EPC COMMISSION MINUTES & AGENDA

MONTH April

YEAR 1988

ADM-1-1-1
April 1988

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State Forest Nursery
Ames, Iowa
April 25-26, 1988

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ADM-1-1-1
April 1988

MINUTES
ENVIRONMENTAL PROTECTION COMMISSION
State Forest Nursery
Ames, Iowa
April 25-26, 1988

The meeting of the Environmental Protection Commission was held at the State Forest Nursery in Ames, Iowa convening at 1:30 p.m. on Monday, April 25, 1988.

MEMBERS PRESENT

Charlotte Mohr, Robert Schlutz, Donna Hammitt, Nancylee Siebenmann, Keith Uhl, Catherine Dunn, Gary Priebe, Richard Timmerman.

MEMBERS ABSENT

Clark Yeager

ADOPTION OF AGENDA

The following was added to the agenda:

Proposed Contested Case Decision -- Stan Moser
Appointment -- Mayor of Mount Pleasant -- 11:00 a.m., April 26

Motion was made by Charlotte Mohr to approve the agenda as amended. Seconded by Catherine Dunn. Motion carried unanimously.

DIRECTOR'S REPORT

Director Wilson distributed copies of the agenda for the joint meeting of DED, DOT and DNR this evening.

Director Wilson announced that Ruth Bender has resigned effective June 1 as she will move with her family to Tokyo, Japan. Her position has been filled by Teresa Hay who is currently working in the Energy Bureau. Teresa was one of the three finalists when Ruth was chosen to fill the Waste Management Authority Division Administrator's position.

Director Wilson introduced Gail George who previously worked at the DNR Conservation Education Center. He stated that Ms. George has taken over the lead role for the department in developing the groundwater education strategy and programs.

Chairman Schlutz welcomed Gail George to the department and commented that the Commission is looking forward to working with her.

AIR MONITORING AND ASSESSMENT EQUIPMENT UPGRADE

Stan Kuhn, Division Administrator, Administrative Services Division, presented the following item.

The Department requests approval to purchase the equipment and services listed below.

The purchases are to be made to:

1. Complete conversion of the ambient air monitoring network to electronic data management,
2. Provide the computers needed to manage this data,
3. Replace a network maintenance vehicle,
4. Upgrade data assessment and modeling capabilities,
5. Obtain minimal volatile organic carbon sampling capabilities,
6. Purchase miscellaneous tools and parts needed to maintain the ambient network.

These items are 100 percent federally funded through a special supplemental grant specifically for this equipment.

Equipment To Be Purchased:

Cost	Description
$ 26,000(1)	8 electronic data loggers, modems and associated equipment
19,000(2)	3 microcomputers
8,000(3)	data handling and assessment software
9,000(4)	1 mini-pickup and utility box
9,000(5)	1 volatile organic carbon (VOC) sampler
4,000(6)	misc. tools and monitor parts
1,599(1)	telephone installation costs
$ 76,600	

(1) Linn County
(2) 1 each to Linn County, Polk County, UHL
(3) Linn County, Polk County, UHL, DNR
(4) Polk County
(5) UHL
(6) Linn County, Polk County

This request includes:

- Enough electronic data loggers to convert Linn County's continuous monitoring network to electronic data management (and the installation of these data loggers),

- The additional microcomputers needed to allow the Department to lease a computer to each local program and to UHL for their use in managing the ambient data they collect,

- Data management software so that the two local programs and UHL can more efficiently prepare the ambient data they collect together with dispersion modeling software for Polk County to use to improve their permitting program and data assessment software for the Department to use in permitting and monitor management efforts,

- A pickup (and utility box) for Polk County to use in servicing their network,

- A volatile organic carbon (VOC) sample collector to enable the collection of certain types of toxic compounds, and

- Various tools and replacement parts needed for maintenance of the ambient monitoring network.

Mr. Kuhn stated that a minor change has been made in regards to the distribution of the equipment, that being; the volatile organic carbon sampler will go to the department rather than UHL.

Motion was made by Catherine Dunn to approve the purchase of air monitoring and assessment equipment as presented. Seconded by Nancylee Siebenmann. Motion carried unanimously.

COMPUTER EQUIPMENT ACQUISITION FOR WATER QUALITY PLANNING SECTION

Stan Kuhn, Division Administrator, Administrative Services Division, presented the following item.

The Department requests approval to purchase the computer equipment listed below. This hardware and software will provide the Water Quality Planning Section with the information management capabilities needed for oversight and management of water quality programs and for satisfying reporting obligations. Areas of emphasis are:

-- Water quality assessments of streams, lakes and wetlands: detailed information on waterbodies is maintained to track water quality problems and to satisfy ongoing and new reporting requirements to the U.S. EPA under the revised Clean Water Act, including the identification of streams that are impaired by toxic pollutants.

-- Water quality standards review: information on water uses of streams and lakes to be considered for redesignation is reviewed periodically. Water use designations will be mapped.

-- Wasteload allocations: the wasteload allocations of continuously discharging wastewater treatment facilities are performed using computer models and then tracked as a reference for preparation of new allocations and for identifying streams that are water quality limited, as required by EPA.

-- Sewage sludge management program: data concerning sludge treatment methods will be entered from an inventory of wastewater treatment facilities.

Equipment to be purchased:

Cost	Description
$ 21,530	Four personal computers
5,510	Software for data base management and analysis, mapping telecommunications and document preparation
$ 27,040	

This acquisition is 100 percent federally funded through a Section 106 supplemental appropriation.

Discussion followed regarding copying of programs, uniform purchases throughout state government, capabilities, efficiency and productivity in relation to computers.

Motion was made by Catherine Dunn to approve the purchase of computer equipment for the Water Quality Planning Section as presented. Seconded by Charlotte Mohr. Motion carried unanimously.

GROUNDWATER IN-SERVICE TRAINING AND EDUCATIONAL MATERIALS DEVELOPMENT FOR LIFE AND EARTH SCIENCE PROGRAMS CONTRACT APPROVAL

Stan Kuhn, Division Administrator, Administrative Services Division, presented the following item.

The Department requests approval of the two contracts described below designed to meet the educational requirements set forth in the Groundwater Protection Act. The teacher in-service training contract is aimed at providing teacher training on existing curriculum for introduction into the classroom this fall. The educational materials development contract would provide additional materials covering a broader scope of groundwater protection issues than is addressed currently.

Groundwater Teacher In-Service Training Contract With the University of Northern Iowa, Institute for Environmental Education -- The $22,250 contract would provide for two one-week training sessions for upper elementary and secondary school science teachers using the OUTLOOK On Groundwater materials, with associated advertising, printing and evaluation costs. The contract would pay, on a per-person basis, for 15 to 30 teachers to attend each workshop, including their tuition, room and board.

Educational Materials Development Contract With the Iowa Department of Education -- The $15,625 contract would provide for the coordination of a team of six teachers to write groundwater educational materials for life and earth science programs (generally taught in seventh and eighth grade). They will also edit the materials after field testing in the classroom this fall. These materials would complete the groundwater education curriculum materials for life and earth science as identified in the Groundwater Education Strategy.

Both contracts would be funded with Oil Overcharge Funds.

Motion was made by Charlotte Mohr to approve the two Groundwater In-Service Training and Educational Materials Development for Life and Earth Science Program Contracts as presented. Seconded by Catherine Dunn. Motion carried unanimously.

REPORT ON FEASIBILITY OF LIMITING THE TYPES OF WASTE ACCEPTED AT A HAZARDOUS WASTE FACILITY

Ruth Bender, Division Administrator, Waste Management Authority Division, presented the following item.

Senate File 396, 1987 Iowa Acts, requires the Waste Management Authority Division to prepare a feasibility report on limiting the types of waste accepted at a hazardous waste facility. The report was to be submitted to the General Assembly by January 1, 1988. Due to the scope of the report and the recent staffing of the Waste Management Authority Division, a preliminary report was submitted on January 1 and a final report was prepared for submittal on April 1, 1988.

A summary of the final report will be provided.

Mrs. Bender presented a brief summarization of the contents of the report. She also gave an update on the Midwest Low-Level Radioactive Waste Compact Commission.

MONTHLY REPORTS

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

The following monthly reports are enclosed with the agenda for the Commission's information.

1. Rulemaking Status Report
2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Enforcement Status Report
5. Contested Case Status Report

Members of the department will be present to expand upon these reports and answer questions.

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
RULEMAKING STATUS REPORT
APRIL 1, 1988

PROPOSAL	DRAFT TO COMMISSION	NOTICE PUBLISHED	RULES REVIEW COMMITTEE	HEARING	SUMMARY OF COMMENTS & RECOMMENDATIONS TO COMMISSION	RULES ADOPTED	RULES PUBLISHED	RULE EFFECTIVE
1. Ch. 4 - Rulemaking Procedures	2/15/88	3/09/88		---				
2. Ch. 5 - Petition for Rulemaking	2/15/88	3/09/88		---				
3. Ch. 7 - Contested Case Procedures	3/21/88	4/20/88		---				
4. Ch. 22 - Air Quality Permitting	4/22/88							
5. Ch. 38 - Private Well Construction Permit	12/15/87	1/13/88	2/09/88	2/01/88 2/02/88 2/03/88	4/22/88	*4/22/88	*5/18/88	*6/22/88
6. Ch. 39 - Well Plugging	3/21/88	*4/21/88		5/12/88 5/13/88 5/14/88				
7. Ch. 40, 41 - Water Supply	4/22/88	*5/18/88		6/13/88 6/14/88 6/15/88				
8. Ch. 47 - Grants to Counties	2/15/88	3/09/88		3/29/88 3/31/88 4/04/88	4/22/88	*4/22/88	*5/18/88	*6/22/88
9. Ch. 70 - Channel Changes	4/22/88	*5/18/88		6/09/88				
10. Ch. 102 - Sewage Sludge w/ Landfills	11/17/87	12/16/87	1/08/88	1/06/88 1/07/88 1/08/88	TERMINATED 3/21/88	---	---	---
11. Chs. 100,101 - Landfill Ground Water Monitoring	10/20/87	11/18/87	12/10/87	1/06/88 1/07/88 1/08/88				
12. Ch. 135 - Shallow Well Criteria	10/20/87	11/18/87	12/10/87	12/09/87 12/10/87 12/11/87	2/16/88	2/16/88	3/09/88	4/13/88

*Projected

MONTHLY VARIANCE REPORT

3/31/88

No.	Facility	Program	Engineer	Subject	Decision	Date
1	University Hygenic Lab	Air Quality		Smoke Generators	approved	03/30/88
2	Drink Master-Hubbard	Air Quality		Equipment Test	approved	03/31/88
3	Long Grove	Wastewater Const.	Allen W.& WW. Engr.	Curtain Wall	approved	03/10/88
4	Long Grove	Wastewater Const.	Allen W.& WW. Engr.	Lagoon Riprap	approved	03/10/88
5	Lucas County	Flood Plain	Calhoun-Burns Assoc.	Freeboard	approved	03/07/88
6	Carroll, City of	Flood Plain	Brice,Petrides-Ren.	Freeboard	approved	03/16/88
7	Ag Prod.,Inc.-Sheldon	Hazardous Waste	John Shepard&Co.Rep	Tanks	approved	03/04/88
8	Brookwood,Inc.-Newton	Hazardous Waste	Everett Wood	Tanks	approved	03/04/88
9	Union Gas & Oil-Lathers	Hazardous Waste	R.Schoenkamp,Owner	Tanks	denied	03/22/88

REPORTS OF HAZARDOUS CONDITIONS

During the period of March 1, 1988 through March 31, 1988, reports of 67 hazardous conditions were forwarded to the Central Office. Two incidents are highlighted, followed by a general summary and the number per field office.

Date Reported and County	Description: Material, Amount, Date of Incident, Cause, Location, Impact	Responsible Party	Response and Corrective Actions
3/17/88 BUENA VISTA	Vandals cut a hose and turned on the valve of an above-ground storage tank at the intersection of county roads M-27 and C-23 near Aurelia, Iowa on March 16, 1988. About 68 tons of 28% nitrogen fertilizer were released.	Farm Service Storm Lake, IA 50588	A layer of frost prevented the material from reaching groundwater. Contaminated soil was excavated and applied on land.
3/30/88 POLK	A manual pump switch that was left in the "on" position caused about 3,000 gallons of diesel fuel to be pumped into a tank excavation at 1800 NE 18th Street, Des Moines, Iowa on March 30, 1988.	Ruan Transportation Inc. 1800 NE 18th Street Des Moines, IA 50304	About 1,000 gallons of product were recovered from monitoring wells. Contaminated soil was removed. Samples of groundwater will be collected to assess the extent of pollution.

Numbers in Parentheses Represent Reports for the Same Period in Fiscal Year 1987

		Substance Type				Mode				
Month	Total # of Incidents	Petroleum Product	Agri. Chemical	Other Chemicals and Substances	Handling and Storage	Pipeline	Highway Incident	RR Incident	Fire	Other
Oct	69	47	4	18	53	0	9	1	2	4
Nov	48	35	3	10	37	0	4	0	1	6
Dec	46	36	3	7	39	1	2	0	0	4
Jan	54	43	4	7	45	1	5	1	0	2
Feb	51	30	2	19	37	1	9	3	1	0
Mar	67 (55)	41 (35)	10 (5)	16 (15)	49 (37)	1 (0)	11 (12)	2 (4)	0(1)	4 (1)
		UST-22		UST-1	UST-23					

Total # of Incidents Per Field Office	01	02	03	04	05	06
This Period	13	11	2	5	26	10

Enforcement Report Update

The following new enforcement actions were taken last month:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
City of Ellsworth (2)	Waste Water	Permit condition violation - discharge limits	Order	3/7/88
The Hubinger Company, Keokuk (6)	Waste Water	Permit condition violation - discharge limits	Order/Penalty	3/7/88
City of Granville (3)	Waste Water	MIP	Order	3/7/88
Howard Bell/Bell Ready Mix Concrete, Columbus Junction (6)	Air Quality	Open burning	Order/Penalty	3/7/88
Lake Hendricks Park, Howard Co. (1)	Drinking Water	Monitoring/ reporting - bacteria	Order/Penalty	3/7/88
DeWitt Moose Lodge, DeWitt (6)	Drinking Water	Monitoring/ reporting - bacteria	Order/Penalty	3/7/88
Vernon Hts. MHP, Cedar Rapids (1)	Drinking Water	Monitoring/ reporting - MCL, bacteria	Order/Penalty	3/7/88
Fred Iben, Monticello (1)	Solid Waste	Open dumping	Order/Penalty	3/7/88
63-I80 Truckstop, Poweshiek Co. (5)	Waste Water	Monitoring/ reporting - discharge limits, operational violations	Order/Penalty	3/7/88
Land O'Lakes, Inc. Ellsworth (2)	Waste Water	Pretreatment	Order/Penalty	3/11/88
City of Orchard (2)	Drinking Water	Monitoring/ reporting - MCL, operational violations, certified operator	Order/Penalty	3/11/88
Wayne, Ringgold & Decatur, SW Mgmt. Commission, Decatur Co. (5)	Solid Waste	Cover violations	Order/Penalty	3/11/88
Blackhawk Foundry and Machine Co., Davenport (6)	Air Quality	Emission standards - particulate	Order/Penalty	3/11/88
Waterloo Water Works (1)	Underground Tanks	Remedial action	Order	3/11/88
Broadview Trailer Courts, Dubuque (1)	Drinking Water	Monitoring/ reporting - bacteria	Order/Penalty	3/24/88
Fla-Mor Bowl, Iowa Falls (2)	Drinking Water	Monitoring/ reporting - bacteria	Order/Penalty	3/24/88

The following new enforcement actions were taken last month:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Otter Creek Station, Zwingle (1)	Drinking Water	Monitoring/ reporting - bacteria	Order/Penalty	3/24/88
City of Sidney (4)	Waste Water	MIP	Referred to AG	3/24/88
City of Long Grove (6)	Waste Water	MIP	Referred to Ag	3/24/88
City of Rock Valley (3)	Waste Water	MIP	Order	3/31/88
City of Inwood (3)	Waste Water	Plan of action	Amended Order	3/31/88
City of Ireton (3)	Waste Water	Plan of action	Amended Order	3/31/88
Harry Brocka, Dumont (2)	Flood Plain	Construction without permit	Order/Penalty	3/31/88

Summary of Administrative Penalties

The following administrative penalties are due:

NAME/LOCATION	AMOUNT	DUE DATE
*Shelter Shield (Buffalo Center)	$1,000	12-03-86
*Cedar Hills Apartments (Dubuque)	1,000	12-29-86
*City of Dysart	400	3-13-87
*Country Corner Cafe (Pacific Junction)	451	8-05-87
*JTM Indust./MacDade/Leamer (Pleasant Valley)	1,000	8-12-87
*Big Rock Tap	660	9-21-87
*Twelve Mile House (Bernard)	339	10-28-87
*OK Lounge (Marion)	448	11-01-87
*Timberline Assoc. Ltd. (W. Burlington)	1,000	11-02-87
*Pleasant Creek Estates (Shellsburg)	200	11-30-87
City of Brighton	700	12-04-87
City of Sheldon	900	1-02-88
Ellie's Bar and Grill (Grand River)	515	3-05-88
Donald Caraway (Linn County)	500	3-06-88
City of Lynnville	225	3-13-88
**Lawrence Payne (Ottumwa)	630	3-15-88
**Don Scribner (Nashua)	1,000	3-28-88
City of Sidney	250	3-31-88
Linn Hollow MHP (Washington)	200	4-13-88
**Elings/Catron/Frey (Des Moines)	400	4-15-88
Mike Vanderpool Construction (Indianola)	1,000	4-16-88
The Meadows, Inc. (Moville)	275	4-17-88
Breitbach's Tap (Sherrill)	230	4-19-88
Randy's Bluffton Store (Decorah)	215	4-19-88
Camp Okoboji	230	4-22-88
David Francy (New London)	800	4-26-88

* Referred to the Attorney General
** On Payment Schedule

Administrative Penalties Due (Continued)

NAME/LOCATION	AMOUNT	DUE DATE
City of Fairfield	1,000	4-29-88
City of Tabor	250	4-30-88
White Consolidated Industries (Webster City)	500	4-30-88
The Rubinger Company (Keokuk)	1,000	5-09-88
Howard Bell, d/b/a Bell Ready Mix Concrete	500	5-09-88
Lake Hendricks Park (Howard Co.)	50	5-09-88
DeWitt Moose Lodge (DeWitt)	560	5-16-88
Vernon Heights MHP (Cedar Rapids)	1,000	5-09-88
Fred Iben (Monticello)	500	5-09-88
63-I80 Truckstop (Poweshiek Co.)	1,000	5-21-88
City of Orchard	580	5-15-88
Land O' Lakes, Inc. (Ellsworth)	1,000	5-15-88
Blackhawk Foundry and Machine Co.(Davenport)	1,000	5-16-88
Wayne, Ringgold & Decatur SW Mgmt. Comm.	1,000	5-16-88
Pla-Mor Bowl (Iowa Falls)	215	5-26-88
*Chico's Supper Club (Burr Oak)	954	6-10-88
Clear View Acres Store (Delhi)	230	-------
Broadview Trailer Court (Dubuque)	1,000	-------
Harry Brocks	800	-------

The following administrative penalties have been appealed:

NAME/LOCATION	AMOUNT
Handi-Klasp, Inc. (Webster City)	1,000
Iowa City Regency MHP	1,000
Bianchi Meyrat Lagoon (Des Moines)	600
Thomas E. Lennon (Barnum)	700
Great Rivers Coop (Atavia)	1,000
City of Wapello	500
Wilfred McFee (Union Co.)	500
Richard Davis/1st Iowa State Bank (Albia)	1,000
Gradert, Ernest and Kevin (Sibley)	500
Stan Moser (Hudson)	250
Hardin County SLF	500
City of University Park	500
South Central Iowa Landfill Agency	1,000
Cloyd Foland (Decatur)	800
Lynn Hennenga Feedlot (Wright Co.)	600
Motel Grinnell	1,000
Benton Co. Care Facility	100
Otter Creek Station (Zwingle)	215

The following administrative penalties were paid in March:

NAME/LOCATION	AMOUNT
N.P. Jensen Subdivision (Ames)	$ 100
Highway 63 Mobile Home Park (Cedar Falls)	400
City of Braddyville	200
Living History Farms (Urbandale)	260
Kossuth County SLF	700
City of Cushing	500
City of Newell	100
Wagner's Printing, Inc. (Davenport)	500
City of Carson, Iowa	600
Central Baptist Church (Council Bluffs)	50
Valley Oaks Country Club (Clinton)	100
Delhi Lakeview Estates, Inc. (Delhi)	100
4 Son's Handy Shop (Neola)	330
Ramsey Reformed Church (Titonka)	50
Petroleum Marketing Co. (Malcolm)	900
**Elings/Catron/Frey (Des Moines)	200
Knolliridge Garden Apts. (Coralville)	100
	$5,190

* Referred to the Attorney General
** On Payment Schedule

KPM:mjg

ADMINISTRATIVE PENALTY SUMMARY 4-01-88

The table below summarizes administrative penalty assessments through March 1988. The penalty rules became effective in September 1985 and the first penalty order was issued in October 1985. Penalties are not due until at least 60 days after an order is issued, so collections did not start until approximately January 1, 1986.

The first column of this table is a rough breakdown of the environmental program and violation types for which penalties have been assessed. The next five columns state the dollar amounts collected during the stated time periods, and the number of cases in parentheses. Total collections are presented next. The last column states similar data for cases still pending as of April 1, 1988 (penalties appealed, delinquent or assessed but not yet due.

Violation Type	FY 86	FY 87	FY 88-1st	FY 88-2nd	FY 88-3rd	TOTALS	PENDING
WW Discharge	$ 1,400 (2)	$12,950 (18)	$ 2,000 (4)	$ 4,800 (8)	$ ---	$ 21,150 (32)	$ 5,800 (7)
WW Monitoring	815 (3)	1,610 (5)	1,500 (3)	---	2,200 (6)	6,125 (17)	4,725 (6)
WW Other	---	2,500 (3)	1,750 (3)	2,000 (2)	1,700 (3)	7,950 (13)	2,400 (6)
SW Permit	1,500 (4)	6,100 (11)	2,848 (3)	2,700 (4)	1,000 (2)	14,148 (24)	2,500 (3)
SW Open Dumping	1,250 (2)	4,000 (7)	550 (2)	1,485 (3)	935 (1)	8,220 (15)	5,780 (8)
Air Permit	2,600 (3)	3,950 (6)	875 (2)	4,650 (7)	2,100 (3)	14,175 (21)	2,000 (2)
Air Open Burning	625 (2)	3,650 (7)	1,500 (2)	2,050 (4)	1,400 (3)	9,225 (18)	1,300 (2)
WS Monitoring	1,859 (20)	7,178 (58)	1,890(14)	2,871 (21)	2,765 (20)	16,571 (133)	7,887 (20)
WS Permit	598 (2)	---	---	425 (2)	1,800 (4)	2,823 (8)	2,500 (3)
Flood Plain	---	150 (1)	---	---	700 (1)	850 (2)	2,800 (4)
NC Notice	---	600 (1)	1,000 (1)	1,450 (3)	1,300 (3)	4,350 (8)	1,800 (1)
Water Use	---	---	---	---	150 (2)	150 (2)	---
Construction Permit	---	100 (1)	---	---	---	100 (1)	---
TOTALS	$10,647 (38)	$42,788 (118)	$13,921(34)	$22,431 (54)	$16,050 (50)	$105,837 (294)	$38,772 (68)

NPH-3.192/rg

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ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
APRIL 1, 1988

Name, Location and Region Number	New or Updated	Program	Alleged Violation	EPC Action	Status	Date
					Referred	12/16/82
					EPA suit filed	2/26/87
			Release of		State intervention	3/05/87
Aldus Corporation		Hazardous	Hazardous	Referred to	Motion to dismiss granted/denied	2/26/88
Council Bluffs (4)	Updated	Waste	Substances	Attorney General	Filed interlocutory appeal	3/11/88
AMPCO, Inc.						
Waterloo (1)	New	Air Quality	Excess Emissions	Order	Referred	2/16/88
Big Rock Tap					Referred	11/17/87
Big Rock (6)	Updated	Drinking Water	Monitoring	Order/Penalty	Suit Filed	1/25/88
					Referred	10/27/86
					Consent Decree	12/15/86
Boyer Valley Company				Referred to	Referred	9/21/87
Denison (4)	Updated	Wastewater	Compliance Schedule	Attorney General	Consent Decree	2/16/88
					Referred	2/20/87
					Suit Filed	4/23/87
					Default Judgment $7500	6/22/87
Bosarth and Ball, Inc.					Motion to set aside overruled	10/30/87
Davenport (5)	Updated	Solid Waste	Open Dumping	Order	Funds condemned ($2,500)	3/18/88
					Referred	6/01/86
Bryant, Robert E.					Suit Filed	9/08/86
Cherokee (3)		Wastewater	Prohibited Discharge	Order	Bankruptcy Proceedings	
					Referred	2/20/87
Cedar Bluffs Apts.			Monitoring; Operating		Suit filed	4/27/87
Bellevue (1)	Updated	Water Supply	without permit	Order/Penalty	Motion for Sum. Judgment Denied	12/30/87
				Referred to		
Chicago Northwestern RR		Air Quality	Open Burning	Attorney General	Referred	10/20/87
Cooper, Kenneth						
Hinkson (5)		Storage Tank	Spill Cleanup	Order	Referred	10/20/87
Country Corner Cafe					Referred	10/20/87
Pacific Junction (4)	Updated	Drinking Water	Monitoring; Penalty	Order/Penalty	Consent Decree	2/17/88
Dunnellon, City of (6)	New	Wastewater	NSP	Order	Referred	2/16/88
					Referred	5/21/87
Dwyer, City of (5)		Wastewater	Compliance Schedule	Order/Penalty	Suit Filed	9/30/87
					Referred	6/19/84
					Suit Filed	11/08/85
Eilers, Dwayne				Referred to	Default Judgment	1/11/87
Hampton (1)		Flood Plain	Unauthorized Fill	Attorney General	Bankruptcy	
Elings, Coleman						
Des Moines (5)		Solid Waste	Open Dumping	Order/Penalty	Referred	10/20/87
Fialon Landfill					Referred	11/17/87
Chickasaw County (1)	Updated	Solid Waste	Permit/Fire	Court Order	Suit Filed	3/28/88
Flynn, Robert					Referred	5/21/87
Ames (6)	Updated	Flood Plain	Channel Change	Order	Consent Decree	3/18/88
					Referred	9/21/87
Garner, City of (2)	Updated	Wastewater	Compliance Schedule	Order	Suit Filed	3/18/88
Hilltop Feeders (Jorgensen)			Operation without		Referred	12/15/87
Winterset (1)	New	Air Quality	Permit	Order	Filed Suit	3/28/88
					Referred	9/16/85
Hill Top Feed Yards, Inc.;			Feedlot Lagoon		Suit Filed	1/23/86
Western Cornbelt Credit Corp.					Hill Top Dissolved	11/ /87
Pottawattamie County (4)	Updated	Wastewater	Discharge	Order	Consent Decree	2/11/88
					Intervention	2/19/88
IBP, Inc. (Longmeadow)						
Denison (4)		Wastewater	Prohibited Discharge	Order	Referred	11/17/87
Jumping Farms', Inc.					Referred	7/21/86
Keokuk County (2)	Updated	Wastewater	Prohibited Discharge	Order	Suit Filed	1/26/87

