

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
JULY 21, 2009

INGRAM OFFICE BUILDING
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WINDSOR HEIGHTS, IOWA

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Charlotte Hubbell at 10:25 a.m. on July 21, 2009 in the Ingram Office Building, Windsor Heights, Iowa.

COMMISSIONERS PRESENT

Charlotte Hubbell, Chair
Martin Stimson, Vice Chair
Carrie La Seur, Secretary
Dale Cochran
Susan Heathcote
Paul Johnson
David Petty
Gene Ver Steeg

ADOPTION OF AGENDA

Motion was made by Gene Ver Steeg to approve the agenda as amended. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS PRESENTED

APPROVAL OF MINUTES

Charlotte Hubbell noted a change on page 31 under Notice of Intended Action Chapter 65 paragraph three. The language should reflect the original proposed text instead of the final language agreed upon by the Commission.

Jerah Gallinger noted and will make the changes.

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

APPROVED AS AMENDED

DIRECTORS REMARKS

Richard A. Leopold –Director

The Department is developing its legislative agenda with input from Department staff, from the NRC/EPC per recent joint commission meeting, and from the public pursuant to the upcoming Stakeholder Forum on July 30th. Director Leopold has been sponsored by national organizations to travel to Washington DC over the past month to discuss climate change and natural resource adaptation.

The Department has received \$13.5 million for water quality improvements. The projects will include river basin improvements on the Raccoon and Boone rivers over the next 3-5 years.

INFORMATIONAL ONLY

PUBLIC PARTICIPATION

SHARON GLASGOW, expressed her concern of the disposal of potash and highly discouraged the state of Iowa to stop taking and storing other states potash because of the harmful chemicals. She also stated her concerns with the air quality monitoring on the eastern border of Iowa. There are more and more people with asthma and breathing problems.

Why are we encouraging development of facilities when we do not know how much water they will use and how much is even available? We need to consider water quantity.

There are over 19 million hogs reside in Iowa and they produce significant amounts of manure. She asked for additional rules to reduce the expansion of hog facilities.

EMILY PIPER, representing Iowa Rural Water Association said that they support the amended scientific process and development of the list of Iowa Outstanding Waters, however we have concerns with the implementation of the antidegradation policy in Iowa. If you are going to follow the process that is outlined in the draft of implementation procedures, it seems to me that we should wait to add waters to a list until that procedure is adopted and goes through public comment.

CHRIS JONES, representing Des Moines Water Works (DMWW) submitted the following comments:

On the map distributed, you can see the north central portion of the state is dominated by the Des Moines Lobe, recently glaciated and primarily wetland and wet prairie prior to European settlement. The City of Des Moines is at the bottom of the DM Lobe, with the Raccoon River tracing the terminal moraine.

To enable cultivation, drain tile was constructed through the lobe that created essentially the world's largest storm sewer. This, along with other hydrological modifications such as stream

straitening, has created a very fertile area for corn and soybeans but has consequences for both the quality and quantity of water flowing downstream.

This is illustrated by the graph on page 2, which shows that average discharge of the Raccoon River at Van Meter has trended from 800 CFS in 1915 to 2300 CFS in the present day. A similar effect is illustrated on page 3 with the Des Moines River Watershed at Des Moines, trending from 3000 CFS in 1940 to about 7000 CFS in the present day.

Page 4 illustrates the relative flows of the Mississippi River at Clinton and Keokuk beginning in 1880. The graph shows the portion of water at Keokuk that did not travel through Clinton. You can see that this has trended from about 18% to about 33% in the present day. In other words, the size of the river at Keokuk has increased dramatically relative to the size of the river at Clinton, and this is a reflection of the hydrological changes that have occurred in Iowa and Illinois over the last century.

Some might say that increases in precipitation have caused these changes, and indeed precipitation has increased over many areas of the Midwest. The changes in the flow of the Mississippi could be explained by precipitation if one could demonstrate that precipitation changes in the Iowa-Illinois region draining to the Mississippi between Clinton and Keokuk were greater than the changes in precipitation in areas north of there. However, the illustration on page 5 (and I know the political boundaries are hard to see) shows that in fact this really is not the case, with the largest increases occurring in or near the Minnesota River basin, and more modest increases, and even some decreases, in the Iowa-Illinois corn belt. However, you look at it, the modest increases in precipitation in Iowa over the last century do not explain a three-fold increase in stream flow in the Raccoon and Des Moines Rivers.

