wastewater rules and from Jessica Harder regarding the antidegradation rules will be included as part of the public record.

LINDA KINMAN representing the Iowa Association of Water Agencies and the Des Moines Water Works commended the department for the collaborative efforts on the water allocation use fees. We appreciate the Department's efforts.

SHANNON GARRETTSON, with the Iowa Environmental Council addressed the anti-degradation rules and their support for implementation but ask that the Department stick with the current schedule. We also appreciate the list of the newly added Iowa waters. We will continue to look forward to working with the Department on the antidegradation policy and implementing procedures as well as ensuring that Iowa's waters are clean and safe for all to enjoy.

KERRI JOHANSON, with the Environmental Law and Policy Center stated their support of the anti-degradation rules. We want to protect the environment and this policy would do that. This policy would not inhibit economic growth. The DNR is undertaking a very inclusive process and has made the effort to meet with a variety of stakeholders. This is not an optional rule. We ask that these rules move forward without further delay.

NICOLE MOLT, representing the Association of Business and Industries expressed her concern with the antidegradation rules. More time and public comment is needed. We do thank the department for keeping us informed. The rulemaking is a very technical document and our

experienced technical members have some questions. There are a lot of unknowns and we would like more time to fully comment on the rules.

HAL MORTON, President of the Iowa Society of Solid Waste Operations submitted the following comments: At our annual business meeting last week, the membership of ISOSWO vote unanimously to support the following statement regarding the NOIA – IAC 567-101.

> The Notice of Intended Action (NOIA) for Chapter 101 includes a proposed change to 101.14(2) "a" which will effectively redefine state tax policy for municipal landfills across the state. While the stated intent of this change is "for clarification purposes in order to correct inconsistencies between the Iowa Code and the Iowa Administrative Code as they pertain to the exemption from tonnage fees for solid waste facilities disposing of construction and demolition (C&D) wastes," practice without challenge throughout the state for over 10 years.
>
> It is equitable to require solid waste fees to be paid on C&D wastes that are deposited in a fully lined MSW landfill with extensive groundwater monitoring, but to exempt from solid waste fees those C&D wastes that are deposited in monitoring. ISOSWO believes that the unintended consequence of this proposed rule change will be to create an economic incentive for C&D wastes to be disposed of at all sites which are less environmentally protective, have fewer regulations and less oversight. If DNR desires to impose solid waste fees on all C&D waste, that change in state tax policy should be accomplished through legislative action.
>
> ISOSWO advises the EPC to strike 101.14(2) "a" from this NOIA to avoid unnecessary delay of the other needed rule changes in the NOIA.

ISOSWO appreciates the opportunity to address the Commission in pursuit of our mutual goal to protect the environment and provide for sound policy in solid waste management.

WALLY TAYLOR, representing the Sierra Club passed out a High Quality Water Resources fact sheet.

The definition of high quality waters: Waters with expecetionally better quality than the levels specified in the Water Quality Standards and with exceptional recreational and ecological importance. Special protection is warranted to maintain the unusual, unique or outstanding physical, chemical or biological characteristics which these waters possess.

There is no reason, as it seems to me, to not list all of these waters in Iowa's outstanding waters list. There is no reason to exclude waters with current discharges. I would ask you to list all waters and then go through public comment rather than adding them one by one.

RICH WHITE, from the Iowa Limestone Producers expressed his concerns with the anti-degradation rulemaking. I don't believe anyone can really state the actual fiscal impact that this rulemaking will have. Our operations use groundwater for mining of the limestone and then is discharged. Often, the water we discharge is cleaner than the streams in which we discharge. It

would be good to have an accurate estimate of how much this rulemaking will cost the industries. Does the fiscal impact statement take into consideration the financial costs to businesses, loss of businesses or jobs? I would ask you today to take into consideration the fiscal impact statement.

NEILA SEAMAN, representing the Sierra Club thanked the DNR for including streams into the Iowa's outstanding waters list. However, we are concerned that the DNR has chosen to eliminate creeks and streams that are being discharged into.

Although, this Notice of Intended Action includes 150.9 miles of protected streams it ignores protection for about 185 miles of those with a discharge either directly or indirectly. Our position hasn't changed since last month, we believe that all of these waters should be included in the Notice of Intended Action. I realize that eliminating these waters is a compromise, our waters deserve more protection.

Regarding the general permit #4 for on-site wastewater permits, it appears that this has been changed from the previous general permit #4 to allow private facility disposal systems discharging into designated waters to be required to obtain NPDES general permit #4. We are confused as to why this language has been changed. We would like clarification as to why on-site sewer systems would be allowed to operate under general permit #4 if they are discharging only into designated waters of the state. Otherwise, it appears that on-sites will be exempted from the general permit. We would recommend that you revert back to the original language.

PETE HAMLIN, from MidAmerican Energy said that he is very pleased with how the department handled the water use allocation fee. A variety of stakeholders came together and worked on a mutually agreeable way to deal with this. We would like to invite the Commissioners to come out to tour the Louisa facility and Big Sand Mound preserve as well as a tour of a wind farm. We would like to invite them in groups of three.

JULIE VYSKOCIL, representing the Iowa Renewables Association stated their support of the water use allocation rule. We appreciate the DNR for their hard work.

KATHY MORRIS, director of the Waste Commission of Scott County discussed the Chapter 101 rules. There are inconsistencies in the code and rule, therefore a need for a legislative change. We don't want to penalize contractors who are hauling their material to a lined landfill site that has significant groundwater protection versus those landfills that do not have the same protection. From a waste commission perspective we fully support the Department in a legislative change that would make this equitable for both municipal solid waste landfills and C&D landfills. Charge the fees but make it equitable. We would support the Department and would concur with ISOSWO to strike the Notice of Intended Action.

----------End of Public Comment----------

NOTICE OF INTENDED ACTION: CHAPTERS 22 AND 33: AIR QUALITY PROGRAM RULES – ADOPTION OF FEDERAL AIR QUALITY STANDARDS AND REVISIONS TO AIR CONSTRUCTION PERMIT REQUIREMENTS

Christine Paulson presented the following item.

The Department is requesting permission from the Commission to proceed with the rulemaking process and publish a Notice of Intended Action to amend Chapter 22 "Controlling Pollution" and Chapter 23 "Emission Standards for Contaminants" of the 567 Iowa Administrative Code.

This rulemaking was presented to the Commission for information in August. No significant changes were made to the Notice from what was presented to the Commission previously.

The primary purpose of the rule changes is to adopt new federal regulations affecting stationary internal combustion engines, gasoline distribution facilities and surface coating operations, and to amend the state air construction permitting requirements to better accommodate the new federal regulations. Additional, minor amendments to other federal regulations are also being adopted by reference.

Over the last year, EPA finalized several new air quality regulations under two programs authorized by federal Clean Air Act (CAA), the New Source Performance Standards (NSPS) program and the National Emissions Standards for Hazardous Air Pollutant (NESHAP) program. These programs require new and existing facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for air pollutant emissions.

This rulemaking includes adoption of new federal NSPS and NESHAP impacting facilities or businesses that previously had few, if any, air quality requirements. Because of the potential impacts to small businesses and previously unregulated facilities, the Department is developing implementation strategies in conjunction with the proposed rulemaking. The strategies include cooperative efforts with University of Northern Iowa – Iowa Air Emissions Assistance Program (UNI), Iowa Department of Economic Development (IDED), the Linn and Polk County local air quality programs, and other interested associations and organizations, to provide outreach, education and compliance assistance to stakeholders.

The Department's outreach efforts began earlier this year, will continue during the rulemaking process, and will go on after the new rules are adopted. The implementation strategies will depend on the specific rule requirements and on stakeholder needs.

It is hoped that this rulemaking, in conjunction with the Department's outreach efforts, will result in reductions in air toxic and other air pollutant emissions while minimizing the regulatory burden to small businesses and other affected facilities.

The specific items included in the Notice of Intended Action are summarized below. Because adoption of new NSPS and NESHAP into Chapter 23 are the primary reason for this rulemaking, these changes are paired with the items describing the complementary changes to permit requirements in Chapter 22.

New requirements for Stationary Internal Combustion Engines (Items 1, 3, 4, 5 and 6)

New Source Performance Standards (NSPS) – Items 3 and 4
The Department is adopting new NSPS for stationary spark ignition internal combustion engines (SI engines). SI engines are typically gasoline fueled, but also include engines with spark plugs that burn other fuels. SI engines are used at power plants, industrial sources and other facilities to generate electricity and to power pumps and compressors.

The standards for new SI engines will limit emissions of NO_x, carbon monoxide (CO) and volatile organic compounds (VOC). All sizes of new stationary SI engines are covered under this NSPS. The NSPS phases in more stringent emissions requirements for engines with later manufacture dates. The standards are similar to the NSPS for stationary compression ignition (CI) engines (diesel engines) that the Department adopted in February 2007.

