

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
APRIL 21, 2009

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 Secretary Sue Morrow at 10:10 a.m. on April 21, 2009 in the Ingram Office Building, Urbandale, Iowa.

COMMISSIONERS PRESENT

- Suzanne Morrow, Secretary
- Gene Ver Steeg
- David Petty
- Susan Heathcote
- Henry Marquard, Chair – arrived at 10:10
- Paul Johnson
- Martin Stimson
- Shearon Elderkin

COMMISSIONERS ABSENT

- Charlotte Hubbell, Vice Chair

ADOPTION OF AGENDA

Motion was made by Gene Ver Steeg to approve the agenda as presented. Seconded by David Petty. Motion carried unanimously.

APPROVED AS PRESENTED

APPROVAL OF MINUTES

Motion was made by Susan Heathcote to approve the March 17, 2009 minutes as presented. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS PRESENTED

DIRECTORS REMARKS

Director Leopold presented appreciation plaques to Henry Marquard, Sue Morrow and Shearon Elderkin for their valuable service to the citizens of Iowa.

Legislative issues

The combined bill regarding manure on frozen ground & stockpiling of dry manure still remains active. The Department is registered as opposed to the current draft.

Budget

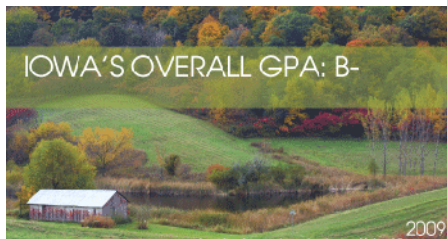
The Department will see a 15% cut to the general fund in FY10.

The Environment First Fund will remain as status quo. That contains \$18 Million for REAP and other environmental programs.

We have a \$100 million dollar request within the I-JOBS proposal. Most projects are dealing with water quality, low head dams, lake restoration, etc... We are very hopeful that this will pass.

2009 ENVIRONMENTAL REPORT CARD

Director Leopold presented Iowa's first Environmental Report Card.



B+ [IOWANS OUTDOORS](#)
Hunting and fishing license sales are down in Iowa; that's just one indication of fewer Iowans getting outdoors. However, our state's residents are willing to help and learn, as volunteer and educational numbers remain strong.

C [NONGAME BIRDS](#)
While some species' numbers show promise, the majority of Iowa's nongame birds - including songbirds - are failing to make the grade. Unless Iowans create proper grassland, wetland and woodland habitat, the state's nongame birds will continue their steady decline.

B- [LAND PROTECTION](#)
What we do on the land directly impacts our water and air - and with 98 percent of Iowa's land privately owned, it's important Iowans make responsible decisions on their land and protect our public areas.

B [CLEAN AIR](#)
Iowa has some homework to do when it comes to air quality, but regional and local efforts can make long-term improvements in our state's air.

B [DEER](#)
Iowa hunters are acing their assignment to reduce the state's deer herd. Deer numbers are falling statewide, with 85 percent of counties meeting population goals or on track to meet goals in the next few years.

B [CLEAN LAKES](#)
Sediment and nutrients are creating challenges for Iowa's lakes, but a majority of lakes are clearing up - literally. Iowans are taking notice of clear water, a sign of a healthy lake and better fishing, boating and swimming.

B [GAME BIRDS](#)
Iowa's pheasants are struggling against brutal winters and ever-shrinking habitat, keeping hunters - and their dollars - away from the fields. Canada geese and wild turkey, despite slight population declines, continue to test Iowa hunters with strong hunting opportunities.

C [WATER QUALITY INDEX](#)
A new tool makes it easier to rate the health of our streams and lakes, but it's showing Iowa has plenty of room for improvement. The DNR is creating a new strategy to combat low water quality

For a complete look at the Report card, please visit <http://www.iowadnr.gov/reportcard/index.html>

Richard Leopold said that when we graded these particular areas, we took the data, level of effort, trends, and status and that is what determined the grade.

Paul Johnson asked if there was any way to bring this down to a more local level. County by county. I think there is a benefit for people knowing how to grade these indicators in their area. People in the area could go out and grade their lakes, watershed, recreational areas based on certain criteria.

Susan Heathcote said that in the area of water quality we are holding steady but not really getting the results we are looking for. Until we can really address the biggest issue in this state which is non-point sources, we are not going to make a significant change in this trend.

INFORMATIONAL ONLY

PUBLIC PARTICIPATION

WARREN CHRISTY submitted the following comments:

Thank you for the opportunity to appear before you today. Over the years, I have attempted to supply all of you with information regarding the industrial waste disposal operation in Harrison County by the Cargill Corp. Facility in Blair Nebraska. Jan Heeren most recently voiced our concerns last month. We also reported these rate and soils problems to this Commission about seven years ago through Rose King of Mondamin.

This saga has actually been ongoing since 1995.

Let me spend a minute hitting the most recent, top line issues. There's been a bit of a maze created out of recent events.

First, Matt McDonald, DNR, got some control of the situation a few years ago and the environmental issues were made more tolerable. In what we see as an effort to circumvent DNR jurisdiction, Cargill and Gary Chamness worked with IDALS to register this waste by-product as a soil conditioner. This opened Pandora's Box and allowed the application of any product, at any rate, on any soil or any location with no restrictions or legal responsibility.

Second, on April 3rd, at our home east of the Chamness property, Terry Jensen of IDALS stated that this location was clearly a waste disposal site. Then last week Terry said he could not cancel the permit just because it was evident that rates were too high, as there was no proof of pollution such as a fish kill.

When contacted earlier this year, Mr. John Whipple, IDALS Division Director, stated they would rescind the registration, if DNR would re-permit the products.

Third, Chad Stobbe, DNR, wrote in December of 2008 that DNR had no jurisdiction on a registered IDALS product. Mr. Stobbe stated, “these materials are considered products/commodities and never fall under the jurisdiction of solid waste regulations when used for their approved purpose.”

My question is two-fold. First, are these products truly used for their approved purpose? Everyone who sees the operation (such as Mr. Jensen, Mr. Klommmhaus and various DNR investigators) refer to this as an industrial waste disposal operation. And two, why, when everyone who visits sees the potential for harm, if not actual harm, is nothing being done? Especially when you consider this is being replicated at other sites throughout Iowa.