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
APRIL 1, 1988

Name, Location and Region Number	New or Updated	Program	Alleged Violation	DNR Action	Status	Date
King, James & Julia Warren County (5)		Flood Plain	Channel Change	Order	Referred Suit Filed Trial	8/20/87 10/08/87 11/ /88
Leaner, Delbert: JTM Ind. Pleasant Valley (6)		Solid Waste	Open Dumping	Order/Penalty	Referred	11/17/87
Lone Grove, City of (6)	New	Wastewater	MIP	Order	Referred	3/24/88
Norwalk, City of(3)	New	Wastewater	MIP Compliance Schedule	Order/Penalty	Referred	1/21/88
Porter Derby Oil Company Davenport (6)		Wastewater	Prohibited Discharge	Referred to Attorney General	Petition Filed Judgment Amended Cleanup Plan Approved	3/ /83 10/12/84 10/24/84 1/27/86
Pleasant Creek Est. Benton Co. (1)	New	Drinking Water	Penalty Non-payment	Order/Penalty	Referred	1/21/88
Poppenliler, William et.al. Louisa County (6)		Flood Plain	Channel Change	Referred to Attorney General	Referred Suit Filed	3/20/87 6/25/87
Salisbury, Ronald, Presto-X Des Moines (5)	Updated	Hazardous Waste	Treatment and Storage Violations	Referred to Attorney General	Referred Judgment Appealed to Sup. Court Decided in our favor	9/18/84 5/86 7/86 12/23/87
Shelter Shield Buffalo Center (6)		Air Quality	Excess Emissions; Construction w/o permit	Order/Penalty	Referred Suit Filed Default Judgement $7,500	2/30/87 6/30/87 12/22/87
Sidney, City of (4)	New	Wastewater	MIP	Order	Referred	3/24/88
Timberline Assoc. Ltd. Des Moines (6)	New	Drinking Water	MCL Radioactivity	Order/Penalty	Referred	1/21/88
Twelve Mile House Barnard (1)	New	Drinking Water	Monitoring; Operation Permit	Order/Penalty	Referred	1/21/88
Wisconsin Barge Service Clinton (6)	Updated	Wastewater	Prohibited Discharge	Referred to Attorney General	Referred Suit Filed Consent Decree Order approving claim Dismissed case - resolved in bankruptcy court	11/20/86 7/86 11/ /87 12/02/87 12/21/87
Washington, City of (6)		Wastewater	Compliance Schedule	Order	Referred Consent Decree	11/17/87 11/30/87
Waterhouse, James & Berne Washington County (6)		Flood Plain	Channel Change	Referred to Attorney General	Referred Suit Filed Trail Set	3/16/87 5/13/87 5/13/88
West Chester, City of (6)	Updated	Wastewater	Compliance Schedule	Order	Referred Consent Decree	10/20/87 2/11/88
Wolleson, Robert C. Buena Vista and Cherokee Counties (3)		Wastewater	Prohibited Discharge	Order	Referred Consent Decree Contempt Finding Contempt Finding Contempt Finding	11/27/84 4/25/85 7/02/85 9/25/85 8/24/87
Woodland Park Jones County (1)		Wastewater	Prohibited Discharge	Order	Referred Suit Filed Temporary Injunction	7/31/86 11/19/86 2/13/87
Yocum, Max Johnson (6)		Flood Plain	Prohibited Construction	Defending	Suit Filed Motion to Dismiss Denied	12/18/84 3/06/85 8/07/85
				Referred to Attorney General	Referred Counter Claim Filed Trial Held Judgment for Department Appealed to Supreme Court	7/12/85 10/85 6/16/87 8/18/87 9/28/87

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
CONTESTED CASES
APRIL, 1988

DATE RECEIVED	NAME OF CASE	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
10-17-85	City of Bevington	Administrative Order	WM	Hansen	Hearing rescheduled for 5-12-88.
1-23-86	Galvein Soil Services	Administrative Order	WM	Lands	Hearing continued; cleanup study progressing.
6-12-86	ASM - Clinton	Administrative Order	Air	Lands	Hearing continued.
10-29-86	Mandi-Klamp Company, Inc.	Administrative Order	AQ/WM/SW	Lands	Briefing completed. Proposed decision 5-15-88.
12-03-86	City of Keokuk	Administrative Order	WM	Hansen	Hearing continued; settlement close.
12-11-86	Kleine Hanna	Permit Condition	FP	Clark	Briefing in progress.
12-24-86	Francis Hamberlin	Administrative Order	FP	Clark	Briefing in progress.
5-12-87	Iowa City Regency MHP	Administrative Order	WM	Hansen	Hearing held 11-03-87.
5-28-87	Bianchi-Meyrat Lagoon (Hawk Smith)	Administrative Order	WM	Kennedy	Hearing continued.
6-08-87	Willow Creek Dam/Zarble et.al	Permit Issuance	FP	Clark	Negotiating before filing.
6-11-87	Thomas Lennon	Administrative Order	FP	Clark	Awaiting decision.
8-10-87	Great Rivers Co-op	Administrative Order	WC	Lands	Hearing continued; study proceeding.
8-17-87	City of Wayelle	Administrative Order	WM	Hansen	Appealed to Commission. Tabled 60 days by EPC - 3-88
9-17-87	Gradwart, Kevin and Ernest	Administrative Order	AQ	Lands	Hearing continued; stipulations being prepared.
10-22-87	University Park	Administrative Order	WM	Hansen	Hearing set for 5-09-88.
12-07-87	Stan Moser	Administrative Order	SW	Murphy	Awaiting decision.
12-11-87	Finlan Landfill	Permit Revocation	SW	Kennedy	Hearing held. Awaiting decision.
12-15-87	Delaware Co. Conc. Cit. (IBP)	Permit Issuance	WM	Clark	Appears it will be dismissed.
12-21-87	Hardin County SLF	Administrative Order	SW	Kennedy	Negotiating before filing.
12-31-87	City of Tipton	Administrative Order	WM	Hansen	Negotiating before filing.
12-31-87	Milfred McFee	Administrative Order	WM	Murphy	Negotiating before filing.
1-15-88	First Iowa State Bank	Administrative Order	SW	Kennedy	Hearing set for 4-14-88.
1-22-88	IBP, Fort Dodge	NPDES Permit	WM	Hansen	Negotiating before filing.
2-04-88	Beaverdale Heights, Woodmen; Westwood Hills	Administrative Order	SW	Lands	Plans approved. Continued pending resolution.
2-05-88	Warren County Brewton Bank	Administrative Order	UT	Lands	Negotiating before filing. Plans submitted.
2-10-88	Lehigh Clay Products	Administrative Order	WC	Lands	Appealed; revised plans approved.
2-22-88	Amana	Tax Certification Denial	AQ/WM	Lands	Appealed. Request for additional information.
2-25-88	South Central Iowa Landfill Agency	Administrative Order	SW	Lands	Appealed.
2-29-88	Lynn Hennenga Feedlot	Administrative Order	WM	Murphy	New case.
3-01-88	Floyd Poland	Administrative Order	FP	Clark	Awaiting Petition filing.
3-03-88	Hotel Grinnel	Administrative Order	WM	Hansen	Hearing set for 5-05-88.
3-08-88	Harlan County Care Facility	Administrative Order	WS	Murphy	New Case.
3-27-88	Otter Creek Station	Administrative Order	WS	Murphy	New case.

Discussion took place on the UST rules regarding related legislation, deadlines, installation of monitoring equipment, and insurance fund. This was an informational item; no action was required.

APPOINTMENT -- CINDY TURKLE

Cindy Turkle, Administrator, Scott County Landfill, and Chapter Director of the Iowa Society of Solid Waste Operators (ISOSWO) introduced Ron Mace, President of the Iowa Chapter ISOSWO along with Pete Duffy, Secretary-Treasurer of the Iowa Chapter.

Ms. Turkle presented the following statement:

"ISOSWO POLICY STATEMENT ON WHITE GOODS AND SHREDDER FLUFF ACCEPTABLE IN IOWA LANDFILLS

"Shredder fluff is the unmarketable byproduct of the recycling of white goods and automobiles. Apparently both lead and PCBs from white goods may contaminant the material, and some fluff tested has reportedly exceeded allowed concentrations. Recently, the Department of Natural Resources has informed landfills that burial of the fluff will require a Special Waste Authorization, and we are told that landfill acceptance of fluff containing concentrations of contaminants above federal guidelines will not be approved. DNR has also indicated that white goods themselves may also be prohibited from landfill disposal if they potentially contain PCBs or lead.

"It is the position of the ISOSWO that the fluff from recycled household appliances and the appliances themselves, should be declared a household hazardous waste and thus exempted from the EPA RCRA regulations for the following reasons:

"1. The U.S. EPA considered white goods and the derived fluff there from, to fall within the household hazardous waste definition and other states have accepted this interpretation.

"2. Recycling is officially preferred by the Iowa legislature and by DNR to landfilling and we are required by law to maximize recycling. Yet prohibiting the landfilling of fluff would result in decreased recycling without decreasing the burial of those reported contaminants.

"3. If there is a problem, it is the result of the concentration of contaminants which are or were once widely dispersed in ordinary household items. Landfilling of the white goods has occurred in the past. If these appliances cannot be recycled or landfilled, what other options are available for the disposal of these items? With no disposal site available, most will find their way to roadside ditches and farmers' ravines; both uncontrolled and environmentally unsafe sites.

"If the DNR wishes to monitor the volumes and frequency of fluff disposal, a SWA could be issued as it is for many other wastes approved for disposal. The outright ban of fluff exceeding guidelines is neither legal nor practical. Some accessible disposal option must be provided to the people of Iowa."

Ms. Turkle stated that landfill operators are given the responsibility of taking care of citizen's waste and it is going to end up in the ditches along with the capacitors that have to be removed. She stated that it is ISOSWO's view that it is better to, at least, have them in a controlled, permitted site that is subject to all the state and federal regulations rather than end up in ditches. She added that EPA has told them that, if the capacitors are contained and not leaking, they can go into a landfill. The capacitors have to be removed before the appliance can go through a shredder. Ms. Turkle stated that landfill operators are stuck in a cach-22 situation, as EPA says the lead can be exempted under the household hazardous waste requirement but PCB cannot because it is under a different program. She stated that they cannot have employees removing capacitors and then have operators wondering what to do with them once they are removed. She added that they would like to have the Commission's assistance in where to go from here.

Director Wilson commented that problems could be worked out, and assistance given from staff and the Director without individuals coming before the Commission seeking to overturn decisions made by staff.

Ms. Turkle stated that attempts have been made to take it up with staff. She added that Pete Duffy has met with staff, but he has not been able to make any progress as to what can be done.

Ron Mace, President of Iowa Chapter ISOSWO, stated that several landfills are having serious problems with liability insurance. He added that the simple way out seems to be to call the PCBs a household hazardous waste and have it excluded under RCRA rules. It otherwise could cause a lot of problems with the landfill's insurance companies.

Allan Stokes clarified that the staff has not told landfills that they cannot take shredder fluff. He stated that notice has been sent to them telling them that parties that supply shredder fluff to landfills (i.e., the recyclers or scrap dealers) would need to obtain special waste authorizations. He stated that the purpose behind that is to build in a requirement that shredder fluff be tested. Mr. Stokes added that there is no problem with it going in the landfills if the fluff has lead that is below the concentration levels that declare it to be a hazardous waste, or if it has PCB levels that are below the threshold of regulatory concern. The department is simply saying that it needs to be regulated by a special waste authorization. Some quantities of shredder fluff may test out to exceed the threshold wherein it would be considered to be a hazardous waste, by virtue of its lead content. That type of waste could cause a problem as the law states that hazardous waste cannot be disposed of in anything but a licensed hazardous waste disposal facility. If the Commission would desire to declare this type of waste to fall under some type of exemption, something would have to be done with the state law. Mr. Stokes further explained regulation of PCBs by EPA.

The Commission expressed concern with problems being experienced by the landfills and stated that there should be some way to resolve them to meet the people's needs.

Chairman Schlutz suggested that Ms. Turkle make an appointment to meet with department staff and Director Wilson; then if she is not satisfied, to come back before the Commission.

FY89 CONSTRUCTION GRANTS PRIORITY LIST

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

The Department of Natural Resources, Environmental Protection Division, is responsible for the establishment of the Priority System and State Project Priority List according to federal regulations.

The Priority System is required by federal regulation to be reviewed annually for needed changes, either as a reflection of changes in federal law which are mandatory changes, or beneficial departmental changes needed to more efficiently carry out the goals and requirements of the Federal Water Pollution Control Act. At this time, the Department is not aware of any mandated changes; and likewise, staff has not identified any needs to alter the Priority System for FY89. Thus, we are recommending that there be no changes made to the existing Priority System for FY89.

The State Project Priority List is made up of two lists, one a fundable list which is used to identify those projects which qualify to receive the grant funds allotted to Iowa in any one year, and second a planning list which consists of the remaining projects which may utilize future grant funds. All State Project Priority List facilities are rescored every two years using the Point Source Rating Criteria contained in the Priority System. All facilities have not been rescored for FY89-90, and the resulting draft funding list has been proposed for FY89. The draft list shows the segmented projects of Des Moines and Ames as well as the smaller unsewered or small community-alternative technology projects which qualify for funding under the Mandated Grant Fund Reserves. Because of the recent April 1, 1988 closing date for submitting project facility plans needed to be eligible for FY89 funds, there may be some shuffling of these smaller Reserve projects if a late arrival(s) rank higher than ones on this draft list.

The following schedule is proposed for adoption of a FY88 State Priority List (in reverse order):

October 1, 1988 -	FY88 Priority List in effect
August 31, 1988 -	FY88 Priority List submitted to EPA
August 16, 1988 -	FY88 Priority List adopted by Commission
July 29, 1988 -	Agenda Item Due--Responsiveness summary and recommendation to Commission
July 11, 1988 -	Public comment period closes
June 29, 1988 -	Public hearing
May 31, 1988 -	Public notice published
May 17, 1988 -	Proposed Priority List to Commission; Authorization to go to hearing in June
May 2, 1988 -	Agenda item due--Proposed list and hearing recommendation
April 29, 1988 -	Preliminary List to EPA
April 25, 1988 -	Draft List to Commission for information
April 1, 1988 -	Cutoff for project submittals; cursory review for Draft List. Compile tentative list and format for draft list.

This was an informational item; no action was required.

DES MOINES AREA CARBON MONOXIDE STUDY

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

Phase II of a study to demonstrate attainment of carbon monoxide standard in the Des Moines Central Business District (CBD) is complete. This cooperative study involving the Des Moines Area Transportation Planning Committee, Polk County, the Department of Transportation, and the Department of Natural Resources shows that the CBD can be redesignated as in attainment with the carbon monoxide standard. The report contains air monitoring data and air quality modeling that supports this conclusion.

Phase I of the study defined the extent of the carbon monoxide problem in Des Moines and demonstrated that all of Lee Township and portions of Des Moines Township in the city of Des Moines had attained air quality that met the primary standard for carbon monoxide. The Phase I study was submitted to EPA on May 13, 1987. EPA suspended action on the redesignation request pending receipt of the Phase II study.

The documentation contained in the Phase I and Phase II studies demonstrate that the entire city of Des Moines should be redesignated as attainment with the carbon monoxide standard. A redesignation request will be submitted to EPA.

Jerry Tonneson, Polk County Air Quality Program, stated that the graph on page 29 of the report displays some modeled carbon monoxide concentrations. He added that since the YWCA asked that the monitor at that location be removed, the program has been recreated mathematically. Mr. Tonneson stated that the modeling studies which have been previewed by EPA Regional Offices VII and I looked favorably upon this modeling approach, and the county feels confident that they have attained the standards.

This was an informational item; no action was required.

REFERRALS TO THE ATTORNEY GENERAL

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

The Director requests the referral of the following to the Attorney General for appropriate legal action. Litigation reports have been provided to the Commissioners and are confidential pursuant to Iowa Code section 22.7(4).

Iowa City -- wastewater (tabled item)
Lakewood Sanitary District -- wastewater (tabled item)
City of Waterloo -- wastewater
City of Mount Pleasant -- wastewater
City of Sheldon -- wastewater
Ellie's Bar and Grill (Grand River) -- water supply/penalty

City of Iowa City

James Combs reminded the Commission that this case was tabled and now needs to be removed from the table.

Motion was made by Catherine Dunn to remove the City of Iowa City referral from the table. Seconded by Charlotte Mohr. Motion carried unanimously.

Mr. Combs reviewed this case and stated that in February, 1988, the Commission granted the City of Iowa City a 60-day negotiation period to resolve their problems. Mr. Combs stated that the zoning issue with Johnson County has been resolved, the rate issue with the University of Iowa has not yet been resolved, and progress has been made with the DNR over a possible consent decree but an agreement has not yet been reached. He added that the primary concern between the department and the city is interim effluent limitations.

APPOINTMENT -- TERRY TIMMONS, CITY OF IOWA CITY

Terry Timmons, City Attorney for the City of Iowa City, gave a report regarding the progress the city has made since February 16, 1988. Mr. Timmons distributed copies and related correspondence of the proposed consent decree and expanded on same. He pointed out areas where concessions had been made and agreements reached. He stated that the city and department are not in agreement on interim effluent limits. Mr. Timmons stated that agreement has been reached that there should be three sets of effluent limits for the existing north plant before final effluent limits to into effect for both plants. The proposed sets of effluent limits are as follows: 1) first set would be in effect until the north plant Phase I improvements are completed around July 1, 1989; 2) second set would be in effect from July 1, 1989 until December 15, 1989 when Phase II on the north plant will be completed; 3) third set would be in effect until February 1, 1991, which is six months after the new south plant completion date. The disagreement is over the first and second set of interim effluent limits. Mr. Timmons stated that the issue is how well Iowa City should be expected to do with the old, existing plant until Phase I is completed on July 1, 1989. He added that the department imposed CBOD and TSS limits which the city feels is arbitrarily low and unrealistic. Mr. Timmons stated that they brought Terry Crouse from Metcalf and Eddy, Inc. along to explain why higher limits proposed by the city are justified.

Terry Crouse, Metcalf and Eddy, Inc. explained that his company was trying to achieve what they felt were reasonable targets the City could shoot for without getting into an immediate violation of the effluent limitations. He added that they started with reviewing records of what the plant, in its current condition, could meet today, and it shows that it will be in compliance with the DNR proposed limitations about 80 percent of the time. He stated that they, therefore, proposed a limit which would put it into compliance 100 percent of the time. When Phase II goes on line in December of 1989, the facility would be in compliance with what the department staff currently recommends for the interim limitation over the entire period.

Richard Timmerman asked the number of current CBOD milligrams per liter for a 30-day average.

Mr. Crouse stated that the current average, over the last year, has been 50; the DNR proposed number is 40. He added that Phase I will have limited impacts on the biological treatment; there will be more improvements in solids for that phase.

Mr. Timmons stated that, with the exception of the interim limits, the city is in agreement with the department. He stated that he and City Councilman Steve Atkins have the authority to execute the consent decree, but the City Council suggests that they receive dismissal of the lawsuit before they do so. He went on to explain project costs, financing, bonds and construction schedule in proposed consent decree.

Mr. Timmons concluded by asking that the Commission make the following recommendation to the Attorney General: 1) that the consent decree be finalized as is with the interim effluent limits that the city has proposed; 2) that the Attorney General conduct a thorough review of the sewer rate lawsuit with the participation of the city, the University of Iowa, the Board of Regents, and a representative of the DNR; 3) that the city not be required to sign the decree, unless and until, the Board of Regents and the University of Iowa consents to dismissal of the sewer rate lawsuit. He added that they would also ask the Commission to secure a commitment from DNR staff as to when the sewer extension permits for the city's developers will be issued. Also, would ask the Commission to go on record in favor of the state and its agencies to pay the same rate for sewer use as all other users of a city sewer system, unless those agencies fit into an existing classification which a city has decided, in its discretion, to give a rate break.

Chairman Schlutz commented that the Commission has no control whatsoever over the Iowa City lawsuit situation. He stated that this is a matter of whether the city deals with the state or whether they deal with EPA.

Diana Hansen, Legal Bureau, stated that the present interim effluent limits for CBOD, which are 40 for 30-day average and 60 for the seven-day average, are limits that should be there. The limits were already raised one time last fall to give the city a little more leeway. For the past 13 months, the city has met the limits of 40, except for two months. Mrs. Hansen added that 50 would allow them to meet the limits all of the time, but 40 gives more incentive to try harder to stay fairly low.

Steve Atkins, City Councilman for Iowa City, addressed the Commission explaining possible problems relating to revenue bonds, lack of resources, and not knowing what the bids will be until Friday, April 29. He urged the Commission to send the proposed consent decree to the Attorney General.

Discussion followed regarding penalties, interim effluent limits, working out a CBOD limit that everyone involved can work with, possible further mediation with the Attorney General's Office involved, and referral with a 20-day flexibility.

Diana Hansen stated that there would have to be agreement on the appropriate interim effluent limitations or the case would have to be referred as a flat referral with no flexibility.

Allan Stokes stated that staff would be extremely reluctant to negotiate any relaxation of the interim effluent limits. He reiterated that the limits have already been relaxed for the City of Iowa City and there is a need to look at the environmental concern.

Catherine Dunn stated that she would hope that the City of Iowa City would look at the levels that the department has set. There were only two months, in over a year, when the city was not in compliance with the levels the department would want. She added that she would hope the city would see that what is being asked of them is not that much of a penalty.

Steve Atkins stated that the city will take the deal (regarding a penalty and levels set by the department).

Motion was made by Keith Uhl that if the City of Iowa City executes, within the next 20 days, the consent order which they now have agreed to, that referral be made solely for formalization of the referral in the court system. If they do not execute the consent decree within 20 days, it would be referred straight out as a flat referral. Seconded by Catherine Dunn. Motion carried unanimously.

RECESS

Chairman Schlutz recessed the meeting at 5:10 p.m., Monday, April 25, 1988.

MEETING RECONVENES 8:30 A.M., TUESDAY, APRIL 26, 1988

NOTICE OF INTENDED ACTION -- CHAPTER 22, REVISIONS -- AIR QUALITY PERMITTING RULES

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

The Commission will be provided copies of proposed revisions to the department's air quality permit regulations. Specifically, the proposed revision will address exemptions from the requirement to obtain air quality construction permits before the construction or use of certain equipment used in the agricultural sector. The intent is to clarify the existing exemptions applicable to "agricultural purposes" to address changes in farm production and management practices which have occurred since these rules were first adopted.

The Commission will be asked to approve a Notice of Intended Action to begin the formal rulemaking process.

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission proposes to adopt an amendment to its rules pertaining to the permitting of stationary contaminant sources, Chapter 22, "Controlling Pollution." Specifically, the Department proposes to amend subrule 567--22.1(2), IAC, the sources exempt from the permitting requirements.

Currently, paragraph 22.1(2)"d" provides that equipment used on farms and ranches for agricultural purposes, other than anaerobic lagoons, is exempt from the requirement to obtain an air permit prior to construction, installation, reconstruction or alteration. As a result of the changes in technological and management practices of the farming and ranching industry, the existing exemption no longer clearly identifies the equipment exempt from the permitting requirements. In addition, the term "agricultural purposes" has become a term of art, defined by courts in the context of numerous and widely varied statutory exclusions; and is, therefore, no longer descriptive of the equipment regulated by the Department. For this reason, the term "agricultural purposes" is removed.

A detailed explanation of the proposed exemption is as follows:

1. "Equipment used for cultivating land, harvesting crops or raising livestock other than anaerobic lagoons" refers to the specific activities which, if used, is exempt from the Department's permitting requirements.

2. This exemption does not apply if the equipment is used to remove substances from grain which were applied to the grain by another person.

The Department has become aware of the practice of companies which treat large quantities of grain with anti-fungal agents and the sale of thee grains to farmers and ranchers. The individual farmers and ranchers in turn roast these grains to remove the chemicals to acceptable levels for feed or distribution. Because of the type and quantity of toxic air contaminants which result from this practice, the proposed exemption does not apply to equipment used to remove these types of substances.

3. This exemption also does not apply to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, which is normally not fed to livestock owned by that person or another person in a feedlot, as defined in Iowa Code section 172D.1, subsection 6, or a confinement building owned or operated by that person and located in this state. These units are typically large and result in the release of a large quantity of air contaminants.

This exemption does apply to grain driers of all types and grain roasters used for the drying or roasting of wet or moldy grains.

The Department will conduct _____ public hearings to receive comments on this proposed amendment. They will be held at the following times and places:

Written comments will be received by the Department at the Des Moines address given above until _____.

This proposed amendment is intended to implement Iowa Code section 455B.133.

The following amendment is proposed:

Rescind paragraph 567-22.1(2)"d" in its entirety and include the following:

d. Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in section 198.3, which is normally not fed to livestock owned by that person or another person in a feedlot, as defined in section 172D.1, subsection 6, or a

confinement building owned or operated by that person and located in this state.

Date

Larry J. Wilson, Director

Motion was made by Charlotte Mohr to approve Notice of Intended Action -- Chapter 22, Revisions -- Air Quality Permitting Rules. Seconded by Catherine Dunn. Motion carried unanimously.

NOTICE OF INTENDED ACTION, CHAPTER 70, WAIVER OF ENGINEERING PLANS FOR FLOODPLAIN PROJECTS

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

As directed by the Commission, the department staff has drafted rule amendments which would allow the department greater latitude when considering whether to waiver the submission of certified engineering plans as part of an application for approval of floodplain development.

The Commission is requested to approve the attached Notice of Intended Action and proposed rule amendment for waiver of engineering plans for floodplain projects.

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.278, the Environmental Protection Commission intends to amend Title V, Floodplain Development, Chapter 70, Scope of Title-Definitions-Forms-Rules of Practice.

Iowa Code section 455B.275 provides that a person desiring to undertake construction on a floodplain shall file a written application with the department setting forth information as required by rule of the Commission. 567--70.4(2)"a", Iowa Administrative Code, provides that an application shall not be considered complete until sufficient engineering plans have been submitted and, furthermore, such engineering plans must be certified by a registered professional engineer as required by Iowa Code Chapter 114. However, submission of certified plans can be waived pursuant to 567--70.4(2)"b", Iowa Administrative Code, if: i) engineering data are not required to determine that the project is minor in scope and conforms to all applicable administrative and statutory criteria or ii) adequate engineering data used to evaluate the dimensions and effects of the project is already available to the engineering staff.

The Environmental Protection Commission feels that there are some floodplain construction projects for which engineering plans are not necessary to determine compliance with applicable administrative and statutory criteria but for which engineering plans cannot be waived under 567--70.4(2)"b" because the project is not minor in scope. The requirement for submission of engineering plans in this instance imposes an unnecessary financial burden on an applicant.

Therefore, the Environmental Protection Commission proposes to amend the provisions of 567--70.4(2)"b", Iowa Administrative Code, to allow the waiver of submission of engineering plans if engineering plans and data are not necessary to determine compliance with applicable approval criteria even if a project is not minor in scope.

Any interested person may file written comments or suggestions on the proposed rules through June 10, 1988. Such written comments should be directed to Jack D. Riessen, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034. Persons are also invited to present oral or written comments at a public hearing which will be held on June 9, 1988 at 1:00 p.m. in the fifth floor conference room, Wallace State Office Building, 900 East Grand, Des Moines, Iowa.

