

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
MARCH 17, 2009

CLARION HOTEL
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CEDAR RAPIDS, IOWA

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Henry Marquard at 10:10 a.m. on March 17, 2009 at the Clarion Hotel, Cedar Rapids, Iowa.

COMMISSIONERS PRESENT

Suzanne Morrow, Secretary
Gene Ver Steeg
David Petty
Susan Heathcote
Henry Marquard, Chair
Paul Johnson
Martin Stimson
Shearon Elderkin
Charlotte Hubbell, Vice-Chair

Henry Marquard thanked Marty Stimson and Clipper Wind for the tour of their facility yesterday.

ADOPTION OF AGENDA

Items 10, 11 and 14 – will be taken up all together as they all deal with the Water Use & Allocation Permit fee rules.

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

APPROVED AS AMENDED

APPROVAL OF MINUTES

Charlotte Hubbell asked the Commissioners if they were okay with the line under the Director's Remarks "*The Commissioners discussed their role in reviewing a contested permit.*"

Henry Marquard said that its fine since the Commissioners took no action.

Motion was made by Gene Ver Steeg to approve the minutes of the February 17, 2009 meeting as presented. Seconded by Sue Morrow. Motion carried unanimously.

APPROVED AS PRESENTED

DEPUTY DIRECTOR REMARKS

Pat Boddy, Deputy Director commented on the following items:

- The burn ban made it through the first funnel.
- The liquid manure on frozen ground rule - There are bills in each chamber allowing the application which is in conflict with our current rulemaking. The Department is registered against those bills.
- The Antidegradation bill has passed the Senate Environmental Committee and is eligible for debate. It has been amended many times. Our Legal Bureau is currently reviewing the most recent draft.
- The \$100 million dollar state stimulus which is apart of the \$750 million bond package for water quality is broken down as follows:

Program	Amount
State Revolving Fund	\$50 M
Combined Sewer Overflow	\$12 M
Lake Water Quality/Restoration Program	\$15 M
Iowa Clean Streams Program	\$10 M
Iowa State Park Waste Water Treatment Upgrade/Compliance Proposal	\$5 M
Emergency Watershed Program	\$5 M
Low-head Dam Solutions and Water Trails	\$3 M
Total	\$100 M

This is the proposal that is now being considered as part of the \$750 million bond package.

- The Department has been convening internally on the federal stimulus monies. You will notice today some emergency rulemaking related to air quality for \$1.7 million for diesel emission reductions that we are hoping to get. This is all happening very fast.
- We are chairing the Environmental Task Force for the state of Iowa. We are hoping to find real opportunities for state agencies and additional stakeholders. We are trying to get these funds coordinated and out to the public as fast as possible.
- There might be a need for an early May EPC phone meeting relating to SRF projects, just because of the timeline that has been given to us.
- The Department is developing a communications plan. This is a planning process that will address both internal and external workings. Our ability to communicate with the commissions is a key piece of this. We will be sending about half a dozen open ended questions related to communications.

Henry Marquard said that once the legislative session ends, the Commission needs to think about a legislative plan for more Commission involvement at ARRC meetings, legislative committee meetings, etc. I feel like we need a more organized approach for that. This would be a piece for the communication plan.

INFORMATION

PUBLIC PARTICIPATION

JANE HEEREN, from Fairfax thanked the DNR and Commission for denying the renewal of Stone Hill Soils and Composting permit application. If you see an appeal for this site, please stand firm on this. It's the wrong thing to do.

I have been contacted by Warren Kristy from Harrison County. He has an issue with some land application of solid waste going on under the guise of soil conditioner. The Cargill plant has been bringing in waste material from Chammmness Technology and disposing this daily on the river bottom. (50 – 60 semi loads daily) Which is 60,000 to 80,000 gallons per acre, where 4,000 gallons is considered accepted. This material has been licensed under IDALS as a Chapter 200 type soil conditioner. Chapter 200 does not mean there is no nitrogen in it. The nitrogen contained in this material will seep into the groundwater and some of the wildlife areas along the Missouri River Valley.

Henry Marquard said that we will discuss this further during general discussion.

Paul Johnson asked for a follow-up and report from the DNR.

MARK WELTER, from Delaware County operates a hog confinement operation. The rule for banning manure on frozen or snow covered ground is unnecessary and not thought out. Our 500 head open feedlot would not have been affected under the current rulemaking except for the fact that we have been proactive. Our operation requires that we have a nutrient management plan. We are being penalized for trying to doing the right thing yet similar operations are free to do as they wish. Manure is manure. Pollution is pollution. Small operators can apply unless there is a water quality violation. Why are small operations treated differently? Requiring more storage has a drawback. It's expensive. Concentrated manure storage can cause more damage to the environment than what's being prevented. Where's the data to show the damage being done now? NRCS officials think this rulemaking is unnecessary to operations following a conservation plan. These rules are too confusing and suggestive. It seems to me that more problems are being created than exist. I oppose the rule for banning manure on frozen or snow covered ground.

ERIK MILES, speaking on behalf of Waste Not Iowa. We looked at alternatives that may provide better solutions than landfills. We are looking at the plasma arc technology and that's what our study is about. We are asking that you approve a contract that's before you today that is with SCS Technologies out of Tampa Bay, Florida. Plasma arc technology is a high temperature gasification of solid waste. It uses an electronic furnace and dissociates the constituents.

This company will approach this from an unbiased position. We really want to hear good news and bad news on whether or not this will work in Iowa. Thank you for your support.

Commissioners asked questions about air emissions and what other states have already implemented this technology.

The Commission asked for basic information on this technology as well as a copy of the results from this study if approved today.

PETE HAMLIN, from MidAmerican Energy addressed the Title V budget and the fee that is being proposed. It's in our best interest to have a strong Title V fee program and we have also supported raising the cap in front of this Commission and the ARRC. We are concerned that as emissions decrease overall the fee goes up. About 70% of the air quality budget is now funded through the Title V fee program and I don't think anyone would suggest that this was the intent of the program when it was first instituted. We do appreciate a very transparent Title V budget process. After spending millions of dollars on non-mandated equipment to help reduce air emissions, it's hard to explain to your management that we're reducing emissions but the fee keeps going up. I believe Iowa is one of four states that doesn't charge fees for its new source review permits. This would resolve a decrease in the Title V fees and give the Department a reasonable budget to count on each year. We are willing to work with the Department on this in the future.

MIKE CARBERRY, from Green State Solutions said that folks are concerned with our air and water quality in this state. This Commission included in the conclusion of its report to the legislature and Governor a statement that Iowans want and expect clean air and water. I don't believe that people are getting that. Last year the Iowa River was named the third most polluted waterway in the country. I can no longer go into the water without getting flu like symptoms and rashes on my skin. A lot of individuals believe that the major contributor is CAFOs and manure application on frozen ground. I do appreciate your leadership on that.

Susan Heathcote clarified that the Iowa River was listed as third most endangered river along with many others. It wasn't about the status of the river being the third most polluted in the country. There are many other waterways in the country that are more polluted than the Iowa River. There are also human components that add to the pollution issue.

PAUL REHN, Mayor from the City of Marion said that he can not add any more than what Mr. Miles has already addressed. We are excited about the contract for a research study for plasma arc technology. I certainly encourage you to support this contract today.

DEAN HAMBLIN, farmer from Buchanan said that he is concerned with the application of manure on frozen ground rule. These rules will and can put people out of business. We are very concerned. I have neighbors that apply manure everyday year round and if these rules are put into effect, it will put them out of business. I don't think you realize the economics of this proposed rule. If we have to build manure storage basins, we will incur a huge debt load for most of our operations. We are not large by any means but we are concerned about the pollution

factors. A lot of us have done more than what is required of us to stem the runoff. I urge the commissioners to look at the options to this rule.

Henry Marquard noted the following letters to be included as part of the record:

From the Iowa Irrigation Association – Thank you to each of you for listening to Mr. Willey’s presentation of the Irrigators concern with being considered in the same category as Municipal wells that are pumped year round. Because of adequate seasonal rainfall most irrigation systems have only been used seven (7) of the last ten (10) years.