This afternoon you will hear a presentation about another plan to drain and re-drain Iowa's landscape. This plan also contains a water quality component, that of constructed wetlands to sequester the nutrients in the tile water. Although we applaud the acknowledgement that tile water is a problem from a water quality perspective, efforts to enhance tile flow trouble us and should trouble all Iowans concerned about the volume of flow in Iowa streams. We do support the concept of restored and constructed wetlands to denitrify impaired water, but no evidence has been presented that this plan will reduce nitrate concentrations at our two river intakes. It should be evident to everyone that Iowa's water quality problems are intimately connected to Iowa's water quality problems, and a renewed effort to re-engineer Iowa's landscape to expedite the water from it seems disingenuous. This re-engineering may meet the needs of row crop agriculture. However, I submit to you that it is instead time to modify row crop agriculture to fit the realities of Iowa's environment.

NEILA SEAMAN, Executive Director of the Iowa Chapter of the Sierra Club shared her concern that all the lakes were removed from the Iowa's Outstanding Waters list. It is unacceptable that all the lakes have been removed. The implementation policy states that when high quality waters constitute an outstanding state resource, such as water with recreational or ecological significance, that water quality should be maintained and protected. The only explanation that lakes could be removed is that they do not currently meet the criteria to be

classified as outstanding water. Which seems strange since they met the criteria last November? I encourage you to direct the DNR to repopulate the list of Iowa's outstanding waters.

She thanked the Commission for requesting DNR to provide further review of the Stream Reclassifications via Use Assessment and Use Attainability Analyses. Based on today's agenda, it does not appear that further consideration has been given to the 16 UAAs. She asked the Commission to request the DNR to reassess each of the identified stream segments in question. We need your leadership in protecting Iowa's waters.

JESSICA HARDER, representing Iowa League of Cities said that she supported the science behind the amended list of Iowa Outstanding Waters in the Amended Notice of Intended Action. However, we would hope that the waters on the list would go through the same process and that is not currently in the rulepackage. We are concerned with the Tier 2 ½ category because it goes well beyond the federal requirements.

MARGARET KING, from Van Buren County expressed her concern with Steve Robinson's proposed confined animal feeding operation. The construction of this operation will deter future businesses and the quality of life and health. I would strongly oppose the issuing of a construction permit to this operation.

SHANNON GARRETSON, representing Iowa Environmental Council expressed their concerns with the UAA process. We want to thank the Department for its efforts in gathering data for each stream segment. She also shared concern for the interpretation of the data for child recreation. She also shared concern for the Amended Notice of Intended Action to remove the Iowa Great Lakes from the list of Outstanding Iowa Waters. We look forward to working with the Department on these issues.

DEAN BICKEL, from Keokuk, Iowa expressed his concern with Steve Robinson's proposed confined animal feeding operation. This operation will be about 1,900 feet from my house. He also opposes the issuing of a construction permit because of the close distance to my house.

TJ BRCOUNK, from Van Buren county expressed his concern regarding the Steve Robinson proposed confined animal feeding operation. He strongly opposes the construction of this operation.

JAN CRAIG, from Van Buren County also expressed her concern regarding the Steve Robinson proposed confined animal feeding operation. The amount of waste from these factories is injected without treatment directly into the soil, which then contaminates the groundwater or nearby streams and lakes. By reading the departments' mission statement and the Iowa Code, I would ask for a moratorium on all proposed facilities, not just in Van Buren County.

MIKE TINKHAM, expressed his concern with Steve Robinson's proposed confined animal feeding operation and opposes the issuing of a construction permit. I own land adjacent to the proposed site. The septic permits were pulled on my property before this application for this CAFO. That didn't make any difference. It just doesn't seem right to me that the Matrix just

assumes that they will do everything right yet they didn't seem to mind pulling my septic permit for my home. They can't assume that I will build the septic?

SONIA SKIDMORE, representing Iowa Citizens for Community Improvement made reference to the number of local citizens who oppose the Steve Robinson proposed confined animal feeding operation in Van Buren County. Please remember that all of these folks will be impacted. We also support the Des Moines Water Works petition for rule making.

LORA CONRAD, from Van Buren County and ICCI member expressed her concern regarding the Steve Robinson proposed confined animal feeding operation and opposes the issuing of a construction permit. I am very concerned about the air and water quality in Iowa. I would also like to address item 25 of the Master Matrix. This item awards 25 points if the application includes livestock feeding and watering systems that would significantly reduce manure volumes. First of all, the feeding and watering system designs were not included in the application. The statements are very generic on how feeding systems will be operated. We do hope that you deny the permit.