The following rule amendment is proposed:

ITEM 1. Paragraph 70.4(2)"b" is amended to read as follows:

b. Waiver of submission of certified plans. The department may waive the requirement in paragraph "a" of this subrule that the application for approval of a floodplain project be supported by certified engineering plans by making one of the following determination in the order in which approves or disapproves the project:

1) Engineering data are not required to determine that the project ~~is minor in scope and~~ conforms to all applicable administrative and statutory criteria; or

2) Adequate engineering data used to evaluate the dimensions and effects of the project were already available to the engineering staff.

_____
Date

_____
Larry J. Wilson, Director

Mr. Stokes explained the proposed rule changes in considering a waiver of engineering plans for floodplain projects. Mr. Stokes informed the Commission that SF 2126 which deals with the same project passed the House and Senate. The bill provides that if the department has not instituted some type of action within ten years after a construction or a project has taken place, or within five years of becoming aware of the project, we cannot institute an action unless public health threats could be determined.

Discussion followed regarding the impact this bill will have on floodplain cases.

Motion was made by Nancylee Siebenmann to approve Notice of Intended Action--Chapter 70, Waiver of Engineering Plans for Floodplain Projects. Seconded by Catherine Dunn. Motion carried unanimously.

Discussion took place regarding motivation for the bill and final passage after the Commission had already solved the problem.

NOTICE OF INTENDED ACTION -- CHAPTER 41, PUBLIC WATER SUPPLY RULES

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

The Commission will be asked to approve a notice of intended action to conduct public hearings and receive public comment on the attached proposed rules. These rules are intended to conform state of Iowa regulations to recently adopted federal rules under the mandate of the federal Safe Drinking Water Act.

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission for the Department of Natural Resources gives notice of intended action to amend the rules pertaining to water supply definitions, organic chemicals, monitoring requirements for organic chemicals, and reporting requirements. New rules are proposed concerning public notification requirements concerning lead and prohibiting the use of lead pipes, solder and flux.

Revisions to 567--40(455) include adding definitions for best available technology (BAT), deep well, lead free, nontransient noncommunity water system (NTNCWS), point of entry treatment device, point of use treatment device, and shallow well. Subrule 41.3(2) is amended to add paragraph "d" which sets forth the maximum contaminant levels for synthetic organic contaminants in community water systems and nontransient noncommunity water systems. Subrule 41.4(5) is renumbered as 41.4(6) and new subrule 41.4(5) is added to specify the procedure for determining whether a particular system is in compliance with the maximum contaminant levels for synthetic organic contaminants. Subrule 41.4(7) is renumbered as 41.4(9), and new subrule 41.4(7) is added to provide the requirements and procedures for special monitoring for organic chemicals. Subrule 41.5(1) is revised by adding paragraph "c" to require the owner or operator of a system to notify those served by the system of the availability of sampling results for the special monitoring for organic chemicals.

A new subrule 41.5(4) is added to establish public notification requirements pertaining to lead. A new rule 41.15 is added to prohibit the use of lead pipes, solder and flux in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water supply system. The additions to the rules pertaining to lead are the result of revisions contained in the 1986 amendments to the federal Safe Drinking Water Act.

Subrule 41.6(5) is amended to add paragraph "c" which allows the department to include as a permit condition use of a specific treatment method to achieve compliance with a maximum compliance level for synthetic organic chemicals in connection with a compliance schedule. New subrule 41.12(10) is added to identify the best available treatment technology to achieve compliance with the maximum contaminant level for the synthetic organic chemicals listed in 41.3(2)"d". New subrule 41.16(2) is added to establish when bottled water may be used by a public water system.

Any interested person may file written suggestions or comments on the proposed rule changes through June 27, 1988. Such written materials should be directed to Jim Humeston, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034. Persons who have questions may contact Jim Humeston at 515/281-8914. Persons are also invited to present oral or written comments at public hearings which will be held on June 13, 1988 at 1:00 p.m. in the fifth floor east conference room, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa; on June 14, 1988 at 1:00 p.m. at Iowa Western Community College, Continuing Education Building, Room 006, Council Bluffs, Iowa; and on June 15, 1988 at 1:00 p.m. at the Iowa Department of Natural Resources, Geological Bureau, Trowbridge Hall, Room 115B, 123 North Capitol, Iowa City, Iowa.

Copies of the proposed rules may be obtained from Sarah Detmer, Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034.

These rules are intended to implement Iowa Code Chapter 455B, Division III, Part I.

ITEM 1. Amend rule 40.2(455B) by adding the following definitions in alphabetical order.

"Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the state finds, after examination, for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).

"Deep well" means a well located and constructed in such a manner that there is a continuous layer of low permeability soil or rock at least five (5) feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

"Lead free" means (1) when used with respect to solder and flux refers to solders and flux containing not more than 0.2 percent lead, and (2) when used with respect to pipes and pipe fittings refers to pipes and lead fittings containing not more than 8.0 percent lead.

"Nontransient noncommunity water system" or "NTNCWS" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons four hours or more per day, for four or more days per week, for 26 or more weeks per year. Examples of NTNCWSs are schools, day-care centers, factories, offices and other public water systems which provide water to a fixed population of 25 or more people. In addition, other service areas such as hotels, resorts, hospitals and restaurants are considered as NTNCWS if they employ more than 25 people and are open six or more months of the year.

"Point-of-entry treatment device" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

"Point-of-use treatment device" is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

"Shallow well" means a well located and constructed in such a manner that there is not a continuous layer of low permeability soil or rock at least five (5) feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

ITEM 2. Amend subrule 41.3(2) to read as follows:

41.3(2) Organic chemicals. The following are the maximum contaminant levels for organic chemicals. ~~The maximum contaminant levels in paragraphs "a" and "b" of this subrule apply to all community water systems. The maximum contaminant level for total trihalomethanes in paragraph "c" of this subrule applies only to community water systems which serve a population of 10,000 or more individuals and which add a disinfectant (oxidant) to the water in any part of the drinking water treatment process. Compliance with maximum contaminant levels for organic chemicals is calculated pursuant to 41.4(4) and 41.4(5).~~

a. Chlorinated hydrocarbons: ~~(effective June 24, 1977).~~ The maximum contaminant levels apply to all community water systems. Compliance with the maximum contaminant levels is calculated pursuant to 41.4(4).

	Level in milligrams per liter
Endrin (1,2,3,4,10, 10-hexachloro-6 7-epoxy-1,4, 4a,5,6,7,8,8a-octa-hydro-1,4-endo, endo-5,8-dimethano naphthalene).	0.0002
Lindane (1,2,3,4,5,6-hexachloro-cyclohexane, gamma isomer).	0.004
Methoxychlor (1,1,1-Trichloro-2, 2-bis [p-methoxyphenyl] ethane).	0.1
Toxaphene ($C_{10}H_{10}Cl_8$-Technical chlorinated camphene, 67-69 percent chlorine).	0.005

b. Chlorophynoxys: ~~(effective June 24, 1977).~~ The maximum contaminant levels apply to all community water systems. Compliance with the maximum contaminant level is calculated pursuant to 41.4(4).

	Level in milligrams per liter
2,4,-D (2,4-Dichlorophenoxyacetic acid).	0.1
2,44,5-TP Silvix (2,4,5-Trichloro-phenoxypropionic acid).	0.01

	Level in milligrams per liter
c. Total trihalomethanes.	0.10

The maximum contaminant level for total trihalomethanes applies to community water systems which serve a population of 10,000 or more individuals and which add a disinfectant (oxidant) to the water in any part of the treatment process. Compliance with the maximum contaminant level is calculated pursuant to 41.4(6). Total trihalomethanes is the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform) and trichloromethane (chloroform). ~~The total trihalomethane maximum contaminant level shall become effective on November 29, 1981 for community water systems serving 75,000 or more individuals and on November 29, 1983 for community water systems serving 10,000 to 74,999 individuals.~~

ITEM 3. Amend subrule 41.3(2) by adding the following new paragraph "d":

d. Synthetic organic contaminants. The maximum contaminant levels for synthetic organic contaminants (SOC) apply to community water systems and nontransient noncommunity water systems. Compliance with the maximum contaminant level is calculated pursuant to 41.4(5)"i".

	Level in milli-grams per liter
Benzene	0.005
Vinyl chloride	0.002
Carbon tetrachloride	0.005
1,2-Dichloroethane	0.005
Trichloroethylene	0.005
1,1-Dichloroethylene	0.007
1,1,1-Trichloroethane	0.20
para-Dichlorobenzene	0.075

ITEM 4. Rescind paragraph "d" of subrule 41.4(4). Reletter paragraph "e" as paragraph "d" and paragraph "f" as paragraph "e".

ITEM 5. Renumber subrule 41.4(5) ad 41.4(6). Add the following as new subrule 41.4(5):

41.4(5) Analysis of the contaminants listed in 41.3(2)"d" for purposes of determining compliance with the maximum contaminant levels shall be conducted as follows:

a. Groundwater systems shall sample at points of entry to the distribution system representative of each well. Sampling must be conducted at the same location or a more representative location each quarter. Groundwater systems must sample every three months for each entry point to the distribution system except as provided in subparagraph "h"(1) of this subrule.

b. Surface water systems shall sample at points in the distribution system representative of each source or at entry points to the distribution system after any application of treatment every three months except as provided in subparagraph "h"(2) of this subrule. Sampling must be conducted at the same location or a more representative location each quarter.

c. If the system draws water from more than one source and sources are combined before distribution, the system must sample at the entry point to the distribution system. The sample must be collected during periods of normal operating conditions.

d. All community water systems and nontransient noncommunity water systems serving more than 10,000 people shall analyze all distribution or entry-point samples, as appropriate, representing all source waters beginning no later than 45 days after the effective date of these rules. All community water systems and nontransient noncommunity water systems serving from 3,300 to 10,000 people shall analyze all distribution or entry-point samples, as required in this subparagraph during the calendar quarter that begins January 1, 1989. All other community and nontransient noncommunity water systems shall analyze distribution or entry-point samples, as required in this paragraph during the calendar quarter that begins January 1, 1991.

e. The department may require confirmation samples for positive or negative results. If a confirmation sample(s) is required by the department, then the sample result(s) shall be averaged with the first sampling result and used for compliance determination in accordance with paragraph "i" of this subrule. The department has the discretion to delete results of sampling errors from this calculation.

f. Analysis for vinyl chloride is required for groundwater systems and surface water systems that have detected one or more of the following two-carbon organic compounds: Trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene or 1,1-dichloroethylene. The analysis for vinyl chloride is required at each entry point to the distribution system at which one or more

of the two-carbon organic compounds were found. If the first analysis does not detect vinyl chloride, the department may reduce the frequency of vinyl chloride monitoring to once every three years for that sample location or other sample locations which are more representative of the same source.

g. Upon request, the department may allow public water systems to composite up to five samples from one or more sources. Compositing of samples is to be done in the laboratory by the procedures listed below. Samples should be analyzed within fourteen days of collection. If any organic contaminant listed in 41.3(2)"d" is detected in the original composite sample, a sample from each source that made up the composite sample must be reanalyzed individually within fourteen days from sampling. The sample for reanalysis cannot be the original sample, but can be a duplicate sample. If duplicates of the original samples are not available, new samples must be taken from each source used in the original composite and analyzed for the SOCs specified in 41.3(2)"d". Reanalysis must be accomplished within fourteen (14) days of the second sample. To composite samples, the following procedure must be followed:

(1) Compositing samples prior to gas chromatograph analysis.

Add 5 ml or equal larger amounts of each sample (up to 5 samples are allowed) to a 25 ml glass syringe. Special precautions must be made to maintain zero headspace in the syringe.

The samples must be cooled at 4°C. during this step to minimize volatilization losses.

Mix well and draw out a 5-ml aliquot for analysis.

Follow sample introduction, purging, and desorption steps described in the method.

If less than five samples are used for compositing, a proportionately smaller syringe may be used.

(2) Compositing samples prior to gas chromatograph/mass spectrometric analysis.

Inject 5-ml or equal larger amounts of each aqueous sample (up to 5 samples are allowed) into a 25-ml purging device using the sample introduction technique described in the method.

The total volume of the sample in the purging device must be 25 ml.

Purge and desorb as described in the method.

(h) The department may reduce the monitoring frequency specified in paragraphs "a" and "b" of this subrule as follows:

(1) The monitoring frequency for groundwater systems is as follows:

When SOCs are not detected in the first sample (or any subsequent samples that may be taken) and the system is not vulnerable as defined in subparagraph "h"(4), monitoring is required every five (5) years.

Monitoring must be repeated in three years for systems with equal to or greater than 500 service connections; and

Monitoring must be repeated every five years for systems with less than 500 service connections.

When SOCs are detected in the first year of quarterly sampling (or any other subsequent sample that may be taken), regardless of vulnerability, monitoring must be repeated every three months, as required under paragraph "b" of this subrule.

(3) The department may reduce the frequency of monitoring to once per year for a groundwater system or surface water system detecting SOCs at levels consistently less than the MCL for three consecutive years.

(4) Vulnerability of each public water system shall be determined by the department based upon an assessment of the following factors.

Previous monitoring results. A system will be classified vulnerable if any sample was analyzed to contain one or more contaminants listed in 41.3(2)"d" or 41.4(7)"e" except for trihalomethanes or other demonstrated disinfection byproducts.

Proximity of surface water supplies to commercial or industrial use, disposal or storage of volatile synthetic organic chemicals. Surface waters which withdraw water directly from reservoirs are considered vulnerable if the drainage basin upgradient and within two (2) miles of the shoreline at the maximum water level contains major transportation facilities such as primary highways or railroads or any of the contaminant sources listed in this subparagraph. Surface water supplies which withdraw water directly from flowing water courses are considered vulnerable if the drainage basin upgradient and within two (2) miles of the water intake structure contains major transportation facilities such as primary highways or railroads or any of the contaminant sources listed in this subparagraph.

Proximity of groundwater supplies to commercial or industrial use, disposal or storage of volatile synthetic organic chemicals. Wells that are not separated from sources of contamination by at least the following distances will be considered vulnerable.

Sources Of Contamination	Shallow Wells as defined in 40.2(455B)	Deep Wells as defined in 40.2(455B)
Sanitary and industrial point discharges	400 ft.	400 ft.
Mechanical waste treatment plants	400 ft.	200 ft.
Lagoons	1,000 ft.	400 ft.
Chemical & mineral storage (above ground)	200 ft.	100 ft.
Chemical & mineral storage including underground storage tanks on or below ground	400 ft.	200 ft.
Solid waste disposal site	1,000 ft.	1,000 ft.

(5) A system is deemed to be vulnerable for a period of three years after any positive measurement of one or more contaminants listed in either 41.3(2)"d" or 41.4(7)"e" except for trihalomethanes or other demonstrated disinfection byproducts.

(i) Compliance with 41.3(2)"d" shall be determined based on the results of running annual average of quarterly sampling for each sampling location. If one location's average is greater than the MCL, then the system shall be deemed to be out of compliance. If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, only that part of the system that exceeds any MCL as specified in 41.3(2)"d" will be deemed out of compliance. The department may reduce the public notice requirement to that portion of the system which is out of compliance. If any one sample result would cause the annual average to be exceeded, then the system shall be deemed to be out of compliance immediately. For systems that only take one sample per location because no SOCs were detected, compliance shall be based on that one sample.

(j) Analysis under this paragraph shall be conducted using the following approved methods or their equivalent as approved by the department. These

methods are contained in "Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water," September 1966, available from Environmental Monitoring and Support Laboratory (EMSL), EPA, Cincinnati, OH 45266 or the department.

(1) Method 502.1, "Volatile Halogenated Organic Chemicals in Water by Purge and Trap Gas Chromatography."

(2) Method 503.1, "Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography."

(3) Method 524.1, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography."

(4) Method 524.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry."

(5) Method 502.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series."

k. Analysis under this subrule shall only be conducted by laboratories that have received conditional approval by the department according to the following conditions:

(1) To receive conditional approval to conduct analyses for benzene, vinyl chloride, carbon tetrachloride, 1,2-dichloroethane, trichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, and paradichlorobenzene the laboratory must:

Analyze performance evaluation samples which include these substances provided by EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the department.

Achieve the quantitative acceptance limits under this subparagraph for at least six of the seven subject organic chemicals.

Achieve quantitative results on the analyses performed under this subparagraph that are within ±20 percent of the actual amount of the substances in the performance evaluation sample when the actual amount is greater than or equal to 0.010 mg/l.

Achieve quantitative results on the analyses performed under this subparagraph that are within ±40 percent of the actual amount of the substances in the performance evaluation sample when the actual amount is less than 0.010 mg/l.

Achieve a method detection limit of 0.0005 mg/l, according to the procedures in 40 CFR, Appendix B of Part 135, October 26, 1984.

Be currently approved by the department for the analyses of trihalomethanes under 41.4(6).

(2) To receive conditional approval for vinyl chloride, the laboratory must:

Analyze performance evaluation samples provided by EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the department.

Achieve quantitative results on the analyses performed under this subparagraph that are within ±40 percent of the actual amount of vinyl chloride in the performance evaluation sample.

Achieve a method detection limit of 0.0005 mg/l, according to the procedures in 40 CFR, Appendix B of Part 136, October 26, 1984.

Receive approval or be currently approved by the department under subparagraph "k"(1) of this subrule.

l. The department may allow the use of monitoring data collected after January 1, 1983, for purposes of monitoring compliance. If the data is

consistent with the other requirements in this paragraph, the department may use that data to represent the initial monitoring if the system is determined by the department not to be vulnerable under the requirements of this section. In addition, the results of the U.S. Environmental Protection Agency's Groundwater Supply Survey can be used in a similar manner for systems supplied by a single well.

m. The department may increase required monitoring where necessary to detect variations within the system.

n. The department may determine compliance or initiate enforcement action based upon analytical results and other information compiled by their sanctioned representatives and agencies.

o. The department may exempt a public water system that obtains treated water from another public water system serving more than 10,000 persons from conducting compliance monitoring for the organic chemicals under 41.3(2)"d," provided that the system from which the water is obtained has conducted the analyses required under 41.3(2)"d".

p. Public water systems exempted by the department under paragraph "o" and which disinfect are required to monitor under 41.4(6).

q. Each approved laboratory must determine the method detection limit (MDL), as defined in 40 CFR, Appendix B of Part 136, October 26, 1984, at which it is capable of detecting SOCs. The acceptable MDL is 0.0005 mg/l. This concentration is the detection level for purposes of subparagraphs "e", "f", "g" and "h" of this subrule.

ITEM 6. Subrule 41.4(6) is to be renumbered as 41.4(8). Renumber 41.4(5) as 41.4(6) and amend as follows:

a. Community water systems which serve a population of 10,000 or more individual and which add disinfectant (oxidant) to the water in any part of the drinking water treatment process shall analyze for total trihalomethanes in accordance with this subrule. ~~For--systems--serving--75,000--or--more individuals,-sampling-and-analyses-shall-begin-before-November-29,-1980.--For systems-serving-10,000-to-74,999-individuals,-sampling-and-analyses-shall begin-before-November-29,-1982.~~ For the purpose of this subrule, samples to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing water from a single aquifer may, with approval of the department, be considered as one treatment plant for determining the minimum number of samples. All samples required within a calendar quarter shall be collected within a 24-hour period.

ITEM 7. Subrule 41.4(7) is renumbered as 41.4(9). Add the following new subrule as 41.4(7):

41.4(7) Special monitoring for organic chemicals.

a. All community and nontransient noncommunity water systems shall monitor for the contaminants listed in paragraph "e" in this subrule by the date specified below:

Number of Persons Served	Monitoring to begin no later than
Over 10,000	Within 45 Days Of Rule Effective Date
3,300 to 10,000	Jan. 1, 1989
Less than 3,300	Jan. 1, 1991

b. Surface water systems shall sample in the distribution system representative of each water source or at entry points to the distribution system. The minimum number of samples is one year of quarterly samples per water source.

c. Groundwater systems shall sample at points of entry to the distribution system representative of each well. The minimum number of samples is one sample per entry point to the distribution system.

d. The department may require confirmation samples for positive or negative results.

e. Community water systems and nontransient noncommunity water systems shall monitor for the following contaminants except as provided in paragraph "f" of this subrule.

(1) Chloroform
(2) Bromodichloromethane
(3) Chlorodibromomethane
(4) Bromoform
(5) trans-1,2-Dichloroethylene
(6) Chlorobenzene
(7) m-Dichlorobenzene
(8) Dichloromethane
(9) cis-1,2-Dichloroethylene
(10) o-Dichlorobenze
(11) Dibromomethane
(12) 1,1-Dichloropropene
(13) Tetrachloroethylene
(14) Toluene
(15) p-Xylene
(16) o-Xylene
(17) m-Xylene
(18) 1,1-Dichloroethane
(19) 1,3-Dichloropropane
(20) 1,1,2,2-Tetrachloroethane
(21) Ethylbenzene
(22) 1,3-Dichloropropane
(23) Styrene
(24) Chloromethane
(25) Bromomethane
(26) 1,2,2-Trichloropropane
(27) 1,1,1,2-Tetrachloroethane
(28) Chloroethane
(29) 1,1,2-Trichloroethane
(30) 2,2-Dichloropropane
(31) o-Chlorotoluene
(32) p-Chlorotoluene
(33) Bromobenzene
(34) 1,3-Dichloropropene
(35) Ethylene dibromide (EDB)
(36) 1,2-Dibromo-3-chloropropane (DBCP)

f. Community water systems and nontransient noncommunity water systems must monitor for ethylene dibromode (EDB) and 1,2-Dibromo-3-chloropropane (DBCP) only if the department determines they are vulnerable to contamination by either or both of these substances. For the purpose of this paragraph, a vulnerable system is defined as a system which is potentially contaminated by

EDB and DBCP, including surface water systems where these two compounds are applied, manufactured, stored, disposed of, or shipped upstream, and for groundwater systems in areas where the compounds are applied, manufactured, stored, disposed of, or shipped in the groundwater recharge basin, or for groundwater systems, shallow wells as defined in 40.2(455B) that are less than four hundred (400) feet and deep wells as defined in 40.2(455B) that are less than two hundred (200) feet from underground storage tanks that contain leaded gasoline.

g. Analysis under this section shall be conducted using the recommended methods as follow, or their equivalent as determined by the department: 502.1, "Volatile Halogenated Organic Compounds in water by Purge and Trap Gas Chromatography," 503.1, "Volatile Aromatic and Unsaturated Organic Compounds in water by Purge and Trap Gas Chromatography," 524.1, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography/Mass Spectrometry," 524.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry, or 502.2, "Volatile Organic Compounds in Water by Purge and Trap gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series." These methods are contained in "Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water," September 1986, available from Environmental Monitoring and Support Laboratory (EMSL), EPA, Cincinnati, Ohio 45263. Analysis of 1,2-dibromo-3-chloropropane (DBCP) and 1,2-dibromoethane (ECB) shall be conducted by Method 504, "Measurement of 1,2-Dibromoethane (EDB) and 1,2-Dibromo-3-chloropropane (DBCP) in Drinking Water by Microextraction and Gas Chromatography," September 1986, available from EMSL, Cincinnati, Ohio 45268.

h. Analysis under this section shall only be conducted by laboratories approved under 41.4(5)"k". In addition to the requirements of 41.4(5)"d", each laboratory analyzing for ethylene dibromide (EDB) and 1,2-dibromo-3-chloropropane (DBCP) must achieve a method detection limit for EDB and DBCP of 0.00002 mg/1, according to the procedures in 40 CFR Appendix B of Part 136, October 26, 1984.

i. Public water systems may use monitoring data collected anytime after January 1, 1983 to meet the requirements for unregulated monitoring, provided that the monitoring program was consistent with the requirements of this section.

j. Monitoring for the following compounds is required at the discretion of the department.

(1) 1,2,4-Trimethylbenzene
(2) 1,2,4-Trichlorobenzene
(3) 1,2,3-Trichlorobenzene
(4) n-Propylbenzene
(5) n-Butylbenzene
(6) Naphthalene
(7) Hexachlorobutadiene
(8) 1,3,5-Trimethylbenzene
(9) p-Isopropyltoluene
(10) Isopropylbenzene
(11) Tert-butylbenzene
(12) Sec-butylbenzene
(13) Fluorotrichloromethane
(14) Dichlorodifluoromethane
(15) Bromochloromethane

k. Instead of performing the monitoring required by this section, a community water system or nontransient noncommunity water system serving fewer than 150 service connections may send a letter to the department stating that its system is available for sampling. Samples are not required unless requested by the department. The letter must be sent to the state no later than January 1, 1991. All community and nontransient noncommunity water systems shall repeat the monitoring required in this subrule no less frequently than every five years from the dates specified in 41.4(7)"a".

ITEM 8. Renumber subrule 41.4(6) and 41.4(8).

ITEM 9. Renumber subrule 41.4(7) and 41.4(9).

ITEM 10. Renumber subrule 41.4(8) as 41.4(10).

ITEM 11. Renumber subrule 41.4(9) as 41.4(11).

ITEM 12. Renumber subrule 41.4(10) as 41.4(12).

ITEM 13. Renumber subrule 41.4(11) as 41.4(13). AMend the beginning statement to read as follows:

For the purpose of determining compliance with 41.4(1) to through ~~41.4(10)~~ 41.4(12), samples may be considered only if they have been analyzed by a laboratory currently certified by the department except that measurements for turbidity, temperature, pH and free chlorine residual may be performed by any person acceptable to the department.

ITEM 14. Renumber subrule 41.4(12) as 41.4(14).

ITEM 15. Renumber subrule 41.4(13) as 41.4(15).

ITEM 16. Renumber subrule 41.4(14) as 41.4(16).

ITEM 17. Renumber subrule 41.4(15) as 41.4(17).

ITEM 18. Amend subrule 41.5(1) by adding new paragraph "c" as follows:

c. The owner or operator shall notify persons served by the system of the availability of the results of sampling conducted under 41.4(7) by including a notice in the first set of water bills issued by the system after the receipt of the results or written notice within three months. The notice shall identify a person and supply the telephone number to contact for information on the monitoring results.

ITEM 19. Change the title of subrule 41.5(2) to read as follows: General public notification requirements.

ITEM 20. Add new subrule 41.5(4) to read as follows:

41.5(4) Public notification requirements pertaining to lead.

a. Applicability of public notice requirements.

(1) Except as provided in subparagraph "a"(2) of this subrule, within thirty (30) days after the effective date of these rules, the owner or operator of each community water system and each nontransient noncommunity water system shall issue a notice to persons served by the system that may be affected by lead contamination of their drinking water. The department may require subsequent notices. The owner or operator shall provide notice under 41.5(4) even if there is no violation of the lead maximum contaminant level as prescribed in 41.3(1).

(2) Notice required under subparagraph "a"(1) of this subrule is not required if the system demonstrates to the department that the water system, including the residential and nonresidential portions connected t the water system, are lead free as defined in 40.2(455B).

b. Manner of notice. Notice shall be given to persons served by the system either by (1) three newspaper notices (one for each of three consecutive months and the first no later than thirty (30) days after the effective date of these rules); or (2) once by mailing the notice with the water bill or in a separate mailing within theirty (30) days after the effective date of these

rules; or (3) once by hand delivery within thirty (30) days after the effective date of these rules. For nontransient noncommunity water systems, notice may be given by continuous posting. If posting is used, the notice shall be posted in a conspicuous place in the area served by the system and start no later than thirty (30) days after the effective date of these rules, and continue for three months.

c. General content of the notice.