From the Iowa Water Pollution Control Association – Regarding Rule 567 – Chapter 60, 62, 63 and 64.

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

CHAPTERS 20, 21, 22, 23, 25, 28, AND 33 – AIR QUALITY PROGRAM RULES - UPDATES, REVISIONS, AND ADDITIONS

Jim McGraw, Environmental Program Supervisor in our Air Quality Bureau presented the following information.

The Notice of Intended Action is to amend Chapter 20 "Scope of Title –Definitions-Forms-Rules of Practice," Chapter 21 "Compliance," Chapter 22 "Controlling Pollution," Chapter 23 "Emission Standards for Contaminants," Chapter 25 "Measurement of Emissions," Chapter 28 "Ambient Air Quality Standards," and Chapter 33 "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," of 567 Iowa Administrative Code is being presented to the Commission for information.

The primary purpose of the rule changes is to update state air quality rules for new federal requirements, including adoption of new National Ambient Air Quality Standards (NAAQS) and adoption of two new federal air toxics standards. The rule changes also include amendments to state air construction permitting requirements and stack testing requirements. Additional, minor amendments to other rules and minor changes to federal regulations also are being adopted.

This rulemaking includes adoption of two new National Emission Standards for Hazardous Air Pollutant (NESHAP). This program requires new and existing facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for air pollutant emissions. The two new NESHAP being adopted affect metal finishing and fabricating facilities and plating and polishing facilities.

Because of the potential impacts to small businesses and previously unregulated facilities, the Department developed implementation strategies in conjunction with the rulemaking. The strategies include cooperative efforts with University of Northern Iowa – Iowa Air Emissions Assistance Program (UNI), Iowa Department of Economic Development (IDED), the Linn and

Polk County local air quality programs to provide outreach, education and compliance assistance to stakeholders. The Department's outreach efforts began in 2008 and are continuing during the rulemaking process. It is hoped that these new rules in conjunction with the Department's outreach efforts will result in reductions in air toxic emissions while minimizing the regulatory burden to small businesses and other affected facilities.

The specific items included in the adopted rules are briefly summarized below. More detail is included in the preamble of the attached Notice.

- Items 1 and 12 adopt a revision to the definition of “volatile organic compound” or “VOC.” EPA removed two compounds from the list of compounds considered to be VOC.
- Items 2 and 4 amend the zip code for the Department’s Air Quality Bureau offices. The address will change effective July 1, 2009.
- Item 3 adds a new construction permit exemption for some non-road diesel fuel engines used to conduct periodic testing and maintenance at natural gas pipelines. The Department has conducted an air quality assessment of these projects and determined that an exemption from construction permitting is appropriate.
- Item 5 amends the provisions for the notification letter for facilities qualifying for the permit by rule for paint booths (PBR). The Department is amending the provisions to require compliance with the new area source NESHAP for metal fabricating and finishing facilities (see also Item 9).
- Item 6 amends the provisions for applying for a Title V Operating Permit to update the zip code for the Air Quality Bureau offices which will change on July 1, 2009, and also to remove the requirement that EPA receive a hard copy of the Title V application.
- Item 7 adopts recent EPA amendments to the New Source Performance Standards (NSPS). EPA amended the NSPS for electric utility steam generating units and industrial-commercial-institutional steam generating units. The amendments add compliance alternatives and eliminate the opacity standard for certain facilities. EPA also amended the NSPS General Conditions for alternative work practices for equipment leak detection and repair.
- Item 8 adopts recent EPA amendments to the NESHAP program. This includes amendments to NESHAP for electric arc furnace steelmaking facilities. The amendments clarify the applicability of the opacity limit, change the particulate matter performance test requirements so that they are consistent with the NSPS for the source category, allow Title V test data to be used to demonstrate compliance, and revise the definition of a “scrap provider.”
- Item 9 adopts two new federal NESHAP for area sources. The first NESHAP affects facilities in which the primary activity is metal fabricating and finishing facilities. At this

time, the Department estimates that 60 facilities may be subject to this NESHAP. The second NESHAP affects facilities engaged in specific plating and polishing activities. The Department estimates that 100 facilities may be subject to this NESHAP. Some facilities may be subject to both NESHAP. The Department in conjunction with UNI has developed outreach tools for affected businesses and is already working directly with several facilities that will be affected by the NESHAP. Existing plating and polishing facilities will not be required to comply with the NESHAP until July 2010. Existing metal fabricating and finishing facilities will not need to comply with the NESHAP until July 2011.

- Item 10 amends the Department's current rules regarding stack testing notifications, pre-test meetings, and test protocols. The amendments provide clarity and allow more flexibility.
- Item 11 adopts the new NAAQS for ozone and lead. EPA recently strengthened the NAAQS for ozone and led to more adequately protect public health and welfare.

The Department plans to bring this Notice to the Commission for decision at the Commission's April meeting. There is no fiscal impact statement associated with this ruling since it we are adopting a federal standard. There may be a national fiscal impact statement.

INFORMATION

AIR QUALITY - TITLE V FEE BUDGET REVIEW

Wendy Rains, Environmental Specialist Senior in the Air Quality Bureau presented the following information.

The Commission will be asked to consider the SFY 2010 Title V budget in anticipation of setting the annual Title V fee at the May Commission meeting. The Air Quality Bureau (Bureau) budget is summarized for your information. Expenditures paid from the Title V fee fund are included in the budget. A summary of anticipated revenues is outlined at the end of the budget. A description of all expenditure areas and funding sources is listed below.

The Title V budget cycle begins each December as the Bureau estimates the upcoming budgetary needs. Staff met with a representative group of the core Title V fee payers each January to discuss the budget. This year the Bureau met with a core group of Title V fee payers on January 27, 2009. By March 31, sources required to obtain Title V Operating Permits submit annual emissions statements for the previous calendar year. The Bureau totals these emissions and provides that information to the Commission no later than the May meeting. The Commission will then be asked to set the fee based on the program budget.

A Title V operating permit is required for those facilities with potential emissions that exceed the major stationary source thresholds. A major stationary source is a facility that has the potential to emit 100 tons per year (tpy) or more of any air pollutant; or the potential to emit 10 tpy or

more of any individual hazardous air pollutant; or the potential to emit 25 tpy or more of any combination of hazardous air pollutants. Currently Iowa has approximately 275 major stationary sources, also referred to as Title V facilities. Examples of Title V facilities include electric utilities, grain processors, cement plants, and manufacturing operations.

The Title V fee is based on the first 4,000 tons of each regulated air pollutant emitted each year from each major stationary source in the state. Regulated pollutants include: particulate matter less than 10 micrometers in diameter (PM₁₀) and particulate matter less than 2.5 micrometers in diameter (PM_{2.5}), sulfur dioxide (SO₂), nitrogen oxides (NO_x), volatile organic compounds (VOC), lead (Pb), and hazardous air pollutants (HAP). The fee is used to support the development and administration of activities associated with major sources subject to the Title V Operating Permit Program.

Air Quality Funding Sources and Cost Centers - The Air Quality Bureau budget is divided into two primary areas: Air Quality Program and Air Title V Program. Expenditures are divided between multiple expenditure (cost center) accounts and a variety of funding sources as listed in Table 1. The attached spreadsheet consolidates the cost centers into the two primary areas to reflect the total program.

Clean Air Act (CAA) section 105 money is awarded to the department through a Performance Partnership Grant (PPG) with the EPA. The PPG is the financial component of the Performance Partnership Agreement (PPA). The department negotiates the PPG on an annual cycle while the PPA is negotiated on a two-year cycle. The PPA contains the mutually agreed upon goals that the EPA and DNR will work together to achieve during the two year agreement period. For air quality, the tasks that must be accomplished to achieve the agreed upon goals are contained in the 105 work plan, which is an attachment to the PPA. As indicated in the chart below, CAA section 105 funds require state matching dollars whereas CAA section 103 funds do not. No Title V money is included in the PPG.