National Emission Standards for Hazardous Air Pollutants (NESHAP) – Items 5 and 6
The Department is adopting recent federal amendments to the NESHAP for stationary reciprocating internal combustion engines (RICE). The amendments include standards to limit hazardous air pollutants (HAP), or air toxics emissions, from new and reconstructed engines located at area sources. The amendments also include standards to regulate HAP from smaller-sized engines located at major sources.

Areas sources are usually smaller commercial or industrial operations that typically release lesser quantities of HAP. Specifically, area sources have potential emissions less than 10 tons per year (tpy) of any single HAP and less than 25 tpy of any combination of HAP. Facilities that have potential HAP emissions greater than or equal to these levels are classified as major sources of HAP.

Generally, the RICE NESHAP requires new and reconstructed engines to meet the NSPS requirements for CI or SI engines. Existing engines located at area sources are not covered under these new regulations. However, EPA has published a notice in the Federal Register stating that EPA plans to issue standards in the future for existing engines located at area sources.

Construction Permit Requirements for Small, Stationary Engines – Item 1
Currently, stationary internal combustion engines less than 400 horsepower (HP) are eligible to be exempt for the requirement to obtain a construction permit. When this exemption was originally adopted into state rules, there were no federal requirements applicable to these smaller engines. The new NSPS and NESHAP regulations require all sizes of new, modified or reconstructed engines to meet certain emissions requirements.

To address this, the Department is amending the 400 HP exemption to require submittal of a registration certifying NSPS and NESHAP compliance prior to installation of the engine. The registration will walk owners and operators of affected facilities through a series of questions that will assist them in ensuring that the engine they order and install complies with the NSPS and NESHAP, while still allowing the engine to be exempt from the requirement to obtain a

construction permit. The registration will also assist the Department air quality and field office staff to ensure that affected facilities are in compliance.

New Requirements for Gasoline Distribution and Dispensing (Items 5 and 7)

NESHAP for Bulk Gasoline Distribution

The NESHAP for gasoline distribution applies to bulk gasoline facilities, such as bulk plants, bulk terminals, and pipeline breakout stations. The NESHAP will reduce VOC and HAP from gasoline vapors, including benzene emissions.

Bulk terminals and pipeline breakout stations typically have higher monthly gasoline throughputs, and are required to control emissions through submerged filling at tanks and loading racks and controls on gasoline storage tanks. Owners and operators of larger terminals must capture and control gasoline vapors at the loading rack.

Bulk plants have lower monthly gasoline throughputs than terminals or breakout stations. Owners and operators of bulk plants are required to control gasoline vapors by use of submerged filling at tanks and loading racks. The Department estimates that there may be 100-200 bulk plants affected by the NESHAP. However, owners and operators of bulk gasoline plants are already required to use submerged filling at tanks under existing state rules for underground storage tanks (UST) and flammable liquids.

The Department is working with Petroleum Marketers and Convenience Stores of Iowa (PMCI), EPA, and state agency staff to identify the affected bulk plants. The Department met with PMCI and other stakeholders on August 21st, and plans to continue working closely with stakeholders on outreach and compliance.

NESHAP for Gasoline Dispensing Facilities

The second area source NESHAP being adopted affects gasoline dispensing facilities, such as gas stations. Like the NESHAP for bulk facilities, this NESHAP will reduce VOC and HAP from gasoline vapors, including benzene emissions. These standards apply to gasoline cargo tanks (trucks) and each storage tank. The NESHAP does not apply to equipment used for refueling motor vehicles (gasoline pumps).

The gasoline dispensing NESHAP requirements are based on the actual, monthly throughput of gasoline at the facility. Under the NESHAP, owners and operators of smaller facilities are required to follow specified "good management practices" (GMP) to minimize gasoline evaporation. Owners and operators of medium sized facilities are required to follow GMP and use submerged filling of gasoline tanks. Owners and operators of large facilities must employ GMP, submerged fill, and a vapor balance system during storage tank loadings.

Owners and operators of affected gasoline dispensing facilities (GDF) are already required to implement GMP and submerged fill under existing administrative rules for UST and flammable liquids. Vapor balancing is not required under existing state rules. The Department estimates that approximately 250 larger GDF will need to implement vapor balancing. However, approximately

50 of these facilities already use vapor balancing, and nearly all of the remaining 200 facilities will have until January 2011 to comply with the NESHAP requirements.

The Department has been corresponding regularly with EPA, PMCI and a number of affected facilities regarding the new requirements. The Department met with PMCI and other stakeholders on August 21st to formulate an outreach and compliance assistance strategy, and plans to continue working closely with stakeholders.

At the August 21st meeting, the Department learned that a number of new, large GDF may be unable to retrofit their equipment to comply with the NESHAP vapor balance system requirements by the September 23, 2008, compliance date. The Department is working with these facilities and EPA Region VII to issue compliance extensions, as appropriate, on a case-by-case basis.

Construction Permit Requirements for Bulk Plants and Gasoline Dispensing Facilities (GDF)
Because bulk plants and GDF that are minor sources (not Title V) previously had very few, if any, federal or state air quality requirements, the Department has not sought construction permits from these facilities. For small and medium sized GDF, compliance with current UST and flammable liquids regulations will also serve as compliance with the NESHAP. For larger GDF that will need to install vapor balance systems, the owners and operators of these facilities are generally aware of the requirements and will be working to meet the January 2011 compliance date. The Department will work with PMCI and affected facilities to assist with compliance. At this time, the Department does not plan to require air construction permits from GDF.

Because of how the NESHAP defines throughput at bulk gasoline facilities, it appears that bulk plant owners and operators will need to obtain enforceable gasoline throughput limits by January 2011 if they wish to avoid having their facilities classified as terminals. The Department estimates that nearly all of 100-200 bulk plants affected by the NESHAP do not have construction permits. At the August 21st meeting, the Department discussed a streamlined permitting strategy with stakeholders. The Department is still finalizing this strategy.

New Requirements for Auto body Refinishing and Miscellaneous Surface Coating (Items 2, 5 and 7)

NESHAP Requirements (Items 5 and 7)
The third area source NESHAP being adopted affects paint stripping and certain surface coating operations, including spray coating of motor vehicles and mobile equipment.

Currently, the Department is not aware of any facilities affected by the paint stripping provisions of this NESHAP.

The NESHAP requirements for surface coating require owners and operators of facilities that spray apply coatings containing certain "target HAP" to control HAP through a variety of means. In brief, owners and operators at affected facilities must enclose spray areas, use high efficiency paint guns, capture 98% of overspray, capture paint and solvent when cleaning, and train and certify paint operators. Owners and operators at existing facilities will have until January 2011 to

either switch to coatings that do not contain the target HAP, or to comply with the NESHAP requirements. The Department estimates that 1000 minor source facilities may be subject to the NESHAP, but that many of these facility owners and operators will choose to stop using the target HAP prior to the NESHAP compliance date

The Department, in cooperation with UNI, IDED, and Linn and Polk County local air programs, hosted the first stakeholder meeting on July 15th. The 30 participants received a presentation on the NESHAP and air permitting requirements, a draft guide and other outreach materials. The participants provided valuable input at this initial meeting, and the Department will be offering additional meetings and compliance assistance tools over the next 18 months.

In July, EPA also finalized a new NESHAP for metal fabricating and finishing. This NESHAP may affect some facilities already subject to the surface coating NESHAP, as well as other facilities not previously required to obtain construction permits. The Department is still determining an implementation strategy for the metal fabricating NESHAP and does not plan to adopt the metal NESHAP at this time. Once the Department better identifies affected facilities, it will begin outreach and compliance assistance activities. The Department expects to begin a rulemaking to adopt the metal NESHAP sometime in 2009. The metal NESHAP is expected to impact significantly fewer facilities than the surface coating NESHAP, and existing facilities are not required to comply with the metal NESHAP until July 25, 2011.

Construction Permit Requirements (Item 2)

Currently, facilities that spray apply three (3) gallons or less of material per day are eligible for the permit by rule for spray booths (PBR). The owners or operators of PBR-eligible facilities simply complete a notification letter certifying that they meet the PBR requirements.

At the time the PBR was adopted, small spray operations were not subject to any federal air quality regulations. Under the new NESHAP, the owner or operator of any size facility that uses target HAP must comply with numerous NESHAP requirements. Additionally, owners and operators that spray coat motor vehicles and mobile equipment must petition for an exemption if they choose not to use the target HAP.

To accommodate the new NESHAP requirements, the Department is amending the PBR requirements and the accompanying DNR form to require that an owner or operator certify that the facility is in compliance with or otherwise exempt from the NESHAP. The revised PBR form will walk owners and operators through a series of questions that will assist them in complying with the NESHAP. Owners and operators of existing facilities that choose to continue using the target HAP will need to re-apply for the PBR to certify compliance prior to the NESHAP compliance date. These rule changes will assist the Department air quality and field office staff in ensuring NESHAP compliance, while still allowing smaller spray operations to use a streamlined permit.