(1) Notices issued under this subrule shall provide a clear and readily understandable explanation of the potential sources of lead in drinking water, potential adverse health effects, reasonably available methods of mitigating known or potential lead content in drinking water, and the necessity for seeking alternative water supplies, if any. Use of the mandatory language in paragraph "d" of this subrule in the notice will be sufficient to explain potential adverse health effects.

(2) Each notice shall also include specific advice on how to determine if materials containing lead have been used in homes or the water distribution system and how to minimize exposure to water likely to contain high levels of lead. Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice shall contain the telephone number of the owner, operator, or designee of the public water system as a source of additional information regarding the notice. Where appropriate, the notice shall be multilingual.

d. Mandatory health effects information. When providing the information in public notices required under paragraph "c" of this subrule on the potential adverse health effects of lead in drinking water, the owner or operator of the water system shall include the following specific language in the notice:

"The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain levels of exposure. There is currently a standard of 0.050 parts per million (ppm). Based on new health information, EPA is likely to lower this standard significantly.

"Part of the purpose of this notice is to inform you of the potential adverse health effects of lead. This is being done even though your water may not be in violation of the current standard.

"EPA and others are concerned about lead in drinking water. Too much lead in the human body can cause serious damage to the brain, kidneys, nervous system, and red blood cells. The greatest risk, even with short-term exposure, is to young children and pregnant women.

"Lead levles in your drinking water are likely to be highest:

- if your home or water system has lead pipes, or
- if your home has copper pipes with lead solder, and
- if the home is less than five years old, or
- if you have soft or acidic water, or
- if water sits in the pipes for several hours."

ITEM 21. Amend subrule 41.6(5) by adding paragraph "c" as follows:

If the department determines that a treatment method identified in 41.12(10) is technically feasible, the department may require the system to install or use that treatment method in connection with a compliance schedule issued under the provisions of this subrule. The department's determination shall be based upon studies by the system and other relevant information.

ITEM 22. Amend rule 41.12(455) by adding a new subrule 41.12(10) as follows:

41.12(10) Best available treatment technology.

a. The department identifies the following as the best tecynology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for synthetic organic chemicals listed in 41.3(2)"d": Central treatment using packed tower aeration or central treatment using granular activated carbon (except vinyl chloride).

b. The department shall require community water systems and nontransient noncommunity water systems to install or use any treatment method identified in 41.12(10) as a condition for granting an interim contaminant level except as provided in paragraph "c". If, after the system's installation of the treatment method, the system cannot meet the maximum contaminant level, that system shall be eligible for a compliance schedule with an interim contaminant level granted under the provisions of 41.7.

c. If a system can demonstrate through comprehensive engineering assessments, which may at the direction of the department include pilot plant studies, that the treatment methods identified in 41.12(10) would only achieve a de minimis reduction in contaminants, the department may issue a schedule of compliance that requires the system to examine other treatment methods as a condition of obtaining an interim contaminant level.

d. If the department determines that a treatment method identified in paragraph "c" of this subrule is technically feasible, the department may require the system to install or ue that treatment method in connection with a compliance schedule issued under the provisions of 41.7. The department's determination shall be based upon studies by the system and other relevant information.

ITEM 23. Add new rule 567--41.15(455B) Prohibition on the use of lead pipes, solder and flux. Any pipe, solder or flux which is used in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system shall be lead free as defined in 40.2(455B). This action shall not apply to leaded joints necessary for the repair of cast iron pipe.

ITEM 24. Add new subrule 41.16(2). Use of noncentralized treatment devices.

a. Public water systems shall not use bottled water, point-of-use (POU) or point-of-entry (POE) devices to achieve compliance with a maximum contaminant level in 41.3(2)"d".

b. The department may require a public water system exceeding a maximum contaminant level specified in 41.3(2)"d" to use bottled water as a condition of an interim compliance schedule or as a temporary measure to avoid an unreasonable risk to health. The system must meet the following requirements:

(1) Submit for approval to the department a monitoring program for bottled water. The monitoring program must provide reasonable assurances that the bottled water meets all the maximum contaminant levels in 41.3. The public water system must monitor a representative sample of bottled water for all contaminants regulated under 41.3(2)"d" the first quarter that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the department annually.

(2) The public water system must receive a certification from the bottled water company that the bottled water supplied has been taken from an "approved source" as defined in 21 CFR, Part 129, Subpart A, Section 129.3(1); the bottled water company has conducted monitoring in accordance with 21 CFR, Part 129, Subpart E, Sections 129.80(g)(1) through (3); and the bottled water does

not exceed any maximum contaminant levels or quality limits as set out in 21 CFR, Part 103, Subpart B, Section 103.35; 21 CFR, Part 110 and 21 CFR, Part 129. The public water system shall provide the certification to the department the first quarter after it supplies bottled water and annually thereafter.

(3) The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system, via door-to-door bottled water delivery.

_____
Date

_____
Larry J. Wilson, Director

Mr. Stokes explained the proposed rules in detail.

Motion was made by Catherine Dunn to approve Notice of Intended Action--Chapter 41, Public Water Supply Rules. Seconded by Nancylee Siebenmann. Motion carried unanimously.

CHAPTER 38 -- PRIVATE WATER WELL CONSTRUCTION PERMITS AUTHORIZED UNDER 455B.187

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

The Commission is requested to approve the proposed Chapter 38 of the IAC.

Chapter 38 of IAC is proposed to implement the issuing of new private water well construction permits as authorized under Chapter 455B.187, Code of Iowa, as amended by Section 304 of Chapter 225 of the 1987 Session Laws.

Three public hearings on the proposed rules were held throughout the state beginning on February 3, 1988, and written and oral comments were received through February 18, 1988, ten days after the date of the final hearing. The notice of intendd action was published in the Iowa Administrative Bulletin on January 13, 1988. Besides, copies of the notice of intended action were sent by ordinary mail to all 99 county boards of supervisors, the USEPA (Region 7), the U.S. Army Corps of Engineers (Omaha and Rock Island Districts), a number of state agencies and several professional organizations and other known and interested and affected parties. A general news release was also prepared and made available to the news media.

Fourteen oral comments were received from the thirty-six persons attending the three public hearings. Also, twenty written comments were received during the comment period.

The proposed rules were revised as a result of the oral and written comments received. Following are descriptions of the revisions to the proposed rules.

38.1(455B) Modified the definition of "contiguous" to limit the radius of a contiguous piece of property to one mile for the purpose of reporting on existing wells.

38.3(1)(455B) Exemp temporary dewatering wells from the construction standards of Chapter 49.

38.3(2)(455B) Exempt "all monitoring wells required as part of a permit or a construction approval issued by the Department" from the permitting requirements of Chapter 38.

38.3(2)c(455B) Require test holes to be peroperly closed in accordance with the proposed Chapter 39 "Requirements for Properly Plugging Abandoned Wells."

38.4(455B) and 38.7(3)(455B) Allow counties with active delegation of authority the option to develop and use their own application forms subject to the approval of the Department.

38.12(455B) Clarify the conditions that may cause the Director to deny a permit.

38.13(455B) Provide for the appeal of permits denied by counties with active delegation to be administered through the county appeal and judicial review process.

38.14(455B) Provide for the rules to become effective on July 1, 1988.

38.15(4)(455B) Provide for permit applications by state or federal agencies to be made to the Department, only.

49.2(455B) Modify rule 49.2(455B) by requiring irrigation and livestock wells to meet the construction standards of Chapter 49 (Nonpublic Water Wells).

ENVIRONMENTAL PROTECTION COMMISSION [567]
Adopted and Filed

Pursuant to the authority of 1987 Iowa Code Supplement section 455B.187, the Environmental Protection Commission has adopted a new Chapter 38, "Private Water Well Construction Permits."

1987 Iowa Code Supplement section 455B.187 requires all landowners or landowners' agents to obtain private well construction permits from the Department of Natural Resources prior to the construction of any new wells on their property. In addition, the Department is precluded from issuing a permit to an applicant until all existing wells on the property have been registered with the Department. Also, the authority to issue private well construction permits may be delegated to county boards of supervisors, but the Department retains concurrent authority. Further, all counties may issue emergency drilling permits in those cases where emergency drilling is necessary to fulfill an immediate need for water. New Chapter 38(455B) is intended to implement these statutory provisions. Generally, this chapter provides procedures and conditions governing applications for and issuance of private water well construction permits.

Notice of Intended Action was published in the January 13, 1988 Iowa Administrative Bulletin as ARC 8291. Thirty-four oral and written comments were received during the comment period and at three public hearings.

One of the written comments pointed out a possible conflict between the rules as published in the Notice of Intended Action and another, existing rule of the Department. Specifically, subrules 38.3(1) and 38.8(3) require that livestock and irrigation wells be constructed in accordance with nonpublic water well construction standards in 567--Chapter 49. It is believed that this requirement is consistent with the Groundwater Protection Act (of which the private well construction permit requirement is a part) policy of preventing groundwater contamination. However, 567--49.2 specifically exempts livestock and irrigation wells from complying with Chapter 49. In order to remove this ambiguity and still pursue the concept provided in the Notice of Intended Action, that all wells requiring a construction permit be constructed according to Chapter 49 standards, it was necessary to amend 567--49.2. Therefore, the adopted rules include an amendment which removes the exemption for livestock and irrigation wells.

Other modifications to the Notice of Intended Action are as follows:

38.1 Modifies the definition of "contiguous" to limit the radius of a contiguous piece of property to one mile for the purpose of reporting existing wells.

38.3(1) Exempts temporary dewatering wells from the construction standards of Chapter 49.

38.3(2) Exempts "all monitoring wells required as part of a permit or a construction approval issued by the Department" from the permitting requirements of Chapter 38.

38.3(2)c Requires test holes to be properly closed in accordance with the proposed Chapter 39, "Requirements for Properly Plugging Abandoned Wells."

38.4 and 38.7(3) Allows counties with active delegation of authority the option to develop and use their own application forms subject to the approval of the Department.

38.12 Clarifies the conditions that may cause the Director to deny a permit.

38.13 Provides for the appeal of permit denials by counties with active delegation to be administered through the county appeal and judicial review process.

38.14 Provides for the rules to become effective on July 1, 1988.

38.15(4) Provides that permit applications by state or federal agencies are to be made to the Department, only.

These rules were adopted by the Environmental Protection Commission at is April 26, 1988 meeting and will become effective on July 1, 1988.

These rules are intended to implement 1987 Iowa Code Supplement section 455B.187 and Iowa Code subsection 455B.105(12).

ITEM 1. Create a new Chapter 38 as follows:

Chapter 38
PRIVATE WATER WELL CONSTRUCTION PERMITS

567--38.1(455B) Definitions

"Abandoned well" means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impracticable.

"Agreement" means a signed document between the department and the county board of supervisors with which the department delegates the authority to issue private well drilling permits to the county board of supervisors or its designee.

~~"Contiguous" means any number of parcels of land that physically touch one another except that tracts of land separated by roads, railroads, or streams shall be deemed contiguous.~~ "Contiguous" means any number of parcels of land that physically touch one another including tracts of land separated by roads, railroads or streams; except that for the purpose of reporting on other existing wells on the property, the radius of a contiguous piece of land shall be limited to one mile from the site of the new well constructed.

"Contractor" means a person engaged in the business of well construction or reconstruction. The term may include a corporation, partnership, sole proprietorship, association or any other business entity, as well as any employee or officer of such an entity.

"Construction" means the physical act or process of making a water well including, but not limited to , siting, excavation, construction and installation of equipment and materials necessary to maintain and operate the well.

"Department" means the Iowa Department of Natural Resources.

"Director" means the director of the department or a designee.

"Groundwater" means any water below the surface of the earth.

"Inactive water well" means a water well which is not currently in use and is capped or sealed to prevent the entrance of contaminants into the well, but is in such a condition that it can be activated to produce a safe supply of water.

"Landowner" means an individual, trust, partnership, corporation, government or governmental subdivision or agency, association or other legal entity that has legal or equitable title to a piece of land.

"Landowner's agent" means a person who acts for or in place of the landowner by authority from the landowner.

"Private water well" means a well that does not supply a public water supply system.

"Protected source" means a surface water or groundwater source recognized by rule as deserving special protection in order to ensure its long-term availability, in terms of either quality or quantity, or both, to preserve the public health and welfare.

"Public water supply system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the supplier of water and used primarily in connection with such system, and (2) any collection (including wells) or pretreatment storage facilities not under such control which are used primarily in connection with such system.

"Water well" means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for accessing groundwater. Water well does not include an open ditch or drain tiles.

567--38.2(455B) Forms. The following application form is currently in use:

Application for a permit to construct a new private water well. 11/87. 542-0988.

567--38.3(455B) Permit requirement.

38.3(1) When permit required. A landowner or landowner's agent shall not drill or construct a new private water well without first obtaining a well construction permit issued by the department or by a county board of supervisors or the board's designee authorized to issue such permits pursuant to rule 38.15(455B). ~~Examples--of--private--water--wells--requiring--well construction--permits--include;--but--are--not--limited--to:--domestic--wells; livestock-wells;-irrigation-wells;-recreational-wells;-monitoring-wells;-heat pump-wells;-industrial-wells;-and-dewatering-wells.~~ Examples of private water wells requiring well construction permits include, but are not limited to: domestic wells, livestock well, irrigation wells, recreational-use wells, monitoring wells, heat pump wells, industrial wells, and dewatering wells, except that dewatering wells shall be exempt from the construction standards of Chapter 49 (nonpublic water wells).

38.3(2) Exemptions. ~~Examples~~ The following types of excavations ~~that-are not-private-water-wells-and-so~~ do not need private water well construction permits: ~~and-need-not-be-reported-include;-but-are-not-limited-to:~~ soil boring, percolation test holes, sand and gravel and limestone exploration holes, excavations for storing and extracting natural gas or other products, gravel pits and quarries and all monitoring wells required as part of a permit or a construction approval issued by the Department. Test holes used to determine the availability, quality or depth of groundwater are also exempt provided that all the following conditions are met.

a. The use of the test hole is limited to the conduct of the test only.

b. The duration of the test is not more than seven consecutive days.

c. The test hole is properly closed immediately after the test is completed in accordance with Chapter 39 "Requirements for Properly Plugging Abandoned Wells" at the end of 38.3(2)c.

38.3(3) Caveat. Nothing in these rules shall be construed as exempting public water supply wells from the construction permit and water withdrawal permit provisions of part 567, Iowa Administrative Code.

567--38.4(455B) Form of application. Application shall be made on forms supplied the department. However, counties that have active delegation of authority to issue new private well construction permits pursuant to rule 38.115(455B) may develop and use their own application forms subject to the approval of the Department. Each application shall list all wells, including abandoned wells, on the applicant's property contiguous to the well site described in the application and shall describe the location of each well site. The location shall be given in the form of a legal land description (section, township and range) to the nearest quarter of a quarter of a section and noted on a map or aerial photograph. The list of wells to be registered shall include but is not limited to abandoned wells, inactive wells, agricultural drainage wells, irrigation wells, domestic wells and livestock wells.

567--38.5(455) Fees.

38.5(1) Fee payment. Each application shall be accompanied by a nonrefundable fee of twenty-five dollars ($25) in the form of a check or money order payable to the Department of Natural Resources, unless a county board of supervisors or the board's designee is authorized to issue private well construction permits pursuant to rule 38.15(455B). In such cases where the permitting authority is delegated to the county, the county board of

supervisors may set a different fee and shall designate the terms for fee payment. More than one proposed well on one contiguous piece of property may be listed on one application and only one fee need be paid irrespective of the number of wells listed on the application form. A proper application shall consist of a fully and properly completed form and nonrefundable fee.

38.5(2) Exemption. The department is exempt from the fee payment requirements of these rules.

567--38.6(455B) Well maintenance and reconstruction. A private well construction permit is required for all replacement wells. A private well construction permit is not required for the repair, maintenance, rehabilitation or reconstruction of an existing well. Changes in physical dimensions included in these exemptions include, but are not limited to: deepening the well and changing the diameter of length of the casing or the screen. ~~Replacement wells do require a private well construction permit.~~

567--38.7(455B) Emergency permits.

38.7(1) Granting of emergency permit. Each county board of supervisors or the board's designee may grant an emergency permit to a landowner or the landowner's agent if emergency drilling is necessary to meet an immediate need for water. The emergency permit and application must be signed by the board of supervisors or the board's designee and shall be on forms obtained from the department prior to the emergency well construction taking place.

38.7(2) Submittal to department. A copy of the permit application signed by the chairperson of the board of supervisors and fee shall be sent to the department within thirty days of the granting of the permit by the county board of supervisors or its designee. In the event the permitting authority has been delegated to the county, no fee need be remitted to the department.

38.7(3) Counties with delegation. Counties with active delegation of authority to issue private water well construction permits, as provided for in rule 38.15(455B), need not follow the special processing and reporting requirements for emergency permits specified in 38.7(1) and 38.7(2). In these counties, emergency permit applications may be made on approved county forms as provided for in 38.4(455B) and the reporting requirements shall be on a routine basis in accordance with rule 38.15(3)(455B).

567--38.8(455B) Permit issuance and conditions.

38.8(1) When issued. Upon receipt of a complete application, the department shall issue a permit to the landowner or landowner's agent except as provided in rules 38.7(455B), 38.12(455B) and 38.15(455B).

38.8(2) Not withdrawl permit. Each permit shall include notification that a private well construction permit is not a water withdrawal permit and does not eliminate the necessity of obtaining any water withdrawal permits required in Chapters 51 and 52 of these rules. A water withdrawal permit is required before an applicant can withdraw more than 25,000 gallons of water per day, from any source of combination of sources in the state of Iowa.

38.8(3) Construction by registered well driller. Each well construction permit shall require that each well shall be constructed by a registered well driller in compliance with Chapters 37 and 49 of these rules. However, temporary dewatering wells at construction sites shall be exempt from the construction standards of Chapter 49.

567--38.9(455B) Noncompliance. Violations of any of the provisions of this chapter may be addressed by the department pursuant to Iowa Code sections 455B.109, 455B.175 and 455B.191.

567--38.10(455B) Expiration of a permit. A private well construction permit shall expire one calendar year from the date of issuance. If construction of the proposed well is not started prior to the expiration date, a new application plus a new nonrefundable fee must be filed with the department or the county board of supervisors pursuant to rule 38.15(455B).

567--38.11(455B) Transferability. A private well construction permit is not transferable.

567--38.12(455B) Denial of a permit. The department may deny a private well construction permit if granting the permit would lead to the violation of state law, would result in groundwater contamination, would lead to withdrawal from a protected source; or the director determines that the well would threaten public health or the environment. Examples of wells that could threaten public health or the environment and therefore may be denied construction permits include, but are not limited to: in-situ mining wells, wells which may result in a negative impact on an identified point source of groundwater contamination and cause leachate plume to spread or migrate, underground injection wells except as provided in 50.6(4) and 62.9 of these rules.

567--38.13(455B) Appeal of a permit denial. Any applicant aggrieved by a decision issued under the provisions of this chapter may file a notice of appeal with the director. The notice of appeal must be filed within thirty (30) days of the date of the permit decision. The form of the notice of appeal and appeal procedures are governed by Chapter 7 of these rules. Appeal of a permit denied by a county which has been delegated authority to issue private water well permits shall be administered by the county in accordance with their appeal or judiciary review process and can only be appealed to the Department if delegation to the county is suspended, rescinded or revoked.

567--38.14(455B) Effective date. The provisions of this chapter of the rules shall become effective on July 1, 1988.

567--38.15(455B) Delegation of authority to county board of supervisors.

38.15(1) Application by board. A county board of supervisors requesting the authority to issue private well construction permits shall apply to the department in accordance with Chapter 28E, Code of Iowa. The application shall include statements of agreement to comply with this chapter of the Iowa Administrative Code. Additional information may be requested by the department.

38.15(2) County standards. The county board of supervisors may impose additional standards as local conditions dictate, but cannot be less stringent than those required by the provisions of this chapter.

38.15(3) Information to department. The delegation agreement shall provide for the method, format and frequency of reporting all permit application information to the department.

38.15(4) Board authority. After delegation of authority to a county board of supervisors, all applications in that county shall be made to the board or

its designee) except that all new private well permit applications by state or federal agencies shall be made to the Department.

38.15(5) Term of delegation. The delegation of authority may be for up to five years and may be redelegated at the discretion of the department.

567--38.16(455B) Concurrent authority of the department. Notwithstanding the delegation of permit granting authority pursuant to rule 38.15(455B), the department reserves the right to exercise concurrent authority. In cases where the board or its designee fails to act on an application, or the director determines that a particular application cannot be appropriately evaluated by the board or its designee, the department may review such an application without invoking the provisions of rule 38.17(455B).

567--38.17(455B) Revocation of delegation agreement. The department may revoke the delegation to issue private well construction permits if the board of supervisors or its designee: failed or refused to carry out the provisions of this chapter in a timely manner; or violated any of the provisions of the delegation of authority agreement with the department.

_____
Date

_____
Larry J. Wilson, Director

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

Rules Pertaining to Chapter 38
"Private Water Well Construction Permits"

PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY

FOR

CHAPTER 38 - PRIVATE WATER WELL CONSTRUCTION PERMITS

The attached information constitutes a summary of written and oral comments received on the proposed rules Chapter 38 - Private Water Well Construction Permits.

Sixty-three comments were received from thirty-three commentors on seventeen sections of Chapter 38 including general comments.

The following information constitutes a summary of comments received through February 23, 1988 and at three public hearings held on February 3, 1988 at Council Bluffs, Iowa; on February 5, 1988 at Des Moines, Iowa; and on February 8, 1988 at Iowa City, Iowa. Three oral comments were received from the thirteen persons attending the hearing in Council Bluffs. Three oral and two written comments were received from the nine persons attended the public hearing in Des Moines. Eight oral and one written comments were received from the fourteen attendees at the hearing in Iowa City.

The responsiveness summary addresses all comments or group of similar-type comments, and each comment or group of comments is followed by a notation of the commentor or commentors, a discussion and a staff recommendation. The interest and input of all the commentors on the proposed Chapter 38 is very much appreciated.

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1. Comment: Too much government intrusion into the individual rights and freedoms.

These commentors expressed opposition to the entire rule-making process. All wondered about state infringement on individual constitutional rights and freedom and expressed the opinion that the proposed rules are just another example of state invasion of individual rights.

Commentors: 1, 2, 6 and 22

Discussion: The relevant statute requires the Department to adopt rules to implement the private well permit program. Therefore, the Department cannot forgo the rule-making process.

Recommendation: No change.

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2. Comment: (38.3) Dewatering wells should be exempt.

A number of commentors feel that dewatering wells for construction projects should be exempt from the permit requirements. In particular, they recommend that Iowa should follow the lead of Oklahoma and Missouri that do not consider construction site dewatering wells to be wells at all. Also, some doubted the wisdom of constructing dewatering wells in accordance with Chapters 37 and 49.

Commentors: 3, 9, 25 and 34

Discussion: Dewatering wells at construction sites are generally temporary, shallow wells that do not penetrate confined aquifers. They are used to dewater a construction site to allow work to proceed, and are often closed or allowed to collapse once construction work is completed. It will be very difficult for these to meet the standards of Chapter 49. These are especially important in those cases where the dewatering wells are not very deep and would only be left open temporarily.

When left open, such wells are potential sources of groundwater contamination. Hence, if such wells are exempt from the requirements of Chapter 38, then there is no way to ensure that they are properly closed once the dewatering operation is completed. Therefore, it is best to exempt them from the construction standards of Chapter 49. Staff feels that it was the intent of the legislature to require a permit and assure proper abandonment.

Recommendation: Rewrite 38.8(3) to exempt temporary dewatering wells from the construction standards of Chapter 49, but require that all dewatering wells be abandoned in accordance with an approved well abandonment procedure. Therefore, the last sentence of 38.3(1) will read as follows: Examples of private water wells requiring well construction permits include, but are not limited to: domestic wells, livestock wells, irrigation wells, recreational wells, monitoring wells, heat pump wells, industrial wells, and dewatering wells, except that temporary dewatering wells at construction sites shall be exempt from the construction standards of Chapter 49 (Nonpublic Water Wells).

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3. Comment: (38.3) Exempt monitoring wells from the permit requirements.

Several commentors suggested that monitoring wells be exempt from the permit provisions of Chapter 38 because most of these wells already require the approval of the Department before they are constructed. This represents a duplication of the approval or permitting requirements.

Commentors: 11, 24, 25, 26, 33

Discussion: The staff agrees with the opinion of the commentors on the issue of monitoring wells. Therefore, 38.3(2) should be rewritten to exempt those types of monitoring wells that must obtain other construction approvals from the Department.

Recommendation: Exempt those classes of monitoring wells that must be approved by the Department prior to being constructed by rewriting the first sentence of 38.3(2) to read: "Examples of . . . gravel pits and quarries, and all monitoring wells required as part of a permit or construction approval issued by the Department."

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4. Comment: (38.6) Require a permit for major well rehabilitation or reconstruction.

The commentors preferred that permits be required for all major rehabilitation or reconstruction of wells in the state. The idea is that old wells constitute a significant conduit for contamination into groundwater. Therefore, requiring them to be permitted would help in controlling groundwater contamination. In particular, the owners will be forced to bring their wells up to adequate standards (Chapter 49). This would also help in the identification and location of existing wells.

Commentors: 16, 17, 23, 24, 30

Discussion: Chapter 49 applies construction standards to new well construction and major rehabilitation or reconstruction of existing wells. In comparison, the proposed rule provides a permit program prior to the construction of new wells. However, nothing in the proposed rule exempts well rehabilitation and reconstruction from having to meet the standards of Chapter 49. The Department is simply limiting the requirement to obtain a permit to new wells.

Recommendation: No change.

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5. Comment: (38.1) Change the definition of abandoned well.

One commentor suggested that the definition of an abandoned well be changed to include a time element (six months, one year, etc.) after which an inactive well would become abandoned.

Commentor: 16

Discussion: Adding a time element to the definition of an abandoned well may be beneficial. For instance, if it is decided that a well that is inactive (i.e., one year) should be deemed abandoned, then it will be easier to determine which wells are by definition abandoned. Such a well must therefore be plugged with no consideration being given to its actual physical conditions. However, the Department believes that a proper definition of an abandoned well must be based on the actual physical condition of the particular well in question. Age, use and inactive time are not very good predictors of the actual conditions of a water well. The condition of a well depends heavily on the quality of its construction and maintenance over the years, and not on how long it has been inactive.

Recommendation: No change.

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6. Comment: (38.1) Modify the definition of public water supply system.

One commentor suggested that the definition of "public water supply system" be modified to include, "15 service connections '<u>regularly served</u>' for at least 60 days a year."

Commentor: 16

Discussion: The definition used is the same that appears in other chapters of the Iowa Administrative Code and is the one adopted by the Environmental Protection Agency. Therefore, modifying the definition of public water supply system would conflict with the federal criteria and will result in confusion between the applicability of Safe Drinking Water Act (Chapters 40 and 41) and the proposed applicability of Chapter 38.

Recommendation: No change.