JIM SHEETS, expressed his concern with Steve Robinson's proposed confined animal feeding operation and opposes the issuing of a construction permit. We built a new house on our property in 2006. This is the third time the Robinson's CAFO has been proposed and each occasion the community rises in opposition. Please consider our comments.

HAL MORTON, representing ISOSWO and Des Moines County Regional Solid Waste Commission referenced a letter that ISOSWO sent the Environmental Protection Commission October 14, 2008. The membership of IOSOWO voted unanimously to support the following statement regarding the NOIA.

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 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 ten years.

It is inequitable to require solid waste fees to be paid on C&D wastes that are deposited in fully lined MSW landfill with extensive groundwater monitoring, but to exempt from solid waste fees those C&D wastes that are deposited in C&D only landfills with lesser design standards and with minimal groundwater 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 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.

This is a large economic burden that you will be leaving with the landfills. He also distributed projected financial increases for each facility related to C&D waste.

We ask that you restore the original Chapter of 101.14(2)"a".

CINDY TURKLE, representing Turkle Environmental Consulting expressed her concern about removing the exemption of the tonnage fee for C&D materials in the Final Rule of Chapter 101 for Solid Waste Comprehensive Planning. This will be an additional expense passed on to the public landfills who are already strapped with tight budgets because of the economy and the new Chapter 113 regulations that have put on additional monitoring requirements. I believe that you will see more open burning and dumping violations, because it will be too expensive to haul to the landfills.

Charlotte Hubbell submitted for the record a letter from East Okoboji Lakes Improvement Corporation dated July 17, 2009:

The East Okoboji Lake Improvement Corporation (EOLIC) has been in existence for forty years working to fulfill the mission. "To protect, enhance and beautify the waters of East Okoboji, Upper Gar, Minnewashta, and Lower Gar Lakes through promotion of watershed stewardship and education."

Last year the Board of Directors of EOLIC voted to nominate all of the lakes of the Iowa Great Lakes as Outstanding Iowa Waters in order to prevent new sources of pollution from lowering water quality in these high quality natural lakes. We understand the Iowa DNR is recommending to the Environmental Protection Commission and the Iowa Great Lakes be deleted from the list of Outstanding Iowa Waters. EOLIC is concerned that elimination from that list will make out lakes vulnerable to wetland and storm water projects that might violate new antidegradation requirements. These lakes each have their own unique geologic attributes, and are the centerpiece of the economy of the area. There are many organizations within Dickinson County working to improve the watershed of our lakes, but state mandates of antidegradation are a welcome enhancement to the work being done locally.

Please keep the Iowa great Lakes on the list of Outstanding Iowa Waters.

Also submitted was a letter from Phil Peterson of the Okoboji Protective Association dated July 20, 2009:

The Okoboji Protective Association has recently learned that all Iowa lakes have been removed from the Anti-degradation Rulemaking. We are shocked by this development and do not believe there is a reasonable explanation for this action.

This association of 400 members supports the inclusion of a designation of Outstanding Iowa Waters(OIW) for Iowa's lakes. This OIW designation reflects the value that Iowans place on Iowa's best waters, including West Lake Okoboji and 5 other natural lakes in Dickinson County that comprise the Iowa Great Lakes.

We have reviewed the seven reasons why a lake would be considered a Tier 2 ½ or Tier 3

water body. We understand a lake only need quality for one of these criteria. Based on the DNR criteria we believe the Iowa Great Lakes meets many of these seven criteria.

Susan Heathcote submitted an email to the record from Jane Shuttleworth dated July 21, 2009:

EPC Commissioners – it comes as a shocking and stunning surprise to the Iowa Great Lakes community to learn that the Iowa DNR has proposed removal of the Iowa Great Lakes from its list of Outstanding Iowa Waters from the proposed federal Clean Water Act Antidegradation rules. The Iowa Great Lakes region, as well as numerous other lakeshore communities across Iowa, serve as models for how Iowa’s lakes can serve as an engine for economic development and quality of life. Our beautiful glacial lakes serve multiple purposes: from drinking water supplies, diverse recreational opportunities, aesthetic enjoyment, that in turn attract economic entrepreneurs. At the same time, our watershed remain primarily agricultural, allowing us to maintain our pride in Iowa’s rich and foundational agricultural economy. This doesn’t mean it is easy balancing all these needs and demands, but people who care about where they live find ways of making it work, keeping the Iowa Great Lakes – on the list of Iowa Outstanding Waters List, is essential tool of economic development and preserving our natural resources far into the future. Please keep the Iowa Great Lakes on the list of Iowa’s Outstanding Waters, and consider including all of Iowa’s lakes on the list.