Following are examples of what is happening currently and the direction we hope the resolution will go.

There are 2-3 applications happening on the same ground – owned by the waste disposal contractor – the Chamness family. And, as we left the farm on Saturday, they were readying for a new application method – waste through an irrigation system.

Mercury has been found by Nebraska in gypsum coming from the Cargill Blair plant. This gypsum is still permitted by IDALS. Mr. Mathis may still have samples he secured from the land. And if not, there is still a pit lined with it where he got the samples.

ALICE CHRISTY stated her concerns with the daily amount of heavy traffic on their county roads. 40-60 semi trucks per day hauling waste products to be disposed on the land. We’re also concerned with the quality of life, house values, soil conditions and water quality.

We have not been able to entertain guests at our home for over 15 years because of the smell. We have had one family dog shot and found along side of the road. We don’t know if it’s because of the operators of this operation but given the fact that Warren has been threatened on two separate occasions with a pipe wrench leaves us to believe that it was caused by them.

Though we have not received negative test results from our well water, we will continue to test.

We are asking that there be a solution to this problem.

Paul Johnson asked what type of soil condition is the land where the waste is being disposed on. Why isn’t this a disposal site?

Wayne Gieselman said that Iowa Code chapter 200 puts this under the jurisdiction of IDALS.

Susan Heathcote said that we do have the jurisdiction to ask IDALS to address these issues.

NEILA SEAMAN, Director of the Iowa Chapter of the Sierra Club respectfully requests that the EPC direct the DNR to extend until May 29th the second batch of use designation comments. There have been errors discovered on the DNR’s website and as a result the public has not had access to complete information. We need the accurate information. This issue is extremely

complicated even when the best information is available to the public. We need to be able to offer simple and accurate information to our members about the streams being recommended for reclassification and designations. I encourage you to extend the public comment for another 30 days.

We also have a few questions regarding the status of Phase I. We don't expect answers to these questions today. Where is EPA on the Phase I review? Would it be possible to obtain a list from DNR on all of the affected permits from all phases of the UAA process? How many of the permits are now green lighted for renewal? Of those, green lighted for renewal, how many of them have been renewed? Of those renewed, what is the compliance schedule break down for them? Are any UAA affected facilities actually in compliance with the new requirements?

The Commission asked the Department if it was possible to extend the public comment for 30 days.

SONIA SKIDMORE, representing ICCI commented on the recently approved permits in Dallas County. The operations have been housing the nearly 15,000 hogs for a few months now. Just last week they started planting the trees that were ordered as a stipulation. They have removed some of the rock barriers that would have blocked drainage. We are confused as to why that happened. We want to make sure that the stipulations made with approval of the permit are being followed rather than just trusting they are being followed.

We ask and hope that the manure on frozen ground bill be passed with strong regulations.

LYNN LAWS, from the Iowa Environmental Council also requested that the UAA comment period be extended until the end of May. The Council wants to ensure that Iowans had their time to submit comment. There are 46 unnamed streams on this notice of intended action. It took us extra time to locate each stream and to match it up with the errors that were mentioned by Neila. Because there was incorrect information on the list and the DNR website, it took us even longer. We also found other inconsistencies with the list and the DNR database.

(Lynn distributed a copies of a 2009 UAA Designations (Round 2) DNR Proposal map and a list of Recreational Use Designation streams.)

EMILY PIPER, representing the Iowa Rural Water Association and the Iowa League of Cities regarding the Notice of Intended Action to amend the wastewater monitoring rules. We offer our support for those changes in the amendments. We have been working with the DNR staff very closely. The ARRC proposed a 70 day delay on portions of the wastewater monitoring rules. After that occurred we sat down with the DNR to get that resolved. We did reach a consensus on how to resolve that. I ask that you enter into rulemaking on those two provisions. I think they are a good compromise that continues to balance the desire for increased monitoring on small communities.

Henry Marquard asked the Commission if they would like to recommend to the DNR that it extend the public comment on the rulemaking for UAA designations.

Motion was made by Sue Morrow to recommend that DNR extend the public comment on the UAA rulemaking until May 31, 2009. Seconded by Shearon Elderkin. Motion carried unanimously.

-----End of Public Participation-----

CONTRACTS WITH THE DIVISION OF SOIL CONSERVATION, IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP, FOR WATERSHED IMPROVEMENT PROJECTS

Steve Hopkins, Coordinator of the Nonpoint Source Program presented the following item.

Recommendations:

Commission approval is requested for one-year and multiple-year service contracts with the Division of Soil Conservation, Iowa Department of Agriculture and Land Stewardship. The contracts will begin on April 23, 2009. The total amount of these contracts shall not exceed \$1,560,405. DNR shall have the option to renew these contracts as long as the contracts and any extensions do not exceed a six-year period.

Funding Source:

These contracts will be funded through FFY 2008 EPA Section 319 grant funds.

Background:

The following project contracts are presented for approval:

Iowa Learning Farm	1-Year	\$158,325
Water Quality for Rathbun Lake	3 Years	\$250,793
Tete des Morts Watershed Project	5 Years	\$472,862
Lake Geode Watershed Project	5 Years	\$90,000
Williamson Pond Watershed Project	4 Years	\$238,425
Muchakinock Creek Watershed Project	5 Years	\$350,000
Total		\$1,560,405

Purpose:

The parties propose to enter into these contracts for the purpose of retaining the Contractor to implement watershed improvement activities for the projects selected.

Contractor Selection Process:

These projects were chosen using a grant proposal application and committee review process.

Paul Johnson asked Mr. Chuck Gipp if he wanted to make any remarks regarding this program.

Chuck Gipp, Director of the Division of Soil Conservation – IDALS said that these are the projects that have been identified as priority for this funding.

Director Leopold stated that IDALS and the DNR work closely together on water quality efforts.

Motion was made by David Petty to approve the contracts as presented. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS PRESENTED

AMENDED NOTICE OF INTENDED ACTION - IAC 567 - CHAPTER 101 - SOLID WASTE COMPREHENSIVE PLANNING REQUIREMENTS

Chad A. Stobbe, Environmental Specialist Senior in the Land Quality Bureau presented the following item.