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7. Comment: (38.4) Application forms.

One commentor wondered if counties with active well programs would be required to use Departmental forms or could they continue to use their existing forms.
Commentor: 16

Discussion: Part of the reason for developing DNR forms for the new well permit program is to provide uniformity and to ensure that minimum standards are met. To meet the minimum requirements, counties must require permit applicants to provide at least all the information required by the Department forms and make them compatible for data entry into the DNR tracking system.

Recommendation: Revise 38.4 to include a statement that counties that accept delegation of authority may develop and use their own forms subject to the approval of the Department. Insert the following after the first sentence of 38.4(455B): "However, counties that have active delegation of authority to issue new private well construction permits pursuant to rule 38.15(455B), may develop and use their own application forms subject to the approval of the Department.

Also, modify 38.7(455B) to allow emergency permits in counties with active delegation of authority to be made on approved county forms, provided that the individual county has an active delegation of authority to issue private well construction permits. Besides, the special processing and reporting requirements of 38.7(1) and 38.7(2) shall not apply to any county with an active delegation of authority pursuant to rule 38.15(455B). Emergency permits issued by such counties shall be reported to the Department along with all other permit information, on a routine basis as specified in 38.15(3) (455B). Insert the following paragraph after 38.7(2):
"38.7(3) Counties with delegation. Counties with active delegation of authority to issue private water well construction permits, as provided for in rule 38.15 (455B), need not follow the special processing and reporting requirement for emergency permits specified in 38.7(1) and 38.7(2). In these counties, emergency permit applications may be made on approved county forms as provided for in 38.4(455B), and the reporting requirements shall be on a routine basis in accordance with rule 38.15(3) (455B)."

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8. Comment: (38.4) Modify land description requirements to allow for descriptions other than section (S), township (T) and range (R).

A commentor was of the opinion that requiring an applicant to report the location(s) of each well in terms of section (S), township (T) and range (R) and to note the same on a map or aerial photograph would be very difficult and expensive to accomplish. He thinks that allowing the applicant to report the location of the well (after it is constructed) in terms of some identifiable physical structures on the property would be more appropriate.

Commentor: 16

Discussion: The Department has required the public to provide legal descriptions of property in terms of section (S), township (T) and range (R) for many years without undue hardship. Besides, the above method of locating wells is permanent, can easily be interpreted, can be used by a statewide tracking system, and is the common nomenclature used for all land description at the federal, state and local level and property transfers. Also, the so-called permanent structures (buildings, etc.) are not really permanent reference points.

Recommendation: No change.

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9. Comment: Delegate permit-granting authority to county board of health not to the board of supervisors.

Several commentors expressed the opinion that for all practical purposes it is the board of health rather than the board of supervisors that has the experience to implement and administer the new program. In many counties, the board of health may already have a well program in place. Therefore, it seems logical to delegate the Department's permit granting authority to the board of health rather than to the board of supervisors.

Commentors: 16, 18, 19, 23, 27

Discussion: The statute requires the Department to delegate the permit-granting authority to the board of supervisors or its designee. Therefore, we must delegate to each county board of supervisors which in turn can designate the board of health or any other employee or department of county government.

Recommendation: No change.

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10. Comment: Minimum standards for county sanitarians.

In a joint statement, three commentors expressed opposition to any attempt to set minimum standards for county sanitarians. In their view, each county should be allowed to set its own standards for sanitarians.

Commentors: 18

Discussion: There is no attempt to set standards for county sanitarians in Chapter 38 of Iowa Administrative Code.

Recommendation: No change.

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11. Comment: Qualification and time commitments of the acceptable county designee.

Commentor was of the opinion that 38.15(1) be modified to require the adoption of an ordinance that is not less stringent than the rules adopted by the Department as a condition for delegating permit-granting authority to any county. Besides, the commentor would like the qualifications of the county designee to be no less than that required to be classified as Sanitarian I by the Iowa Department of Personnel and require the designee to commit a minimum of 20 hours a week to the program in any one county. He also suggested that the designee not be allowed to hold an elective office.
Commentors: 23

Discussion: The language of the relevant statutory provisions (455B.187 as amended by the 1987 Iowa Acts, House File 631, Section 304) is such that the rules cannot specify the qualifications of the county designee or his/her time commitment to the program. Specifically, 38.15(2) states that county standards for new private well construction cannot be less stringent than the provisions of the proposed rules.

Recommendation: No change.

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12. Comment: Fees.

One commentor expressed the view that since the Department is already funded by the legislature, no fees should be charged for the private well permits and that the Department should assign staff to make site visits and help the permittee determine the best well site and advise on proper well construction and development. Also, a number of commentors suggested that the private well construction permit fees be increased to $100. They suggested that the additional money be used to (i) hire new staff to administer the program, (ii) provide enforcement and on-site inspection, (iii) provide training to relevant county and DNR personnel, (iv) pay for water quality testing of every new (permitted) well, (v) hire a "circuit rider" to tour all counties to advise and help in program implementation.

Commentors: 3, 15, 20, 21, 28, 30

Discussion: The proposed fee is intended to cover the state's cost in processing applications. These fees are not available to the Department, but are deposited in the state's general fund to be appropriated by the legislature. In order to implement a program as comprehensive as suggested, the fee would have to be substantially higher than the $100 and the legislature would have to provide the necessary resource. In lieu thereof, the Department feels that the best place to provide these services and regulation is by county government. Sections 38.5(1) and 38.15(2) provide counties which accept delegation the maximum flexibility to charge any fee that they find necessary to support their program and to have requirements more stringent than the state's.

Some proposed rules, Chapter 47, "Private Well Sampling and Abandonment -- Grants to Counties," will provide funds to counties to test private wells and for programs for abandonment of wells. In addition, the Department, through the Geological Survey Bureau, will continue to provide water availability and water quality forecasts to anyone upon request.

Recommendation: No change.

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13. Comment: Standards, training and qualifications of well drillers.

A number of commentors wanted the proposed rules to include provisions for professional standards, training and qualifications of well drillers.

Commentor: 3

Discussion: The qualification, training and all other conditions needed to qualify as a well driller are covered in Chapter 37 of the rules. Therefore, any changes in well driller registration requirements can best be addressed as a modification of that chapter considering the statutory limitations.

Recommendation: No change.

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14. Comment: Exempt sandpoint wells from being installed by a registered well driller.

One commentor agreed that sandpoint wells should require permits, but wondered about the usefulness of requiring a registered well driller to install them. Many landowners could install their own sandpoints fast, efficiently, and cheaply. Therefore, requiring sandpoints to be installed by a registered well driller would constitute an undue burden on the landowner.

Commentor: 10, 14

Discussion: The rule does not preclude any landowner, if he/she registers as a well driller, from installing his/her own sandpoints or drilling his/her own well. The requirements for well driller registration are such that any landowner could register as a well driller.

Recommendation: No change.

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15. Comment: Require old well abandonment as a condition for a new well construction permit.

Two commentors felt that the new private well permit program would be more effective if proper abandonment of all old wells is made a condition for new permits. Both feel that this will ensure the proper abandonment of unusable wells.

Commentor: 10, 14

Discussion: This is not necessary since well abandonment is being covered by proposed Chapter 39, "Requirements for Properly Plugging Abandoned Wells." The Department plans to issue a permit with caveats, similar to our other permit programs which will remind the permittee that they must hire a registered driller (Chapter 37), construct the well in accordance with Chapter 49, and properly abandon all wells in accordance with proposed Chapter 39. Also, existing statutes (Section 305, Chapter 225 of the 1987 Session Laws) provide for substantial civil penalties that would serve as incentives to encourage landowners to properly plug abandoned wells on their property.

Recommendation: No change.

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16. Comment: (38.3(2)c) Closure of test holes.

Two commentors felt that "properly closed" is not very clear. They suggest that this be changed to "properly sealed," "properly plugged," or that it be referenced to an appropriate well closure approach.

Commentors: 4, 21

Discussion: The Department agrees with the commentors. Therefore, 38.3(2)c will be reworded to include a reference to an acceptable well closure procedure(s).

Recommendation: Add "in accordance with Chapter 39 "Requirements for Properly Plugging Abandoned Wells" at the end of 38.3(2)c.

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17. Comment: Require separate application and fee for each well.

A number of commentors proposed that a separate application and fee be required for each well and that each well must be inspected during construction to ensure compliance to the standards of Chapter 49.

Commentors: 20, 23, 34

Discussion: There is nothing to be gained by requiring a separate application and fee for each well, especially when the wells are on a contiguous piece of property. Each well can be identified on a single form with no significant additional cost in processing.
Recommendation: No change.

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18. Comment: (38.11) Nontransferability of permits.

One commentor would like the language of 38.11 to be modified to allow permits to be transferable in those cases involving minor changes. Cases cited include changes in land ownership, applicant's name or minor design changes.

Commentor: 32

Discussion: The design standards that would be applicable to wells permitted under Chapter 38 are those specified in Chapter 49. Therefore, changes in well design would not invalidate a well construction permit except if such changes violate the applicable provisions of Chapters 37 and 49. Besides, a permit is valid for only one calendar year from the date of issue and the chances are small that a significant number of the 2000 applicants anticipated each year will be affected by a transfer in ownership. Since the new private well permit is a one-time event only, it is reasonable to limit permit transferability to ensure that only those applicants who have decided on drilling a new well within one year would apply. In addition, the $25 fee is relatively small compared to the land valued in all property transfers and the cost of $25 would pose no economic burden. Finally, it is anticipated that the cost of processing a transfer would be the same as issuing the permit.

Recommendation: No change.

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19. Comment: 38.8(1) Turn-around time for permit applications.

Commentor would like the rules to specify the time frame within which an applicant can expect his/her permit to be issued. Such information will help an applicant to plan and schedule construction activities accordingly.

Commentor: 32

Discussion: The speed of processing permit applications would depend on the rate at which applications are received, the staff time allocated to the program, and the number of counties that accept delegation to issue the permits. Therefore, it is not easy to specify a turn-around time for this new program. However, the Department plans to issue the permits as expeditiously as possible. In an emergency, an applicant could invoke the provisions of 38.7 to satisfy an immediate need of water.

Recommendation: No change.

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20. Comment: Lack of agreement between 38.3(1), 38.8(3) and 49.2

Commentor noted that 38.3(1) and 38.8(3) do not agree with 49.2 and would create confusion. 38.3(1) includes livestock and irrigation wells among wells that would require a permit, while 38.8(3) specify that all permitted wells must be constructed in accordance with Chapters 37 and 49. However, 49.2 specifically exempts irrigation and livestock wells from the provisions of

Chapter 49 unless they are part of a system that provides water to humans. Commentor would prefer that the Department modify Chapter 49 to remove the exemption provisions for these two types of wells.

Commentor: 21

Discussion: The staff agrees with the commentor that taken as a whole, 38.3(1), 38.8(3) and 49.2 could be confusing. This confusion can be removed by modifying section 49.2.

Recommendation: Modify 49.2 by deleting the last sentence which is: "These regulations do not apply to irrigation or livestock wells unless such wells are part of or are connected to a water system which serves as a source of drinking water for humans; or through poor construction or operation such wells can allow significant contamination to enter groundwater."

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21. Comment: Well inspection to ensure standards.

Many commentors felt that the rules should require inspection of some or all new wells during construction to ensure that they are constructed in accordance with the rules.

Commentors: 9, 20, 21, 27, 28, 30, 34

Discussion: Given the limited resources available, it is impractical for the Department to inspect a meaningful number of private wells during construction given the logistics problem of coordinating the time of inspection with the construction date planned by the contractor and the immediate need for water by the applicant. The most practical way to provide this service is at the local level. If counties seek delegation, they can adopt stricter standards of enforcement which can require inspection by the county. The Department will continue to respond to complaints through our field offices.

Recommendation: No change.

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22. Comment: Rule enforcement; public support.

Several commentors expressed the opinion that the department is not capable of enforcing the proposed rules and that the public is opposed to it. Other commentors feared that the rules will be of little value if they are not enforced. Many expressed the view that the Department's rules always include tough enforcement clauses, but no real enforcement. One commentor felt that better results would be achieved if money is channeled into existing county programs rather than starting new ones by the Department.

Commentors: 10, 11, 17, 22, 27, 28

Discussion: The Department is required by law to adopt rules to implement the new private well permit program. Besides, it is the intent of the Department

to enforce the law using the proposed rules as an interpretative vehicle. However, for the enforcement to be effective, the Department would need the cooperation of county governments, especially those that request and are granted delegation to issue private well construction permits, to provide the degree of policing necessary. The Department plans to rely on public information and education to gain acceptance and voluntary compliance, the fact that Iowans are generally willing to comply with laws, and complaint response investigations.

Recommendation: No change.

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23. Comment: Design and construction standards.

Several commentors felt that specific well construction standards should be incorporated into the proposed rules.

Commentors: 31

Discussion: The relevant construction standards are specified in Chapter 49 and need not be repeated in Chapter 38.

Recommendation: No change.

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24. Comment: Appeal of a permit denied by counties.

Commentor wanted to know what the appeal procedures would be in the case of permits that are denied by counties with delegated permit-granting authority. Does the applicant appeal to the Department, submit a new application to the Department, or initiate a Chapter 7 proceeding?

Commentor: 32

Discussion: The Department agrees with the commentor that the proposed rules do not clearly specify the proper appeal procedures for permits denied by counties. In the opinion of the Department, permit denials by counties with permit-granting authority can best be administered by the counties in accordance with their appeal and judicial review process.

Recommendation: Revise 38.13 by including the following after the last sentence, "Appeal of a permit denied by a county which have been delegated authority to issue private water well permits shall be administered by the county in accordance with their appeal or judicial review process and can only be appealed to the Department if delegation to the county is suspended, rescinded or revoked."

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25. Comment: Concurrent authority of the Department.

Commentor wishes to know how the Department might exercise concurrent authority to issue private well construction permits in counties with active delegation of permit-issuing authority.

Commentor: 32

Discussion: Rule 38.16 is fairly clear on the exercise of concurrent authority by the Department. The Department would prefer that every county seek delegation and to take primary responsibility in enforcing these rules. However, the Department must retain concurrent authority because the relevant statute (Section 304 of Chapter 225 of 1987 Iowa Acts) requires it. Besides, the Department needs to retain concurrent authority in case some counties accept delegation but fail to adequately implement the program. However, it is the intention of the Department to encourage as much local control of this program as possible.

Recommendation: No change.

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26. Comment: (38.12) Permit denial.

Commentor felt that the provisions of this rule are quite vague and should be made clearer and more specific. For instance, the commentor asserts that the Director is given broad powers to deny a permit if "the well would threaten public health or the environment." Yet, the public is not appraised of a sampling of those conditions that would lead the Director to conclude that the well is a threat to public health or the environment. Commentor feels that all of these conditions should be listed and made part of the rule-making process.

Commentor: 32

Discussion: It is not possible to enumerate all the possible conditions that could cause a well to become a threat to public health or the environment. However, some of the conditions include but are not limited to, a well that would be withdrawing from a protected source, wells which may result in a negative impact on an identified point source of groundwater contamination and cause leachate or contaminant plume to spread or migrate, in-situ mining wells, underground injection wells and agricultural drainage wells. The staff agrees with the commentor that 38.12 should be made more specific.

Recommendation: Reword 38.12 by adding the following at the end of the sentence: "Examples of wells that could threaten public health or the environment and therefore may be denied construction permits include, but are not limited to: in-situ mining wells, wells which may result in a negative impact on an identified point source of groundwater contamination and cause leachate plume to spread or migrate, underground injection wells except as provided in 50.6(4)(455B) and 62.9(455B) of these rules, and agricultural drainage wells."

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27. Comment: (38.15(1)) Information required of the board of supervisors prior to the delegation of permit-granting authority.

Commentor feels that the public needs to know what additional information the Department may request from counties in order to qualify for delegation. Such additional information should be made public, discussed and incorporated into the rule.

Commentor: 32

Discussion: It is the desire of the Department that county governments would accept primary responsibility in implementing the provision of Chapter 38. The Department wanted to allow the county widest possible latitude in selecting administrative personnel or department to handle the permitting process and choices in the complexity of their enforcement, surveillance and compliance efforts. The Department did not want to be overly restrictive. It was felt that the best alternative would be to handle this through negotiations in completion of the 23E agreements.

Recommendation: No change.

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28. Comment: (38.3(1), 38.15(1)) State agencies should not be required to apply to counties for new well construction permits.

Commentor wondered whether state agencies are subject to the new permit requirements on new well construction since new unnumbered paragraph three of section 304, Chapter 225 of the 1987 Session Laws is silent on the issue. If state agencies are subject to the permit requirements, then the commentor suggests that the permit authority be centralized and retained within the Department and not delegated to the counties.

Commentor: 33

Discussion: The Department interprets the provisions of new unnumbered paragraph one, section 304, Chapter 225 of the 1987 Session Laws as being applicable to state agencies. However, the staff agrees with the commentor that state agencies should not have to apply to counties for new well construction permits.

Recommendation: Reword 38.15(4) to exempt state and federal agencies from the necessity to apply to any county for a new well construction permit. New well construction permit applications from these sources must be processed by the Department. Rule 38.15(4) will henceforth read as follows: "After delegation of authority to a county board of supervisors, all applications in that county shall be made to the board or its designee, except that all new private well permit applications by state or federal agencies shall be made to the Department."

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29. Comment: (38.6) Rewrite section to make it clearer.

A number of commentors interpreted section 38.6 as exempting replacement wells from the provisions of Chapter 38.

Commentors: 9, 13, 33

Discussion: The last sentence of section 38.6 clearly stated that replacement wells do require a private well construction permit. Yet, several commentors read in the opposite meaning. The staff feels that the last sentence of 38.6 should be revised to eliminate any misunderstanding.

Recommendation: Replace last sentence of 38.6 with the following: "A private well construction permit is required for all replacement wells" and insert the sentence at the beginning of the section.

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30. Comment: (38.1) Definition of "contiguous."
Commentor reasoned that the definition of "contiguous" that appeared in 38.1 is badly flawed because it may make the DOT the owner of a contiguous piece of property that is over 10,000 miles long and which contains numerous buildings and spans 99 counties. The commentor indicated that his department (the State DOT) cannot deal with well management procedures that make it the owner of such an extensive contiguous property. Railroads, counties and even municipalities may run into the same problem if the current definition of "contiguous" is allowed to stand.

Commentor: 33

Discussion: The staff agrees with the commentor that the definition of contiguous that appears in 38.1 could create problems for owners of roads, railroads and other narrow but long strips of land in the state.

Recommendation: Rewrite the definition of contiguous in 38.1 to include a provision that the radium of the contiguous piece be limited to one mile for the purpose of reporting on other existing wells on the property. Replace the definition of "contiguous" shown in 38.1 with the following: "Contiguous" means any number of parcels of land that physically touch one another including tracts of land separated by roads, railroads or streams; except that for the purpose of reporting on other existing wells on the property, the radius of a contiguous piece of land shall be limited to one mile.

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31. Comment: Incorporate the proposed rules into Chapter 49.

Commentor thinks that it is not a good idea to create a new Chapter 38 to implement the provisions of the new private well permit program. Instead, the commentor feels that things would be more straight forward if the provisions of the proposed rules are incorporated into Chapter 49. Enforcement of the rules will be easier and more straight forward, too.

Commentor: 9

Discussion: There may be something to be gained by incorporating the provisions of the new rules into Chapter 49. But, the Department disagrees with the commentor that modifying Chapter 49 would be more appropriate. In order to incorporate the provisions of Chapter 38 into Chapter 49, the latter would have to be rewritten; not just modified. On the other hand, by creating a new Chapter 38, there would be limited need to modify Chapter 49. Besides, the public will not be confused by frequent changes of existing rules. The Department chose to take the most expeditious process of developing rules for a program that has a legislative mandate of July 1, 1987. In addition, Chapter 38 is also tied to the requirements of Chapter 37, "Registration of Water Well Contractors" and proposed Chapter 39, "Requirements for Properly Plugging Abandoned Wells."

Recommendations: No change.

CHAPTER 38 -- PRIVATE WATER WELL CONSTRUCTION PERMITS
List of Commentors

Oral Commentors:

A - Council Bluffs
February 3, 1988

1. R. Sheer
   Rural Route #1, Box 205E
   Crescent, Iowa 51526

2. D. G. Rhoades
   Rural Route #1, Box 247
   Crescent, Iowa 51526

3. Stephen A. Seliga
   Stang Dewatering, Inc.
   6414 South 84th
   Omaha, Nebraska 68127

B - Des Moines
February 5, 1988

4. Brent Parker
   Jasper County Board of Health
   Courthouse
   Newton, Iowa 50208

5. Charlotte Banks
   R. Banks, Inc.
   Rural Route
   St. Charles, Iowa 50240

6. Noel Westrum
Rural Route
Stratford, Iowa 50249

C - Iowa City
February 8, 1988

7. Hillary Maurer
Johnson County Health Department
1105 Gilbert Court
Iowa City, Iowa 52240

8. Joel Garretson
DNR Field Office #6
117 N Second Avenue
P. O. Box 27
Washington, Iowa 52353

9. H. B. Calvert
Lee County Health Department
933 Avenue H
P. O. Box 427
Fort Madison, Iowa 52627

10. Jeff Joslyn, Well Driller
Iowa Water Well Association
1614 Ridge
Iowa City, Iowa 52240

11. Graham Dameron
Johnson County Health Department
1105 Gilbert Street
Iowa City, Iowa 52240

12. Dan Kramer
Iowa Environmental Health Association
1105 Gilbert Court
Iowa City, Iowa 52240

13. Tom Langan
Iowa Irrigation Association
106 Second Avenue
Muscatine, Iowa 52761

14. Don Gordon
DNR - Geological Survey Bureau
123 North Capitol
Iowa City, Iowa 52240

Written Commentors:

15. Earl J. Langel
P. O. Box 95
Milford, Iowa 51351

16. Lawrence E. Barker, Administrator
Scott County Health Department
Bicentennial Building, 5th Floor
428 Western Avenue
Davenport, IA 52801-1004

17. Hillary Maurer
Public Health Sanitarian
Johnson County Health Department
1105 Gilbert Court
Iowa City, Iowa 52240

18. Thomas B. Andersen, P.E. (Howard County Engineer/Sanitarian)
Robert F. Voves, (Chairman, Howard County Board of Supervisors)
C. J. Anderson (Co-Chairman, Howard County Board of Health)
Office of Howard County Engineer
Courthouse
Cresco, Iowa 52136

19. Ron Fairchild
Winneshiek County Sanitarian
Winneshiek County Public Health
201 West Main, Courthouse
Decorah, Iowa 52101

20. Iowa Water Well Association
920 Des Moines Street, Suite #200
Des Moines, Iowa 50309

21. Brent Parker, Chairman
Groundwater Bill Advisory Committee
Jasper County Sanitarian
Courthouse
Newton, Iowa 50208

22. Wayne Hansen
Rural Route #1
Audubon, Iowa 50025

23. Doug Bird
Bremer County Sanitarian
Courthouse
415 East Bremer Avenue
Waverly, Iowa 50677

24. Lyle F. Jackson
Fayette County Sanitarian
P. O. Box 269
Courthouse
West Union, Iowa 52175

25. Bryce E. Hawthorn, Supervisor
Environmental Services
John Deere Waterloo Works
P. O. Box 270
Waterloo, Iowa 50704-0270

26. Royce J. Fichtner, P.E.
Marshall County Engineer
Courthouse
Marshalltown, Iowa 50158

27. Dan Nolting, RS
Story County Sanitarian
Courthouse
Nevada, Iowa 50201

28. David Manning
Jackson County Sanitarian
Jackson County Board of Health
Courthouse
Maquoketa, Iowa 52060

29. Donivan L. Gordon
Geological Survey Bureau (DNR)
123 North Capitol
Iowa City, Iowa 52240

30. Lee G. Dameron, Director
Sally Stutsman, Chairperson
Johnson County Board of Health
1105 Gilbert Court
Iowa City, Iowa 52240

31. Leslie Larson
Larson Well Drilling
Route #2
Mabel, Minnesota 55954

32. Ted O. Yanecek
Public Affairs Council
Iowa Farm Bureau Federation
5400 University Avenue
West Des Moines, Iowa 50265

33. Darrel Rensink
Acting Director
Department of Transportation
800 Lincoln Way
Ames, Iowa 50010

34. H. B. Calvert
Lee County Health Dept.
933 H Avenue
P. O. Box 427
Fort Madison, Iowa 52627

Motion was made by Catherine Dunn to approve Final Rule --Chapter 38, Private Water Well Construction Permits. Seconded by Richard Timmerman. Motion carried unanimously.

CHAPTER 47 -- PRIVATE WELL SAMPLING AND ABANDONMENT -- GRANTS TO COUNTIES

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

The Department requests Commission approval of the proposed new Chapter 47 rules relating to grants to counties for (1) private well testing programs and (2) for private well closing (plugging) of abandoned well programs.

Three public hearings on the proposed new chapter of the rules were held in Cedar Rapids, Denison and Des Moines on March 29, March 31 and April 4, 1988: and written and oral comments are to be received through April 14, 1988, ten days after the date of the final hearing. The notice was published on March 9, 1988.

There were a total of 48 attendees and 18 commentors at the three hearings, and a total of 18 written and telephone comments were received. There was a universal feeling expressed in the comments that equal grants should be made available to all counties and the competitive rating system for grants to counties should not be used and that costs for closing abandoned wells should be grant eligible. The rules have been changed to accommodate these suggestions.

Copies of the public participation responsiveness summary and the proposed revised rules will be sent to all Commission members and to all hearing attendees and commentors under separate cover.

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY

FOR

RULES TO IMPLEMENT 1987 IOWA CODE SECTION 455b.172(5), AS AMENDED BY 1987 IOWA ACTS, HOUSE FILE 631, SECTION 113.5

CHAPTER 47: PRIVATE WELL SAMPLING AND ABANDONMENT--GRANTS TO COUNTIES

The attached information constitutes a summary of written and oral comments received on the above proposed new chapter of the rules.

Eighteen oral comments, seventeen written comments and one telephone comment were received from twenty-eight commentors on twenty-eight separate topics concerning the proposed new chapter of the rules. A total of forty-eight persons attended the three public hearings held.

The following information constitutes a summary of comments received at three (3) statewide public hearings held on March 29, 1988 at Kirkwood Community College, Cedar Rapids; on March 31, 1988 in Denison; and on April 4, 1988 in Des Moines; and comments received through April 14, 1988 addressed to the department. This responsiveness summary addresses all comments or groups of similar type comments, and each comment or group of comments is followed by a notation of the commentor or commentors; a discussion; and a staff recommendation. The interest and input of the many commentors on the proposed Chapter 47 is very much appreciated.

1) Comment: These commentors felt the proposed application rating system is inequitable in that it rewards those counties which have done little or nothing and penalizes those which have

active programs. The 50 points given to unstaffed counties is more than a staffed county could ever receive from other sections of the rate applications and all counties, staffed or otherwise, should be rated on an equal basis at the start of the rating. Some feel the rating criteria is not needed at all. They believe it is only needed if you're trying to limit participation and this rule should be trying to encourage participation. Some thought existing programs would be ended so that their chances would be better for receiving a grant.

Commentor: 1, 2, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28

Discussion: The rating system proposed does have the effects described and will discourage grant applications both from counties with and without current programs, so the system should be changed.