Adoption of Additional NSPS and NESHAP amendments (Items 3 and 5)

The Department is also adopting additional, federal amendments to existing NSPS and NESHAP. These amendments consist of administrative changes, technical updates and clarifications, and are summarized in the attached Notice.

The Department held an informational meeting regarding this rule making on August 28, 2008. The meeting was attended by only one interested person. However, the Department has also hosted several stakeholder meetings to discuss the new regulations, and plans to continue its outreach activities.

If the Commission approves this Notice of Intended Action, a public hearing will be held on Monday, December 8, 2008, at 1 p.m. at the Department's Air Quality Bureau offices. The public comment period for the proposed rules will close on Tuesday, December 9, 2008.

Motion was made by Susan Heathcote to approve the notice of intended action as presented. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS PRESENTED

PROPOSED RULE: CHAPTERS 21, 22, 23, 25 AND 34 AIR QUALITY PROGRAM RULES – RESCISSION OF VACATED FEDERAL REGULATIONS

Christine Paulson presented the following item.

The Notice of Intended Action is to amend Chapter 21 "Compliance," Chapter 22 "Controlling Pollution," Chapter 23 "Emission Standards for Contaminants," Chapter 25 "Measurement of Emissions," and Chapter 34 "Provisions for Air Quality Emissions Trading Programs" of the 567 Iowa Administrative Code is being presented to the Commission for information.

The purpose of the proposed rule changes is to remove from the state air quality rules federal regulations that the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court) recently vacated. The federal programs vacated by the D.C. Court include: the Clean Air Interstate Rule (CAIR), the Clean Air Mercury Rule (CAMR), the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Boilers and Process Heaters (the Boiler MACT), and the NESHAP for Brick and Structural Clay Products Manufacturing (Brick-Clay MACT).

Over the last year and a half, the D.C. Court has issued rulings on several significant federal programs promulgated by the U.S. Environmental Protection Agency (EPA). The D.C. Court found the regulations to be unauthorized under the federal Clean Air Act (CAA) or otherwise deficient. The vacaturs of these federal programs have elicited uncertainty and confusion for regulated industries and for state and local air agencies. Please see the attached background document for more information on the vacated federal regulations, the D.C. Court decisions, and the impacts of the vacaturs on the Department and on stakeholders.

In response to these vacaturs, the Department is proposing to remove the now vacated federal regulations that were adopted by reference. The specific rule amendments being proposed are explained in the preamble of the attached Notice. The Department plans to bring this Notice to the Commission for decision at the Commission's November meeting.

Commissioners discussed how they should handle these rules.

Director Leopold said that we will draw up some alternative options listing pros and cons.

Henry Marquard asked the department to bring back this item next month as an informational item along with the options of proposed procedures.

INFORMATION

2009 EPC DATES AND LOCATIONS

Jerah Gallinger presented the following item

2009 Meeting Schedule	Location
January 20, 2009	Urbandale, IA
February 17, 2009	Urbandale, IA
March 17, 2009	Clipper Wind Energy- Cedar Rapids, IA
April 21, 2009	Urbandale, IA
May 19, 2009	Red Oak, IA
June 16, 2009	Urbandale, IA
July 21, 2009	Urbandale, IA
August 18, 2009	Honey Creek Resort State Park Moravia, IA
September 15, 2009	Urbandale, IA
October 20, 2009	Fayette, IA
November 17, 2009	Urbandale, IA
December 15, 2009	Urbandale,

Commissioners agreed to change the meeting date to the third Tuesday of each month.
The Commissioners would like to visit Scott County in 2010.

Motion was made by Charlotte Hubbell to approve the amended dates as presented. Seconded by Shearon Elderkin. Motion carried unanimously.

APPROVED AS AMENDED

NOTICE OF INTENDED ACTION – CHAPTER 101 – SOLID WASTE COMPREHENSIVE PLANNING REQUIREMENTS

Chad Stobbe presented the following item.

The Commission is asked to approve the Notice of Intended Action to amend 567-Chapter 101 "Solid Waste Comprehensive Planning Requirements." This amendment is being proposed for clarification and ease of use purposes and in order to correct inconsistencies between the Iowa Code and Iowa Administrative Code.

This chapter underwent a complete revision in 2005 prior to the 5th round of solid waste comprehensive plan submittals, which is now nearly complete. During this round of submittals, several items were identified as future revisions for clarification. Revisions are also proposed to the municipal solid waste and recycling survey, several of the fourteen (14) online forms which make up the online database, and the Quarterly Solid Waste Fee Schedule and Retained Fees Report. Revisions to these three areas are also included in this proposed rulemaking.

Several of the proposed revisions are in response to stakeholder input received during the 5th round of comprehensive plan update submittals. In addition, a memo outlining the proposed changes and requesting informal feedback and comment was mailed to all planning area responsible officials and sent by electronic mail to all Iowa municipal solid waste landfills and solid waste consultants on June 20, 2008. No feedback or comment was provided.

The following is a summary of the proposed revisions and clarifications to the chapter.

- 101.1(2) *Applicability.*

This section is not necessary as the Iowa Code Sections implemented are cited at the end of the chapter. Therefore propose to remove the section.

- 101.2 Definitions.

Contaminated Soil
Propose to remove the definition of contaminated soils from this rule chapter. A definition of contaminated soils will be developed as part of the rule revision of IAC 567-Chapter 108.

Planning Cycle
Propose the planning cycle remain as set (3 years) for the next round of plan updates but change to five (5) years for subsequent rounds (starting with the 7th round).

Solid Waste
Propose to revise the definition of Solid Waste to include wastes that have been exempted from federal hazardous waste regulation except to the extent that any such exempted substances are liquid wastes or wastewater.

- 101.3 Waste management hierarchy.

Revise 101.3 to be consistent with Iowa Code Section 455B.301A.

This moves combustion with energy recovery above other approved techniques of solid waste management.

- 101.7 Base year adjustment method.

Propose to remove the provision which states the department will perform a goal progress calculation 12 months prior to the due date of the comprehensive plan update for each planning cycle for planning purposes. It is unclear how beneficial this provision is for the planning areas and takes a great deal of staff time. When planning areas were asked provide comments on the benefits gained by this provision, no comments were submitted.

- 101.7(3)"c" – Contaminated soils.

Propose to remove this section. This section allows the exclusion of contaminated soils from goal progress calculations. In many cases, contaminated soils can be remediated to state and federal standards at which time it becomes dirt, which is specifically exempted from the statutory definition of solid waste. If disposal of contaminated soil is the result of an exceptional event, a request for exemption from goal progress calculation can be made under the provisions of 101.7(3). Therefore it is unnecessary for separate provisions.

- 101.10 Municipal solid waste and recycling survey.

Current rule allows for four (4) options when completing the municipal solid waste and recycling survey outlined in 101.10(1) through 101.10(4). The options outlined in 101.10(1) and 101.10(4) states the department will enter the data into the online database. It is proposed to remove the options that state the department will enter the data.

Completion of the previous round of comprehensive plans has fully populated the online database resulting in the need to only review and update the submitted information. It is the planning area's responsibility to ensure submitted data is accurate.

- 101.12 Solid waste comprehensive plan types.

Revise 101.12 to be consistent with Iowa Code Section 455B.306.

Recent changes to 455B.306 (Senate File 2276) clarifies language related to planning areas that choose to remain autonomous by closing all their landfills and using a transfer station to transfer waste to a facility in another planning area.

- 101.13 Types of comprehensive plan submittals to be filed.

Recent changes in Iowa Code section 455B.306 (Senate File 2276) remove the comprehensive planning requirement for non municipal solid waste facilities. Therefore propose to remove language which indicates comprehensive planning requirements for non municipal solid waste facilities.

- 101.13(2) Comprehensive plan updates: for permitted municipal solid waste landfills, construction and demolition waste disposal sites, material recovery facilities, and transfer stations.

Revise the heading of this section to state comprehensive plan updates for municipal solid waste sanitary disposal projects.

- 101.13(3) Transfer stations and construction and demolition waste disposal sites.

The provisions of this section are inconsistent with Iowa Code. Therefore propose to remove the section.

Iowa Code section 455B.306(1) specifies that a city, county, or private agency operating, or planning to operate, a municipal solid waste sanitary disposal projects shall file a comprehensive plan. Solid waste transfer stations are sanitary disposal projects, as determined by the Iowa Supreme Court in the case of ABC Disposal Systems, Inc. v. Department of Natural Resources, 681 N.W.2d 596 (Iowa 2004). Section 455B.306(7)"e" also states that a comprehensive plan must include a description of the geographic area to be served by the city, county, or private agency. Except in limited circumstances defined in the statute, the comprehensive plan shall not include a planning area or service area, any part of which is included in another comprehensive plan. The impact of this requirement is that a city or county must choose one planning area for the disposal of the solid waste generated in the city or county and can not be a part of more than one planning or service area. All waste generated within an entity's comprehensive planning area must be deposited at a facility within the comprehensive plan, however, this does not preclude waste being deposited at out of state facilities.