The commission is being informed of an Amended Notice of Intended Action regarding proposed rulemaking to amend Iowa Administrative Code 567 Chapter 101 "Solid Waste Comprehensive Planning Requirements."

The Notice of Intended Action published in the November 5, 2008, Iowa Administrative Bulletin as **ARC 7310B** has been extended. The department solicited informal feedback from the public regarding a proposed rulemaking to IAC 567 Chapter 114 "Sanitary Landfills: Construction and Demolition Wastes" that may impact the comments received for Chapter 101, and therefore the public comment period is being extended. Notice is hereby given that an additional public hearing will be held on Tuesday, May 12, 2009, at 1 p.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa. Persons are invited to present oral or written comments at the additional public hearing.

INFORMATION

28E AGREEMENT BETWEEN THE IOWA UNDERGROUND STORAGE TANK FUND BOARD AND THE IOWA DEPARTMENT OF NATURAL RESOURCES FOR LONG-TERM FUNDING OF THE DEPARTMENT'S UNDERGROUND STORAGE TANK SECTION

Wayne Gieselman, Administrator of the Environmental Protection Division presented the following item.

The Department is requesting approval for entering into a 28E agreement with the UST Fund Board ('the Fund') that will provide a portion of the funding needed for the management and operation of the Department's UST Section, and for matching federal UST and LUST program

grants. Receipt of the funding is contingent upon a) the DNR meeting with the Fund administrator on a regular basis during the year, b) developing a mutually agreed upon annual goal with associated milestones to be met by the DNR, and c) quarterly meetings between DNR central and field office staff to set priorities and report on progress.

The source of funding for this agreement is the state's tank registration fees. Per statute (455B.479), an owner or operator of an underground tank shall pay an annual storage tank management fee of sixty-five dollars for each tank over one thousand one hundred gallons capacity. DNR collects the fees and issues the tags. Twenty-three percent of the fees collected are deposited in DNR's storage tank management account of the groundwater protection fund. Seventy-seven percent of the fees are transferred and deposited in the comprehensive petroleum underground storage tank fund which is managed by the UST Fund Board. A total of \$500,000 to \$525,000 is collected on an annual basis. In FY'08 \$385,000 was transferred to the UST Fund Board while DNR retained \$115,000.

Funding for DNR's Underground Storage Tank Program (UST) remains problematic. In order to have a balanced budget DNR has, for the past four years, relied upon the portion of the tank tag fees that are transferred to the UST Fund Board. The mechanism for the reverse transfer has been a 28E Agreement with the Fund. The Department submitted a proposed change to the statute to have 100% of the tank registration fees deposited in DNR's UST management account of the groundwater protection fund. The bill, however, did not receive strong support and failed to move beyond legislative subcommittees. This alternate approach (28E agreement) was proposed by the UST Fund Board. Essentially, this agreement is a continuation of the practice of the past four years, with a couple key differences. This long-term agreement will benefit the department and its mission in the following ways:

- Provides a reliable, long-term, funding source for essential operations of the UST program. The agreement is written in such a way that DNR can plan and manage its annual budget with a certainty on the amount of revenue it will receive from the Fund. Any failure of DNR to meet milestones (and consequential withholding of funds) will not be applied to the current budget year, but rather the following year. Further, the Fund has committed to payment upon completion of the milestones if completed within the following year.
- Provides a mechanism for the DNR and the Fund to jointly plan and determine strategies that each agency can implement in order to achieve the overall goal of closing LUST sites prior to the 'sunset' date of the UST Funds.
- Has built in flexibility to allow DNR to address unplanned events /unforeseen time commitments which may demand DNR's attention as a higher priority than the set milestones (e.g., floods of 2008, economic stimulus funding and associated planning).
- The agreement is written such to not limit the funding amount to only the equivalent of the tank tag fees. Additional funding could be obtained with negotiated additional milestones.

Wayne Gieselman gave a brief overview on the history of the UST program.

Paul Johnson stated his concerns with the possibility of the UST Fund Board directing the DNR in rulemakings.

Wayne Gieselman said that is a legitimate concern. We are working closely to ensure good communication with the UST Board. I don't view this as an approach that will tie our hands.

Motion was made by Gene Ver Steeg to approve the agreement as presented. Seconded by David Petty. Motion carried unanimously.

APPROVED AS PRESENTED

NOTICE OF INTENDED ACTION - IAC 567 - CHAPTER 135 & 134: OPERATOR TRAINING RULES AND CONFLICT OF INTEREST

Elaine Douskey, Program Supervisor – Underground Storage Tank Section presented the following item.

The Department is presenting the proposed additions to Chapters 135 and 134 to implement the EPA's Operating Training and UST Inspections guidelines, part of the Federal Energy Policy Act of 2005, and as authorized per legislation passed in 2007 (SF 499/HF792) (Iowa Act).

The rules outline three classes of operators that must be trained and designated at all underground storage tank (UST) facilities: Class A, Class B, and Class C. In brief, Class A operators have primary responsibility to operate and maintain the UST system; Class B operators actually implement applicable UST regulatory requirements and standards in the field; and the Class C operator is an employee at the UST site (e.g., cashier) and is the first line of response to events indicating emergency conditions. These rules contain specific job duties, training requirements, and training deadlines applicable to each operator class.

Additions to Chapter 134 are also included in this proposed rule package to include conflict of interest provisions contained in the EPA guidelines applicable to compliance inspectors who are also a designated Class A or B operators.

Elaine Douskey said that EPA released guidelines and those are included within this proposed rule. Back in 2007, we went before the Iowa legislature and received statutory authority to implement the federal rules.

There is also a conflict of interest provision that basically states that operators of the facility can not do compliance inspections. These rules satisfy those training requirements. Operators need to be trained by 2011. DNR will not be conducting the actual training but we will approve the courses.

We have held four stakeholder meetings. The intent is to submit the Notice of Intended Action for decision at the May meeting for decision with a public hearing held in July. EPA's guidelines state that each state needs to have their guidelines in place by August 2009.