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

NOTICE OF INTENDED ACTION – CHAPTER 133, RULES FOR DETERMINING CLEANUP ACTIONS AND RESPONSIBLE PARTIES

David Wornson of the Legal Services Bureau presented the following item.

In part, Chapter133 provides for compensation to the state and public for damages to natural resources and wildlife resulting from a hazardous condition. For fish loss specifically, the rule authorizes the use of the American Fisheries Society’s special publication on fish counting methods and restitution valuation.

The Fisheries Bureau is making changes to AFS-based policy and procedure and updating their fish restitution rules in chapter 571 IAC 113 accordingly. For internal consistency, Chapter 133 must be amended to reflect those changes as well.

The following changes are to be made: (1) update the definition of “AFS” in the rule to state the most-current version of AFS’s special publication shall be used and (2) revise the fish species to be valued at \$15 a fish unless the AFS publication requires a higher value, in which case the higher value shall be applied.

INFORMATION

REGION XII COUNCIL OF GOVERNMENTS AS A GRANT AWARDEE FOR THE IOWA WASTE EXCHANGE

Brian Tormey of the Land Quality Bureau presented the following item.

Recommendation:

The Department requests Commission approval of a grant award in the amount of \$385,000 with the Region XII Council of Governments for one year, with a possible two year extension to deliver the Iowa Waste Exchange (IWE) program.

Funding Source:

This project is funded through the Groundwater Protection Fund, Solid Waste Account under Iowa code 455 E.11.2(c)

Background:

The IWE has helped divert over 2.8 million tons of waste from Iowa landfills since 1990. Cost savings from diversion has resulted in \$66.5 million is savings for Iowans. This has been accomplished through over 14,000 on-site visits and thousands of contacts throughout the program's history.

Purpose:

The Grantee works with Iowa businesses, schools, hospitals, government institutions, industries, institutions, and local governments in the areas of waste management and pollution prevention. The Grantee provides services to the above customer groups to divert waste from Iowa landfills reduce waste, and enhance pollution prevention. The Grantee's Resource Specialists also market other programs within the Financial and Business Assistance section of the Land Quality Bureau.

Consulting Firm Selection Process:

A selection process was completed via a RFP. Region XII Council of Governments was the only applicant to respond. Because this applicant is also an incumbent to this award, we are confident in their ability to meet the requirements of the award and the IWE program.

Based on the Iowa Code and the existing relationships with the Region XII Council of Governments, we recommend the grant for the Iowa Waste Exchange be awarded.

Motion was made by David Petty to approve the Region XII Council of Governments as a Grant Awardee for the Iowa Waste Exchange as presented. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS PRESENTED

FINAL RULE – CHAPTER 101 – SOLID WASTE COMPREHENSIVE PLANNING REQUIREMENTS

Chad Stobbe of the Land Quality Bureau presented the following item.

The Commission is requested to approve the attached Final Rule to amend Iowa Administrative Code 567 Chapter 101 “Solid Waste Comprehensive Planning Requirements.” Amendments proposed are the result of 2008 legislation (SF2276) and in response to stakeholder input for suggested improvements to the solid waste comprehensive plan submittal process received during the past three years. These amendments will aid in clarification and ease of use of these rules and will streamline the comprehensive planning submittal requirements for cities, counties and municipal solid waste sanitary disposal projects, while expediting departmental review.

Examples of simplifying the submittal process include streamlining of the municipal solid waste and recycling survey, the online database and the Quarterly Solid Waste Fee Scheduled and Retained Fees Report. Two additional amendments are proposed in order to correct inconsistencies in past interpretation of the Iowa Code for comprehensive planning requirements applicable to solid waste transfer stations transporting waste out-of-state for disposal and for an exemption to the solid waste tonnage fee for construction and demolition waste landfills. The proposed changes were published as a Notice of Intended Action in the Iowa Administrative Bulletin on November 5, 2008 as ARC 7310B.