Table1. Summary of Cost Centers and Funding Sources

Program Area	Expenditures (Cost Center)	Funding Source*
Air Title V includes		
Legal Services	1430	TV Fees
Title V Information & Education	1556	TV Fees
IT Support	3520	TV Fees
Title V Operating Permit Program	7230	TV Fees
Title V Field Program	7421	TV Fees
Air Quality Program includes:		
Diesel Emission Reduction Grant	7210	Federal Grant
Air Quality central office base program	7220	CAA 105 & GF
PM 2.5 Monitoring network	7240	CAA 103
ICCAC Support	7250	GF / Env. First
Air Quality field office base program	7419	CAA 105 & GF

Ambient Air Monitoring Infrastructure Request	17HA New	GF / Env. First Proposed GF
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- * TV Fees – Title V fees
 CAA 105 – Clean Air Act section 105 grant with a state match required
 CAA 103 – Clean Air Act section 103 grant with no state match required
 Env. First – Funding under the state Environment First Fund
 GF – Legislatively appropriated General Funds or other state funds
 Proposed GF – Proposed legislative request for ambient air monitoring and comprehensive airshed planning

Carryover Funds - The Bureau has been working each year since the program's inception to develop a budget that more accurately reflects the amount of funding required to implement the Title V program. In past years, the Air Quality Bureau budget was planned with approximately a one percent reserve, however, the carry over funds have accumulated each year to an amount greater than 1%. The Bureau implemented measures in SFY 2009 to reduce the amount carried over into SFY 2010. The measures include adjustments to the projected carryover funds that account for normal staff turnover and the resulting vacancies that occur during a typical state fiscal year. Due to lower than anticipated vacancy rates, the Bureau did not generate the typical amount of carryover funds. The Bureau projects the amount to be carried over at the end of SFY 2009 at approximately \$100,000, which is dramatically lower than the over \$1,000,000 seen in prior years. The large carry forward amount has buffered the increase in the Title V fee over the past several years. The reduced amount will result in a larger increase in the fee in comparison with prior years.

Ambient Air Monitoring Changes – The ambient air monitoring program continues to prepare for the recently revised Lead NAAQS. The Bureau must establish a new Lead monitoring network to meet the revised requirements. Additional equipment will be needed for laboratory analysis.

The program also continues to prepare for new requirements associated with the revised ozone and PM 2.5 NAAQS. There continues to be a potential for significant change in the federal Clean Air Act (CAA) Section 103 grant that supports PM 2.5 monitoring. EPA indicated in the current continuing resolution (through March 6, 2009) that this would be the final year of the CAA 103 grant. The PM 2.5 laboratory analysis, estimated at over \$245,000 annually, has been previously funded by this grant. A combination of CAA 105 money with general fund match, infrastructure money, and Title V fees will be used to meet the ambient air monitoring needs and to offset the possible loss of laboratory analysis funding if the CAA 103 grant ends.

Title V Budget Changes – The Bureau is projecting that the statewide calendar year emissions for 2008 will be lower than last year's emissions due to the natural disasters in the summer of 2008. The current estimate is 215,700 tons, which is 8,300 tons less than the prior year. Actual emissions data will be used in calculating the final Title V fee for the May Commission meeting.

The Title V fee payers were supportive of the Bureau to restoring 1.0 FTE to provide IT user support to staff. Expenses, such as rent and travel costs, have been redistributed proportional to the increased major source work effort in SFY 2008, and the increased effort seen to date in SFY 2009.

Details on where changes to the budget are being proposed are listed in the attached spreadsheet in the “Notes” column.

1. Personnel and indirect costs: As the personnel costs have not been finalized, the Bureau is using an estimate of 5 percent increase for all FTE positions that are not capped. The indirect costs are estimated to increase from 13.76 percent to 14.03 percent in SFY 2010.
2. Professional Services: The agreements are still under negotiation. The current estimates, based on negotiations to date, are included in the attached budget.
 - The Linn and Polk County Local Air Quality Programs have estimated increased personnel costs and program costs.
 - The UHL contract amount reflects an estimated increase due to increased personnel costs and to accommodate changes in the ambient monitoring program requirements.
 - The UNI small business assistance agreement amount reflects an estimated increase to cover increases in personnel costs.
 - An expense for laboratory analysis related to PM 2.5 has also been added. This expense was previously provided by EPA.

Total Title V Fund expenditures are proposed to be increased from the current SFY 2009 budget levels by 11.3% or \$1,168,000 in the SFY 2010 budget. The carry forward amount has been reduced 90.2%. The fee is proposed to increase by 33% or \$13.00, from \$39.00 per ton to \$52.00 per ton.

Susan Heathcote asked that we step up the discussion about other funding sources for the program. It doesn't seem right that the fee goes up drastically because our overall emissions have decreased.

Charlotte Hubbell asked about our authority to charge a fee for new construction.

Jim McGraw said that we currently have the authority to charge it but we haven't wanted to implement that because the money wouldn't come back to us. We don't want to charge them a fee and then have the money go elsewhere and not back into the program.

Henry Marquard said that this is an issue for next year's legislation. We need to make sure that we address this.

Pat Boddy said that this will be on the list for next year.

INFORMATION

ADOPTED AND FILED EMERGENCY – NEW CHAPTER 35: AIR EMISSIONS REDUCTION ASSISTANCE PROGRAM

Wendy Rains, Environmental Specialist Senior in the Air Quality Bureau presented the following item.

The Commission will be asked to approve the Adopted & Filed Emergency rulemaking to adopt a new Chapter 35 to create a financial assistance program for air quality purposes.

The federal American Recovery and Reinvestment Act of 2009 (Act) appropriated \$300 million dollars to reduce diesel emissions across the country. The State of Iowa anticipates receiving approximately \$1.7 million dollars. The funds will be distributed to eligible applicants through grants or a combination of grants and loans. The program addresses diesel vehicles and equipment currently used for on-road applications, like buses and heavy duty diesel trucks, and non-road applications, like construction, agriculture, or mining. Eligible projects include engine idling reduction and retrofit technologies, engine replacement, vehicle replacement, and clean diesel emerging technologies.

There is an expedited timeline for funds from the federal Act to be distributed to eligible applicants. U.S. EPA must report the details of the programs to Congress by mid-May 2009. Disbursement of funds is anticipated to be required shortly after approval of the programs. The Department is proposing this rulemaking in an expedited manner to meet the timeline requirements of the federal Act. The Department is also publishing a Notice of Intended Action regarding this rulemaking to accept comments.

To facilitate the rulemaking process, the Department patterned the new chapter after the Solid Waste Alternative Program (SWAP) in 567 IAC 209. Guidelines for the financial assistance program and application forms will be posted on our website.

Pat Boddy said that there is a iowarecovery.gov website that will promote these available funding sources for Iowa.

Susan Heathcote asked if bus emissions are included.

Wendy Rains said yes. We have worked with state agencies, schools and other groups. Through various grants we have been able to put on catalytic mufflers on the buses. Buses are much cleaner now than they have ever been.

Motion was made by Shearon Elderkin to move forward with the emergency rulemaking for Chapter 35 as presented. Seconded by Charlotte Hubbell. Motion carried unanimously.

APPROVED AS PRESENTED

NOTICE OF INTENDED ACTION – NEW CHAPTER 35 – AIR EMISSIONS REDUCTION ASSISTANCE PROGRAM

Wendy Rains, Environmental Specialist Senior in the Air Quality Bureau presented the following item.

The Commission will be requested to approve this Notice of Intended Action to adopt a new Chapter 35 to create a financial assistance program for air quality purposes.

The federal American Recovery and Reinvestment Act of 2009 (Act) appropriated \$300 million dollars to reduce diesel emissions across the country. The State of Iowa anticipates receiving approximately \$1.7 million dollars. The funds will be distributed to eligible applicants through grants or a combination of grants and loans. The program addresses diesel vehicles and equipment currently used for on-road applications, like buses and heavy duty diesel trucks, and non-road applications, like construction, agriculture, or mining. Eligible projects include engine idling reduction and retrofit technologies, engine replacement, vehicle replacement, and clean diesel emerging technologies.

There is an expedited timeline for funds from the federal Act to be distributed to eligible applicants. U.S. EPA must report the details of the programs to Congress by mid-May 2009. Disbursement of funds is anticipated to be required shortly after approval of the programs. The Department is proposing this rulemaking in an expedited manner to meet the timeline requirements of the federal Act. The Department is also publishing an Adopted and Filed Emergency notice regarding this rulemaking.