Gene Ver Steeg asked how much this will cost the average convenience store.

Elaine Douskey said that she did not presently have that information, but would have it in the final version of the Notice of Intended Action .

INFORMATION

CONTRACT WITH IOWA STATE UNIVERSITY FOR 2009 IOWA LAKES MONITORING

Eric O'Brien, Supervisor of the Watershed Monitoring and Assessment Section presented the following item.

Recommendations:

Commission approval is requested for a one year-service contract with Iowa State University of Ames, Iowa. The contract will begin on May 11, 2009 and terminate on February 26, 2010. The total amount of this contract shall not exceed \$217,190.

Funding Source:

This contract will be funded through Infrastructure (60%) and Lake Restoration Program (40%).

Background:

This contract encompasses the majority of lake water quality monitoring conducted as part of the state-wide water monitoring program and is the primary basis for assessing the state's lake water quality. The purpose of this program is to define the condition of Iowa's lakes, characterize existing and emerging issues, measure changes or trends in water quality, and provide information to citizens and decision-makers. These data have historically been used for reporting on the status and quality of lakes in fulfillment of Clean Water Act requirements. The data are also utilized heavily for management of our lake resources.

Purpose:

The parties propose to enter into this Contract for the purpose of contracting with ISU to provide the DNR with lake monitoring data. As part of this contract ISU will provide field and analytical support for monitoring on 131 of Iowa's significantly and publicly owned lakes. The lakes are monitored three times during the field season for basic water chemistry, nutrients, plankton composition, and clarity.

Specific ways the DNR intends to utilize the information gathered and analyzed in this Contract include: to fulfill Clean Water Act requirements of the department including: biennial reports on

the status of lake water quality, impaired waters listing, and total maximum daily load reports; manage and evaluate lake resources; and allocate lake restoration funds appropriately.

Contractor Selection Process:

Code of Iowa allows the Department to contract, with public agencies of this state, to provide all laboratory, scientific field and environmental quality evaluation services necessary to fulfill requirements of Clean Water Act Reporting. ISU Limnology Laboratory is one of two laboratories that have conducted monitoring for Iowa's Ambient Lakes Program in the past. Because of additional work being conducted by ISU, for the DNR's Lake Restoration Program, this contractor offers an opportunity for partnership and shared expenses.

Paul Johnson asked if IOWATER is coordinating, so we are getting monitoring as well?

Eric O'Brien said that the IOWATER program does function within our water monitoring section of the DNR. Within the IOWATER program we are trying to put together additional quality assurance documentation that are assessment staff will be able to utilize that data more in the future. We are trying to ensure that this will be a completely integrated program in the future.

Paul Johnson asked if IOWATER is coordinating, are we also getting monitoring as well?

Eric O'Brien said that the IOWATER program does function within our water monitoring section of the DNR. Within the IOWATER program we are trying to put together additional quality assurance documentation so that our assessment staff will be able to utilize that data more in the future. We are trying to ensure that this will be a completely integrated program in the future.

Paul Johnson said that Minnesota has a very strong citizen monitoring program.

Eric O'Brien said we haven't discussed volunteer efforts within the current contracts but we do have a lot of work that the contractor and department does with various lake groups around the state based on a lot of the data that is collected here.

Gene Ver Steeg asked if one sample per lake was adequate.

Dr. Downing, Iowa State professor, said yes. For most of the lakes that we work on, one sample has proven to be adequate and it's usually at its deepest point. The lakes where this doesn't work well are the ones that have many little bays.

Paul Johnson asked Dr. Downing if he sees a role for citizen monitoring?

Dr. Downing said that we want to ensure that our samples and test results are of outmost quality. Citizen monitoring is great for when situations arise that are not baseline.

Motion was made by Sue Morrow to approve the contract as presented. Seconded by Paul Johnson.

APPROVED AS PRESENTED

CONTRACT – DAN CORBIN, INC. – IOWA ORTHOPHOTO QUALITY ASSESSMENT

Chris Ensminger, GIS Section Supervisor presented the following item.

Recommendation:

The Department requests Commission approval of a contract in the amount of \$126,900 in 2009 and not to exceed \$130,000 in 2010 with Dan Corbin, Inc. (DCI)

This request would allow Dan Corbin, Inc., a licensed surveyor and photogrammetrist to collect highly accurate, photo identifiable ground survey points and perform subsequent quality assurance testing for the aerial photography collected as part of the Iowa LiDAR Project. It is our intention to issue a one-year contract in April 2009 to cover approximately ½ of the state with the possibility of extending it another year (if funding allows) for the second ½.

Funding Source:

This project will be funded through Pooled Technology dollars. The Department received a grant from the Pooled Technology fund for the work in 2009. Dollars for 2010 have been requested from the same fund and the request has been scored in the top three. If the legislature decides not to fund the Pooled Technology program in 2010, the contract will NOT be extended to cover that effort.

Purpose:

The purpose of this contract is to ensure data being collected for the Iowa LiDAR Project (both LiDAR and aerial photography) are meeting the accuracies stated by those vendors. Furthermore, this contract will quantify any errors so the Department can effectively evaluate the utility of the data for such uses as floodplain mapping, levee assessment, sediment basin design, etc.

Consulting Firm Selection Process:

This contractor was chosen for several reasons. First, Dan Corbin, Inc. is an Iowa firm. They have a long and proven history of completing successful projects of this nature locally. Lastly, they offered the Department the most affordable rates of all bidders.

Scope of Work:***Executive Summary for NSSDA Horizontal Accuracy Testing***

DCI will use the National Standard for Spatial Data Accuracy (NSSDA) to measure and report the horizontal positional accuracy of the final digital orthorectified photography. The NSSDA provides a step-by-step approach and sound statistical methods for measuring and reporting the positional accuracy of digital spatial data.