Subrule 101.13(3) allows transfer stations that take solid waste solid waste generated within Iowa and transports all of it out of state for disposal to meet comprehensive planning requirements by filing an operational plan with the department. Under current administrative code, the department requires any transfer station which uses an Iowa landfill to join the comprehensive plan established by the communities using that landfill and to only deliver waste collected within those communities. For transfer stations which haul all of their waste out of

state, the department has attempted to strike an appropriate balance between the goals of comprehensive solid waste planning and any burden those goals may be alleged to place on interstate commerce. The department was requested by stakeholders to re-evaluate its position in regard to transfer stations that deposit all solid waste collected out of state and to enforce the same requirements as those for transfer stations that deposit solid waste at instate facilities. The department has determined that this attempt to interpret 455B.306(7)"e" so as to minimize potential impacts upon the interstate transportation of waste is not authorized by law.

Because the department has concluded subrule 101.13(3) to be inconsistent with Iowa Code 455B.306, we are proposing the removal of said subrule. This would result in all transfer stations, regardless of final solid waste deposit location, being required to follow the same solid waste comprehensive planning requirements and bring Iowa Administrative Code in compliance with Iowa Code in respect to this matter.

- 101.13(4) Comprehensive plan updates for permitted monowaste facilities.

Recent changes in Iowa Code section 455B.306 (Senate File 2276) remove the comprehensive planning requirement for non municipal solid waste facilities. Therefore propose to remove section.

- 101.13(5) Comprehensive plan updates for permitted monogenerator facilities.

Recent changes in Iowa Code section 455B.306 (Senate File 2276) remove the comprehensive planning requirement for non municipal solid waste facilities. Therefore propose to remove section.

- 101.13(6) Comprehensive plan updates for permitted incinerators.

Recent changes in Iowa Code section 455B.306 (Senate File 2276) remove the comprehensive planning requirement for non municipal solid waste facilities. Therefore propose to remove section.

- 101.14(2) Exclusions.

Revise 101.14(2)"a" to be consistent with Iowa Code Section 455B.310(5). This revision is being proposed for clarification purposes in order to correct inconsistencies between the Iowa Code and Iowa Administrative Code as they pertain to the exemption from tonnage fees for solid waste facilities disposing of construction & demolition (C&D) wastes.

Iowa Code 455B.310 specifies that the operator of a sanitary landfill shall pay a tonnage fee to the department for each ton of solid waste received and disposed of at a sanitary landfill. Tonnage fees remitted to the department are placed in the Groundwater Protection Fund for department operations and support of statewide solid waste programs such as Solid Waste Alternatives Financial Assistance, Solid Waste Facility Permitting, Comprehensive Planning, Special Waste Authorization, Iowa Waste Reduction Center, Iowa Waste Exchange and Household Hazardous Waste Regional Collection Centers. A portion of the tonnage fee is also

retained locally for waste management plan development and implementation and environmental protection activities. The base tonnage fee is $4.25; however, based on a planning area's progress towards state mandated goals, each landfill plays slightly more or slightly less than the base amount. On average $2.78 per ton is remitted to the department and $1.47 is retained locally.

Iowa Code section 455B.310(5) states in part, "Solid waste disposal facilities with special provisions which limit the site to disposal of construction and demolition waste"…"are exempt from the tonnage fees imposed under this section." Furthermore, Iowa Administrative Code 567-Chapter 101, paragraph 101.14(2)"a" states in part, "The fees specified in subrule 101.14(3) do not apply to construction and demolition waste disposed of in an area of a sanitary landfill that has been designated exclusively for the disposal of construction and demolition waste based on plans and specifications approved by the department…"

Iowa Code section 455B.310(5) provides an exemption from the tonnage fee for sites limited to the disposal of C&D wastes only. Paragraph 101.14(2)"a" misinterprets the meaning of the term "site" as it is referred to in Iowa Code 455B.310(5) and erroneously extends the tonnage fee exemption of Iowa Code section 455B.310(5) to individual disposal areas at municipal solid waste (MSW) landfills known as "MSWLF units". The following examples are given to support the correct use of the term "site" as it pertains to sanitary landfills:

- Iowa Code section 455B.304(5) uses "site" to refer to the whole landfill.
- The siting provisions of Iowa Code section 455B.305A use "site" to refer to the entire location.
- Iowa Code section 455B.307(2) uses "site" in a way that refers to the whole property in that it refers to the hydrologic and geologic conditions of the disposal site and to disposal at a site for which an application has been made.
- Iowa Code section 455D.9A prohibits baling of solid waste except waste that is baled on-site. The on-site reference logically refers to the entire site.
- Iowa Code section 455B.305(6) uses "cell" to refer to an individual landfill cell.

These statutory uses of the term "site" are consistent with the definition of "site" previously adopted by the Department at 567 IAC 100.2. Rule 100.2 defines "site" as "any location, place or tract of land used for collection, storage, conversion, utilization, incineration or landfilling of solid waste, to include the landfill area, non-fill work areas, borrow areas plus a 100-foot wide perimeter surrounding the working areas or the property line if it is closer than 100 feet to the working areas." This administrative rule definition, while consistent with the use of the term "site" in the Iowa Code sections referenced above, is not consistent with current subrule 101.14.(2).

Subrule 101.14(2) is proposed to be amended by incorporating Iowa Code section 455B.310(5) verbatim so that the exemption from the tonnage fee is for sites dedicated wholly to the disposal of C&D wastes. Currently there are four sanitary landfills that meet this exemption.

- <u>Implementation Paragraph</u>

Update paragraph to include all applicable Iowa Code sections.

Motion was made by Charlotte Hubbell to approve the NOIA as presented. Seconded by Marty Stimson. Motion carried unanimously.

APPROVED AS PRESENTED

CLOSED SESSION – LINCOLN 1 PORK, LLC & DALLAS PORK, LLC

Motion was made by Susan Heathcote to proceed into closed session to discuss strategy with counsel in a matter that is presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the EPC in that litigation. The litigation specifically pertains to the EPC's recent decision to deny construction permits to Lincoln 1 Pork, LLC and Dallas Pork, LLC. This motion was seconded by Marty Stimson.

-----Commissioners went into closed session-----

-----Commissioners are back into open session-----

Motion by Susan Heathcote that if the additional permit conditions, not otherwise required by law, discussed with counsel in closed session are included, the IDNR is authorized to issue the confinement feeding operation construction permits to Dallas Pork, LLC and Lincoln 1 Pork, LLC. Seconded by Marty Stimson.
Amendment was made by Charlotte Hubbell to include the following language in the motion: "With the understanding that this is not an admission of any of the grounds cited by the plaintiffs in their petition for judicial review, in particular, that the agency discretion rule found in Iowa Administrative Code 567-65(5) is void." Amendment Seconded by Shearon Elderkin. Roll call vote went as follows: Shearon Elderkin – aye; Marty Stimson – aye; Paul Johnson – aye; Susan Heathcote – aye; David Petty – nay; Charlotte Hubbell – aye; Henry Marquard – aye. Motion carried.

Charlotte Hubbell stated her concern that air quality issues have not been addressed. It really concerns me that there will be 15,000 hogs in a small area concentrated with other Iowa residents.

Henry Marquard called the question to approve the permit as amended. Charlotte Hubbell abstained. Motion carried.

APPROVED AS AMENDED

NOTICE OF INTENDED ACTION – WATER USE & ALLOCATION PERMIT FEES – CHAPTER 50: SCOPE OF DIVISION-DEFINITIONS-FORMS-RULES OF PRACTICE; AND CHAPTER 55: AQUIFER STORAGE AND RECOVERY: CRITERIA AND CONDITIONS FOR AUTHORIZING STORAGE, RECOVERY AND USE OF WATER

Dennis Alt presented the following item.

The Commission is asked to approve the Notice of Intended Action to initiate rulemaking to amend the Iowa Administrative Code: Chapter 50: Scope of Division – Definitions – Forms – Rules of Practice and Chapter 55: Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water. The changes being proposed would revise the fee schedule for water use permits and aquifer storage and recovery well permits.

Water use permits are required of any person or entity using 25,000 gallons of water in a single day during the year, and are issued for a period of up to 10 years. Appropriations from the General Fund have been used to fund the issuance of the water use permits and related costs at approximately $292,600 for SFY 2009.