To facilitate the rulemaking process, the Department patterned the new chapter after the Solid Waste Alternative Program (SWAP) in 567 IAC 209. Guidelines for the financial assistance program and application forms will be posted on our website. A public hearing will be held on May 11, 2009 at 10:00 a.m. at the Air Quality Bureau.

Motion was made by Susan Heathcote to approve the NOIA for Chapter 35 as presented. Seconded by Sue Morrow. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT – CITY OF MARION – ECONOMIC ANALYSIS OF A PLASMA ARC WASTE-TO-ENERGY FACILITY

Ed Tormey, Chief of the Legal Services Bureau presented the following item.

Recommendation:

The Department requests Commission approval of a contract not to exceed \$150,000 with the City of Marion for seven (7) months to accomplish the following three objectives:

- To study the commercial application potential of plasma arc gasification technology as an alternative to landfill disposal of municipal solid waste.
- To develop a conceptual Pro Forma for a third party partnership who will build, own, and operate the plasma arc facility.
- To study the impacts of the construction of such a facility on the local and state economy.

Funding Source:

This project is funded through a legislative appropriation from the Rebuild Iowa Infrastructure Fund to the Department of \$150,000.

Background:

Senate File 2432, passed during the 2008 legislative session, provided funding (\$150,000) and authorizing the Department to award a grant to a city within certain population parameters to conduct a study of the feasibility of the use of plasma arc and other related energy technology for disposal of solid waste while generating energy. The City of Marion met these population parameters.

Plasma arc technology is a potential waste treatment technology that uses high electrical energy and high temperature to break down waste material by melting the inorganic portion and destroying the organic portion. Materials are not incinerated but rather the heat from plasma converters causes pyrolysis where organics break down and decompose. The process is intended to be a net generator of electricity while reducing the volume of waste being sent to the landfill. In general, by-products of the process include synthetic gas (syngas), slag and heat.

- Syngas, can be used to generate electricity to power the facility or sold to the power grid or cleaned and used in fuel cells.
- Slag is the solid by-product. Its weight and volume are significantly reduced from its original form. Potential uses for slag include concrete/asphalt, paving brick, insulation, or as an absorbent depending on the method employed during the cooling process.
- Heat production is considerable. It can be used to maintain the furnace temperature or to convert water to steam and then used to turn steam turbines to generate electricity.

Purpose:

The purpose of this contract is to accomplish three (3) main objectives:

- To study the commercial application potential of plasma arc gasification technology as an alternative to dispose of municipal solid waste. End products will include electricity for commercial sale and potential secondary products, such as ethanol, methanol, rock wool, biodiesel, steam, or others. To examine economic benefits of such a facility and determine which secondary product is the most profitable within the Midwestern economy.
- The study will include development of a conceptual Pro Forma for a third party partnership who will build, own, and operate the plasma arc facility. The University of Iowa, a partner in the study, is interested in the potential of using plasma arc technology as a source of renewable energy. The University of Iowa is also interested as a customer for the renewable energy (syngas, electric, thermal) produced by the facility.
- To study the impacts of the construction of such a facility on the local and state economy.

The study will:

- Examine available plasma arc gasification systems to determine which is best suited to dispose of municipal solid waste, with potential other feedstocks such as hazardous

waste, animal, and commercial waste with the highest reliability and lowest operating cost;

- Determine the most reasonable alternative and pricing structure for the marketing of power produced at a plasma arc gasification facility;
- Look at potential markets and cost of production for several secondary products such as rock wool, ethanol, methanol, biodiesel, steam and others as needed to determine which has the best positive impact on the profitability of the facility;
- Prepare an analysis of the “rightsizing” of the facility, as determined by the point at which the size of the facility makes operations most profitable;
- Prepare a summary report of the expected economic impact construction and operation of such a facility in the City of Marion on a regional and statewide level; and
- Identify optimal site location for a facility to serve the University of Iowa, given the University would serve as the sole, and long-term customer for purchase of energy (syngas, electric, thermal) produced by the facility.

Consulting Firm Selection Process:

The City of Marion was chosen as the contractor based on conditions set out in Senate File 2432. The City of Marion has completed a subcontractor selection search. SCS Engineers was selected by the City as the firm most capable to meet the objectives of this economic analysis.

Paul Johnson asked how the contractor was selected and if they will take a fair and unbiased look at this technology?

Erik Miles said that we put together a group of people and they generated a Request for Qualifications (RFQ). We had two major firms that were interested in this study. We went with this firm because they did seem unbiased. They seemed very professional in how they were going about the study. They did tell us that they were going to present both the pros and cons. That was one of the major criteria to ensure that the report would be unbiased.

Marty Stimson asked if the report could be made public and that the Commission receive a copy of the study.

Erik Miles said yes, we can do that.

Charlotte Hubbell said that based on her article regarding plasma arc technology, landfills charge \$35 per ton for garbage and this plasma arc technology would run about \$172 per ton. Is that accurate?

Erik Miles said that we would need to gather more information regarding the costs and ability to off-set based on our own experiences.

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

APPROVED AS PRESENTED

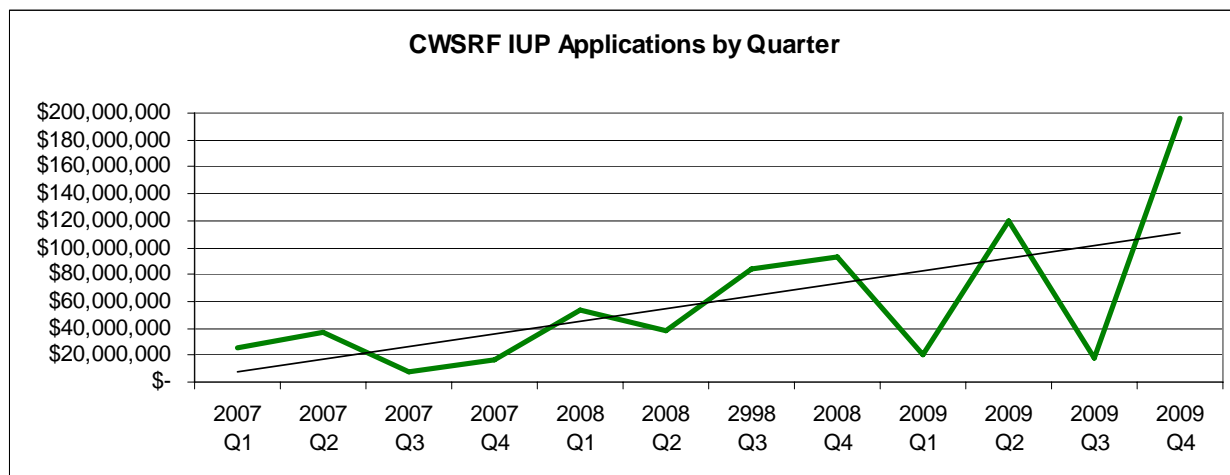
CLEAN WATER AND DRINKING WATER STATE REVOLVING LOAN FUND – FY 2009 INTENDED USE PLANS, FOURTH QUARTER UPDATES

Patti Cale-Finnegan, in the Water Quality Bureau presented the following information.

Commission approval is requested for the fourth quarter updates to the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Intended Use Plans (IUPs) for FY 2009. The Iowa SRF continues to grow and expand its role as one of the primary funding sources for water quality and protection of public health. Since 1989, the Iowa SRF has loaned more than \$1 billion.

The Iowa SRF is operated through a coordinated partnership between the Department of Natural Resources (DNR) and the Iowa Finance Authority (IFA). DNR administers the environmental and permitting aspects of the programs, with IFA providing financial assistance including loan approval and disbursements.

The CWSRF provides low-interest loans for wastewater and storm water infrastructure improvements and nonpoint source water quality projects. The fourth quarter update includes new project requests for \$196 million. The table shows that the demand for CWSRF loans continues to grow.



This brings the current requests for FY 2009 to \$549.5 million, including \$33.7 million for non-point source projects. There is typically a lag between when projects are placed on the IUP and when funding is disbursed. It is anticipated that approximately \$222 million could be disbursed through the remainder of FY 2009 for CWSRF projects.