Public hearings were held on November 25, 2008 and May 12, 2009, and written comments were accepted from November 5, 2008 through May 12, 2009. Eight organizations commented on the proposed rule changes during the public comment period.

Charlotte Hubbell inquired regarding the number of public comments submitted and their position. Chad responded that 8 public comments were submitted with 7 public comments opposing the rule.

Chad reported that the industry standard for accepting C&D waste is 20% while the Iowa landfills are reporting an even higher percentage with one reporting as much as 80% of their waste stream as C&D.

After contacting the 45 Iowa landfills, 41 facilities were charging C&D waste the same rate as regular waste and 2 were charging a higher rate. Therefore, these landfills were not passing on the savings to the consumer and the Department has been experiencing a corresponding reduction in fees submitted to the Department.

Motion was made by Susan Heathcote to approve the Final Rule – Chapter 101 – Solid Waste Comprehensive Planning Requirements as presented. Seconded by Dale Cochran. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT – UPPER MISSISSIPPI RIVER BASIN ASSOCIATION FOR UPPER MISSISSIPPI RIVER CLEAN WATER ACT PLANNING AND COORDINATION

Charles Corell of the Water Quality Bureau presented the following item.

Recommendations:

Commission approval is requested for a two year-service contract with Upper Mississippi River Basin Association (UMRBA) of St. Paul, Minnesota. The contract will begin on August 1, 2009, and terminate on December 31, 2011. The total amount of this contract shall not exceed \$50,000.

Funding Source:

This contract will be funded through a collaborative effort to support work by UMRBA with \$50,000 of Clean Water Act (CWA) Section 604(b) funds from the IDNR. This funding will be combined with grants from UMRBA's other four member states to provide the resources needed to execute the work identified in the statement of work. UMRBA is a collaborative, multi-state project that is focused on key water quality planning needs of the Upper Mississippi River (UMR). Under the proposal, UMRBA will use a combined total of \$252,000 in water quality management planning grants from 5 states. The statutory authority for the DNR to enter into this contract is 455B.176A.

Background:

UMRBA supports and provides staff for two work groups, the Water Quality Task Force (WQTF) and the Water Quality Executive Committee (WQEC), which provide forums for consultation among the five state water quality management agencies, as well as Regions 5 and 7 of the U.S. Environmental Protection Agency (US EPA).

As required by Section 604(b), each state is to receive 1% of the CWSRF grant (\$535,800) to carry out planning under sections 205(j) and 303(e) of the CWA. Under Section 205(j)(3), each state must allocate at least 40% of its 205(j) grant to regional public comprehensive planning organizations or appropriate interstate organizations.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining the Contractor for: improving water quality standards and assessment, evaluating nutrient impacts & nutrient monitoring, and fostering inter-program collaboration.

Contractor Selection Process:

UMRBA was chosen using the sole source procurement process. UMRBA was chosen for this project because they are a regional interstate organization formed by the Governors of Illinois, Iowa, Minnesota, Missouri, and Wisconsin to coordinate the states' river-related programs and policies and work with federal agencies that have river responsibilities. The states of the UMR have identified UMRBA as the most appropriate entity through which to coordinate their CWA programs for the River.

Susan Heathcote inquired if the Department has contracted in this manner in the past. Chuck Corell shared previous practices with the Commission.

Motion was made by Susan Heathcote to approve the contract as presented. Seconded by David Petty. 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

Wayne Gieselman provided updates on the following items:

American Rivers

The Department received a letter from American Rivers expressing their gratitude with the Department's solicitation of green projects for the stimulus funding.

Contingency Planning

The Department is exploring contingency plans for additional cuts during FY10 and/or FY11. Department employees have offered voluntary leave without pay estimated to be approximately \$100,000 in cost savings.

August EPC Meeting

The EPC meeting in August will take place in Moravia, Iowa at the Honey Creek Resort. In previous months Wayne estimated that we would present an animal feeding operations rules revisions package in August but now believes that will come later in the year. A tour will take place on Monday, August 17th in the afternoon. Additional details to follow. The EPC meeting will begin at 9 a.m. on Tuesday, August 18th.