During the last legislative session, the legislature authorized the department to collect up to an additional $500,000 in fees. The General Fund appropriations do not cover the cost of the program as envisioned in the late 1960's, nor do they cover the funding for the additional requirements placed on the department for this program during the ensuing years, which include the priority water allocation implementation during droughts, implementation of water conservation practices, and well interference compensation resolution. Many permit decisions must be made with inadequate available hydrogeological data. Well-interference cases often require that the department meet with appropriate individuals to assess hydrogeologic, engineering, and environmental impacts of contested water allocation cases. Historically, there has been insufficient funding to meet these needs.

Each year, the Environmental Protection Commission will be asked to set the fee based on the budgeted expenses for that year minus the amount of any unused funds from the previous year and the general fund appropriations that are assumed to remain at approximately $292,600. A more detailed explanation of the current and future program efforts can be obtained from the department's website at *http://www.iowadnr.com/water/quantity.html*.

Stakeholders participating in the development of the *Iowa Water Resource Management Strategy* have also been involved in the development of this rulemaking. The department plans to mail notices about the proposed fee rule to the current water use permittees (approximately 3,500) and to hold three public hearings to obtain additional public comment.

Motion was made by Shearon Elderkin to approve the NOIA as presented. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS PRESENTED

REFERRAL TO THE ATTORNEY GENERAL

Kelli Book presented the following item.

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).

- Kyle Dudden (Grundy County) – Animal Feeding Operation

Description of Facility
Mr. Dudden owns and operates a confined animal feeding operation located at 27644 170th Street in rural Dike, Iowa (Section 11, Lincoln Township, Grundy County). The facility consists of 2,000 head swine finishers (800 animal units).

Alleged Violations (including facts and applicable law)
The manure management plan (MMP) is a crucial aspect of the DNR's animal feeding operation program. The MMP ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to crop land at an agronomic rate in order to prevent over application of manure.

FACTS
Kyle Dudden failed to submit a complete MMP update and proper fees by July 1, 2008. On May 15, 2008, DNR Field Office 2 sent Mr. Dudden a notice of the requirements stating that the complete MMP update and compliance fees must be submitted to the field office by July 1, 2008. On July 11, 2008, DNR Field Office 2 issued a Notice of Violation letter to Mr. Dudden for failing to submit the MMP update and fees by July 1, 2008. The letter informed Mr. Dudden that the MMP update and fees must be submitted by July 31, 2008 to avoid further enforcement and penalty. On August 14, 2008, DNR Field Office 2 sent Mr. Dudden a notice of referral stating that the violations were being referred for further enforcement. To date, Mr. Dudden has not submitted the MMP update and fees for 2008. Mr. Dudden has continued to fail to submit a Phosphorus Index MMP.

APPLICABLE LAW
Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding

operations. The Commission has adopted such rules at 567 Iowa Administrative Code (IAC) chapter 65.

567 IAC 65.16(3)"b" and "c" requires that all persons required to submit a MMP also submit an updated MMP and compliance fees on an annual basis. The compliance fee is fifteen cents per animal unit. Mr. Dudden failed to submit an updated MMP and compliance fees by July 1, 2008 and to date has not submitted the updated MMP or the compliance fees. Mr. Dudden's compliance fee is $120.00.

Iowa Code sections 459.603 and 455B.191(4) authorize the Attorney General to institute legal proceedings necessary to secure enforcement of the water quality provisions of the law. 455B.191(1) authorizes civil penalties of up to $5,000 per day of violation of statutory provisions or DNR rules. Iowa Code section 455B.191(2) authorizes more serious criminal sanctions for negligent or knowing violations.

Past History and Other Violations

Mr. Dudden failed to timely submit the MMP updates and compliance fees for 2006 and 2007. On May 8, 2006, DNR Field Office 2 sent a notice of the MMP requirements to Mr. Dudden and reminded him that his MMP update and fees were due July 1, 2006. On July 11, 2006, DNR Field Office 2 issued a Notice of Violation letter to Mr. Dudden for failing to submit the MMP update and fees by July 1, 2006. On August 10, 2006, DNR Field Office 2 issued another Notice of Violation letter to Mr. Dudden for failing to submit the MMP update and fees by July 1, 2006. On September 12, 2006, DNR Field Office 2 received Mr. Dudden's MMP update and fees for 2006.

On May 15, 2007, DNR Field Office 2 sent a notice of the MMP requirements to Mr. Dudden and reminded him that his MMP update and fees were due July 1, 2007. On July 11, 2007, DNR Field Office 2 issued a Notice of Violation letter to Mr. Dudden for failing to submit the MMP update and fees by July 1, 2007. On August 17, 2007, DNR Field Office 2 sent a notice of referral to Mr. Dudden. On December 10, 2007, the DNR and Mr. Dudden entered into Administrative Consent Order No. 2007-AFO-38 for failing to submit a timely MMP update and fees. The Administrative Consent Order required that Mr. Dudden submit a complete MMP update and fees to DNR Field Office 2 and to pay a $3,000.00 penalty. In February 2008, Mr. Dudden paid the penalty and submitted the compliance fees to DNR Field Office 2. The MMP update submitted was considered incomplete and was submitted on the 2005 forms. The update failed to include a complete Phosphorus Index MMP; only a partial Phosphorus Index MMP was submitted. This is a violation of the Administrative Consent Order since Mr. Dudden failed to submit a complete MMP with the Phosphorus Index.

In addition to the MMP update violations, DNR Field Office 2 has discovered other environmental violations at another facility Mr. Dudden operates. On April 15, 2008, DNR Field Office 2 personnel visited Mr. Dudden's farrowing site located at 29148 160th Street in rural Dike, Iowa (NW ¼, Section 6, Grant Township, Grundy County) and discovered improper solid waste disposal and open burning. DNR Field Office 2 personnel observed a large pile of solid waste from the confinement building, and the site operator indicated that the solid waste had always been burned on site. Additionally, DNR Field Office 2 personnel noted that the concrete

manure storage tank did not have adequate freeboard. There was only 2-3 inches of freeboard and one foot of freeboard was required. On April 22, 2008, DNR Field Office 2 issued a Notice of Violation letter to Mr. Dudden for the improper solid waste disposal, open burning, and freeboard violations observed during the April 15 visit.

Witnesses
Dale Adams, DNR Field Office 2 environmental specialist, will be DNR's potential witness. Mr. Adams will be available during the October 14, 2008 EPC meeting to answer additional questions.

Motion was made Susan Heathcote to refer Kyle Dudden to the Attorney General. Seconded by Paul Johnson. Motion carried unanimously.

REFERRED

CDI/WINNEBAGO: APPEAL OF PROPOSED DECISION

Anne Preziosi, DNR Attorney presented the following item.

On several separate occasions, CDI and Winnebago appealed DNR's determinations that the CDI and Winnebago facilities constitute one major stationary source at their locations in both Charles City and Forest City, Iowa. These appeals have been before the EPC once already, on appeal of the administrative law judge's decision to grant summary judgment. That decision was ultimately overturned by the Hancock County District Court, who remanded this matter back for a full contested case hearing.

On May 28 and 29, 2008, a contested case hearing was held before an administrative law judge in the consolidated appeals. A Proposed Decision was issued on August 11, 2008, upholding DNR's determinations that the CDI and Winnebago facilities constitute one major stationary source in each city. On September 11, 2008, a joint appeal of the Proposed Decision was filed by CDI and Winnebago.

According to the provisions of 561 Iowa Administrative Code 7.17(5)"d", the director shall issue a schedule for consideration of the appeal. The director has set forth a briefing schedule whereby each party may file a brief and a responsive brief. Briefs shall be due to the director by October 8, 2008. Responsive briefs shall be due to the director by October 20, 2008. Briefs shall be no longer than 25 pages, and reply briefs shall be no longer than 10 pages. Written requests to present oral arguments shall be filed with the briefs.

The record in this case includes the notices of appeal, pleadings, motions, rulings, and filings listed in Attachment "A" to the Proposed Decision, including the record on appeal before the EPC and the District Court; the parties' "Stipulated Facts" filed on May 28, 2008; the exhibits listed in Attachment "B" to the Proposed Decision; the hearing transcript; and the Post Hearing and Reply Briefs of the parties. A copy of the Proposed Decision, including Attachments "A" and "B", is attached. As the record is voluminous, each of the EPC Commissioners will be provided with an electronic version of the scanned record.

INFORMATION

NOTICE OF INTENDED ACTION – CHAPTER 69 – ONSITE WASTEWATER TREATMENT AND DISPOSAL SYSTEMS, NPDES GENERAL PERMIT #4 AND CHAPTER 64 – WASTEWATER CONSTRUCTION AND OPERATION PERMITS

Daniel Olson presented the following item.

The Commission is requested to approve the proposed amendments to Chapter 69, "Onsite Wastewater Treatment and Disposal Systems". The summary of changes to Chapter 69 outline the addition of a time of transfer section as required by Senate File 261, the addition of new technologies and changes to reflect the latest research and experience with onsite systems in Iowa. Changes also include the renewal of NPDES General Permit #4 for discharging onsite systems.