The fourth quarter update also includes a change in the nonpoint source set-asides. Demand in the Livestock Water Quality Facilities Program has exceeded the \$12 million originally set aside, while several projects anticipated in the General Nonpoint Source set-aside have not proceeded.

Program	Final SFY 2008 Set-Aside Amount	Proposed SFY 2009 Set-Aside Amount
Onsite Wastewater Assistance Program (OSWAP)	\$1.5 million	\$1.7 million
Local Water Protection Program (LWPP)	\$8.0 million	\$6.0 million
Livestock Water Quality Facilities Program (LWQ)	\$6.0 million	\$12.0 million <u>\$14.0 million</u>
General Non-Point Source Program (GNS)	\$19.3 million	\$14.0 million <u>\$12.0 million</u>
	TOTAL	\$33.7 million

To date this fiscal year, \$85.6 million dollars in infrastructure loans have been signed, and \$10.5 million in nonpoint source assistance has been disbursed.

The DWSRF provides loans to public water supplies to protect public health and improve infrastructure. The fourth quarter update includes project requests for \$31 million. This brings the current requests for FY 2009 to \$154 million. This includes two projects, for Sioux City and Anamosa, which were left off the priority list by mistake during the public comment period. To date this fiscal year, \$37 million dollars in infrastructure loans have been signed. It is anticipated that approximately \$76 million could be disbursed during the remainder of FY 2009 for DWSRF projects.

The Project Priority Lists are attached and published on www.iowasrf.com as sortable Excel files for greater ease in finding specific projects.

The Sources and Uses tables (below) for both CWSRF and DWSRF show that funds are available or obtainable to provide anticipated disbursements. Loan disbursement rates are estimated based on previous experience with how quickly projects get ready for funding and the pace of reimbursement requests.

The Sources and Uses tables include possible federal economic stimulus funds. DNR and IFA are preparing special updates to the SRF Intended Use Plans to accommodate the provisions that will be unique to the stimulus funds. The IUP updates will be available for public comment in March and will be submitted for approval by the Commission in April.

A public meeting was held January 29, 2009 to receive comments on the proposed IUP updates. No oral comments were provided at the hearing. The written comment period closed on February 5, 2009. No written comments were received.

**Iowa CWSRF State Fiscal Year 2009 4Q
Estimated Funding Sources and Funding Uses**

As of 1/16/09

Funding Sources

Funds Available in Equity and Loan Accounts	\$116,404,000	*
Funds Available Through Potential Stimulus Bill and/or Issuance of Bonds	\$89,737,000	
Federal Fiscal Year (FFY) 2008 Capitalization Grant	\$9,203,000	
Federal Fiscal Year (FFY) 2009 Capitalization Grant (partial)	\$3,506,000	
Equity Fund Interest Earnings during State Fiscal Year (SFY) 2009	\$1,314,000	
Net Repayments on Equity Fund Loans during SFY 2009	\$1,665,000	
Funds Released from Indentures to Equity Fund (available for loans)	<u>\$912,000</u>	
Total Funding Sources	\$222,741,000	

Funding Uses

Undisbursed Amounts Committed to Existing Loans (60% disbursement rate)	\$66,360,000	
Section 212 Project Requests (FNSI issued; 40% disbursement rate)	\$58,312,000	**
Section 212 Project Requests (FNSI not issued; 20% disbursement rate)	\$70,997,000	**
Planning & Design Requests (approved on previous IUP)	\$5,789,000	
Planning & Design Requests (new request this IUP)	\$2,204,000	
Non-point Source Program Assistance	\$18,571,000	
Program Administration From FFY 2008 Capitalization Grant	<u>\$508,000</u>	
Total Funding Uses	\$222,741,000	

* *Cash Available for disbursements as of 1/16/09*

** Loan disbursement rates are estimated based on previous experience with project pace. For projects that currently have not had a Finding of No Significant Impact issued, it is expected that up to 20% of the total project amounts may be disbursed during SFY 2009 once a FNSI has been cleared, construction permit issued, and binding loan commitment signed. For those projects with FNSI clearance, the disbursement rate is estimated at 40% of the loan request amount.

**Iowa DWSRF State Fiscal Year 2009 4Q
Estimated Funding Sources and Funding Uses**

As of 1/16/09

Funding Sources for Loans

Funds Available in Equity and Loan Accounts	\$39,987,000	*
Funds Available Through Potential Stimulus Bill and/or Issuance of Bonds	\$28,145,000	
Federal Fiscal Year (FFY) 2008 Capitalization Grant available for loans	\$6,358,000	
State Match for FFY 2008 Capitalization Grant	\$303,000	*
Equity Fund Interest Earnings during State Fiscal Year (SFY) 2009	\$372,000	
Net Repayments on Equity Fund Loans during SFY 2009	\$1,289,000	
Funds Released from Indentures to Equity Fund (available for loans)	<u>\$173,000</u>	
Total Funding Sources for Loans	\$76,627,000	

Funding Uses for Loans

Undisbursed Amounts Committed to Existing Loans (60% disbursement rate)	\$31,421,000	
Project Requests (FNSI issued; 40% disbursement rate)	\$34,373,000	**
Project Requests (FNSI not issued; 20% disbursement rate)	\$7,841,000	**
Planning & Design Requests (approved on previous IUP)	\$2,035,000	
Planning & Design Requests (new request this IUP)	<u>\$957,000</u>	
Total Funding Uses for Loans	\$76,627,000	

* *Cash Available for disbursements as of 1/16/09*

** Loan disbursement rates are estimated based on previous experience with project pace. For projects that currently have not had a Finding of No Significant Impact issued, it is expected that up to 20% of the total project amounts may be disbursed during SFY 2009 once a FNSI has been cleared, construction permit issued, and binding loan commitment signed. For those projects with FNSI clearance, the disbursement rate is estimated at 40% of the loan request amount.

Funding Sources for Set Asides

Available Balance under Existing Capitalization Grants for set asides:

Administration	\$1,153,000
Small Systems Technical Assistance	\$268,000
State Program	\$494,000
Other Authorized Activities	<u>\$4,161,000</u>
Total Funding Sources for Set-Asides	\$7,797,000

Funding Uses for Set Asides

Set Asides:	Administration	\$1,153,000
	Small Systems Technical Assistance	\$268,000
	State Program	\$494,000
	Other Authorized Activities	<u>\$4,161,000</u>
Total Uses for Set Asides		\$7,797,000

Paul Johnson asked who the nonpoint source grants are reviewed by?

Chuck Corell said that the technical side of the livestock water quality is reviewed by the NRCS.

Motion was made by David Petty to approve the Clean Water and Drinking water SRF as presented. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACTS – ARCHEOLOGICAL AND/OR ARCHITECTURAL HISTORY SERVICES – STATE REVOLVING FUND

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

Recommendation:

The Department requests Commission approval of contracts with the following firms:

- Wapsi Valley Archaeology, Inc. (archeology and architectural history)
- The Louis Berger Group, Inc. (archeology and architectural history)
- The 106 Group, Ltd. (architectural history)
- Office of State Archeology, University of Iowa (archeology and architectural history)
- Marina Consulting Corp. (archeology)

Purpose:

The purpose of the contracts is to provide archeological and/or architectural history services relating to State Revolving Fund-financed water supply and wastewater construction projects. DNR intends to execute contracts with these service providers on a retainer basis. As the need for specific archeological and/or architectural history investigations is identified, the DNR will solicit bid proposals from the selected contractors for the specific scope of work. The DNR will then select the most appropriate bid proposal and will execute an addendum to the contract with the selected contractor to provide the specific services. This will speed the process of contracting for these services which are often time-sensitive.

Background:

Drinking water and wastewater construction projects funded by the SRF are considered federal undertakings. Each project must either have a Categorical Exclusion (CX) or must demonstrate a Finding of No Significant Impact (FNSI), which must include documentation of the process of determining potential impacts on natural and cultural resources. Previously, the applicant was responsible to contract and pay for archeological and/or architectural history services.