Briefly, the steps in applying the NSSDA are:

1. Select a set of test points from the data set being evaluated.

2. *Select an independent data set of higher accuracy that corresponds to the data set being tested.*
3. *Collect measurements from identical points from each of those two sources.*
4. *Calculate a positional accuracy statistic using the NSSDA horizontal accuracy statistic worksheet.*
5. *Prepare an accuracy statement in a standardized report form. A data set's accuracy is tested by comparing the coordinates of points within the data set (digital orthos) to the coordinates of the same points from an independent data set of greater accuracy. Points used for this comparison must be well-defined. Twenty or more test points are required to conduct a statistically significant accuracy evaluation of an area. An area of a minimum of one county in size of digital orthos will be tested as a whole to meet the specified horizontal accuracy at 95% confidence level. An accuracy statement will be prepared for the final digital orthos for each area tested.*

Motion was made by David Petty to approve the contract as presented. Seconded by Marty Stimson. Motion carried unanimously.

APPROVED AS PRESENTED

Cargill Sludge update

Dan Stipe and Barb Lynch gave an update on the Cargill sludge issue.

Henry Marquard asked if there were any rules of the DNR that would come into play?

Dan Stipe said nothing unless there was a water quality violation.

Susan Heathcote asked the Department to make recommendations to IDALS on how to handle the industrial waste disposal issues.

Jon Tack said that changes would require a statutory change by IDALS.

Richard Leopold said that we will bring this up with IDALS and will report back to the commission.

ANTHONY HERMAN DBA MIGHTY GOOD USED CARS - APPEAL OF PROPOSED DECISION

Jon Tack, attorney for the Department presented the following item.

On February 5, 2008, the Department of Natural Resources (Department) issued Administrative Order No. 2008-WW-03 (Order) to Anthony Herman dba Mighty Good Used Cars for violations of Department rules regarding storm water control and discharge. The Order required Mr. Herman to revise his pollution prevention plan to prevent further discharge of contaminants by March 1, 2008, to implement the revised pollution plan by April 1, 2008, and to pay an administrative penalty of \$7,500. That action was appealed. A hearing regarding the appeal of the order was held on September 23, 2008 and the administrative law judge issued a Proposed Decision on October 6, 2008. At the time of the hearing, Mr. Herman had revised his pollution

prevention plan and the plan had been implemented. Therefore, the only issue left to be resolved was the penalty amount. In the Proposed Decision, the administrative law judge reduced the penalty to \$3,000. Mr. Herman has appealed the proposed decision.

The Exhibits offered at hearing and the transcript of the contested case hearing were distributed to the Commission. The Commission's decision will become the final agency action.

Jon Tack said that this matter started back in the fall of 2006. The Department received some complaints in November regarding potential fluid spills. Mr. Herman owns a car wash and oil change facility. He was also selling cars and junking vehicle materials. Mr. Gibbons from our field office went out and investigated. He found that there was not a required storm water permit. He did observe some staining on the ground. Mr. Gibbons did not seek enforcement action at this point. But he did inform Mr. Herman on what was required of him. Mr. Gibbons followed up after his visit and noted that the permit was filed.

During his March 5, 2007 visit, he noticed big piles of contaminated snow. Mr. Gibbons informed Mr. Herman that this will be a big problem come spring when it starts to melt.

On March 15, 2007, the Department received a complaint call from Polk City. So we visited the site again and noticed a hose running straight to the storm sewer. We noted and documented that the hose was draining contaminants and that there was a sheen in the storm sewer.

Since that time, Mr. Herman has been in compliance. We have received no further complaints. But we did have this intentional action of pollution, despite the fact that we previously visited the site and tried to work with Mr. Herman to make sure that everything was in compliance. So we issued a fine of \$7,500 that went to the Administrative Law Judge who in turn reduced it to \$3,000. That is the reason that the Department is challenging this. I don't believe that anyone should receive a triple reduction for simply doing what the law requires. We legally believe the penalty should be returned back to the originally order of \$7,500.

Ernie Kersler, attorney representing Mr. Anthony Herman, then provided information in support of his client. In the beginning of December 2006, there was a long enduring conflict with Polk City. At that point in time, the city administrator complained to the DNR and DOT about Mr. Herman's operations. On the 1st of March, Iowa was inundated by a foot of snow. Mr. Herman had to push it somewhere. Mr. Herman runs a lube shop. There will be drippings from vehicles. All of Mr. Herman's property is covered in concrete with curbs and gutters and nothing is directly discharged on to the street. When the DNR came out on March 5th to observe these piles of snow and sheen, Mr. Herman asked what to do about the snow. Well, the snow melted and on the 13th of March at 10:00 AM the Iowa Patrol, local police officers, and DOT officials showed up at the site. Mr. Herman was charged criminally by the DOT and was arrested right before Labor Day weekend for operating a junk yard without the proper license. On March 14, 2007 DNR officials followed up at the site and said that there was less than a quart of either antifreeze and/or motor oil in the sewer. Mr. Herman immediately cleaned up the mess and we haven't had any further discharges. Looking at this today, we had a very small modest amount of fluid leave the property and the Department wants to charge \$250 an ounce – \$3,000 for a quart is a bit excessive. Please consider these facts and reduce the cost.

Henry Marquard confirmed that neither side is contesting the facts of the situation but rather the amount of the penalty.

Paul Johnson asked if this was the only time that pollution was discharged from this site.

Mr. Herman said that he made every effort to comply. The City never informed me to clean up the snow. The City waited until the snow melted and then made a big production about it. It's not in my best interest to pollute my property. We never had any violations before or after this event. We did what we were told to do. If we would have been told to truck the snow way, we would have done that.

Sue Morrow asked Mr. Herman to explain the hose.

Mr. Herman said that he wanted to get the water in the parking lot drained so he could put down an absorbent. We weren't trying to drain off any contaminants. We were trying to do what's right but they didn't give us a chance to do that. But we also get run-off through my property from the apartment complex nearby.

Susan Heathcote stated her concern about the inappropriate actions of using a hose to drain off the property.

Jon Tack said that the City's actions should not be taken into consideration. We are dealing with the complaints that the Department received. Take note that there were multiple pollution discharges at this site. Despite pressures from local officials to take a more aggressive approach, our first action was trying to work with Mr. Herman. To intentionally drain the water with contaminants directly into the storm sewer is not acceptable. Why didn't he try to contain the soiled snow or water from going into the drain? The fact is that the Department tried to help someone achieve compliance and they intentionally drained contaminants into the storm sewer. The ALJ based her decision and penalty amount on the one filed agency violation.