The following is a summary of the proposed amendments to the rules:

- Title changed to "Private Sewage Disposal Systems" to match Iowa Code
- Changes and additions to definitions
- Addition of a time of transfer inspection section
- Addition of final inspection requirement and database tracking
- Changes to the requirements for discharging systems and NPDES permitting
- Changes to septic tank sizing and configuration
- Addition of soil loading rates to absorption system sizing
- Addition of requirements for grease traps, tank abandonment, pump vaults, a grade soil systems, EPS aggregate, peat filters and textile filters.
- Removal of some applications of free access sand filters and waste stabilization ponds.
- Additional requirements for aerobic treatment units.
- General permit 4 will change to include only those discharging onsite systems that pose a substantial risk to water quality.

IAC 567-Chapter 64.15 will change to reflect the change in effective dates of the NPDES General Permit #4.

General Permit #4 Rationale

Written by: Daniel Olson, R.S.

Coverage: All discharging private sewage disposal systems in Iowa

Type of systems covered: Predominantly buried sand filters (~80%), aerobic treatment units (~6%), free access sand filters (~5%), peat filters (~3%), textile filters, lagoons and wetlands (all<2%).

Discharge points: The majority of systems discharge to the ground surface in a homeowner's backyard or to a road or drainage ditch. A smaller percentage discharge directly or close enough to a waterway to be considered to be discharging to a stream.

System performance: The following is a collection of data from US EPA "Onsite Wastewater Treatment Systems Manual" Tables 3-19, representing studies on the treatment performance of various onsite treatment technologies.

Type of system	BOD_5 (mg/L)	TSS (mg/L)	TN (mg N/L)	Fecal Coliforms (cfu/100mL)
Buried Sand filter	8	12.5	30	10^2
Aerobic treatment unit*	27.5	52.5	42.5	10^4
Textile filters	10	7.5	45	10^2

*Aerobic treatment units (ATU) in Iowa require a tertiary sand filter
Source: Siegrist, 2001

This information is consistent with test results in Iowa. The best available information is on sand filters since they are the predominant type of system and have been used for 30+ years.
Typical results for sand filters in Iowa
BOD5: <10mg/L
TSS: <15mg/L
E. coli: <2000 cfu/100mL

Systems that discharge to Class A waterways may require disinfection. This is typically done with UV lights. These results met the current limits for BOD_5 (25mg/L) and TSS (25mg/L) consistently for approximately 88% of the discharging systems in Iowa. The current requirement for E. coli is 235cfu/100ml for systems one mile up gradient of a Class A or C water. Systems not within this area do not have a limit for E. coli. Insufficient data is available on the other 12% of systems to make a scientifically accurate estimate. Nationally, other discharging systems have performed satisfactorily with proper maintenance.
Presently ATU's, textile and peat filters require regular maintenance, ATU's in rule and textile and peat filters through manufacturers requirements. Regular maintenance is important to achieve proper effluent results.

New Limits:

Effluents Discharging To	E. coli cfu/100 mL	CBOD5 mg/L	TSS mg/L
Class "A1", "A3" waters	235	25	25
Class "A2" waters	2880	25	25
All other water use classifications	no limit	25	25

Basis for limits:
The new proposed requirements will include permitting those systems that discharge to designated waters of the state. The BOD5 and TSS limits remain unchanged. The E. coli limit for Class "A2" waterways is relaxed to an obtainable limit without disinfection. These waters are unlikely to be ingested and this limit. More restrictive requirements are not required of non-point sources.

Given that the majority of discharging onsite systems do not directly discharge to waterways, further treatment can be expected as the effluent soaks into the ground. Evaporation can also be significant. With the historically excellent performance of discharging systems in Iowa (particularly sand filters), adequate operation and maintenance can provide a better benefit than effluent sampling. The new permit language requires that only those systems that discharge to, or can reasonably be assumed to enter; designated waters of the state will need to apply for General Permit #4. These systems may impact waters of the state and particularly designated waters. The effluent testing for these systems will be increased in frequency to twice a year. The limits above will apply. The number of permits issued will be more manageable with increased ability by the Department to monitor these systems.

Systems that do not discharge to designated waters of the state will require annual operation and maintenance inspections but no General Permit #4 or effluent testing. They will however be permitted by rule. This means they must operate and maintain their system according to procedures outlined by the Department. Buried sand filters will require an annual inspection by a knowledgeable person including a tank and effluent pipe inspection and inspection of the treatment area. A knowledgeable person can be the homeowner but they must be trained. More complex systems such as ATU's, textile and peat filters will require annual or semi-annual operation and maintenance inspections by a manufacturer or state trained service provider. These inspections may include effluent sampling if required by the manufacturer. Inspection records must be kept by the owner and produced upon demand for sand filters. Aerobic treatment units, textile and peat filters require maintenance contracts and inspection reports must be submitted to the administrative authority. Lagoons and free access sand filters have been removed from the rules as alternatives for residences.

Susan Heathcote stated that she has concerns with some of the changes in the General Permit #4 – page 25 under item 13. I would like to propose that we add back in tile line (subsurface drainage tile) as another requirement for General Permit #4. We need to make sure it's clear that it's either discharged directly to or has the potential to reach a designated water.

Motion was made by Susan Heathcote to amend the NOIA to add the proposed language: Page 25 Item 13 - Portion would read as: "All discharges from private sewage disposal systems which discharge into or have the potential to reach any designated waters of the state or a subsurface drainage tile, shall be treated in a manner that will conform with the requirement of NPDES

General Permit #4 issued by the Department of Natural Resources as referenced in Chapter 567.64. Prior to the use of any system discharging to designated waters of the state or a subsurface drainage tile, a notice of intent to be covered…" The remainder of the language stays the same. Seconded by Charlotte Hubbell. Roll call vote went as follows: Paul Johnson – aye; Shearon Elderkin – aye; Marty Stimson – aye; David Petty – nay; Susan Heathcote – aye; Charlotte Hubbell – aye; Henry Marquard – nay.

Henry Marquard said that his issue is that the rule is designed for those who run a pipeline right to the river. I feel like this is way too burdensome to the average homeowner, because most people have septic fields.

Daniel Olson said that about 80% plus of the systems in the state are soil absorbed. They require little to no maintenance. It's the discharging systems that we would be looking at.

Motion was made by Shearon Elderkin to approve the amended NOIA. Seconded by Susan Heathcote. Motion carried with one no vote by Henry Marquard.

APPROVED AS AMENDED

NOTICE OF INTENDED ACTION – CHAPTER 61 – WATER QUALITY STANDARDS (ANTIDEGRADATION POLICY AND IMPLEMENTATION PROCEDURES)

Lori McDaniel presented the following item.

The commission will be asked to approve a Notice of Intended Action regarding proposed rulemaking to amend the state's antidegradation policy and new implementation procedures.

Antidegradation policy is one of the three components of water quality standards (i.e. designated uses, water quality criteria to protect those uses, and antidegradation policy). The purpose of the antidegradation policy is to set minimum requirements for the state to follow in order to conserve, maintain, and protect existing uses and water quality. The department is required by 40 CFR 131.12(a) to develop and adopt a statewide antidegradation policy and to identify procedures for implementing the policy.

The department is proposing a four-tiered approach and guidance document establishing procedures for implementing the antidegradation policy. The previous draft versions of the antidegradation policy rule, implementation procedures, and other related items can be found at the following web address: http://www.iowadnr.gov/water/standards/antidegradation.html.
The four-tiered approach includes:

Tier 1. Existing surface water uses and the level of water quality necessary to protect the existing uses will be maintained and protected.

Tier 2. Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and

protected unless a review of reasonable alternatives and social and economic considerations justifies the degradation. Such a review will need to be demonstrated in an alternatives analysis, which is an evaluation that must explore non-degrading and less-degrading pollution control measures.

Tier 2 ½ - Outstanding Iowa waters. Where high quality waters constitute an outstanding state resource, such as waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

Tier 3 - Outstanding national resource waters. Where high quality waters constitute an outstanding national resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

Based on recommendations from the Environmental Protection Commission, the department has proposed to add some waterbodies to category Tier 2 ½ - Outstanding Iowa Waters.

Any person may submit written suggestions or comments on the proposed amendments through December 26, 2008. Such written material should be submitted to Adam Schnieders, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034, fax (515)281-8895 or by E-mail to adam.schnieders@dnr.iowa.gov. Persons who have questions may contact Adam Schnieders at (515)281-7409.

Persons are invited to present oral or written comments at public hearings which will be held:

December 3, 2008	11 a.m.	Storm Lake Public Library 609 Cayuga Street Storm Lake, IA
December 3, 2008	6 p.m.	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa
December 4, 2008	11 a.m.	Manchester Public Library 304 Franklin Street Manchester, IA
December 4, 2008	6 p.m.	Washington Public Library 120 E. Main Street Washington, IA
December 5, 2008	1 p.m.	Clear Lake Community Meeting Room 15 N. Sixth St.