Since 2006, the DNR's Environmental Review Specialist has been assisting SRF applicants by determining and issuing CXs, seeking clearances from consulting parties, contracting for archeological and/or architectural history investigations, preparing documentation for the State Historic Preservation Office, compiling the Environmental Information Documents, and issuing FNSIs.

DNR sends a questionnaire to applicants once the environmental review process is completed, asking for ratings of and comments on the services provided. Here is a typical comment from a city staff member: "The Environmental Review Services made a seemingly convoluted process as streamlined as such a process could be. Thank you for all your assistance. It would not have been possible without you. Great customer service!"

Funding Source:

Funding for these contracts will come from the administrative accounts of the Clean Water SRF and Drinking Water SRF programs. DNR may contract for Phase IA Survey or Phase I Survey archeological services and/or Reconnaissance Survey architectural history services as needed for specific applicant projects. If additional investigation or effort is required beyond those survey levels aforementioned, the cost and procurement of these surveys will be the responsibility of the SRF applicant.

In the period since DNR has begun paying for these services, a total of \$236,118 has been awarded for contracts. These costs are associated with SRF loans totaling \$207 million.

DNR has projected that up to 100 investigations may be needed over the term of the contracts at an estimated total cost of \$300,000. The contracts are written to provide a not-to-exceed amount per firm of up to \$60,000 in order to give DNR flexibility in choosing the appropriate contractor for each work effort, but the contracts do not constitute a commitment by DNR to award any contract addenda.

Consulting Firm Selection Process:

A selection committee of DNR staff, advised by staff from the State Historic Preservation Office, chose the contractors based on their experience working in Iowa, the firms' qualifications, their ability to complete assignments on time, their cost proposals, and their ability to provide both archeological and architectural history services.

Scope of Work:

For an outline of the **scope of work**, see the attached, 09-7121/7154-XX Contract. The scope of work for all of the contracts is identical.

Paul Johnson asked who pays for this in the end? And have you ever stopped a project because of archeological finds?

Chuck Corell said the federal government. We work closely with the State Historical Preservation Office (SHPO) on whether or not to proceed with a project.

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

APPROVED AS PRESENTED

CONTRACT – IOWA STATE UNIVERSITY FOR DEVELOPMENT OF SWAT HYDROLOGIC PARAMETERS FOR SPECIFIC IOWA LANDFORM REGIONS

Keith Schilling, with the Department's Geological Survey Bureau presented the following item.

Recommendations:

Commission approval is requested for a one year-service contract with Iowa State University of Ames, IA. The contract will begin on April 1, 2009 and terminate on November 30, 2009. The total amount of this contract shall not exceed 65,421.00. DNR shall have the option to renew this contract long as this contract and any extensions do not exceed a six-year period.

Funding Source:

This contract will be funded through federal EPA Section 104(b)(3) TMDL Grant Agreement No. X7977026 01.

Background:

The project was developed in response to a solicitation from Region VII US EPA calling for proposal to improve TMDL develop in the region. In accordance with the federal Clean Water Act,

DNR must prepare TMDLs for any and all waterbodies that have been placed on the state's impaired waters list (section 303(d) list). By completing this project DNR will be better able to perform more accurate modeling of pollutant loads within watersheds for impaired waterbodies.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining Iowa State University to provide data and programming support including i_SWAT software, SWAT modeling; calibration and validation processes; and data identification and processing; in support of DNR's Section 104(b)(3) TMDL grant from Region VII of the US Environmental Protection Agency for the development of SWAT hydrologic parameters for specific Iowa landform regions.

Contractor Selection Process:

Iowa State University was chosen for this project because staff from the Center for Agricultural and Rural Development (CARD) at ISU were proposed to EPA, and are serving, as co-principal investigators for this study.

The DNR is allowed to contract with Iowa State University without using a competitive selection process pursuant to state law.

Section 5 STATEMENT OF WORK

5.1 Statement of Work. ISU shall be responsible to perform the following tasks as described by the Task Milestone Dates set out in the following table:

Obligation	Task Milestone Date
<p>Task 1: Watershed Identification and Data Collection Support and refine work conducted by the Iowa Geological Survey to identify appropriate watersheds within each ecoregion, collecting and processing necessary data to create each watershed model and development of watershed models.</p>	No later than July 1, 2009
<p>Task 2: Software and Technical Support The contractor shall provide data and programming support including i_SWAT software.</p>	No later than November 30, 2009
<p>Task 3: SWAT Modeling, Calibration and Validation The contractor shall, in conjunction with DNR staff, conduct SWAT model calibration and validation as outlined in the QAPP approved for this project, and through this process identify appropriate hydrologic parameter values and/or ranges correlated to Iowa Landform Regions.</p>	No later than November 30, 2009
<p>Task 4: Final Document Preparation The contractor shall, in conjunction with IDNR staff, document methodology used to develop region specific input parameters for distribution to EPA</p>	No later than November 30, 2009

region 7 states. This documentation will serve as an instructional guide allowing other states to develop landform region specific parameters.	
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All tasks identified above shall be completed in conformance with the work plan, the quality assurance project plan (QAPP), and other requirements articulated in the grant proposal, Development of SWAT Hydrologic Parameters for Specific Iowa Landform Regions for Grant Solicitation Number EPA-WWPD-08-005, and the grant award of the same name issued December 4, 2008, both of which are incorporated by this reference. To the extent that there is disagreement between this contract and those incorporated documents, the terms of this contract shall control.

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

APPROVED AS PRESENTED

GENERAL DISCUSSION

CAFO HEARING RULES

Charlotte Hubbell distributed the proposed hearing procedures.

65.10(9) Decision by commission

a. Hearing before commission

1. All hearings before the commission requested pursuant to subrules 65.10(7) and 65.10(8) shall be handled as other agency action.
2. Upon a timely request or requests for a hearing before the commission pursuant to subrules 65.10(7) and 65.10(8), the director shall set a hearing during the first regular meeting of the commission scheduled 30 days or more from the date the director receives the first such request.
3. No later than 5 days from the date the director receives a timely request for hearing, the director shall send, by certified mail, one copy of the request or requests, a notice of the hearing date assigned and the department's complete file on the application under review to the commission, the applicant and the county board of supervisors.
4. No later than 15 days from the date set for hearing, the applicant, *the department* and the county board of supervisors shall, if either chooses to do so, send, by certified mail, one copy of a brief and any written documents claimed to support their respective positions to the commission and to each other. No further briefs or documents shall be permitted except upon request and permission of the commission.

5. The commission shall use the following hearing procedures:
 - i) All written evidentiary material submitted into the record at the hearing shall be marked as coming from the ~~person or entity~~ **party** presenting it in the manner indicated by the chairperson of the commission.
 - ii) Objections to submitted written evidentiary material may be made for the record by the applicant and the county board of supervisors. All such objections shall be taken under advisement by the commission.
 - iii) The applicant and the county board of supervisors shall present no more than one witness during their oral presentations unless permission to present others is requested and granted by the chairperson of the commission.
 - iv) Members of the commission, or the commission's designated legal counsel, may ask questions of the applicant, the county board of supervisors, and their witnesses during their respective oral presentations. The members and counsel may also ask questions of any other person or entity appearing at the hearing ***except upon request and permission by the chairperson of the commission***. No other persons or entities may ask questions of anyone making a presentation or comment at the hearing except upon request and permission by the chairperson of the commission.
 - v) Persons making oral presentations or comments, or giving testimony as witnesses, shall not be placed under oath. Such persons shall include DNR staff, as part of the hearing, their assessment of the application in question and why such application was approved or denied.

6. The commission shall use the following hearing format:
 - I) Announcement by the chairperson of the commission of the permit application under review.
 - ii) Receipt into the hearing record of the demand or demands for hearing, the department's complete file on the application under review and the briefs and written documents previously provided by the applicant and county board of supervisors pursuant to subrule 65.10(9)(a)(4).
 - iii) Oral presentation, if any, by the applicant if that party timely requested the hearing. If the applicant did not timely request the hearing, then the county board of supervisors shall make the first presentation.
 - iv) Oral presentation, if any, by the applicant or county board of supervisors, whichever party did not have the opportunity to make the first presentation.
 - v) Oral comments, if any, by witnesses allowed under subrule 65.10(9)(a)(5)(iii) relating to the permit application under review. Such persons or entities may submit written position statements which shall be received into the hearing record.