NO ACTION TAKEN

TED DICKEY, DBA DICKEY FARMS (MUSCATINE COUNTY) – ANIMAL FEEDING OPERATIONS - REFERRALS TO THE ATTORNEY GENERAL

Kelli Book, Attorney representing the Department and Jim Sievers from the field office presented on behalf of the Department.

We are here to ask that the administrative order that was issued to Mr. Dickey on August 24, 2006 be enforced along with the administrative penalty as deemed appropriate.

Kelli passed around a timeline of events. From July 2003 to August 2006, the Department sent at least ten letters explaining the regulations and also requiring him to remove the manure from the site and be properly land applied. Many extensions were given. The order issued in August

2006 was appealed. Over the course of the next year, the Department worked with Mr. Dickey's attorney. We were unable to reach a conclusion, so we moved for a hearing. About four days before the hearing we did come to an agreement. That agreement then became a consent order. Both parties signed this in March 2008. Within this order, Mr. Dickey agreed to remove the solid and liquid manure in the basin by June 1, 2008 and to pay a penalty of \$4,000. There was a provision in the consent order that stated that if the manure was not removed by June 1, an additional \$2,000 penalty would be assessed and if the manure was not removed by September 1, a further penalty of \$2,000 would be assessed.

DNR field staff visited the site after the June 1 deadline and no change was noted. They visited the site after the September 1 deadline and again no change. In September 2008, we sent another letter to Mr. Dickey stating that the manure needed to be removed immediately and the penalty paid as well. I spoke with Mr. Dickey in November, since his attorney was no longer representing him. Mr. Dickey told me that the liquids were removed in the spring but due to the rain the basin had filled back up and the solids were still there. So we're back to square one with the basin not cleaned out. This is going on five to six years. I did explain to Mr. Dickey that if this is not done by the first of the year, we will be going before the EPC for referral. I sent him a payment plan and nothing was sent back. DNR field staff went out to the site in March 2009 and nothing has changed. We are asking you to enforce the consent order that both parties agreed to and have this basin cleaned out properly.

Mr. Dickey said that all liquids were taken out last spring but with the weather he was unable to get out the solids. He did explain to Ms. Book in November that everything was frozen and there would be no way to get to it. He is trying to get this cleaned out. If he could have stockpiled the solids it would have been done last summer.

Henry Marquard asked what kind of operation Mr. Dickey ran.

Mr. Dickey said it was a hog operation. He quit raising hogs and rented the barns to a neighbor. He had hogs in it for four years and he quit in 2003.

Henry Marquard asked about the extended timeline to deal with the issues raised by the Department.

Mr. Dickey said that when his neighbor first quit operations, he had plans to repopulate it. When he checked into that, he realized it wouldn't be feasible. That decision wasn't made very quickly, it should have been decided earlier. He also had an explosion at this site and his mother was killed. There were other things on his mind that took precedence.

Henry Marquard asked how long it would take to comply with the consent order.

Mr. Dickey said that he hopes to have it cleaned before we plant corn this spring. The liquids will be out by the end of this week.

Henry Marquard asked if we didn't refer this to the Attorney General's office, would you pay the fine?

Mr. Dickey said yes but I would ask that just because of the weather, that if we don't get it done by the middle of May I would like to be able to plant the corn and then stockpile whatever is left so it can be hauled away next fall and applied.

Gene Ver Steeg said that if I don't get my pits cleaned out then I delay corn planting to get it done.

Sue Morrow asked about the timeline and why things took so long.

Mr. Dickey said that the decision not to repopulate was made in early 2008. In 2004, we had the explosion where my mother died and my father was over 30% burned. I had attorneys telling me that as long as I was considering repopulating it that it didn't have to be cleaned out. The decision should not have taken this long.

Henry Marquard said that there appears to be an agreement with the Department in March 2008 that resulted in a consent order, and weather events prevented complete action from Mr. Dickey.

Motion was made by Henry Marquard to defer Mr. Dickey dba Dickey Farms hearing until the June EPC meeting with the understanding that Mr. Dickey will comply with the signed consent order including payment of the \$8,000 penalty by June 1st. Seconded by Sue Morrow.

Marty Stimson stated his concerns about this really getting done because of the amount of solids.

Mr. Dickey said that it will be tough to remove the solids but we do own the equipment to get this out. It's not leaking. I haven't had any problems with leaking.

Mr. Leopold said the Commission can proceed with this action but like Commissioner Ver Steeg, he sometimes needs to manipulate his management practices in order to take care of other issues. This is not a matter of convenience.

Kelli Book said the current rules would not allow him to stockpile. Coming from a confined operation the manure needs to be contained at all times. There was plenty of time for Mr. Dickey to address this issue. We never received a phone call from Mr. Dickey during the floods asking how to handle this issue. Most farmers did inform us if they were unable to meet certain requirements. Please consider the extensive timeline before the floods.

Roll call vote went as follows: David Petty – aye; Susan Heathcote – nay; Sue Morrow – aye; Gene Ver Steeg – aye; Marty Stimson – aye; Paul Johnson – aye; Shearon Elderkin – aye; Henry Marquard – aye. Motion carries.

Mr. Dickey said that he hopes to have it cleaned before he plants corn this spring. The liquids will be out by the end of this week.

Henry Marquard asked if the EPC didn't refer this to the Attorney General's office, would Mr. Dickey pay the fine?

Mr. Dickey said yes.

Because of the weather, Mr. Dickey asked that if he failed to remove all manure by the middle of May, could he plant corn and then stockpile whatever manure is left and haul it away next fall for land application?

Gene Ver Steeg said that if I don't get my pits cleaned out then I delay corn planting to get it done.

Sue Morrow asked about the timeline and why things took so long.

Mr. Dickey said that the decision not to repopulate was made in early 2008. In 2004, we had the explosion where my mother died and my father was over 30% burned. I had attorneys telling me that as long as I was considering repopulating it that it didn't have to be cleaned out. The decision should not have taken this long.