Recommendation: Revise the grant distribution method to make equal amounts available to all counties without using a ranking system.

2) Comment: Commentors feel that grant funds should be made available to all eligible counties and the amount should be based on a percentage of the county's household units using private water supplies when compared to the entire state where households are using private water supplies. These figures are available in the 1980 census. Any excess grant funds left over could then be made available to counties for starting new water and waste water programs to introduce more educational programs, or awarding extra money to promote multi-county applications.

Commentor: 1, 4, 15, 20, 21, 24, 26, 28

Discussion: Any statistical system that might be used based on a limited group of parameters could introduce inequities. For example, counties with widespread service available from rural water systems might have fewer active individual household well supplies, so would gain less in grant funds. Yet these same counties might have more abandoned wells than others (partly due to the rural water system connections) and therefore greater need for grant funds for closing wells.

It is felt that the equal distribution of grant funds to all eligible counties will be more equitable than the method originally proposed or the method described in this comment.

Recommendation: Change the grant method as described under the recommendation for comment No. 1.

3) Comment: These commentors believe a maximum grant amount needs to be established for each well tested for example, $50 each. This would be a more equitable method for distributing grant funds and also within the quarterly reports the county could simply report the number of wells tested and the grant amount would be based on such.

Commentor: 1, 2, 5, 26

Discussion: This proposal has the beauty of simplicity. However, it does not address the point made in other comments of encouraging education and public information activities, since no credit would be given for costs incurred for such activities.

Recommendation: Adopt a system making an equal grant amount available to each of the eligible participating counties. All counties would be eligible for grant funds if they wished to participate, made application and met the proposed conditions.

4) Comment: This commentor, in agreement with those in Comment No. 1, goes a step further and asked that Sections 47.21(1) and 47.37(1) (contained in official 3/9/88 Notice of Intended Action published under ARC 8475) relating to the awarding of points barred on staffed or unstaffed county programs, be struck from the rule as they are unfair and biased.

Commentor: 2

Discussion: The staffing status of counties would not be a factor under the changes described in the recommendations in response to comments numbers 1, 2, and 3.

Recommendation: Already given in the recommendations under Comments Nos. 1, 2 and 3, (to give equal grants to all counties).

5) Comment: The Groundwater Protection Act 1987 collects approximately five million dollars annually from fertilizer and chemical association members. Our concern is that there be a finite beginning and ending to these private well programs and that the results are accurate and meaningful to Iowa citizens.

Commentor: 3

Discussion: Both well testing and plugging of abandoned wells will always be necessary to a certain extent. However, the current program of addressing the backlog of abandoned wells which have not been properly plugged and determining the analyses for many previously untested private wells requires special effort which may not always be needed. Results are expected to be meaningful and positive.

Recommendation: No change.

6) Comment: EPA has conducted a pilot study in three states on domestic and community water wells for pesticide residues. A summary report was issued in September, 1987, and a copy is attached. It is recommended that DNR work with EPA on a similar joint program. This would reduce costs and provide a more accurate and detailed report. If a joint venture cannot be worked out then a DNR program, similar to that completed on Iowa public water supplies, should be initiated on a statistically representative number of rural wells, giving a complete statewide picture of Iowa's groundwater.

Commentor: 3

Discussion: The testing program described might be useful and desirable, and is something to be considered for the future. For the present program, the intent is to accomplish the testing of as many wells as possible over the entire state to gain knowledge of the extent of contamination by just the common parameters of nitrates and coliform bacteria.

Recommendation: No change.

7) Comment: This commentor feels the proposed grant amounts are too large and feels a smaller grant should be given to more counties and should be based on the most cost effective programs. Allow all applicants to start from the same point - staffed versus nonstaffed. This will provide a greater impact on the total picture of Iowa groundwater.

Commentor: 4, 5, 15, 16

Discussion: It appears that the proposed grant amounts were too large as suggested.

Recommendation: Reduce the grant amounts by dividing the total available funds between all participating counties equally and not using a rating system.

8) Comment: Within the Definition of "abandoned well" the following should be added at the end, <u>or creates a potential for groundwater contamination</u>.

Commentor: 4

Discussion: The definition of an abandoned well can only be changed by revising other sections of the Iowa Administrative Code, which is a protracted process and unnecessary for the purposes of these rule. The proposed definition would create a problem in detecting, identifying and proving contamination caused by an abandoned well.

Recommendation: No change.

9) Comment: With Section 47.6(2)a Goals and Objectives - please clarify "regular and periodic".

Commentor: 4

Discussion: The "regular and periodic testing" expression is used to refer to the general objectives of the grant program. Numerical guidelines have not at this time been established and are not contemplated.

Recommendation: No change.

10) Comment: Within Section 47.8(7), If a private water supply is found to be contaminated and is located next to a well not used for human consumption, then this well also should be sampled and be grant eligible. Thus section 47.8(7) should be deleted.

Commentor: 4, 16, 21, 26

Discussion: There is no objection to sampling a well next to a contaminated well, and it could be included in the grant program if it is a private water supply well. The grant program written to conform with the legislative mandate does not include wells other than private water supply wells.

Recommendation: No change.

11) Comment: This commentor appreciates the legislative intent of the rule and that to be eligible counties must adopt programs for regulating private sewage and water. He feels that the testing and plugging private well program (Chapter 47) is generally good.

Commentor: 5

Discussion: The comment indicates an understanding and appreciation for the effort to develop rules consistent with the legislative intent.

Recommendation: No change.

12) Comment: This commentor feels the total coliform analyses using multiple tube fermentation process exclusively is unnecessary - other methods such as membrane filter is also reliable. The multiple tube method will increase both cost and time involved.

Commentor: 5, 8, 10

Discussion: The multiple tube fermentation method was proposed to be required for total coliform bacteria analyses, not nitrate analyses. The method was recommended to minimize the effects

of interference from substances which may be present in private well waters in some areas of the state, such as iron, manganese and turbidity. Other methods are acceptable if accurate results can be obtained, depending upon the water being tested.

Recommendation: Change the rules to permit other testing methods to be used.

13) Comment: Commentor wants every participating county to be eligible to receive a small base grant, such as $5-7,000 for well testing and approximately $3,500 for well closure. These counties must adopt water and wastewater standards and must test say two percent of the household wells within the county based on statistics from the 1980 census. After gaining exposure from these grant programs, then perhaps county budgets would be expanded to start county programs.

Commentor: 5, 26

Discussion: This approach to grants is similar to that suggested by other commentors to make universal equal distribution of available grant funds without the use of rating points or rankings. It appears to be a more equitable approach than the rating system. It is preferred that limits not be placed on the number of wells tested so that as many as possible will be included in the program and to encourage the development of education and public information programs.

Recommendation: Change the distribution of grant funds to equal amounts for all participating counties as discussed under this and previous comments.

14) Comment: Suggests providing incentives to counties that have not previously adopted regulations, say ten dollars per well for testing or for each abandoned well

Commentor: 5

Discussion: The provision of grant money should be sufficient incentive to encourage counties to apply and eligibility will be contingent upon adoption of the state standards for private water supply and private wastewater disposal facilities.

Recommendation: No change.

15) Comment: Again suggests providing more incentive for counties to go with multi-county applications, which will lessen the administrative overhead for DNR and will encourage combined training and expertise in the counties. Another ten dollars per well could be added for further incentive to go the

multi-county route. Initially a larger amount of money is needed to get two or more counties to combine. Bonus grant money could also be given to counties with problem areas.

Commentor: 5, 16, 20, 26

Discussion: The multi-county approach will be welcomed, and should be adequately encouraged by the inherent savings in administrative costs by those participating.

Recommendation: No change.

16) Comment: Recommends that DNR work more closely on Chapter 47 with the Groundwater Ad Hoc Advisory Committee made up the following organizations: Iowa Environmental Health Association; Iowa Public Health Association; Iowa Groundwater Association; Public Health Directors of Iowa; Iowa Water Well Association and the Land and Improvement Contractors Association. With these groups input we can have rules that we can all live with. Feels there is a breakdown of communication and that the Ad Hoc Groundwater Committee's recommendations were not taken into account.

Commentor: 5, 15, 26

Discussion: The public hearings provide an opportunity for input from many interested and affected organizations and individuals, as well as the Ad Hoc committee recommendations. As a result, changes to the rules are being proposed incorporating many of the suggestions made by the Ad Hoc Committee and others.

Recommendation: Eliminate the rating and ranking system and divide available grant money equally between eligible counties applying as discussed under previous comments.

17) Comment: Commentor feels grant money should be used for well plugging on a cost share basis. Well owners need cost incentive to initiate well plugging. Doesn't feel well abandonment program will work without cost share money. Commentor felt the legislative intent was that grant money was to be used for actual well closure.

Commentor: 6, 7, 11, 12, 13, 16, 27

Discussion: Direct grants or cost-sharing for well plugging may be an effective means of securing participation by well owners, and can be made available through the rules.

Recommendation: Provide in the rules for the use of grant money to help defray the costs of well plugging.

18) Comment: Commentor feels that grant applications should be submitted by Boards of Health rather than Boards of Supervisors.

Commentor: 7

Discussion: The Boards of Health are not empowered to enter into contracts of this type or to receive funds for the program other than through the County Boards of Supervisors.

Recommendation: No change.

19) Comment: Because the ranking system is based in part upon cost per well tested or plugged, the concern is that in an effort to be competitive and efficient, minimal funds will be spent on well surveying, individual follow-up communication, or educational programs - all three of which are important public health activities.

Commentor: 14, 15, 16, 17, 26

Discussion: Well surveying, individual follow-up communication and educational programs are important as suggested and should be included in the items for which grant funds may be used.

Recommendation: Change the rules to allow use of grant funds for the items mentioned, all of which can in included in a category identified as environmental health and public information programs.

20) Comment: Give each qualifying county applicant a smaller amount, say $10-15,000, and let them cost share with well owner. Forget all the paper work and fancy grant rules and let the counties do their job. Get the grant money out to the rural counties rather than giving larger grants to a few well established programs.

Commentor: 15, 16, 19, 20

Discussion: This is similar to the sentiments expressed by many commentors, and the rules should be changed accordingly.

Recommendation: Simplify the grant application requirements and procedures and allow all counties to participate equally by adopting the state standards.

21) Comment: Virtually no sanitarians, outside of those from large county staffed programs, have background experience in writing grant applications and work proposals which the rules require. This will result in many cases where counties will not apply due to (1) lack of experience and confidence and (2) lack of

time because the sanitarian is overworked already. This will result in only larger counties getting higher ranking points. Unstaffed counties will have no one to attempt the grant application process. To expect unpaid boards of supervisors to attempt such an application on a competitive basis would be unreasonable. Net effect of the rule therefore is no new programs and no change in the smaller county programs.

Commentor: 15, 16, 17, 26

Discussion: Simplification of the grant application procedure is called for by this comment to encourage participation.

Recommendation: Simplify the requirement for budgeting in connection with the grant application, and base payment of grant funds on the actual cost of work performed by the counties in carrying out these programs.

22) Comment: It is felt the boards of supervisors must know that there will be a relatively constant supply of funds that will last at least a few years. Large caps on the grant amounts, as proposed by the rule, will have two drawbacks: (1) counties will hesitate to apply if they feel grants will be only temporary and (2) if accepted in year one to start a program and then in year two the grant funds are lost, the most likely outcome will be that the county will end the program totally, thus the long term goal of starting new programs is not being met. Counties don't want programs started with grant money and then after a few years the programs get dumped on counties totally without grant money.

Commentor: 16, 17, 19, 22, 25

Discussion: Grant funding for these programs has been projected for a five year period. Beyond that, the availability of such funds is unknown, but will possibly be influenced by the participation in and success of the programs during the initial years they are in effect.

Recommendation: No change.

(23) Comments: The month of application acceptance needs to be moved up. County budgets need to be set by the end of December. Therefore grant applications need to be accepted in October and November and approved in December. There also needs to be a grace period built in, for example 2 weeks for correcting errors. Any applicant can make an error or mistakenly omit some part of the application and should be given a chance to correct it.

Commentor: 16, 20, 26

Discussion: There is an apparent need to adjust the time of application submittal and provide time for correction of applications.

Recommendation: Change the time of application to October, with final corrections to be made by the end of November.

(24) Comment: This commentor proposed a detailed plan for funding approximately 55 counties. The grants would be approximately $12,600 for well testing and some $6,700 for well closure; or a total of $19,300 per county for both programs. This concept was thought to be a more equitable and worthwhile plan to maximize the benefits on a statewide basis.

Commentor: 16

Discussion: All counties should be given the opportunity to share equally in the available grant funds simply by establishing acceptable programs and adopting state standards. If the actual number of counties that participate turns out to be only 55, then larger grant amounts can be made available to each county.

Recommendation: Change the rules to provide equal distribution of grants to all participating counties.

25) Comment: Is the DNR going to back up these grants to county programs or merely sit in Des Moines, where the programs are started, and then leave all of the problems at the local level?

Commentor: 19

Discussion: The DNR with its associated field offices is always available to offer advice, support and guidelines for programs such as these. However, the DNR does not have staff or funding to perform the on-site contacts or administrative tasks involved. It was the intent of the legislature that the counties receive the grants based on rules established by DNR, and that administration of tasks performed with grant monies be done at the local level by the counties.

Recommendation: No change.

26) Comment: Counties should be given the maximum level of flexibility as to how they can spend their grant - like such things as allowing them to cost share with the well owner. Allow the results of the programs to justify their expenditures rather than expecting expenditures to dictate the setting of unclear goals or program levels.

Commentor: 20

Discussion: There is merit in an approach which gives greater flexibility to the counties in the expenditure of grant funds and permits cost sharing for well closures.

Recommendation: Revise the rules to permit cost sharing for plugging abandoned wells and allow the counties to develop their own programs and be reimbursed for expenditures with grant funds.

27) Comment: This groundwater bill provision of grants to counties is greatly needed, but the only way it is ever going to work is to organize and educate all areas of the state. Only when there are trained people in every county will there be an equitable attainment of enforcement throughout the state, which is what the intent of the law is. DNR needs to address in the rule, and then take a more active role, in getting out to the counties for assisting and encouraging them to prepare applications. Most county supervisors do not have the expertise or the knowledge to apply for these programs.

Commentor: 22, 24, 26

Discussion: Assistance in training and preparing grant applications for counties throughout the state would certainly be helpful in attaining the objectives of the groundwater legislation. The activities proposed for DNR cannot conveniently be included in Chapter 47, but represent worthwhile goals for consideration.

Recommendation: No change.

28) Comment: The proposed rules don't require sending test results to the state, only a summary of such. Section 47.6(1) outlines the objectives of the program and it is also believed that an inventory of wells and contaminants is an objective of the Groundwater Protection Law. This needs to be further addressed in the rules.

Commentor: 26

Discussion: The rules state that copies of the test results will be provided to the department upon request. This can provide some of the information needed on which to base future programs designed to improve the quality of water in private water supplies.

Recommendation: No change.

INDEX OF COMMENTORS

Commentor Number	Name	Title	Representing	Comment Presentation Written	Oral at Hearing	telephone
1	Joe Cook	Administrative Supervisor	Linn Co. Health Dept. 751 Ct. Pt. Rd. N.E. Cedar Rapids		X	
2	Tom Hart	Supervising Sanitarian, Environmental Division	Linn Co. Health Dept. 751 Ct. Pt. Rd. N.E. Cedar Rapids	X	X	
3	Winton Etchen	Executive Vice President	Iowa Fertilizer and Chemical Association, 323 University Des Moines	X	X	
4	Judy Harrison	Environmental Director	Lee Co. Health Dept. 933 Ave N. Ft. Madison	X	X	
5	Lee G. Dameron	Director	Johnson County Health Dept. 1105 Gilbert Court, Iowa City		X	
6	Lyle F. Jackson	County Sanitarian	Fayette County, Box 269 Courthouse, West Union	X	X	
7	Ron Fairchild	County Sanitarian	Winneshiek Co. Public Health 201 W. Main, Decorah	X		
8	Bobby Baker	Chief Sanitarian	Polk County Physical Planning Dept. 5895 N.E. 14th Street, Des Moines	X		
9	Doug Bird	County Sanitarian	Bremer Co. Health Dept. Courthouse 415 E Bremer Ave., Waverly	X		
10	Brent L. Mangold	Manager	Mangold Environmental Testing, 1715 N. Lake Ave., Storm Lake	X		X
11	Thomas B. Anderson	P.E., Co. Engineer/Sanitarian	Howard County Engineer Courthouse, Cresco	X		
12	Robert F. Voves	Chairman	Howard Co. Bd. of Supervisors Courthouse, Cresco	X		
13	C. J. Anderson	Co-chairman	Howard Co. Bd. of Health	X		
14	J. Mark Linda	Disease Prevention Manager	Black Hawk County Health Dept. 1407 Independence Ave., Waterloo	X		
15	Jim Ulveling	County Sanitarian	Carroll County Health Dept. 603 N. Adams, Carroll	X	X	
16	Stephen Patterson	County Sanitarian	Guthrie County Health Dept. Courthouse, Guthrie Center	X	X	
17	Steve Buckingham	County Sanitarian	Mills Co.		X	
18	Mrs. Paul Venner	President	Carroll Co. Farm Bureau Breda		X	
19	David Irwin	County Sanitarian	Sac County Public Health S. State St., Sac City		X	
20	Tricia Fazzini	Communications Director	Iowa State Association of Counties 700 Third Street		X	
21	Don Wolting	Health Sanitarian	Story County Courthouse Nevada		X	
22	Stanley I. Rooker	Deputy Health Officer	Ottumwa Health Dept. & Wapello Co. City Hall, Ottumwa		X	

INDEX OF COMMENTORS, CONT'D.

Commentor Number	Name	Title	Representing	Comment Presentation Written	Oral at Hearing	telephone
23	Fred Diers	County Supervisor	Poweskiek County, Montezuma		X	
24	Al Moore	Environmental Health Director	Scott Co. Health Dept. 428 Western Ave., Davenport		X	
25	Jack Bradley	Sanitarian	Webster County 602 3rd Ave. N., Fort Dodge		X	
26	Brent Parker	County Sanitarian & Chairman of Groundwater Ad Hoc Advisory Committee	Jasper County, Newton, and Groundwater Ad Hoc Advisory Committee	X	X	
27	Arden Hinners	Chairman	Carroll Co. Bd. of Supervisors Courthouse Carroll	X		
28	Lawrence E. Barker	Administrator	Scott Co. Health Department 428 Western Ave., Davenport	X		

Chairman Schlutz stated that Keith Cherryholmes, UHL, has requested to address this item, and he then invited Mr. Cherryholmes to speak.

SPEAKER -- KEITH CHERRYHOLMES, UNIVERSITY HYGIENIC LABORATORY

Keith Cherryholmes, University Hygienic Laboratory, addressed the Commission presenting the following statement:

"Comments on
Iowa Department of Natural Resources
Chapter 47
Private Well Sampling and Abandonment
Grants to Counties
Specifically: Section 47.19(4)

Presented to:

Environmental Protection Commission
26 April 1988

Presented by:

K. L. Cherryholmes, Ph.D
Assistant Director
Hygienic Laboratory
The University of Iowa

"I am Dr. Keith L. Cherryholmes, Assistant Director of the Hygieniac Laboratory. The Hygienic Laborator by statutory authority is Iowa's

Environmental and Public Health Laboratory. Today I would like to specifically address the language of Section 47.19 (4) of the Private Well Sampling and Closure -- Grants to Counties. The need to address this matter today stems from language changes subsequent to the public hearings and the drafting of the final proposed rules you have before you today.

"UHL recommends the multiple-tube fermentation coliform test (the MPN) from private well water samples to be analyzed in this study based upon experience with the membrane filter (MF) methodology on compliance samples of both surface and groundwater from Iowa's public water supplies.

"On July 1, 1983, UHL changed the analytical procedures for total coliform analysis of public water samples from MPN to MF on the basis of anticipated program economics. The laboratory continued to perform MPN analyses on private water samples because of our decades of experience examining these waters. During the first month (2,277 samples) we encountered a resample rate of 42.8% compared to an average resample rate of 5.4% using the MPN. The rate of resamples which generated subsequent resamples was 54.4%. There was no significant difference in the number of resamples generated from chlorinated vs. nonchlorinated supplies.

"On 6 August 1982, we abandoned MF for resamples and on 25 August 1982 we abandoned MF on all nonchlorinated samples. On 6 September 1982, we abandoned the MF altogether. Our experience with MF is similar to anecdotal experiences reported in the surrounding states of Wisconsin, Minnesota and Kansas.

"Iowa groundwater has a high mineral content and many active rural wells are old, poorly constructed and inadequately maintained. Private well samples submitted for bacterial analysis frequently contain high levels of particulates (iron oxides, etc.) and potential interfering organisms (noncoliform bacteria).

"The MF test is subject to several problems when used on water containing noncoliform bacteria and/or particulate material such as:

- mechanical blockage of membrane filters
- toxic interference from metals
- overgrowth by completing microorganisms
- atypical colony morphology

"Private water samples that will be tested in this program are subject to several variables which we anticipate will create technical problems if the MF test is used. Examples of these problems are:

- seasonal blooms of noncoliform organisms
- source-water quality variability
- well construction, condition and maintenance

"We estimate that over 50% of the initial water samples tested by MF methodology will require resampling and that most of these will ultimately be tested by MPN methods at considerable inconvenience and expense.

"The Hygienic Laboratory believes that the multiple tube MPN procedure provides higher reliability for detection of coliform bacteria in Iowa groundwaters than the membrane filter method. Supporting documentation for this assertion is contained in the literature cited at the end of this formal presentation in addition to the experiences cited above.

"A modification of the MPN procedure called Colilert™, which uses enzyme detection systems, has recently been developed, thoroughly evaluated and marketed. The Colilert test was compared to the MPN and MF methods in a large national collaborative test funded by a grant from the American Water Works Association Research Foundation. The results of this study have been exhaustively evaluated by the EPA and that agency is so enthusiastic about the merits of the test that it has placed it on a fast track for agency approval.

Unfortunately it is anticipated that it will take 6-12 months to complete the required Federal rule making process.

"Colilert was designed to achieve the following goals:

- specifically enumerate the required minimum one coliform/100 ml in a maximum of 24 hours
- simultaneously, specifically enumerate one Escherichia coli/100 ml in the same test
- not be subject to heterotrophic (or noncoliform) inhibition
- not require confirmatory tests
- grow injured coliforms or those requiring resuscitation steps
- be easy to inoculate
- be very easy to interpret.

"These advantages make the test an ideal replacement for the MF test for total and fecal coliform analysis. They also make it the ideal test for bacterial analysis in this project. Objections to the Colilert test because presently it is not an EPA approved method are shortsighted since private water supplies are not subject to regulation in Iowa. Any hint of regulatory action or intent could jeopardize full participation by owners of private water supplies.

"Because the results of coliform and nitrate analyses will be used to identify wells for follow-up testing, it is important to select the most sensitive method and the method most appropriate for the waters encountered. For this reason we strongly recommend that laboratories use appropriate methodology for the array of waters encountered and that the same methodology be used for all coliform analyses to enhance the scientific merit of the data collected.

"The hygienic Laboratory has received assurances from the manufacturers of the Colilert test that the product will be made available for use in certified laboratories in Iowa at cost for this important study.

"We urge reconsideration of rule 47.19(4) to require use of a bacteriological procedure appropriate for the broad array of well waters encountered. This opinion is based on sound scientific and professional judgment which in this nonregulatory attitudes or considerations. The major goal of this program is to determine the potability of private water supplies by the most economical, scientifically sound and rapid means available.

"On behalf of the professional chemists and microbiologists on the UHL staff, I thank you for this time on your busy agenda.

REFERENCES

"Edberg, S. C., F. Ludwig and D. B. Smit. 1987, Rapid, Scientific Autoanalytical Method for the Simultaneous Detection of Total Coliforms and E. Coli from Drinking Water. Presented at the Water Quality Technology Conference, AWWA, Baltimore, Maryland.

"Hsu, S. C. and T. J. Williams. 1982. Evaluations of factors affecting the membrane filter technique for testing drinking water. Applied and Environmental Microbiology. 44:453-460.

"Jacobs, N. J., W. L. Ziegler, F. C. Read, T. A. Stukel and E. W. Rice. 1986. Comparison of membrane filter, multiple-
fermentation tube, and presence-absence technique for detecting total

coliforms in small community water systems. Applied and Environmental Microbiology. 51: 1007-1012.

"Standridge, J. H. and H. H. Delfino. 1982. Underestimation of total-coliform counts by the membrance filter verification method. Applied and Environmental Microbiology. 44: 1001-1003."

Discussion followed regarding methods of testing; EPA approval of Colilert method within six months; Colilert method of testing; MNP testing; false readings and retesting.

Mr. Stokes stated that there are several choices the Commission could make if they would like to facilitate the comments of the UHL. Mr. Stokes mentioned possible language changes that could be made. He stated that the rules have been substantially changed from the original proposal and pointed out the main changes. The department will hold a training/information seminar in early June for the benefit of the counties. The department will be devoting a staff person to communication and coordination with the county programs.

SPEAKER -- BRENT PARKER, JASPER COUNTY SANITARIAN

Brent Parker, Jasper County Sanitarian, addressed the Commission expressing concerns with the changes made regarding cost-sharing for the well closure program. His main concern is with the restrictions on how the money must be spent. Mr. Parker pointed out that 25 percent may not be enough for administration of the program, especially with implementing the program. Mr. Parker related that he is receiving good cooperation with DNR staff since he addressed the Commission several months ago.

Chairman Schlutz responded that the Commission is strictly opposed to cost-share money going to administration, and that they would like the money to go to the closing of wells.

Motion was made by Nancylee Siebenmann that for purposes of these rules in 47.19(4)a this statement be strengthened to say "the total coliform bacterial analysis must be performed using the EPA-approved reference method most suitable for producing accurate results considering the conditions of the water being tested." Seconded by Richard Timmerman.

Discussion followed regarding what the most suitable method is and who makes that determination.

Catherine Dunn asked, as for immediacy, what changing the language does in terms of costs.

Mr. Stokes stated that it will probably not change much of anything. He added that it will not change much in the way of how laboratories will analyze. They will probably still use the filter method and see if they have a problem, then go back and use the multiple tube method.

Nancylee Siebenmann withdrew her motion and Richard Timmerman withdrew his second.

Motion was made by Nancylee Siebenmann that the total coliform bacteria analysis must be performed using the EPA multiple tube testing method most suitable for producing accurate results.

Mr. Stokes stated that if you go that route you chop the number in half of laboratories who can or will do this. When you have a large demand and limited supply, the labs will increase their price for testing. Mr. Stokes recommended leaving the rule as it is currently written, which allows the filter method. When the Colilert method is approved, all of the other laboratories can pick it up (in approximately six months).

Nancylee Siebenmann stated that she would find that hard to vote for as it is accepting something that may, in the short run, be kind of sloppy.

Motion made by Nancylee Siebenmann failed for lack of a second.

Motion was made by Richard Timmerman to approve Final Rule--Chapter 47, Private Well Sampling and Abandonment--Grants to Counties. Seconded by Gary Priebe. Motion carried with Nancylee Siebenmann abstaining due to concern for the time, waste, and potential public health implication in waiting for EPA approval of the Colilert test.