DEMAND FOR HEARING – VAN BUREN COUNTY – STEVE ROBINSON

Randy Clark of the Legal Services Bureau presented the following item

On June 8, 2009, the Department issued a draft construction permit to Steve Robinson, indicating a preliminary decision to approve Steve Robinson's application to construct a swine confinement operation in Des Moines Township, Van Buren County. Notice of this preliminary decision was delivered to the Van Buren County Board of Supervisors (Van Buren County) on June 10, 2009. On June 22, 2009, Van Buren County notified the Department by facsimile of its intent to demand a hearing. The Demand For Hearing was mailed by Van Buren County on June 23, 2009, and received by the Department on June 26, 2009. Van Buren County has requested the opportunity to make oral statements. Pertinent documents relating to the Demand, and the Department's and Steve Robinson's responses to it, will be provided to the Commission.

The Commission is requested to review this matter and render a final decision by July 31, 2009, which is 35 days from the date the Department received Van Buren County's Demand For Hearing.

Randy Clark stated the Department is not for or against this application but urges that the rules and statutes be enforced. Van Buren County is contesting four Master Matrix items for which the Department granted points as a result of its independent review of the Master Matrix. These points resulted in the applicant receiving a passing score on the Master Matrix.

Randy reviewed Master Matrix item 1 relating to additional separation distance to a residence. Mr. Robinson applied for 85 points while the County Supervisors denied the points due to a trailer home with an outhouse that it contends qualifies as a residence. The Department granted the points determining the trailer home with an outhouse is not a residence as defined in Department rules because it is not connected to a private sewage disposal system.

Randy reviewed Master Matrix question #16 relating to enhancements above minimum requirements of structures used in stockpiling and composting. Mr. Robinson applied for 30 points while the County Supervisors denied the points. The Department approved the points concluding that an enclosed structure and an Ecodrum for mortality composting are an enhancement beyond minimum composting requirements.

Randy reviewed Master Matrix question #25 relating to livestock feeding and watering systems to reduce manure volume. Mr. Robinson applied for 25 points while the County Supervisors denied the points. The Department approved the points based on a design, operation and maintenance plan and information from the manufacturer for a wet/dry feeder system included in the application.

Randy reviewed Master Matrix question #26 relating to manure disposal. Mr. Robinson applied for 30 points while the County Supervisors denied the points. The Department approved the points under paragraph "e" based on the applicant's commitment to incorporate or inject manure on the same day it is land applied.

Van Buren County - Supervisor Marvin Philips and Lloyd Foster, a neighbor to Dean Bickel, presented for Van Buren County. Supervisor Philips (Philips) introduced fellow Supervisors William Randolph and Gary Adams in the audience.

Mr. Foster reviewed the County's determination of the Master Matrix questions. The County did not feel the application provided adequate capacity details related to the composting tumbler for the possible mortality rate related to the size of the facility. The County also did not feel the application provided adequate wet/dry feeder details related to the volume of liquid.

Mr. Philips reviewed the County's interpretation of residency for the Dean Bickel. Due to the length of time he has lived there, since approximately 1985, the location has been considered a residence and should be "grandfathered" to continue to be considered a residence.

Mr. Foster reviewed how a composting drum operates. The County expressed concern that the application did not provide adequate details of the composting tumbler size and capacity. With the size of the proposed facility, multiple mortalities in a short period of time could exceed the composting tumbler manufacturer's capacity.

Mike Blaser of Brown, Winick Firm, standing in for Eldon McAfee, represented Steve Robinson, applicant. Mike supports the DNR scoring of the Master Matrix. Master Matrix question #26E references composting dry manure. The county's argument is misapplied because the application is for liquid manure.

Mr. Blaser shared the EcoDrum schematic that was provided in the application showing the length and capacity. The County's argument of the system's size and capacity should not be an issue. Industry's average rate is 5% mortality with roughly 1.5 pigs per day and the composter would be of adequate size. The Robinson family utilizes EcoDrum technologies on other sites and have experience and knowledge in working these systems. When a major mortality event happens, the rules require the producer to contact the DNR to coordinate disposal. The County's concern of overloading the composting tumbler due to a large mortality is against the law.

The trailer home with an outhouse under today's rules does not qualify as a residence with the current lack of a septic system. The applicant's proposed site is beyond the required separation distances and has applied for additional points for obtaining an additional separation distance.

Mr. Blaser explained that wet/dry feeders systems save water consumption and reduce manure. The application referenced adjusting wet/dry feeders as needed. Mr. Blaser shared that adjusting the water system is not "rocket science."

Mr. Foster responded that the Master Matrix instructs that specifics be included with the application. The County does not interpret the application details to be specific. The size of the composting tumbler was not included on the drawing and thus did not provide specific capacity details.

Mr. Foster also responded that animal mortality does not happen evenly at 1.5 per day but rather in batches.