- vi) Testimony, if any, by public officials or experts engaged by the commission to assist it in making its decision.
- vii) Discussion by the commission, motion and final decision on whether the application for permit is approved or disapproved.
 - A. The commission may elect to reduce its decision to writing within 20 days after the hearing. Such election must be made at the hearing, and the subsequent written decision shall thereafter stand as the departments final decision for purposes of appeal to district court.
 - B. The commission shall, by certified mail, send one copy of its written final decision to the director, the applicant, and the county board of supervisors on the date it is rendered.

65.10(7) County board of supervisors' request for hearing

- a. A county board of supervisors that has submitted an adopted recommendation to the department may contest the department's preliminary decision to approve or disapprove an application for permit by filing a written request for a hearing before the commission. Such request shall be sent to Director, Department of Natural Resources, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319, by certified mail, no later than 14 days following receipt by it of the department's notice of preliminary decision.
- b. The request for hearing shall include a statement setting forth all of the county board of supervisors' reasons why the application for permit should be approved or disapproved and a further statement indicating whether an oral presentation before the commission is requested.

65.10(8) Applicant's request for hearing

- a. The applicant may contest the department's preliminary decision to approve or disapprove an application for permit by filing a written request for a hearing. The applicant may elect, in the request, to have the hearing conducted before the commission pursuant to subrule 65.10(9)(a) or before an administrative law judge pursuant to subrule 65.10(9)(b). If no such election is made, the request shall be considered to be a request for hearing before the commission. Such request shall be sent to Director, Department of Natural Resources, Henry A Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319, by certified mail, no later than 14 days following receipt by it of the department's notice of preliminary decision.
- b. The request for hearing shall include a statement setting forth all of the applicant's reasons why the application for permit should be approved or disapproved and a further statement indication whether an oral presentation before the commission or an in-person appearance before the administrative law judge, as the case may be, is requested.

Susan Heathcote made changes to a. Hearing before commission, number 4 to include *the department*. It's important that we hear from the DNR staff on why they approved or denied the permit.

David Petty made changes to a. Hearing before commission, number 5(i), to change person or entity to *party*.

Henry Marquard agreed with that change.

Charlotte Hubbell said that we should be able to ask anyone a question for an expert answer pertaining to the hearing.

David Petty said that he is concerned with people presenting wrong information that ends up being influential in the hearing decision.

Henry Marquard made an addition to A. 5(iv.) “The members and counsel may also ask questions of any other person or entity appearing at the hearing *except upon request and permission by the chairperson of the commission.*”

I would agree that you can't confuse the public participation part of our meetings with the hearing and I think these rules help make that clear.

Charlotte Hubbell clarified that on the following sentence. “No other persons or entities may ask questions of anyone making a presentation or comment at the hearing except upon request and permission by the chairperson of the commission.” This means no one in the audience can ask a question during a hearing except upon permission by the chair.

Susan Heathcote said that we need to ensure that any information to be used in the hearing needs to be available to both parties beforehand. That way parties are not taken back by new information presented and then not have the resources to respond accurately.

Henry Marquard agreed.

Charlotte Hubbell raised the question on whether or not the Department should be included on the exchange of documents.

Henry Marquard said that it seems to be appropriate that they are included.

Ed Tormey, the Department's Legal Services Bureau Chief said that there are requirements on what documents the Department must submit for a hearing.

The Commission agreed to take out the procedures on Hearing before an Administrative Law Judge since they already have their own guidelines.

Henry Marquard said that we need to have these rules come back as a Notice of Intended Action.

DIRECTOR'S REMARKS

Director Richard Leopold said that he presented before the Ag/Natural Resources appropriations committee this morning. There were a lot of questions about selling off land, artwork and Honey Creek to generate revenues. We talked about general fund monies and what that means to the Department as far as the cuts. The Environmental Services Division is more vulnerable for cuts because of how much they rely on the general fund.

On the other side, we could be receiving \$300 million for floodplain management and dam inspection. We also have the \$100 million from the \$750 million bond.

Sustainable Funding is set to be on the ballot in 2010.

The manure on frozen ground bill is currently in the House. We have three manure bills out there right now. We have the turkey stockpiling bill, the cattle/feedlot stockpiling bill and then manure on frozen ground. The cattle stockpiling bill has been pushed together with the manure on frozen ground bill, which is upsetting because of the work we have done with the Cattlemen to come up with a good workable bill.

INFORMATION

**RESCISSION OF DECISION ITEM #6 FROM THE FEBRUARY 17, 2009 MEETING:
ADOPTED AND FINAL WATER USE & ALLOCATION PERMIT FEES RULE**

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

The Commission is asked to rescind the decision from the February 17, 2009 meeting for item #6 Adopted and Filed rulemaking to amend the Iowa Administrative Code Chapter 50: Scope of Division – Definitions – Forms – Rules of Practice and Chapter 55: Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water.

Henry Marquard reminded the commissioners of its decision from the February meeting. The Commission decided to set an annual fee and then supplement that fee based on water usage. It then instructed the Department to go forward with this fee structure in an Amended Notice of Intended Action. The Department's Legal Bureau reviewed this fee structure and determined that it would not be feasible to proceed in this manner. The Commission also heard that this decision was not supported by the legislative intent of the bill creating this fee, House File 2672 (2008). The Commission must now decide whether it wants to rescind its decision from the February meeting.

<i>Motion was made by Charlotte Hubbell to rescind our actions from the February 17, 2009 Meeting regarding the Adopted and Final Water Use & Allocation Permit Fees Rule . Seconded by Susan Heathcote. Roll call vote went as follows: David Petty – nay; Susan Heathcote – aye; Sue Morrow – aye; Gene Ver Steeg – nay; Marty Stimson – aye; Paul Johnson – aye; Shearon Elderkin – aye; Charlotte Hubbell – aye; Henry Marquard – nay. Motion carried.</i>

RESCINDED

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

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

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

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

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

The annual fee for water use permits and aquifer storage and recovery permits will be based on the number of active permits and amount of water allocated, with a minimum fee of \$100 per permit. Each year, the Environmental Protection Commission will be asked to set the fee based on the budgeted expenses for that year. A more detailed explanation of the current and future program efforts can be obtained from the department's website at <http://www.iowadnr.com/water/quantity.html>.

The department plans to hold one public hearing to obtain public comment.

NO MOTION MADE

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

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

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

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

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

During the last legislative session, the legislature authorized the department to collect up to an additional \$500,000 in fees each fiscal year. Iowa Code § 455B.265(6) requires the fees to be based on the Department's "reasonable cost of reviewing applications, issuing permits, ensuring compliance with the terms of the permits, and resolving water interference complaints."

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

The Commission approved the Notice of Intended Action for this rulemaking on October 14, 2008. A notice of the proposed rulemaking, public comment period, and public hearings was

mailed to each of the 2,537 current water withdrawal permit holders on November 14, 2008. Three public hearings were held in December 2008, in Onawa (12/3/08), Iowa City (12/5/08), and Des Moines (12/11/08), and were attended by 65 people. Comments were received from 56 people, with varying levels of support or opposition. There are no changes to the Notice of Intended Action as a result of public comments.

**ENVIRONMENTAL PROTECTION COMMISSION [567]
Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.265 the Environmental Protection Commission hereby amends Chapter 50, "Scope of Division—Definitions—Forms—Rules of Practice," and Chapter 55, "Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water," Iowa Administrative Code.