PUBLIC PARTICIPATION

Stephen Patterson, Guthrie County Sanitarian, commented that he is glad to see that the department, through the Commission and staff, is starting to work closely with the sanitarians in the counties. He stated that the first few years will be difficult in getting the grants to counties program going. He added that he would hope that the department will bear with the counties if mistakes are made in the beginning of the program.

UPDATE ON ONE-TIME TEST PUBLIC WATER SUPPLIES FOR SOC

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

The Commission will be given an update of the current status of water supplies in addressing problems noted during the legislatively mandated one-time testing for the presence of synthetic organic compounds.

Mr. Stokes stated that part of last month's report listed 19 communities where initial sampling has shown some levels that would have exceeded either maximum contaminant levels or health advisory levels. At that time, we were in the process of retesting to confirm whether or not those were good numbers or bad numbers.

Mr. Stokes stated that another chart listed nine communities where numbers were found which exceeded MCL or health advisory levels. Those have been resampled and confirmed that, at the time of the sampling, those were good numbers and they were listed. Mr. Stokes stated that those communities were in the process of taking corrective action to address the problems that were found, but that word did not get out and left many people under the impression that the citizens were still being subjected to those problems, with nothing being done to solve them.

Mr. Stokes presented a brief update on the present status of these communities. He presented charts showing original sample numbers and their most recent numbers. Mr. Stokes reiterated that the communities are indeed taking action. It was never intended to leave the impression that nothing was being done by the responsible water supply officials to address and correct the problem.

Mr. Stokes stated that the Commission inquired last month about scientific methods in sampling. He stated that Dr. Keith Cherryholmes from the University Hygienic Laboratory would address this issue.

Keith Cherryholmes explained the procedure used in analyzing pesticides and herbicides.

REFERRALS TO THE ATTORNEY GENERAL (Continued)

Lakewood Sanitary District

James Combs stated that this case was a tabled item and must be removed from the table.

Motion was made by Donna Hammitt to remove the Lakewood Sanitary District referral from the table. Seconded by Catherine Dunn. Motion carried unanimously.

Mr. Combs stated that the department has come to an agreement on a consent decree and referral is requested for finalization of the consent decree.

Motion was made by Catherine Dunn for referral to the Attorney General's Office. Seconded by Donna Hammitt. Motion carried unanimously.

City of Waterloo

Mr. Combs stated that the city has submitted the delinquent material; therefore, the department is withdrawing the request for referral.

City of Mount Pleasant

Mr. Combs reported that the mayor of Mount Pleasant will not appear before the Commission as requested, as consent decree terms were negotiated with the department and referral is now requested for finalization of the consent decree.

Motion was made by Catherine Dunn for referral to the Attorney General's Office. Seconded by Charlotte Mohr. Motion carried unanimously.

City of Sheldon

Mr. Combs briefed the Commission on the history of this case.

Motion was made by Gary Priebe for referral to the Attorney General's Office. Seconded by Donna Hammitt. Motion carried unanimously.

Ellie's Bar and Grill (Grand River)

Mr. Combs briefed the Commission on the history of this case.

Motion was made by Catherine Dunn for referral to the Attorney General's Office. Seconded by Nancylee Siebenmann. Motion carried unanimously.

PROPOSED CONTESTED CASE DECISION -- THOMAS E. LENNON

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

On May 11, 1987, the department issued administrative order 87-FP-04 to Thomas E. Lennon. That action required Mr. Lennon to degrade a levee or obtain after-the-fact approval for it, and to pay a $700 penalty. That action was appealed, and the matter proceeded to administrative hearing on January 12, 1988. The hearing officer issued the attached Proposed Findings of Fact, Conclusions of Law, and Order on April 4, 1988. The decision affirms the department's order.

Either party may appeal the Proposed Decision to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the Proposed Decision. If there is no appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

No action was taken by the Commission; this has the effect of upholding the hearing officer's decision unless there is an appeal.

PROPOSED CONTESTED CASE DECISION -- HANDI-KLASP COMPANY, INC. AND ROYAL PRODUCTS COMPANY, INC.

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

On October 7, 1986 and February 13, 1987, the department issued and amended Administrative Order Nos. 86-SW-23, 86-AQ-15, and 86-WW-41 to Handi-Klasp Company, Inc. and Royal Products Company, Inc. That action assessed a $1,000 penalty and required remedial measures at a disposal site. That action was appealed and the matter proceeded to administrative hearing on October 13, November 3, December 10 and December 21, 1987. The hearing officer issued the attached Proposed Findings of Fact, Conclusions of Law, and Order on March 18, 1988. The decision affirms the department's order for the most part.

Either party may appeal the Proposed Decision to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the Proposed Decision. If there is no appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

Mr. Combs informed the Commission that Handi-Klasp Company, Inc. and Royal Products Company, Inc. have appealed the hearing officer's decision, and it will be brought to the May Commission meeting.

PROPOSED CONTESTED CASE DECISION -- STAN MOSER

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

Stan Moser appeared before the Commission last month on a matter where we have a solid waste violation, unpermitted solid waste disposal, and assessment of administrative penalty for $250. The order of the hearings officer affirms the department's order. If there is no appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

Mr. Combs stated that there is an appeal period, but the department has not heard anything regarding an appeal from Mr. Moser.

No action was taken by the Commission; this has the effect of upholding the hearing officer's decision unless there is an appeal.

COUNTY ZONING AND POLLUTION CONTROL FACILITIES

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

Mr. Combs stated that the Commission asked staff to look into the current statute and laws regarding county zoning and pollution control facilities, and what authority the department has, as well as what authority counties have.

Mike Murphy stated that the law was presented in the August, 1986 decision of the Iowa Supreme Court case entitled "City of Ames vs. Story County." The City of Ames has proposed to build a wastewater facility on property they owned, but not within the city limits, and the county refused zoning. They went to court and the City of Ames argued that a city exercising a governmental function would not be subject to county zoning. There are cases in some jurisdictions supporting this view, and cases in other jurisdictions that go completely to the opposite end of the spectrum and say the county is the superior level of government and has absolute authority in zoning issues of this sort. The Iowa Supreme Court came down in the middle acknowledging that counties do have zoning authority in situations such as this. However, counties were required to recognize the legitimate interests of cities in performing governmental functions and, at all levels, the decision would be made by balancing the relative interests of both parties. Mr. Murphy stated that this is very vague and doesn't answer too many questions, except that it does indicate that the county does have some authority in this area but it cannot be exercised unreasonably.

Mr. Murphy stated that there is some precedent for state agencies to resolve such issues that he is aware of in the following two areas: 1) the siting of power plants wherein the Utilities Board is given the authority to establish an administrative proceeding to get all interested parties together, when a power company proposes to build a plant, and ultimately it is that Board who has the authority to decide and to override local zoning decisions (after a hearing); 2) the EPC, as supplemented by other representatives from local governments, is given authority to make decisions regarding the siting of hazardous waste facilities using a very similar type of proceeding, and may override local zoning decisions.

Discussion followed.

LEGISLATION UPDATE

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

The following is a brief summary of legislation of interest to the Environmental Protection Commission that passed this session. A copy of the enrolled bill is attached if it is available. Many of the bills of interest to the Commission passed in the final days of the session. Therefore, a copy of the final bill is not yet available and this summary is based on our observations of the action taken. When the rest of the bills of interest are available in enrolled form they will be provided to the Commission.

HF 2550 DALS and DNR Appropriations

Generally the Department received the Governor's recommendation as presented to the Commission at a previous meeting. Stan Kuhn will provide more detailed information as it is available.

A copy of the bill is attached.

HF 2369 Oil Overcharge Fund Appropriations

$4 million allocated to the groundwater programs per the 1987 agreement. Additional details are not yet clear.

SF 2092 State Revolving Fund

This bill contains the Governor's bill on the State Revolving Fund as part 2 of a more inclusive "infrastructure" bonding bill. The two parts are completely separate and there were no significant changes made to the original proposal.

HF 2441 Underground Storage Tank Insurance

This bill establishes an underground storage tank insurance program within Chapter 455B but separate from the Department.

An UST Insurance Committee consisting of the Director of DNR, the State Treasurer, the Insurance Commissioner, and two public members with expertise in finance and insurance is established. This Committee is authorized to appoint an Administrator who has insurance or actuarial experience.

The bill establishes an UST Insurance Fund that will pay up to $500 per occurrence for clean-up only for tank leaks. This coverage will be adjusted to be consistent with Federal regulations when they are finalized. This level of coverage should cover 90%+ of the claims. Third party liability or damages are not covered by this program.

The premiums and deductible levels are set by the bill.

Deductible	Annual Premium (per tank)
$10,000	$400
$20,000	$325
$30,000	$250

Participation in the program may select the level of coverage they desire.

The Fund will be supplemented by an additional fee of $20 per thousand gallons on gasoline sold in August of 1988 and 1989.

The general understanding in the General Assembly was that this is an initial effort to establish an UST Insurance program for Iowa and that there will be additional action on this program by the next General Assembly.

SF 2126 Flood Plain Statute of Limitations

This bill limits the Department from initiating any administrative action against someone for violation of the flood plain law more than 10 years after the construction occurred or more than five years after the Department discovered the construction. This bill is retroactive. The only exception to these limits is when the construction poses a threat to public safety.

SF 2246 Water Pollution and Hazardous Waste Disposal Penalties

This is the Attorney General's bill to bring the penalties for violation of State law in these two programs into line with federal and other state's penalties. The civil penalties remain at $5,000 per day for water pollution violations and $10,000 per day for hazardous waste violations.

The bill establishes criminal penalties for negligently or knowingly violating water pollution statutes. A negligent violation is a serious misdemeanor and is punishable by a fine of up to $25,000 per day of violation and/or one year in prison or both; except that all violations after the first one are punishable by a fine of up to $50,000 per day and/or up to two years in prison. A knowing violation is an aggravated misdemeanor and is punishable by a fine of up to $50,000 per day of violation and/or up to two years in prison; except that all violations after the first one are punishable by a fine of up to $100,000 per day and/or up to five years in prison.

The bill establishes criminal penalties for knowingly unlawful disposal, transportation, storage or treatment of hazardous wastes. The first violation is an aggravated misdemeanor and is punishable by a fine of up to $25,000 per day of violation and/or up to two years in prison or both. All subsequent violations are a class "D" felony and punishable by a fine of up to $50,000 per day of violation and/or up to five years in prison.

A copy of the bill is attached.

HF 2338 Penalties

This bill establishes a fund into which payments for penalties of Chapter 455B are deposited. $100,000 of the fund is then transferred to the General Fund; $100,000 is made available to local officials for emergency response activities; and the balance goes to the Household Hazardous Materials Account of the Groundwater Protection Fund.

SF 2245 Laboratory Certification

This is one of the Commission's bills. It requires that all laboratories providing data to the Department be certified by the Department. The certification is valid for two years. The Department must establish rules for certification based on reciprocity.

A copy of the bill is attached.

SF 2250 Groundwater Clean-up

This bill made several corrections, but not significant policy changes, to the groundwater program. It incorporates the Commission's bill on retaining the interest earned on the Groundwater Protection Fund in the Fund. It clarified that the 25¢ per ton solid waste fee remains in place until July 1, 1988, at which time the fee raises to $1.50 per ton. It adds the word "known" to all of the information required on the Groundwater Hazard Statement that must be filed with all real estate transactions. It changes the Household Hazardous Material permit fee to $25 for all retailers versus the current $10, $25, $100 fee structure based on sales.

SF 38 Agriculture Drainage Wells

This bill extends the registration deadline to September 1988. It also clarifies a part of the groundwater bill regarding the allocation of funds from the Agriculture Management Account to the Department of Agriculture and Land Stewardship.

SF 443 Bottle Bill

This bill allows distributors to accept only their own container for deposit redemption. Copy attached. The Department has asked the Governor to veto this bill. A copy of the Director's letter to the Governor which explains our concerns with the bill is attached.

SF 2313 Hazardous Waste Fees

This bill imposes the following fees on persons required to obtain a USEPA identification number:

Generator of more than 1,000 kilograms per month ------	$250
Generator of less than 1,000 kilograms per month ------	$ 25
Generator of hazardous waste ----------	$ 25
Operator of a storage, treatment or disposal facility -	$ 25

The fees are deposited to the Hazardous Waste Remedial Fund.

A copy of the bill is attached.

SF 2171 Reorganization Clean-up

This bill makes several corrections to the Code that were left over from reorganization of State government. I will highlight each of the changes at the meeting.

REPORT OF MEETING AT UNI -- KEITH UHL

Keith Uhl gave a report on an SBAC meeting he recently attended at UNI. Mr. Uhl expressed concern that the direction the center is taking is way outside of the legislative intent of education parameters. He expanded on possible problems that could occur as a result of this. Mr. Uhl further expressed concerns that environmental policy should be made by this department, Commission, and the legislature. He added that he has expressed to the Executive Council and some legislators that these things have to be revamped as there is no oversight over these centers. He commented that we are creating and funding three, basically, open-end institutions.

Director Wilson stated that he will write a letter to SBAC, and asked Keith Uhl to do the same, regarding their attitude and the concerns expressed today.

Nancylee Siebenmann stated that she attended a CHEEC group meeting in March and she did not get the same flavor. They discussed projects that were already underway but are encountering problems because of the decrease in funding. She added that she did not get the feeling that they are going to go ahead with the type of policy expressed by SBAC.

ADDRESS ITEMS FOR NEXT MEETING

1. Outbriefing by Ruth Bender on entire WMA Division
2. Gerry Schnepf -- Discuss program of Iowa Natural Heritage Foundation (future meeting)
3. Reclarification of when and where speakers address the Commission regarding items that have been through the hearing process.

NEXT MEETING DATES

May 16-17, 1988
June 20-21, 1988
July 18-19, 1988

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairman Schlutz adjourned the meeting at 12:40 p.m., Tuesday, April 26, 1988.

Larry J. Wilson, Director

Charlotte Mohr, Secretary

(4-88.MIN/sc)

APM-1-1-1 c
April 1988

MEETING AGENDA
ENVIRONMENTAL PROTECTION COMMISSION
STATE FOREST NURSERY
AMES, IOWA
April 25-26, 1988

Meeting Convenes at 1:30 p.m., April 25, 1988 in the conference room and reconvenes on April 26, 8:30 a.m.

Break	3:00 p.m.
Appointment:	
Cindy Turkle	2:30 p.m.
Terry Timmons, City of Iowa City	4:00 p.m.

Meeting Reconvenes 8:30 a.m., April 26, 1988

Break	10:00 a.m.
Public Participation	10:30 a.m.
Mayor of Mt. Pleasant	11:00 a.m.

1. Approval of Agenda.

2. Approval of Minutes of March 21-22, 1988.

3. Director's Report. (Wilson) Informational.

4. Air Monitoring and Assessment Equipment Upgrade. (Kuhn) Decision.

5. Computer Equipment Acquisition for Water Quality Planning Section. (Kuhn) Decision.

6. Groundwater In-Service Training and Educational Materials Development for Life and Earth Science Programs Contract Approval. (Kuhn) Decision.

7. Report on Feasibility of Limiting the Types of Waste Accepted at a Hazardous Waste Facility. (Bender) Informational.

8. Monthly Reports. (Stokes) Informational.

9. FY89 Construction Grants Priority List. (Stokes) Informational.

10. Des Moines Area Carbon Monoxide Study. (Stokes) Informational.

11. Notice of Intended Action--Chapter 22, Revisions - Air Quality Permitting Rules. (Stokes) Decision.

12. Notice of Intended Action--Chapter 70, Waiver of Engineering Plans for Floodplain Projects. (Stokes) Decision.

13. Notice of Intended Action--Chapter 41, Public Water Supply Rules. (Stokes) Decision.

14. Final Rule--Chapter 38, Private Water Well Construction Permits. (Stokes) Decision

15. Final Rule--Chapter 47, Private Well Sampling and Abandonment - Grants to Counties. (Stokes) Decision.

16. Update on One-Time Test Public Water Supplies for SOC. (Stokes) Information.

17. Referrals to the Attorney General. (Combs) Decision.

18. Proposed Contested Case Decision--Thomas E. Lennon. (Combs) Decision.

19. Proposed Contested Case Decision--Handi-Klasp Company, Inc. and Royal Products Company, Inc. (Combs) Decision.

19A. Proposed Contested Case Decision--Stan Moser. (Combs) Decision.

20. County Zoning and Pollution Control Facilities. (Combs) Informational.

21. Legislation Update. (Combs) Informational.

22. Address Items for Next Meeting.

REMINDER: 1:30 p.m. Tuesday, April 19 - Public Hearings on Groundwater Standards - to be held in the Wallace Building Auditorium - 2nd floor.

NEXT MEETING DATES
April 25-26, 1988 (Ames)
May 16-17, 1988
June 20-21, 1988

ENVIRONMENTAL PROTECTION COMMISSION

Monday, April 25, 1988

NAME (Please print)	COMPANY OR AGENCY	CITY
Jerry Tonnesen	Polk Co. Physical Planning Dept.	Des Moines
Cindy Turkle	Scott County Landfill	Buffalo
	ISOSWO-GRCDA	
Ron Mace	LEE Co. SOLID WASTE	Ft. Madison
	GRCDA - ISOSWO	
Bill Wyn	DM	Omaha.
Nancy Siebenmann	Environmental Protection Commission	Cedar Rapids, I
Donna Hammitt	"	Woodbine
Veronica Fowler	THE DES MOINES REGISTER	AMES BUREAU
Mike Thompson	IPI	Des Moines
Jeanne Lloyd-Jones	IPI	Iowa City
Keith Chamberlain	Hygienic Laboratory	Iowa City
Stephen W Poulson	Linn Co. Health Dept.	Linn County
Brent Poulson	Jasper County Board of Health	Newton
Jim Kelly	Carroll Co Board of Health	Carroll
Verne H. Knecht	Retired	Cedar Rapids, Iowa

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 4 DECISION

AIR MONITORING AND ASSESSMENT EQUIPMENT UPGRADE

The Department requests approval to purchase the equipment and services listed below.

The purchases are to be made to:

1. Complete conversion of the ambient air monitoring network to electronic data management,
2. Provide the computers needed to manage this data,
3. Replace a network maintenance vehicle,
4. Upgrade data assessment and modeling capabilities,
5. Obtain minimal volatile organic carbon sampling capabilities,
6. Purchase miscellaneous tools and parts needed to maintain the ambient network.

These items are 100 percent federally funded through a special supplemental grant specifically for this equipment.

Equipment To Be Purchased:

Cost	Description
$ 26,000(1)	8 electronic data loggers, modems and associated equipment
19,000(2)	3 microcomputers
8,000(3)	data handling and assessment software
9,000(4)	1 mini-pickup and utility box
9,000(5)	1 volatile organic carbon (VOC) sampler
4,000(6)	misc. tools and monitor parts
1,600(1)	telephone installation costs
$ 76,600	

(1) Linn County
(2) 1 each to Linn County, Polk County, UHL
(3) Linn County, Polk County, UHL, DNR
(4) Polk County
(5) UHL
(6) Linn County, Polk County

This request includes:

- Enough electronic data loggers to convert Linn County's continuous monitoring network to electronic data management (and the installation of these data loggers),

- The additional microcomputers needed to allow the Department to lease a computer to each local program and to UHL for their use in managing the ambient data they collect,

- Data management software so that the two local programs and UHL can more efficiantly prepare the ambient data they collect together with dispersion modeling software for Polk County to use to improve their permitting program and data assessment software for the Department to use in permitting and monitor management efforts,

- A pickup (and utility box) for Polk County to use in servicing their network,

- A volatile organic carbon (VOC) sample collector to enable the collection of certain types of toxic compounds, and

- Various tools and replacement parts needed for maintenance of the ambient monitoring network.

Stan Kuhn
March 4, 1988

(I06.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 5 DECISION

COMPUTER EQUIPMENT ACQUISITION FOR WATER QUALITY PLANNING SECTION

The Department requests approval to purchase the computer equipment listed below. This hardware and software will provide the Water Quality Planning Section with the information management capabilities needed for oversight and management of water quality programs and for satisfying reporting obligations. Areas of emphasis are:

-- Water quality assessments of streams, lakes and wetlands - detailed information on waterbodies is maintained to track water quality problems and to satisfy ongoing and new reporting requirements to the U.S. EPA under the revised Clean Water Act, including the identification of streams that are imparied by toxic pollutants.

-- Water Quality Standards Review - information on water uses of streams and lakes to be considered for redesignation is reviewed periodically. Water use designations will be mapped.

-- Wasteload Allocations - the wasteload allocations of continuously discharging wastewater treatment facilities are performed using computer models and then tracked as a reference for preparation of new allocations and for identifying streams that are water quality limited, as required by EPA.

-- Sewage sludge management program - data concerning sludge treatment methods will be entered from an inventory of wastewater treatment facilities.

EQUIPMENT TO BE PURCHASED

COST	DESCRIPTION
$21,530	Four personal computers
$ 5,510	Software for data base management and analysis, mapping, telecommunications and document preparation
---	
$27,040	

This acquisition is 100% federally funded through a Section 106 supplemental appropriation.

SECTION 106 COMPUTER ACQUISITION FOR WATER QUALITY PLANNING SECTION

Listed below are the computer hardware and software products that are proposed for purchase by the Department using Section 106 supplemental appropriation funds.

DESCRIPTION	QUANTITY	UNIT COST	TOTAL COST
Hardware:			
1. IBM PS/2 Model 50-021 (10-MHz 80286 processor, 1MB RAM, one 20MB fixed disk, one 1.44MB 3.5-inch diskette drive)	3	$2,520	$7,560
2. IBM PS/2 Model 80-111 (20-MHz 80386 processor, 2MB RAM, one 115MB fixed disk, one 1.44MB 3.5-inch diskette drive)	1	7,700	7,700
3. IBM Color Monitor #8513	4	480	1,920
4. IBM 80287 math co-processor	2	370	740
5. IBM 80387 math co-processor	1	840	840
6. IBM PC 3270 emulation	3	790	2,370
7. Hayes Smartmodem (1200/2400)	1	400	400
Hardware Total			$21,530
Software:			
1. IBM PC-DOS 3.3	4	80	320
2. dBase III Plus	4	490	1,960
3. Lotus 1-2-3	2	350	700
4. Symphony	1	490	490
5. DisplayWrite 4	4	350	1,400
6. CrossTalk	1	140	140
7. Mapping Software (undetermined)	1	500	500
Software Total			$5,510
Total			$27,040

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

MAR 1 1 1988

Mr. Allan E. Stokes, Administrator
Environmental Protection Division
Iowa Department of Natural Resources
Henry A. Wallace Bldg.
900 E. Grand
Des Moines, IA 50319

Dear Mr. Stokes:

Thank you for your workplan for the supplemental FY-87 106 appropriation. I have asked my staff to review the plan and they offer the following comments.

The work activities proposed for the Water Quality Standards, Water Quality Assessment Plans, and Sludge Disposal Program are acceptable. In the area of Automated Data Processing Equipment, however, we do have some suggestions for your consideration.

You were not specific on some of the hardware proposed for purchase. We recommend that you obtain math co-processors for all three work stations, rather than one. It is a necessary component for much of the water quality modeling software. In addition, you will need, at a minimum, a CGA card with each unit, although we recommend an EGA card and color monitor for each work station where water quality modeling will take place. These facilitate evaluation of the modeling and allow quicker and more precise decision making.

We also recommend you consider an AT or AT clone rather than the PS/2 model computer. We understand they use a different disk size, and thus we would not be able to exchange data by floppies if you were to purchase the PS/2 model.

It also would be desirable for you to provide one of these work stations with a phone line and modem in order to expedite work coordination between our two offices. Compatibility with Lotus 1-2-3 that we have in this office would also be desirable.

If you have any questions, please feel free to contact me or my staff members Julie Elfving, for planning items, and Lynn Kring for ADP items.

Sincerely yours,

Paul M. Walker, Director
Water Management Division

TO: Lavoy Haage, Ralph Turkle, Ubbo Agena, Lynn Hall

FROM: Jim Joy JJ

DATE: March 23, 1988

RE: Section 106 Computer Acquisition

Attached for your review and comments is a draft of a Commission agenda item brief requesting approval for purchase of the 106 computer hardware and software. I have discussed with Lynn Kring EPA's comments on our original proposal (see attached copy of letter from Paul Walker to Al Stokes). Their recommendations concerning EGA cards, color monitors, and AT vs PS/2 computers seem to have come from a lack of understanding of PS/2 capabilities. When I explained to him that the proposed PS/2 models have specifications that exceed those of the AT, while maintaining full compatibility with AT features and AT-developed software, he supported our proposal to acquire PS/2 machines.

EPA's other recommdations were incorporated into our 106 proposal by adding two math co-processors and substituting Lotus 1-2-3 for Symphony for two of the work stations. A complete list of our EPA-approved 106 acquisitions is attached.

Any changes to the agenda brief or the equipment list should be made this week. We need to get approval from Darrell and Al by Monday so that the agenda brief can go to Mark Slatterly on Tuesday, giving him time to process it and meet the April 1st deadline for agenda items for the next Commision meeting.

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 6 DECISION

GROUNDWATER IN-SERVICE TRAINING AND EDUCATIONAL MATERIALS DEVELOPMENT FOR LIFE AND EARTH SCIENCE PROGRAMS CONTRACT APPROVAL

The Department requests approval of the two contracts described below designed to meet the educational requirements set forth in the Groundwater Protection Act. The teacher in-service training contract is aimed at providing teacher training on existing curriculum for introduction into the classroom this fall. The educational materials development contract would provide additional materials covering a broader scope of groundwater protection issues than is addressed currently.

Groundwater Teacher In-Service Training Contract With the University of Northern Iowa, Institute for Environmental Education -- The $22,250 contract would provide for two one-week training sessions for upper elementary and secondary school science teachers using the OUTLOOK On Groundwater materials, with associated advertising, printing, and evaluation costs. The contract would pay, on a per-person basis, for 15 to 30 teachers to attend each workshop, including their tuition, room and board.

Educational Materials Development Contract With the Iowa Department of Education -- The $15,625 contract would provide for the coordination of a team of six teachers to write groundwater educational materials for life and earth science programs (generally taught in seventh and eighth grade). They will also edit the materials after field testing in the classroom this fall. These materials would complete the groundwater education curriculum materials for life and earth science as identified in the Groundwater Education Strategy.

Both contracts would be funded with Oil Overcharge funds.

Stan Kuhn
3-7-88

(I17.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 7

INFORMATIONAL

REPORT ON FEASIBILITY OF LIMITING THE TYPES OF WASTE ACCEPTED AT A HAZARDOUS WASTE FACILITY

Senate File 396, 1987 Iowa Acts, requires the Waste Management Authority Division to prepare a feasibility report on limiting the types of waste accepted at a hazardous waste facility. The report was to be submitted to the General Assembly by January 1, 1988. Due to the scope of the report and the recent staffing of the Waste Management Authority Division, a preliminary report was submitted on January 1 and a final report was prepared for submittal on April 1, 1988.

A summary of the final report will be provided.

Ruth Bender
4/11/88

(I10.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 8 INFORMATIONAL

MONTHLY REPORTS

The following monthly reports are enclosed with the agenda for the Commission's information.

1. Rulemaking Status Report

2. Variance Report

3. Hazardous Substance/Emergency Response Report

4. Enforcement Status Report

5. Contested Case Status Report

Members of the department will be present to expand upon these reports and answer questions.