The Commissioners discussed Master Matrix item 1 related to the outhouse disqualifying the trailer home as a residence. Dan Olson shared that there are not many residences with outhouses. When the laws changed, residences with outhouses were not “grandfathered” in to make outhouses acceptable.

Susan Heathcote expressed concern for other homes near proposed confinement operations if the Commission determines the property with an outhouse is not considered a residence. Randy shared that the current definition of “residence” has been in place for more than 5 years.

Motion was made by Susan Heathcote to go into Closed Session. Seconded by Marty Stimson. Roll call vote went as follows: David Petty – aye; Susan Heathcote – aye; Carrie LaSeur – aye; Gene VerSteege – aye; Marty Stimson – aye; Paul Johnson – aye; Dale Cochran – aye; Charlotte Hubbell – aye. Motion carries.

COMMISSION ENTERED INTO CLOSED SESSION

COMMISSION RETURNED TO OPEN SESSION

Gene VerSteege asked Dean Bickel how he disposes of his sink and shower water. Mr. Bickel responded that his sink water is applied to his gravel driveway.

Motion was made by Marty Stimson the outhouse is a private sewage disposal system as defined by section 455B.171 subsection 19 and 567 Iowa Administrative Code 69.1 subsection 2 and also that the outhouse is connected to or associated with this trailer home since 1987 and therefore a permanent residence and therefore does not pass the Master Matrix and on this ground we grant the appeal to deny the permit. Seconded by Susan Heathcote. Roll call vote went as follows: David Petty – nay; Carrie LaSeur – aye; Paul Johnson – aye; Susan Heathcote – aye; Marty Stimson – aye; Gene VerSteege – nay; Dale Cochran – aye; Charlotte Hubbell – aye. Motion carries.

APPEAL GRANTED TO DENY PERMIT

THE COMMISSION RECEIVED A POWER POINT PRESENTATION ON “A PILOT PROGRAM FOR INTEGRATED DRAINAGE AND WETLAND LANDSCAPE SYSTEMS” FROM DR. WILLIAM CRUMPTON, DR. MATT HELMERS, DR. JAMES BAKER, DR. STEWART MELVIN, DEAN LEMKE, AND CHUCK GIPP. THE PRESENTATION IS AVAILABLE ON THE ENVIRONMENTAL PROTECTION COMMISSION WEBSITE AT [HTTP://WWW.IOWADNR.GOV/EPC/INDEX.HTML](http://www.iowadnr.gov/ePC/index.html).

AMENDED NOTICE OF INTENDED ACTION – CHAPTER 61 – WATER QUALITY STANDARDS (ANTIDegradation Policy and Implementation Procedures)

Charles Corell of the Water Quality Bureau presented the following item.

The commission will be asked to approve an Amended 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 proposed a four-tiered approach and guidance document establishing procedures for implementing the antidegradation policy in November of 2008. 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 proposed amendment to this Notice of Intended Action revises the list of Outstanding Iowa Waters (OIWs). The changes serve to more appropriately reflect waters that satisfy the criteria proposed for OIWs in addition to limiting the initial regulatory impact identified during the public comment process.

The department will be providing the Commission the revised list of OIWs prior to the July 21st EPC meeting. The amended Notice of Intended Action will also include two additional public hearings to take place in northeast Iowa.

Susan Heathcote clarified that both cold and warm water streams are classified as Outstanding Iowa Waters. Susan asked for Chuck to provide information on why the lakes were removed from the list. Chuck responded that OIWs are regulated via NPDES permit which do not allow discharges to lakes.

Charlotte Hubbell asked for explanation of Emily Piper's public comment. Chuck responded the Department's Fisheries Bureau reviewed the list of streams with a focus on trout. The streams that were placed on the list were based on the Fisheries Bureau's health and reproduction rates for trout.

Richard Leopold shared that all streams have been assigned A1 protection unless otherwise noted. The OIW's is a subset of bodies of water with a greater level of protection.

Commissioners discussed the lakes and streams that are listed on the Outstanding Iowa Waters list and the rationale behind the water quality ratings.

Susan Heathcote offered an amendment to the proposal to add 6 lakes back onto the NOIA list.. These lakes are East Okoboji, West Okoboji, Spirit, Upper Gar, Lower Gar, and Lake Minnewashta. The Commission will also seek public comment regarding the lakes on or off the list.