The adopted amendments to Chapter 50 include fees for the water use permit program and move the permit fee for the aquifer storage and recovery well permitting program from Chapter 55 to Chapter 50. Adopted in 2008, Iowa Code subsection 455B.265(6) authorizes the Environmental Protection Commission to adopt by rule fee amounts for permit applications and annual fees, up to \$500,000 each fiscal year. In determining the fees, the Commission is required to consider the cost of reviewing applications, issuing permits, ensuring compliance with the terms of the permits, and resolving water interference complaints. Each year, the Commission will calculate the fee based on the budgeted expenses for that year minus the general fund appropriation and the amount of any unused funds from the previous year.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 2008, as ARC 7307B. A notice of the proposed rulemaking, public comment period, and public hearings was mailed to each of the 2,537 current water withdrawal permit holders on November 14, 2008. Three public hearings were held in December 2008, in Onawa (12/3/08), Iowa City (12/5/08), and Des Moines (12/11/08), and were attended by 65 people. Comments were received from 56 people, with varying levels of support or opposition. A public participation responsiveness summary is available from the Department upon request.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code section 455B.265.

These amendments will become effective May 13, 2009.

The following amendments are adopted:

Item 1. Adopt the following new subrule 50.4(2):

50.4(2) *Fees.*

a. Application Fee. An application to the department for a new permit, modification of an existing permit, or registration of a minor non-recurring use of water must be accompanied with the fee listed in the table below. These fees are nonrefundable and are not transferable. For any

single application, if more than one fee in the table below applies, only the higher fee is required. The fees become effective on July 1, 2009.

Application Description	Form	Fees, in dollars
(1) To apply for a new permit to withdraw or divert water	16 (542-3106)	\$350
(2) To renew an existing permit	542-1470	\$0
(3) To modify an existing permit to either add a new source or increase the amount or rate of water withdrawn or diverted from a source or sources	16 (542-3106)	\$350
(4) To modify the conditions of an existing permit which are not described in Item 3 of this table (see above)	16 (542-3106)	\$0
(5) To apply for an aquifer storage and recovery permit or a protected source designation	N/A	\$700
(6) To apply for a permit to store water	18 (542-3109)	\$75
(7) To register a minor nonrecurring use of water	20 (542-3112)	\$75

b. Annual permit fee. In addition to the application fee, there is an annual permit fee for a water use permit or an aquifer storage and recovery permit. The annual fee shall be based on the number of active permits. Each permit holder shall pay the same annual fee. The fee will not be prorated and is nonrefundable. The annual permit fee is due December 1 of each year, beginning with December 1, 2009. The department will provide an annual fee notice to each permittee at least 60 days prior to the fee due date. An additional fee of \$100 will be imposed if the fee is not received by December 1. Failure to remit the fee by January 1 may result in the cancellation of the permit.

(1) There is no annual fee for a water storage permit (see (6) of table at paragraph 50.4(2)“a”) or for a minor nonrecurring water use registration (see (7) of table at paragraph 50.4(2)“a”).

(2) The annual fee shall be based on the costs for administering the water use permitting program for the previous calendar year and on the budget for the next fiscal year. The department will review the annual permit fee each year and adjust the fee as necessary to cover all reasonable costs required to develop and administer the water use permitting program. Permit holders that have paid an application fee after December 1, but prior to November 30, will not be required to pay an annual fee until December 1 of the following year. If an applicant remits an annual fee for the 12-month period beginning December 1 and then later submits an application fee for a permit modification, the applicant will be refunded the lesser of the fees. The department shall request commission approval of the amount of the annual fee no later than September of each year.

Item 2. Rescind and reserve subrule 55.5(2).

Motion was made by Susan Heathcote to approve the adopted and filed – Water Use and Allocation Permit Fees – Chapter 50 and 55 as presented. Seconded by Charlotte Hubbell.

Paul Johnson said that we are addressing fees to cover the program and administration but that’s only dealing with permit costs. We need to recognize that there is another part of this and that’s using the water resources of this state. Should the people of Iowa be reimbursed for that?

Richard Leopold said that we don't feel we have the authority to address that issue at this time. We have tried but we feel the discussions need and will continue.

Amendment to the motion was made by Charlotte Hubbell to approve the rulemaking along with the following language " with the understanding that the Commission's decision here was a result of the requirement to conform to the legislative interpretation of the statute."

Motion was made by Shearon Elderkin to approve the adopted and filed – Water Use and Allocation Permit Fees – Chapter 50 and 55 with the understanding that the Commission's decision here was a result of the requirement to conform to the legislative interpretation of the statute. Seconded by David Petty.

Chuck Corell said that through the current fee structure we can not collect more than \$500,000 per year for this program.

Charlotte Hubbell asked if the money allocated by the legislature is an ongoing allocation every year.

Chuck Corell said yes. This is the second year that we have had this allocation.

Marty Stimson said that this fell on us last time with not having the background of the true legislative stand on this issue. Therefore, when this issue came before us last month, we got off on our tangent which really wasted a lot of time and now we're discussing this again this month.

Richard Leopold said that part of it was a misunderstanding by stakeholder groups and the other part is our fault. With the more controversial rulemakings we need to make sure that everyone understands the background. Negotiation of this fee took months of work, dealing with different lobbies, legislators and the Governor's office. This rulemaking was strewn over three legislative sessions.

Henry Marquard said that he has a hard time with the idea that a deal should get made which requires Commission action without the Commission having any reasonable input into those discussions.

Richard Leopold said Commission decisions are discussed a lot at the capitol when rulemakings come up but things happen fast during the session. If you are requesting more involvement with legislative decisions, then we will need to communicate more often.

Pat Boddy said that these issues need to be addressed in the Department's communication plan.

Motion carried unanimously.

APPROVED AS AMENDED

GENERAL DISCUSSION

Henry Marquard asked if the Department could give an update at the April meeting on the Cargill sludge issue.

Barb Lynch said that this sludge (corn by-product and lycene) comes from two plants in Blair, Nebraska. The last time my field staff was out investigating in February they took samples that were very low in content (nitrogen and PK) levels. This complaint has been going on for about 15 years. We can not stop waste products from going across the state border because that is interstate commerce. In 2002, the permits were rescinded by DNR but a soil amendment was issued by IDALS. It is as they stated, sandy soil, and so the water does soak in more rapidly. There was a concern about metals at one point. I do have results from February tests that showed low contamination levels. So that's not an issue. She believed the nitrogen concentration was 1/10 ppm.

Susan Heathcote said that with the amount of concentration being applied, I would think that would change the nitrogen level content. Could you please check into this?

Paul Johnson asked if this would be permissible on the Nebraska side? Would you allow this to go into the river directly? Probably not.

Barb Lynch said that the land near the Blair area is very hilly. This waste does go through a very sophisticated treatment process. It has a uni-tank system with anaerobic pretreatment and sequencing batch reactor type treatment.

Charlotte Hubbell asked if there has been any water quality violations?

Barb Lynch said that there is a large ongoing file regarding this complaint. If there were water quality violations that would have been documented. I will have staff look further into this and report back next month.

Alternative Technologies

Henry Marquard passed out a letter from Lemna Technologies in regards to Iowa's Wastewater Design standards. I have received some complaints from other vendors regarding the Department's slowness in considering alternative technologies. If we are going to be handing out millions of dollars in stimulus monies to small unsewered communities, etc., then the ability to use these technologies become very important. I'm not stating that all these folks who have contacted me are right but I would like to hear from the Department on how they are handling alternative technologies.

Richard Leopold said that the Department has worked closely with Lemna Technologies. The Department agrees that we need to step on the gas with these technologies. Our wastewater engineering folks did produce a document that takes a look at about 8 different technologies. From what I understand, comparing other technologies to that used by Lemna Technologies is

not an apple to apple comparison. With Lemna we are not sure if it would work here and that's what is making this slow.

Chuck Corell said that we have approved four projects using Lemna Technologies. The Director is right, that we have been in frequent contact with Lemna Technologies. Their system isn't necessarily something new as much as it is a new way to apply a single technology. That's still enough for them to show us how it works. We just need to know if it works and what the reports look like. A lot of the time the comparisons are done in other states with different set-ups.

(Chuck distributed a list of alternative technologies that are approved in Iowa.)

David Petty said that alternative technologies need to meet or exceed Iowa standards. Iowa has set the standards for alternative technologies with EPA.

MONTHLY REPORTS

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

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

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

INFORMATION

NEXT MEETING DATES

April 21, 2009

May 19, 2009

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairperson Henry Marquard adjourned the meeting at 3:30 p.m., Tuesday, March 17, 2009.

Richard A. Leopold, Director

Henry Marquard, Chair

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