Clear Lake, Iowa

December 12, 2008 1 p.m. Wallace State Office Building
Fifth Floor Conference Rooms
502 East 9th Street
Des Moines, Iowa

Motion was made by Charlotte Hubbell to approve the NOIA-Chapter 61 Antidegration Implementation. Seconded by Susan Heathcote.

Susan Heathcote said that we should look at expanding the Outstanding waters list as discussed during public comment. I think it's important to add the HQ waters before it goes out for public comment since they are the most critical ones. We need to get this moving. Waters can still be nominated after it's finalized but some of these waters need to be added right away.

Jon Tack explained that if HQ waters are added to this rulemaking, lawsuits will more than likely be filed on those streams. We then have to prove why they are high quality waters.

Susan Heathcote asked if we can specifically ask the public to comment on whether or not specific waters should or should not be added.

David Petty asked if there would be a conflict of interest between Susan Heathcote and Iowa Environmental Council (IEC) because of the petition that was filed.

Ed Tormey said that generally Iowa's ethic laws look to see whether an individual would receive a personal financial gain through the exercise of their official state duty.

Susan Heathcote publicly disclosed that she is employed by the Iowa Environmental Council (IEC).

Paul Johnson said that he would like to add all of the Outstanding waters now, that way people can then comment on whether or not they should remain as high quality. The Canoe Creek and Turkey River/Trout Run are highly used streams in NE Iowa. We all know it's going to be hard to get streams on the list.

Charlotte Hubbell said that we should err on the side of protecting more streams than not.

Susan Heathcote would like to include the July 3, 2008 draft of streams to the Outstanding Iowa Waters list.

July 3, 2008 Draft

Iowa Antidegradation Implementation Procedure - DRAFT

Appendix B – Outstanding Iowa Waters

STREAMS	DESCRIPTION	Length (Miles)
Baron Spring	Mouth (S2, T91N, R6W, Clayton Co.) to spring source (S4, T91N, R6W, Clayton Co.)	1.99
Bear Creek	Confluence with N. Bear Cr. (S25, T100N, R7W, Winneshiek Co.) to spring source (Mestad Spring) (S29, T100N, R7W, Winneshiek Co.)	4.97
Bear Creek	Mouth (S8, T92N, R7W, Fayette Co.) to W. line of S6, T92N, R7W, Fayette Co.	3.94
X Bohemian Creek	Mouth (Winneshiek Co.) to Howard Co. Rd. V58 (W. line of S2, T97N, R11W, Howard Co.)	12.58
Brush Creek	N. line of S23, T85N, R3E, Jackson Co. to N. line of S1, T85N, R3E, Jackson Co.	5.82
Buck Creek	Mouth (S29, T93N, R2W, Clayton Co.) to W. line of S9, T93N, R3W, Clayton Co.	13.26
X Canoe Creek	Winneshiek Co. Rd. W38 to W. line of Section 8, T99N, R8W, Winneshiek Co.	7.34
Clear Creek	Mouth (Allamakee Co.) to W. line of Section 25, T99N, R4W, Allamakee Co.	3.79
Coon Creek	Mouth (Winneshiek Co.) to rd. crossing in S13, T98N, R7W, Winneshiek Co.	3.22
Ensign Creek (aka Ensign Hollow)	Mouth (S28, T92N, R6W, Clayton Co.) to spring source (S29, T92N, R6W, Clayton Co.)	1.05
X Fenchel Creek (a.k.a. Richmond Springs)	Mouth (S5, T90N, R6W, Delaware Co.) to Richmond Springs (Center of S4, T90N, R6W, Delaware Co.)	1.26
Fountain Spring Creek (aka Odell Br.)	Mouth (SE1/4, S10, T90N, R4W, Delaware Co.) to W. line of NW1/4, S16, T90N, R4W, Delaware Co.	2.82
French Creek	Mouth (Allamakee Co.) to E. line of Section 23, T99N, R5W, Allamakee Co.	5.58
Grannis Creek	Mouth (S30, T95N, R7W, Fayette Co.) to W. line of S36, T93N, R8W, Fayette Co.	3.56
X Hickory Creek	Mouth (Allamakee Co.) to S. line of S28, T96N, R5W, Allamakee Co.	3.24
Little Mill Creek	Mouth (Jackson Co.) to W. line of S29, T86N, R4E, Jackson Co.	6.74
Little Paint Creek	Mouth to N. line of Section 30, T97N, R3W	1.92
Little Turkey River	Clayton-Delaware Co. line to S. line of S11, T90N, R3W, Delaware Co.	3.25
X Maquoketa River	Confluence with South Fork Maquoketa River (S16, T90N, R6W, Delaware Co.) to Hwy 3(N. Line S24, T91N, R7W, Fayette Co.).	8.61
Middle Fork Little Maquoketa River	W. line of S31, T90N, R1E, Dubuque Co. to N. line of S33, T90N, R1W, Dubuque Co.	4.94
Mill Creek (aka Big Mill Creek)	Confluence with Little Mill Cr. to confluence with Unnamed Cr. (S1, T86N, R3E, Jackson Co.)	8.04
Mink Creek	Mouth (S30, T93N, R6W, Clayton Co.) to W. line of S15, T93N, R7W, Fayette Co.	5.94
Nichols Creek (aka Bigalk Cr.)	Mouth (S18, T100N, R10W, Winneshiek Co.) to W. line of S23, T100N, R11W, Howard Co.	4.18
North Bear Creek	Mouth (S25, T100N, R7W, Winneshiek Co.) to Iowa-Minnesota state line	6.39
North Cedar Creek	Mouth (S8, T94N, R3W, Clayton Co.) to W. line of S24, T94N, R4W, Clayton Co.	4.62
X Otter Creek	Mouth (Fayette Co.) to confluence with Unnamed Cr. (a.k.a. Glovers Cr., S22, T94N, R8W, Fayette Co.)	10.89
X Paint Creek	Little Paint Cr. to Rd. crossing, S18, T97N, R4W, Allamakee Co.	12.37
Patterson Creek	Mouth (Allamakee Co.) to E. line of S3, T98N, R6W, Allamakee Co.	4.85
Ram Hollow	Mouth (S11, T90N, R3W, Clayton Co.) to spring source (S10, T90N, R3W, Delaware Co.)	0.66
Silver Creek	Mouth (S4, T99N, R5W, Allamakee Co.) to S. line of S31, T99N, R5W, Allamakee Co.	8.31
Smith Creek (aka Trout River)	Mouth (S21, T98N, R7W, Winneshiek Co.) to S. line of S33, T98N, R7W, Winneshiek Co.	3.42
Sny Magill Creek	Mouth (S23, T94N, R3W, Clayton Co.) to W. line of S6, T94N, R3W, Clayton Co.)	7.57
X Spring Branch	Mouth (S10, T88N, R5W, Delaware Co.) to spring source (S35, T89N, R5W, Delaware Co.)	2.83
X Spring Creek	Mouth (Mitchell Co.) to N. line of S8, T97N, R16W, Mitchell Co.	3.93
Storybook Hollow	Mouth (S7, T86N, R4E, Jackson Co.) to S. line of S12, T86N, R3E, Jackson Co	1.37
Turtle Creek	Mouth (Mitchell Co.) to E. line of S7, T99, R17W, Mitchell Co.	3.45
Twin Springs Creek	Mouth (S17, T98N, R8W, Winneshiek Co.) to springs in Twin Springs Park (S20, T98N, R8W, Winneshiek Co.)	0.61

Turky River HQ water (removed from earlier draft)

Appendix B

Iowa Antidegradation Implementation Procedure - DRAFT

Unnamed Creek	Mouth (S1, T86N, R3E, Jackson Co.) to W. line of S1, T86N, R3E, Jackson Co.	0.73
Unnamed Creek (aka Cold Water Cr.)	Mouth (S32, T100N, R9W, Winneshiek Co.) to N. line of Section 31, T100N, R9W, Winneshiek Co.)	2.46
Unnamed Creek (aka Glovers Cr.)	Mouth (S22, T94N, R8W, Fayette Co.) to W. line of S15, T94N, R8W, Fayette Co.	1.43
Unnamed Creek (aka S. Fk. Big Mill)	Mouth (S8, T86N, R4E, Jackson Co.) to W. line of S17, T86N, R4E, Jackson Co.	0.97
Unnamed Stream (aka Trout Run)	Mouth (S27, T98N, R8W, Winneshiek Co.) to S. line of S27, T98N, R8W, Winneshiek Co.	0.54
Village Creek	Mouth (Allamakee Co.) to W. line of S19, T98N, R4W, Allamakee Co.	13.32
Wapsipinicon River	Confluence with UT in McIntire (S34, T100N, R15W Mitchell Co.) to N. line of (S20, T100N, R15W, Mitchell Co.)	5.24
Waterloo Creek	Mouth (S35, T100N, R6W, Allamakee Co.) to Iowa-Minnesota state line	9.39
Wexford Creek	Mouth (S5, T97N, R2W, Allamakee Co.) to W. line of S25, T98N, R3W, Allamakee Co.	4.42
Grand Total		336.96 miles