Motion was made by Susan Heathcote to amend the Notice of Intended Action – Chapter 61 – Water Quality Standards (Antidegradation Policy and Implementation Procedures) to add the following lakes onto the list of Outstanding Iowa Waters in the NOIA: East Okoboji, West Okoboji, Spirit, Upper Gar, Lower Gar, and Lake Minnewashta. Seconded by Dale Cochran. Motion carried unanimously.

Motion was made by Susan Heathcote to approve the Amended Notice of Intended Action – Chapter 61 – Water Quality Standards (Antidegradation Policy and Implementation Procedures) amended. Seconded by Dale Cochran. Motion carried unanimously.

APPROVED AS AMENDED

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

Chuck Corell with the Water Quality Bureau presented the following item.

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

1. Revise and list approximately 33 river and stream segments as Class A2 Secondary Contact Recreational Use designated waters in the rule-referenced document "Surface Water Classification."
2. Revise and list approximately 83 river and stream segments as Class A2 Secondary Contact Recreational Use and Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document "Surface Water Classification."
3. Revise and list four stream segments as Class A2 Secondary Contact Recreational Use and Class B(WW-3) Warm Water-Type 3 designated waters in the rule-referenced document "Surface Water Classification."
4. Revise and list six river and stream segments as Class A3 Children's Recreational Use and Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document "Surface Water Classification."
5. Revise and list 12 river and stream segments as Class A3 Children's Recreational Use designated waters in the rule-referenced document "Surface Water Classification."
6. Revise and list one stream segment as Class HH Human Health designated water in the rule-referenced document "Surface Water Classification."

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

The DNR elected to perform a UA/UAA on any newly designated stream that receives a continuous discharge from a facility with a National Pollutant Discharge Elimination System (NPDES) permit. Prior to issuing a NPDES permit for an affected facility, the DNR must complete a UA/UAA for the receiving stream or stream network. Each use designation revision recommendation proposed in the NOIA has an associated UA/UAA that is available on the department's web site at: <http://programs.iowadnr.gov/uaa/search.aspx>

The adopted amendments have been modified from those published in the NOIA, including specific changes to 2 stream segments. The modifications were made after all comments from the public comment process were considered.

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

errors. All designations conform to the previously-approved use designations, as amended by the Commission.

The Notice of Intended Action (NOIA) was published in the Iowa Administrative Bulletin on March 11, 2009 as **ARC 7624B**. Six public hearings were held across the state throughout April 2009. Approximately 247 persons or groups provided oral or written comments on the proposed WQS revisions. A responsiveness summary has been prepared addressing the comments received in terms of the issues involved.

Comments from stakeholder groups and other persons or organizations may be made at the Commission meeting regarding the rule changes. As discussed in the Responsiveness Summary, the Department believes that the rule changes will be protective of water quality and the uses being made of Iowa waters.

Chuck summarized his July 20th EPA meeting regarding UAA assessments. EPA will defer to the Department in determining base flow conditions. EPA clarified swimming hole depth and width criteria. EPA also clarified that swimming hole depth does not solely change the attainable level but also flow should be determined.

Susan Heathcote expressed concern with the Department's interpretation of the protocols with child's play and responding to comments.

Motion was made by Susan Heathcote to change the designation of Big Bear Creek to A3 for the town of Brooklyn with the DNR's nearest location marker. Seconded by Marty Stimson. Motion carried unanimously.

Motion was made by Susan Heathcote to change the designation of Hartgrave Creek in Butler and Franklin County to A1. Seconded by Marty Stimson. Motion carried unanimously.

Motion was made by Gene VerSteeg to approve the Final Rule – Chapter 61 – Water Quality Standards (Stream Reclassifications via Use Assessment and Use Attainability Analyses) as amended previously in the meeting except the recreational use designations for 32 stream segments marked as concerns. Seconded by Marty Stimson. Motion carried unanimously.

APPROVED AS AMENDED

Motion was made by Marty Stimson to table the recreational use designations for 32 stream segments not approved in the Final Rule – Chapter 61 – Water Quality Standards (Stream Reclassifications via Use Assessment and Use Attainability Analyses). Seconded by Susan Heathcote. Motion carried unanimously.

NEXT MEETING DATES

August 18th – Moravia

September 15th – Windsor Heights

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairperson Charlotte Hubbell adjourned the meeting at 5:59 p.m., Tuesday, July 21, 2009.

Richard A. Leopold, Director

Charlotte Hubbell, Chair