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Roll call vote went as follows: David Petty – aye; Susan Heathcote – nay; Sue Morrow – aye; Gene Ver Steeg – aye; Marty Stimson – aye; Paul Johnson – aye; Shearon Elderkin – aye; Henry Marquard – aye. Motion carries.

DEFERRED UNTIL JUNE**PROPOSED RULE – CHAPTER 61 – WATER QUALITY STANDARDS – CHLORIDE, SULFATE AND TOTAL DISSOLVED SOLIDS**

Charles C. Corell, Chief of the Water Quality Bureau presented the following item.

Background

In 2004, the DNR moved forward with a proposed chloride standard. Concerns were raised that the proposed chloride standard was not scientifically defensible for use in Iowa. The result was that a chloride standard was not approved and an interim strategy using Total Dissolved Solids as an indicator regarding water quality was put in place while the Department worked through the issues surrounding the chloride standard.

Recently the research and analysis related to toxicity of total dissolved solids, chloride and sulfate has been completed by the Department in conjunction with the Environmental Protection Agency. The purpose was to update and develop criteria for these parameters to better protect aquatic life based on new scientific information.

The DNR worked with the U.S. Environmental Protection Agency to ensure that the research compiled met certain scientific standards. Gaps were identified in the research and resulted in new toxicity tests being performed in 2008 and 2009.

With the availability of new research and toxicity data, the information is now available to propose numeric criteria for chloride and sulfate to better protect river, stream and lake aquatic life uses and remove the current interim approach for total dissolved solids criteria.

Timeline and Proposed Criteria

In May 2009, the Department plans to bring forth a Notice of Intended Action proposing water quality standard parameters for chloride and sulfate as well as to remove the interim strategy used regarding Total Dissolved Solids.

Proposed chloride criteria

To calculate the applicable acute and chronic criteria for chloride, use the equations below. Statewide default values for hardness and sulfate will be used unless site specific data is available.

Acute Chloride Criteria Equation

$$287.8(\text{Hardness})^{0.205797}(\text{Sulfate})^{-0.07452} = \text{Acute Criteria Value (mg/L)}$$

Chronic Chloride Criteria Equation

$$177.87(\text{Hardness})^{0.205797}(\text{Sulfate})^{-0.07452} = \text{Chronic Criteria Value (mg/L)}$$

Proposed Sulfate Criteria

Chloride Hardness mg/L as CaCO ₃	Cl ⁻ < 5 mg/L	5 ≤ Cl ⁻ < 25	25 ≤ Cl ⁻ < =500
H < 100 mg/L	500	500	500
100 ≤ H ≤ 500	500	[-57.478 + 5.79 (hardness) + 54.163 (chloride)] * 0.65	[1276.7 + 5.508 (hardness) - 1.457 (chloride)] * 0.65
H > 500	500	2,000	2,000

Statewide Background Values

The following statewide background values were determined by analyzing DNR ambient water monitoring data from 2000 to 2007:

- Hardness: 200 mg/L as CaCO₃
- Sulfate: 63 mg/L
- Chloride: 34 mg/L

Total Dissolved Solids

The current interim approach for total dissolved solids levels through Whole Effluent Toxicity Testing will be replaced by the proposed numerical criteria for chloride and sulfate.

This revision is based on scientific review that demonstrates individual ions cause toxicity to aquatic life. This review revealed that in Iowa, chloride and sulfate are the specific ions of concern. As a result, ion criteria for chloride and sulfate are better indicators than integrative parameters such as TDS, conductivity and salinity for water quality protection.

We will be back next month with a Notice of Intended Action, which will include a schedule for public hearings. We have held a number of technical advisory meetings to discuss sulfate, TDS and chloride. We have had a number of stakeholder meetings and we will continue this throughout the public comment process.

We are planning to rescind with this rulemaking the site specific TDS approach that we have been using over the last three years. It's not very scientifically sound to base a standard on. The site specific approach using the toxicity testing was never very practical because we tried to use an EPA approved method for trying to figure toxicity in wastewater. So we will be dropping TDS from our standards. Illinois is doing something very similar to this and EPA has approved this change.

Susan Heathcote asked what's happening with our general use waters.

Chuck Corell said that they are still protected by the standard that you can't create toxic conditions. We have good acute numbers for chloride now and we'll use those to protect general use streams.

Susan Heathcote said that she would like to know how the Department plans to protect general use streams. She would like to see rationale on why we don't need general use protection. It's more than just about aquatic life.

INFORMATION

NOTICE OF INTENDED ACTION – AMENDMENTS TO WASTEWATER RULES, INCLUDING CHAPTERS 62 AND 63

Chuck Corell, Chief of the Water Quality Bureau presented the following item.

In 2003, we adopted EPA's new pathogen water quality standard. EPA was telling us that a mean of 126 was protective of Class A1 uses – swimming and full body uses. A single maximum of 235 went along with that. In 2004, EPA came out with information to clarify that. In the last year or two, as a result of legal action EPA has looked harder at their pathogen standard and clarified even further. They never mean the 235 to be implemented as a maximum value in their standard. It was meant to be a number that you could use to make decisions on closing a specific beach if you had very small number of samples and needed to make a decision quickly. When we set a daily maximum load limit in our guidance documents, our procedure is to pick out the 99% number and that's the number that you shouldn't exceed. The mean of 126 was meant to be a mean over the entire recreation season. Basically, what our water quality standard was not what EPA intended it to be.

We received a letter from the League of Cities asking for clarification on how we plan to implement this. So we have been discussing this with technical staff and our attorneys. We are in the process of correcting this. Rulemaking would be the most upfront way in correcting this. Meanwhile, the League of Cities was not receiving an answer fast enough and they went to the AARC and put a hold on our wastewater rules so that they could push to get answer sooner. Now we have a rule in place that outlines how we plan to implement this.

We have been in contact with stakeholders over the monitoring schedules that we have put in place. We have talked with the League of Cities clarifying what our plans will be as well as sending them a letter. If we proceed with this notice of intended action today, the hold should be gone and the rule should move forward.

Listed below are the changes to Chapter 62 "Effluent and Pretreatment Standards: Other Effluent Limits or Prohibitions" and Chapter 63 "Monitoring, Analytical, and Reporting Requirements" are being presented to the Environmental Protection Commission for Notice of Intended Action.