LAKES	Description (Section, Township, Range)	Size (Acres)
Big Spirit Lake SGMA	S33, T100N, R36W	5684
East Okoboji Lake SGMA	S29, T99N, R36W	1835
Lower Gar Lake SGMA	S32, T99N, R36W	251
Minnewashta Lake SGMA	S29, T99N, R36W	122
Upper Gar Lake SGMA	S29, T99N, R36W	36
West Okoboji Lake SGMA	S20, T99N, R36W	3,847
Dalton Lake	S34, T84N, R5E	2

Appendix B

Motion was made by Marty Stimson to include the 49 stream segments to the Outstanding Waters list – July 3, 2008 draft as well as including two more public hearings in Waukon (Allamakee County) and Davenport (Scott County). Seconded by Paul Johnson. Roll call vote went as follows: Charlotte Hubbell – aye; Paul Johnson – aye; Shearon Elderkin – aye; Marty Stimson – aye; David Petty – nay; Susan Heathcote – aye; Henry Marquard – aye. Motion carried.

Charlotte Hubbell made note on the implementation procedure on page 5. I think the appendix referenced in 2 ½ should be appendix B.

Commissioners agreed that if more time for public comment is needed, that can be addressed in December.

Henry Marquard called the question to approve the NOIA as amended. Motion carried unanimously.

APPROVED AS AMENDED

CONTRACT - REGIONAL COLLECTION CENTER ESTABLISHMENT GRANT RECOMMENDATIONS

Tom Anderson presented the following item.

The Department received three (3) applications requesting $342,500 in financial assistance through the Regional Collection Center Establishment Grant Program. After reviewing the applications and subsequent requested information, each applicant project is recommended for implementation in the total amount of $317,500.

Four new counties will be added to the number of counties provided with on-going opportunities for proper hazardous materials disposal and hazardous materials education. The total number of counties offering hazardous materials education and disposal to households and conditionally exempt small quantity business generators through the regional collection center program will increase to ninety (90) statewide.

BACKGROUND

Regional Collection Centers are permanent facilities that provide hazardous waste management education and on-going access to proper disposal of hazardous materials generated by conditionally exempt small quantity generator (CESQG) businesses, urban and rural households, and farming operations. Household hazardous materials (HHMs) possess any or all of the following characteristics: toxic, corrosive, flammable or reactive. Funding for the Regional Collection Center program is provided through a portion of the solid waste tonnage fee.

A total of 2,957,014 pounds of waste was accepted, processed, recycled and disposed of through the RCC Program in 2007. These materials represent some of the most toxic materials in the solid waste stream and are being prevented from entering Iowa's landfills.

At this time, the Department is requesting Commission approval to enter into contracts with Fremont, Wapello/Davis, and Woodbury Counties, to expand the Regional Collection Center Programs in their respective service areas.

REGIONAL COLLECTION CENTER ESTABLISHMENT PROGRAM

Regional Collection Center Program: Review Team Recommendations

The following provides a brief description of the RCC establishment grant applications recommended for implementation.

Applicant: Fremont County Sanitary Landfill Commission
2879 250th St.
Sidney, Iowa 51652

Award Amount: $100,000 **Contact:** Mike Fox (712) 374-3087
Cost Share Amount: $95,500

Description: This application will establish a main regional collection center providing proper disposal opportunities and HHM education for Fremont County. The facility will serve approximately 3570 residents and approximately 100 conditionally exempt small quantity generator businesses. Funding is requested for facility construction and site prep, hazardous materials storage unit, equipment, supplies, and educational materials.

Applicant: Ottumwa Wapello County Solid Waste Commission
105 E. 3rd St
Ottumwa, Iowa 52501

Award Amount: $117,500 **Contact:** Jody Gates (641) 683-0694
Cost Share Amount: $93,400

Description: This application is to establish a main regional collection center providing proper disposal opportunities and HHM education for Wapello and Davis Counties. The facility will serve approximately 39,581 residents and 357 conditionally exempt small quantity generator businesses. In addition to on-going access to the main RCC in Ottumwa, at least two mobile collection events will be held in Davis County each year to facilitate convenience for Davis County residents. Funding is requested for facility construction and site prep, hazardous materials storage unit, equipment, supplies, mobile collection trailer, and educational materials.

Applicant: Woodbury County Solid Waste Agency
2210 Ida Ave
Moville, Iowa 51039

Award Amount: $100,000 **Contact:** Nancy Countryman (712) 873-3637
Cost Share Amount: $92,500

Description: This application is to establish a new regional collection center providing proper disposal opportunities and HHM education for Woodbury County. The facility will serve approximately 9880 residents and approximately 150 conditionally exempt small quantity generator businesses. Funding is requested for facility construction and site prep, hazardous materials storage unit, equipment, supplies, and educational materials.

Motion was made by Shearon Elderkin to approve the contract as presented. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS PRESENTED

MONTHLY REPORTS

Wayne Gieselman, Division Administrator, Environmental Protection Division, presented the following items.

The following monthly reports are enclosed with the agenda for the Commission's information and have been posted on the DNR website under the appropriate meeting month: http://www.iowadnr.com/epc/index.html

1. Rulemaking Status Report
2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Manure Releases Report
5. Enforcement Status Report
6. Administrative Penalty Report
7. Attorney General Referrals Report
8. Contested Case Status Report
9. Waste Water By-passes Report

INFORMATION

GENERAL DISCUSSION

PM 2.5 Update

Jim McGraw gave an update on Scott and Muscatine counties and their non-attainment status.

Charlotte Hubbell asked if the Department has recommended ways to deal with ammonia emitted by CAFOs.

Catharine Fitzsimmons said that we have not made any recommendations specific to that. That will be a discussion at our next client contact meeting. There really is no overwhelming source of the emissions, it's a combination of more vehicle pollution, industry, livestock, etc. We will be looking at all sources of emissions.

CAFO Appeals Rules

Motion was made by Henry Marquard to direct the Department to develop rules and procedures related to hearing appeals from CAFO construction permits. Seconded by Shearon Elderkin.

Henry Marquard said that there needs to be clarification on the role the Department plays, what documents should be exchanged between the two sides, how long does each side have, should the hearings be separate from our monthly meetings, etc. There is nothing right now set up to show the burden of proof. The rules and procedures seem to be based on what the chair wants to do. There seems to be no consistent procedure.

Ed Tormey said that they could have a draft rule by the January meeting. Ed also suggested looking at the 35 day requirement.

Commissioners agreed that the rule should not be complicated or take up numerous hours of the Department's legal staff.

Paul Johnson asked if the Department has looked at the number facilities that are being built under the threshold limit.

Rich Leopold said that the lines are specific in code and of course people will go just under the limit. There may be a discussion on whether or not those lines are appropriate. And that's legislative.

Paul Johnson said that if we're getting a lot of complaints from people on the facilities under the threshold, we should be looking at whether that is an issue.

Henry Marquard suggested that we discuss this next month as one of our legislative priorities.

Motion carried unanimously.

Underground Storage Tanks Update

Brian Tormey, Chief of the Land Quality bureau gave an update on the rulemakings for Chapter 135 which deals with the risk based corrective action framework for dealing with leaking underground storage tanks.

A part of this rulemaking will be coming back to the Commission in November as a Notice of Intended Action.

Memo Supplemental Funding Requests

Henry Marquard sent out a letter to Dick Oshlo, Department of Management in support of the Department's supplement funding requests.

Charlotte Hubbell said that she is drafting a letter to Attorney General Miller expressing our concerns over the appearance of the Attorney General's office at the ARRC meeting in both July and August without prior knowledge by us. The ARRC has their own attorney who is fully capable of deciding whether or not to adopt rules by emergency procedure. I believe it's inappropriate for our attorney to be arguing against our position in a public meeting. My position is that if there are five commissioners who agree than it would be appropriate to put this on letterhead and then send it out.

David Petty said that he would like to be informed when the commission is taking a stand on a particular item. Commissioners should not be representing the commission as a whole, but rather as individuals.

Susan Heathcote said that this letter should not go on letterhead but just signed by agreeing commissioners.

Randy Clark said that the voting requirements rule was presented and passed at the ARRC today. There were no questions or comments.

NEXT MEETING DATES

November 10, 2008 – Urbandale
December 9, 2008 - Urbandale

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairperson Henry Marquard adjourned the meeting at 6:00 p.m., Tuesday, October 14, 2008.

_____
Richard A. Leopold, Director

_____
Henry Marquard, Chair

_____
Suzanne Morrow, Secretary

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