Chapters 62 and 63 were recently amended by the rulemaking designated ARC 7625B, approved by the Commission on February 17, 2009. On April 8, 2009 the Administrative Rules Review Committee unanimously placed a seventy-day delay on the effective date of portions of ARRC 7625B. This rulemaking will address some of the issues that contributed to the seventy-day delay. Based upon public comment and internal review, the Department has determined that additional revisions are appropriate at this time.

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

Chapter 62

- Subrule 62.8(2) is being changed to indicate that the daily sample maximum criteria for E.coli shall not be used as an end-of-pipe permit limitation. The proposed amendment to subrule 62.8(2) is designed to address new technical data received by the Department from U.S. Environmental Protection Agency indicating that the methodology set forth in the Department's "Supporting Document for Iowa Water Quality Management Plans", Chapter IV, July 1976, as revised on June 16, 2004 for establishing E.coli effluent limits is not supported by the technical data upon which the methodology is intended to be based.

Chapter 63

- The monitoring table for continuously discharging WWTPs, including municipal and semi-public WWTPs, is being changed to remove Total Nitrogen, Total Phosphorous, and Total Kjeldahl Nitrogen monitoring for facilities with a Population Equivalent (PE) of 1,000 – 3,000. The proposed amendment to Table II of Chapter 63 is intended to reduce the burden on smaller communities in regard to nutrient monitoring requirements.

Susan Heathcote asked if their will be a maximum e-coli limit.

Chuck Corell said that for any discharger that discharges continuously, they can easily get enough data to calculate a meaningful mean. That would be the perfect example. For a CSO, who discharge intermittently, that will be harder to calculate a mean.

Jon Tack said that the only thing different about this rulemaking is that it hasn't come as an informational item because you have seen it many times before this. The hold will be voted on May 28th.

Motion was made by Susan Heathcote to approve the Notice of Intended Action as presented. Seconded by Shearon Elderkin. 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

GENERAL DISCUSSION

Wayne Gieselmann gave updates on the following items:

Dallas Pork (as mentioned by Sonia Skidmore during public comment)

Dallas Pork has submitted paperwork to the DNR stating that they have capped and closed the wells at the sites back in January. Tree planting has just begun because the ground is no longer frozen.

UAA - Phase I update

EPA folks were here in March to discuss the UAA process and the issues we are facing. Our biggest concern is that we can not issue permits until UAA's are approved. Until we issue permits, we won't get any treatment on these systems. The longer this goes on the less that happens to improve water quality in Iowa.

Susan Heathcote said that it would be beneficial to include this item on the agenda for next month.

Budget

We're looking at a 15% cut in our general fund monies, which is about \$1.2 million from the Environmental Services Division. We are actively engaged on searching for program monies from the stimulus package.

SRF update

Chuck Corell gave a quick update on the State revolving loan funds. For a complete report, please visit www.iowasrf.com

The Commission will be asked next month to approve the final use plan for the federal stimulus monies.

Wastewater Sewer (SSO/CSO) by-passes update

Dennis Ostwinkle distributed copies of a summary on Combined Sewers in Iowa. There are 9 communities in Iowa that have Combined Sewer Overflows (CSO's). They are Des Moines, Clinton, Burlington, Wapello, Fort Madison, Keokuk, Ottumwa, Muscatine and Spencer.

CSO's are a priority for DNR and EPA. We have been working on these communities for the last couple of years.

CSO's are sewers that were constructed to combine storm water and wastewater. When there is significant rainfall the CSO typically will discharge to a stream and will continue to discharge until the flow of rainwater into the system subsides.

Many of the CSO communities have worked through the years to eliminate these combined sewers. In 2006, CSO's became a priority for EPA. Iowa DNR has been working closely with EPA to work out Consent Orders with these communities to separate the Combined Sewers.

Today's estimated cost to separate all of the CSO's in the nine cities is about \$600 million.

Handout distributed: *Priority Sanitary Sewer Overflow (SSO) Facilities Improvement Update from each DNR field office.*

SSO's will be called by-passes under the new rules. They are not permitted outflows. Each discharge from one of these is a violation. Most of the time these communities do call us when they have an overflow. They also submit monthly reports.

We are currently working with 70 communities on by-passes. EPA is involved with three of those. We also have 26 enforcement cases.

Sue Morrow asked that we need to ensure that these types of facilities have back up generators or a 2nd source of energy in order to avoid by-passes.

Barb Lynch said that the rules do require a back-up use within 30 minutes. Permitted facilities are required but there are no regulations to check weekly.

Manure on frozen ground update

Claire Hruby said that there were 825 attendees at the public meetings held across the state. A majority of the participants were from the small beef and dairy industries, which wouldn't be affected by this rulemaking but were concerned that they would end up under these rules. There were only a couple that were in favor of the stronger restrictions. It was also noted that they were not in favor of the date restrictions. Overall there was great participation, but farmers mainly felt frustrated since they believe they are doing their very best.

In regards to the written comments, compaction seemed to be the concern.

Paul Johnson thanked Claire for her hard work and professionalism.

Richard Leopold said that back at the beginning this was a practice based initiative. A performance based approach is probably the more efficient way in the future. The industry is demanding consistency and dependability. Those are two reasons why we need to drive nutrient standards. He also likes rules better than statutory changes, because of the availability to be flexible in rule.

The application dates in this case are very arbitrary and hard to justify. They also have side effects.

Confinement Feeding Operation Applications

Henry Marquard suggested that this item be added as a notice of intended action next month.

Ed Tormey said that these amendments are procedural in nature.

Shearon Elderkin said that the burden of proof language should be taken out.

Susan Heathcote said that we should make this item informational next month so Commissioners can be fully aware of the issues associated with these amendments.

The commissioners agreed to an informational item next month.

NEXT MEETING DATES

May 19, 2009 – Urbandale

June 16, 2009 – Urbandale

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairperson Henry Marquard adjourned the meeting at 5:10 p.m., Tuesday, April 21, 2009.

Richard A. Leopold, Director

Henry Marquard, Chair

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