Allan Stokes
April 12, 1988

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
RULEMAKING STATUS REPORT
APRIL 1, 1988

PROPOSAL	DRAFT TO COMMISSION	NOTICE PUBLISHED	RULES REVIEW COMMITTEE	HEARING	SUMMARY OF COMMENTS & RECOMMENDATIONS TO COMMISSION	RULES ADOPTED	RULES PUBLISHED	RULE EFFECTIVE
1. Ch. 4 - Rulemaking Procedures	2/15/88	3/09/88		—				
2. Ch. 5 - Petition for Rulemaking	2/15/88	3/09/88		—				
3. Ch. 7 - Contested Case Procedures	3/21/88	4/20/88		—				
4. Ch. 22 - Air Quality Permitting	4/25/88							
5. Ch. 38 - Private Well Construction Permit	12/15/87	1/13/88	3/09/88	2/03/88 2/05/88 2/08/88	4/25/88	*4/25/88	*5/18/88	*6/22/88
6. Ch. 39 - Well Plugging	3/21/88	*4/21/88		5/12/88 5/13/88 5/16/88				
7. Ch. 40, 41 - Water Supply	4/25/88	*5/18/88		6/13/88 6/14/88 6/15/88				
8. Ch. 47 - Grants to Counties	2/15/88	3/09/88		3/29/88 3/31/88 4/04/88	4/25/88	*4/25/88	*5/18/88	*6/22/88
9. Ch. 70 - Channel Changes	4/25/88	*5/18/88		6/09/88				
10. Ch. 102 - Sewage Sludge at Landfills	11/17/87	12/16/87	1/05/88	1/06/88 1/07/88 1/08/88	TERMINATED 3/21/88	—	—	—
11. Chs. 100,105 - Landfill Ground Water Monitoring	10/20/87	11/18/87	12/10/87	1/06/88 1/07/88 1/08/88				
12. Ch. 135 - Sniffer Well Criteria	10/20/87	11/18/87	12/10/87	12/09/87 12/10/87 12/11/87	2/16/88	2/16/88	3/09/88	4/13/88

*Projected

E:NPM/CI-1251J03.FRM

MONTHLY VARIANCE REPORT 3/31/88

No.	Facility	Program	Engineer	Subject	Decision	Date
1	University Hygenic Lab	Air Quality		Smoke Generators	approved	03/30/88
2	Brink Roaster-Hubbard	Air Quality		Equipment Test	approved	03/31/88
3	Long Grove	Wastewater Const.	Allen W.& WW. Engr.	Curtain Wall	approved	03/10/88
4	Long Grove	Wastewater Const.	Allen W.& WW. Engr.	Lagoon Riprap	approved	03/10/88
5	Lucas County	Flood Plain	Calhoun-Burns Assoc	Freeboard	approved	03/07/88
6	Carroll, City of	Flood Plain	Brice,Petrides-Don.	Freeboard	approved	03/16/88
7	Ag Proc.,Inc.-Sheldon	Hazardous Waste	John Sheperd(Co.Rep	Tanks	approved	03/04/88
8	Brookwood,Inc.-Newton	Hazardous Waste	Everett Wood	Tanks	approved	03/04/88
9	Union Gas & Oil-LeMars	Hazardous Waste	R.Bohnenkamp,Owner	Tanks	denied	03/22/88

REPORTS OF HAZARDOUS CONDITIONS

During the period of March 1, 1988 through March 31, 1988, reports of 67 hazardous conditions were forwarded to the Central Office. Two incidents are highlighted, followed by a general summary and the number per field office.

Date Reported and County	Description: Material, Amount, Date of Incident, Cause, Location, Impact	Responsible Party	Response and Corrective Actions
3/17/88 BUENA VISTA	Vandals cut a hose and turned on the valve of an above-ground storage tank at the intersection of county roads M-27 and C-25 near Aurelia, Iowa on March 16, 1988. About 68 tons of 28% nitrogen fertilizer were released.	Farm Service Storm Lake, IA 50588	A layer of frost prevented the material from reaching groundwater. Contaminated soil was excavated and applied on land.
3/30/88 POLK	A manual pump switch that was left in the "on" position caused about 3,000 gallons of diesel fuel to be pumped into a tank excavation at 1800 NE 18th Street, Des Moines, Iowa on March 30, 1988.	Ruan Transportation Inc. 1800 NE 18th Street Des Moines, IA 50304	About 1,000 gallons of product were recovered from monitoring wells. Contaminated soil was removed. Samples of groundwater will be collected to assess the extent of pollution.

RMK-1.099/rg

Numbers in Parentheses Represent Reports for the Same Period in Fiscal Year 1987

		Substance Type				Mode				
Month	Total # of Incidents	Petroleum Product	Agri. Chemical	Other Chemicals and Substances	Handling and Storage	Pipeline	Highway Incident	RR Incident	Fire	Other
Oct	69	47	4	18	53	0	9	1	2	4
Nov	48	35	3	10	37	0	4	0	1	6
Dec	46	36	3	7	39	1	2	0	0	4
Jan	54	43	4	7	45	1	5	1	0	2
Feb	51	30	2	19	37	1	9	3	1	0
Mar	67 (55)	41 (35)	10 (5)	16 (15)	49 (37)	1 (0)	11 (12)	2 (4)	0(1)	4 (1)
		UST-22		UST-1	UST-23					

Total # of Incidents Per Field Office This Period

01	02	03	04	05	06
13	11	2	5	26	10

RNK-2.099/rg

E:CHT.ER

DATE: April 6, 1988

TO: EPC

FROM: Mike Murphy

RE: Enforcement Report Update

The following new enforcement actions were taken last month:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
City of Ellsworth (2)	Waste Water	Permit condition violation - discharge limits	Order	3/7/88
The Hubinger Company, Keokuk (6)	Waste Water	Permit condition violation - discharge limits	Order/Penalty	3/7/88
City of Granville (3)	Waste Water	MIP	Order	3/7/88
Howard Bell/Bell Ready Mix Concrete, Columbus Junction (6)	Air Quality	Open burning	Order/Penalty	3/7/88
Lake Hendricks Park, Howard Co. (1)	Drinking Water	Monitoring/ reporting - bacteria	Order/Penalty	3/7/88
DeWitt Moose Lodge, DeWitt (6)	Drinking Water	Monitoring/ reporting - bacteria	Order/Penalty	3/7/88
Vernon Hts. MHP, Cedar Rapids (1)	Drinking Water	Monitoring/ reporting - MCL, bacteria	Order/Penalty	3/7/88
Fred Iben, Monticello (1)	Solid Waste	Open dumping	Order/Penalty	3/7/88
63-I80 Truckstop, Poweshiek Co. (5)	Waste Water	Monitoring/ reporting - discharge limits, operational violations	Order/Penalty	3/7/88

MG:bag/M095L06.01

The following new enforcement actions were taken last month:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Land O'Lakes, Inc. Ellsworth (2)	Waste Water	Pretreatment	Order/Penalty	3/11/88
City of Orchard (2)	Drinking Water	Monitoring/ reporting - MCL, operational violations, certified operator	Order/Penalty	3/11/88
Wayne, Ringgold & Decatur, SW Mgmt. Commission, Decatur Co. (5)	Solid Waste	Cover violations	Order/Penalty	3/11/88
Blackhawk Foundry and Machine Co., Davenport (6)	Air Quality	Emission standards - particulate	Order/Penalty	3/11/88
Waterloo Water Works (1)	Underground Tanks	Remedial action	Order	3/11/88
Broadview Trailer Courts, Dubuque (1)	Drinking Water	Monitoring/ reporting - bacteria	Order/Penalty	3/24/88
Pla-Mor Bowl, Iowa Falls (2)	Drinking Water	Monitoring/ reporting - bacteria	Order/Penalty	3/24/88
Otter Creek Station, Zwingle (1)	Drinking Water	Monitoring/ reporting - bacteria	Order/Penalty	3/24/88
City of Sidney (4)	Waste Water	MIP	Referred to AG	3/24/88
City of Long Grove (6)	Waste Water	MIP	Referred to Ag	3/24/88
City of Rock Valley (3)	Waste Water	MIP	Order	3/31/88

MG:bsg/M095L06.02

The following new enforcement actions were taken last month:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
City of Inwood (3)	Waste Water	Plan of action	Amended Order	3/31/88
City of Ireton (3)	Waste Water	Plan of action	Amended Order	3/31/88
Harry Brocka, Dumont (2)	Flood Plain	Construction without permit	Order/Penalty	3/31/88

MG:bsg/M095L06.03

IOWA DEPARTMENT OF NATURAL RESOURCES
Government Liaison Bureau

DATE: April 1, 1988

TO: Environmental Protection Commission

FROM: Michael P. Murphy

SUBJECT: Summary of Administrative Penalties

The following administrative penalties are due:

NAME/LOCATION	AMOUNT	DUE DATE
*Shelter Shield (Buffalo Center)	$1,000	12-03-86
*Cedar Hills Apartments (Dubuque)	1,000	12-29-86
*City of Dysart	400	3-13-87
*Country Corner Cafe (Pacific Junction)	451	8-05-87
*JTM Indust./MacDade/Leamer (Pleasant Valley)	1,000	8-12-87
*Big Rock Tap	660	9-21-87
*Twelve Mile House (Bernard)	339	10-28-87
*OK Lounge (Marion)	448	11-01-87
*Timberline Assoc. Ltd. (W. Burlington)	1,000	11-02-87
*Pleasant Creek Estates (Shellsburg)	200	11-30-87
City of Brighton	700	12-04-87
City of Sheldon	900	1-02-88
Ellie's Bar and Grill (Grand River)	515	3-05-88
Donald Caraway (Linn County)	500	3-06-88
City of Lynnville	225	3-13-88
**Lawrence Payne (Ottumwa)	630	3-15-88
**Don Scribner (Nashua)	1,000	3-28-88
City of Sidney	250	3-31-88
Linn Hollow MHP (Washington)	200	4-13-88
**Elings/Catron/Frey (Des Moines)	400	4-15-88
Mike Vanderpool Construction (Indianola)	1,000	4-16-88
The Meadows, Inc. (Moville)	275	4-17-88
Breitbach's Tap (Sherrill)	230	4-19-88
Randy's Bluffton Store (Decorah)	215	4-19-88
Camp Okoboji	230	4-22-88
David Francy (New London)	800	4-26-88

* Referred to the Attorney General
** On Payment Schedule

Administrative Penalties Due (Continued)

NAME/LOCATION	AMOUNT	DUE DATE
City of Fairfield	1,000	4-29-88
City of Tabor	250	4-30-88
White Consolidated Industries (Webster City)	500	4-30-88
The Hubinger Company (Keokuk)	1,000	5-09-88
Howard Bell, d/b/a Bell Ready Mix Concrete	500	5-09-88
Lake Hendricks Park (Howard Co.)	50	5-09-88
DeWitt Moose Lodge (DeWitt)	560	5-16-88
Vernon Heights MHP (Cedar Rapids)	1,000	5-09-88
Fred Iben (Monticello)	500	5-09-88
63-I80 Truckstop (Poweshiek Co.)	1,000	5-21-88
City of Orchard	580	5-15-88
Land O' Lakes, Inc. (Ellsworth)	1,000	5-15-88
Blackhawk Foundry and Machine Co.(Davenport)	1,000	5-16-88
Wayne, Ringgold & Decatur SW Mgmt. Comm.	1,000	5-16-88
Pla-Mor Bowl (Iowa Falls)	215	5-26-88
*Chico's Supper Club (Burr Oak)	954	6-10-88
Clear View Acres Store (Delhi)	230	-------
Broadview Trailer Court (Dubuque)	1,000	-------
Harry Brocka	800	-------

The following administrative penalties have been appealed:

NAME/LOCATION	AMOUNT
Handi-Klasp, Inc. (Webster City)	1,000
Iowa City Regency MHP	1,000
Bianchi Meyrat Lagoon (Des Moines)	600
Thomas E. Lennon (Barnum)	700
Great Rivers Coop (Atavia)	1,000
City of Wapello	500
Wilfred McFee (Union Co.)	500
Richard Davis/1st Iowa State Bank (Albia)	1,000
Gradert, Ernest and Kevin (Sibley)	500
Stan Moser (Hudson)	250
Hardin County SLF	500
City of University Park	500
South Central Iowa Landfill Agency	1,000
Cloyd Foland (Decatur)	800
Lynn Mennenga Feedlot (Wright Co.)	600
Motel Grinnell	1,000
Benton Co. Care Facility	100
Otter Creek Station (Zwingle)	215

*Referred to the Attorney General
**On Payment Schedule

The following administrative penalties were paid in March:

NAME/LOCATION	AMOUNT
H.P. Jensen Subdivision (Ames)	$ 100
Highway #3 Mobile Home Park (Cedar Falls)	400
City of Braddyville	200
Living History Farms (Urbandale)	260
Kossuth County SLF	700
City of Cushing	500
City of Newell	100
Wagner's Printing, Inc. (Davenport)	500
City of Carson, Iowa	600
Central Baptist Church (Council Bluffs)	50
Valley Oaks Country Club (Clinton)	100
Delhi Lakeview Estates, Inc. (Delhi)	100
4 Son's Handy Shop (Neola)	330
Ramsey Reformed Church (Titonka)	50
Petroleum Marketing Co. (Malcolm)	900
**Elings/Catron/Frey (Des Moines)	200
Knollridge Garden Apts. (Coralville)	100
	$5,190

* Referred to the Attorney General
** On Payment Schedule

MPM:mjg

ADMINISTRATIVE PENALTY SUMMARY

4-01-88

The table below summarizes administrative penalty assessments through March 1988. The penalty rules became effective in September 1985 and the first penalty order was issued in October 1985. Penalties are not due until at least 60 days after an order is issued, so collections did not start until approximately January 1, 1986.

The first column of this table is a rough breakdown of the environmental program and violation types for which penalties have been assessed. The next five columns state the dollar amounts collected during the stated time periods, and the number of cases in parentheses. Total collections are presented next. The last column states similar data for cases still pending as of April 1, 1988 (penalties appealed, delinquent or assessed but not yet due.

Violation Type	FY 86	FY 87	FY 88-1st	FY 88-2nd	FY 88-3rd	TOTALS	PENDING
WW Discharge	$ 1,400 (2)	$12,950 (18)	$ 2,000 (4)	$ 4,800 (8)	$ ---	$ 21,150 (32)	$ 5,800 (7)
WW Monitoring	815 (3)	1,610 (5)	1,500 (3)	---	2,200 (6)	6,125 (17)	4,725 (6)
WW Other	---	2,500 (3)	1,750 (3)	2,000 (2)	1,700 (5)	7,950 (13)	2,400 (6)
SW Permit	1,500 (4)	6,100 (11)	2,848 (3)	2,700 (4)	1,000 (2)	14,148 (24)	2,500 (3)
SW Open Dumping	1,250 (2)	4,000 (7)	550 (2)	1,485 (3)	935 (1)	8,220 (15)	5,780 (8)
Air Permit	2,600 (3)	3,950 (6)	875 (2)	4,650 (7)	2,100 (3)	14,175 (21)	2,000 (2)
Air Open Burning	625 (2)	3,650 (7)	1,500 (2)	2,050 (4)	1,400 (3)	9,225 (18)	1,300 (2)
WS Monitoring	1,859 (20)	7,178 (58)	1,898(14)	2,871 (21)	2,765 (20)	16,571 (133)	7,887 (20)
WS Permit	598 (2)	---	---	425 (2)	1,800 (4)	2,823 (8)	2,580 (3)
Flood Plain	---	150 (1)	---	---	700 (1)	850 (2)	2,800 (4)
HC Notice	---	600 (1)	1,000 (1)	1,450 (3)	1,300 (3)	4,350 (8)	1,000 (1)
Water Use	---	---	---	---	150 (2)	150 (2)	---
Construction Permit	---	100 (1)	---	---	---	100 (1)	---
TOTALS	$10,647 (38)	$42,788 (118)	$13,921(34)	$22,431 (54)	$16,850 (50)	$105,837 (294)	$38,772 (62)

MPM-3.192/rg

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
APRIL 1, 1988

Name, Location and Region Number	New or Updated	Program	Alleged Violation	DNR Action	Status	Date
Aidex Corporation Council Bluffs (4)	Updated	Hazardous Waste	Release of Hazardous Substances	Referred to Attornet General	Referred EPA suit filed State intervention Motion to dismiss granted/denied Filed interlocutory appeal	12/16/82 2/26/87 3/05/87 2/26/98 3/11/88
ASPRO, Inc. Waterloo (1)	New	Air Quality	Excess Emissions	Order	Referred	2/16/88
Big Rock Tap Big Rock (6)	Updated	Drinking Water	Monitoring	Order/Penalty	Referred Suit Filed	11/17/87 1/25/88
Boyer Valley Company Denison (4)	Updated	Wastewater	Compliance Schedule	Referred to Attorney General	Referred Consent Decree Referred Consent Decree	10/27/86 12/15/86 9/21/87 2/16/88
Bozarth and Bell, Inc. Davenport (6)	Updated	Solid Waste	Open Dumping	Order	Referred Suit Filed Default Judgment $7500 Motion to set aside overruled Funds condemned ($2,628)	2/20/87 4/23/87 6/22/87 10/30/87 3/18/88
Bryant, Robert E. Cherokee (3)		Wastewater	Prohibited Discharge	Order	Referred Suit Filed Bankruptcy Proceedings	6/01/86 9/08/86
Cedar Hills Apts. Dubuque (1)	Updated	Water Supply	Monitoring; Operating without permit	Order/Penalty	Referred Suit filed Motion for Sum. Judgment Denied	2/20/87 4/27/87 12/30/87
Chicago Northwestern RR		Air Quality	Open Burning	Referred to Attorney General	Referred	10/20/87
Cooper, Kenneth Missouri (5)		Storage Tank	Spill Cleanup	Order	Referred	10/20/87
Country Corner Cafe Pacific Junction (4)	Updated	Drinking Water	Monitoring; Penalty	Order/Penalty	Referred Consent Decree	10/20/87 2/17/88

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
APRIL 1, 1988

Name, Location and Region Number	New or Updated	Program	Alleged Violation	DNR Action	Status	Date
Donnellson, City of (6)	New	Wastewater	MIP	Order	Referred	2/16/88
Dysart, City of (5)		Wastewater	Compliance Schedule	Order/Penalty	Referred Suit Filed	5/21/87 9/30/87
Eilers, Dwayne Waterloo (1)		Flood Plain	Unauthorized Fill	Referred to Attorney General	Referred Suit Filed Default Judgment Bankruptcy	6/19/84 11/01/85 1/12/87
Elings, Catron Des Moines (5)		Solid Waste	Open Dumping	Order/Penalty	Referred	10/20/87
Finlan Landfill Chickasaw County (1)	Updated	Solid Waste	Permit/Fee	Court Order	Referred Suit Filed	11/17/87 3/08/88
Flynn, Robert Keota (6)	Updated	Flood Plain	Channel Change	Order	Referred Consent Decree	5/21/87 3/18/88
Garner, City of (2)	Updated	Wastewater	Compliance Schedule	Order	Referred Suit Filed	9/21/87 2/16/88
Hilltop Feeders (Jorgenson) Winneshiek (1)	New	Air Quality	Operation without Permit	Order	Referred Filed Suit	12/15/87 3/24/88
Hill Top Feed Yards, Inc.; Western Cornbelt Credit Corp. Pottawattamie County (4)	Updated	Wastewater	Feedlot Lagoon Discharge	Order	Referred Suit Filed Hill Top Dismissed Consent Decree Injunction	9/16/85 1/23/86 11/ /87 2/11/88 2/19/88
IBP, inc. (Langenfeld) Denison (4)		Wastewater	Prohibited Discharge	Order	Referred	11/[illegible]/87
Jungling Farms, Inc. Butler County (2)	Updated	Wastewater	Prohibited Discharge	Order	Referred Suit Filed	7/21/86 1/31/87

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
APRIL 1, 1988

Name, Location and Region Number	New or Updated	Program	Alleged Violation	DNR Action	Status	Date
King, James & Julia Warren County (5)		Flood Plain	Channel Change	Order	Referred Suit Filed Trial	8/20/87 10/08/87 11/ /88
Leamer, Delbert; JTM Ind. Pleasant Valley (6)		Solid Waste	Open Dumping	Order/Penalty	Referred	11/17/87
Long Grove, City of (6)	New	Wastewater	MIP	Order	Referred	3/24/88
Newell, City of(3)	New	Wastewater	MIP Compliance Schedule	Order/Penalty	Referred	1/21/88
Pester Derby Oil Company Davenport (6)		Wastewater	Prohibited Discharge	Referred to Attorney General	Petition Filed Judgment Amended Cleanup Plan Approved	3/ /83 10/12/84 10/24/84 1/27/86
Pleasant Creek Est. Benton Co. (1)	New	Drinking Water	Penalty Non-payment	Order/Penalty	Referred	1/21/88
Poggemiller, William et.al. Louisa County (6)		Flood Plain	Channel Change	Referred to Attorney General	Referred Suit Filed	3/20/87 6/25/87
Salisbury, Ronald, Presto-X Des Moines (5)	Updated	Hazardous Waste	Treatment and Storage Violations	Referred to Attorney General	Referred Judgment Appealed to Sup. Court Decided in our favor	9/18/84 5/86 7/86 12/23/87
Shelter Shield Buffalo Center (6)		Air Quality	Excess Emissions; Construction w/o permit	Order/Penalty	Referred Suit Filed Default Judgement $7,500	2/20/87 6/30/87 12/22/87
Sidney, City of (4)	New	Wastewater	MIP	Order	Referred	3/24/88
Timberline Assoc. Ltd. Des Moines (6)	New	Drinking Water	MCL Radioactivity	Order/Penalty	Referred	1/21/88
Twelve Mile House Bernard (1)	New	Drinking Water	Monitoring; Operation Permit	Order/Penalty	Referred	1/21/88

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
APRIL 1, 1988

Name, Location and Region Number	New or Updated	Program	Alleged Violation	DNR Action	Status	Date
Wisconsin Barge Service Clinton (6)	Updated	Wastewater	Prohibited Discharge	Referred to Attorney General	Referred	11/20/85
					Suit Filed	7/86
					Consent Decree	11/ /87
					Order approving claim	12/02/87
					Dismissed case - resolved in bankruptcy court	12/21/87
Washington, City of (6)		Wastewater	Compliance Schedule	Order	Referred	11/17/87
					Consent Decree	11/30/87
Waterhouse, James & Berna Washington County (6)		Flood Plain	Channel Change	Referred to Attorney General	Referred	3/16/87
					Suit Filed	5/13/87
					Trail Set	5/13/88
West Chester, City of (6)	Updated	Wastewater	Compliance Schedule	Order	Referred	10/20/87
					Consent Decree	2/11/88
Wollenson, Robert C. Buena Vista and Cherokee Counties (3)		Wastewater	Prohibited Discharge	Order	Referred	11/27/84
					Consent Decree	4/25/85
					Contempt Finding	7/02/85
					Contempt Finding	9/25/86
					Contempt Finding	8/24/87
Woodland Park Jones County (1)		Wastewater	Prohibited Discharge	Order	Referred	7/31/86
					Suit Filed	11/19/86
					Temporary Injunction	2/13/87
Yocum, Max Johnson (6)		Flood Plain	Prohibited Construction	Defending	Suit Filed	12/18/84
					Motion to Dismiss	3/06/85
					Denied	8/07/85
				Referred to Attorney General	Referred	7/12/85
					Counter Claim Filed	10/85
					Trial Held	6/16/87
					Judgment for Department	8/18/87
					Appealed to Supreme Court	9/01/87

E:Mtn-4.240/rag

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
CONTESTED CASES
APRIL, 1988

DATE RECEIVED	NAME OF CASE	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
10-17-85	City of Bevington	Administrative Order	WW	Hansen	Hearing rescheduled for 5-12-88.
1-23-86	Oelwein Soil Service	Administrative Order	WW	Landa	Hearing continued; cleanup study progressing.
6-12-86	ADM - Clinton	Administrative Order	Air	Landa	Hearing continued.
10-29-86	Handi-Klamp Company, Inc.	Administrative Order	AQ/WW/SW	Landa	Briefing completed. Proposed decision 3-15-88.
12-03-86	City of Waukee	Administrative Order	WS	Hansen	Hearing continued; settlement close.
12-11-86	Eloise Reese	Permit Condition	FP	Clark	Briefing in progress.
12-24-86	Francis Hamberlin	Administrative Order	FP	Clark	Briefing in progress.
5-12-87	Iowa City Regency MHP	Administrative Order	WW	Hansen	Hearing held 11-03-87.
5-20-87	Bianchi-Meyrat Lagoon (Hank Smith)	Administrative Order	WW	Kennedy	Hearing continued.
6-08-87	Willow Creek Dam/Zerble et.al	Permit Issuance	FP	Clark	Negotiating before filing.
6-11-87	Thomas Lennon	Administrative Order	FP	Clark	Awaiting decision.
8-10-87	Great Rivers Co-op	Administrative Order	WC	Landa	Hearing continued; study proceeding.
8-17-87	City of Nepello	Administrative Order	WW	Hansen	Appealed to Commission. Tabled 60 days by EPC - 3-88
9-17-87	Gradart, Kevin and Ernest	Administrative Order	AQ	Landa	Hearing continued; stipulations being prepared.
10-22-87	University Park	Administrative Order	WW	Hansen	Hearing set for 5-09-88.
12-07-87	Stan Moser	Administrative Order	SW	Murphy	Awaiting decision.
12-11-87	Finlan Landfill	Permit Revocation	SW	Kennedy	Hearing held. Awaiting decision.
12-15-87	Delaware Co. Conc. Cit. (IDP)	Permit Issuance	WR	Clark	Appears it will be dismissed.
12-21-87	Hardin County SLF	Administrative Order	SW	Kennedy	Negotiating before filing.
12-31-87	City of Tipton	Administrative Order	WW	Hansen	Negotiating before filing.
12-31-87	Wilfred McFee	Administrative Order	WW	Murphy	Negotiating before filing.

E:NPM/CI-I251302.FBM

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
CONTESTED CASES
APRIL, 1988

DATE RECEIVED	NAME OF CASE	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
1-15-88	First Iowa State Bank	Administrative Order	SW	Kennedy	Hearing set for 4-14-88.
1-22-88	IBP, Fort Dodge	NPDES Permit	WW	Hansen	Negotiating before filing.
2-04-88	Beaverdale Heights, Woodsman; Westwood Hills	Administrative Order	SW	Landa	Plans approved. Continued pending resolution.
2-05-88	Warren County Brenton Bank	Administrative Order	UT	Landa	Negotiating before filing. Plans submitted.
2-10-88	Lehigh Clay Products	Administrative Order	NC	Landa	Appealed; revised plans approved.
2-22-88	Amana	Tax Certification Denial	AQ/WW	Landa	Appealed. Request for additional information.
2-25-88	South Central Iowa Landfill Agency	Administrative Order	SW	Landa	Appealed.
2-29-88	Lynn Mennenga Feedlot	Administrative Order	WW	Murphy	New case.
3-01-88	Cloyd Foland	Administrative Order	FP	Clark	Awaiting Petition filing.
3-03-88	Motel Grinnel	Administrative Order	WW	Hansen	Hearing set for 5-05-88.
3-08-88	Benton County Care Facility	Administrative Order	WS	Murphy	New Case.
3-27-88	Otter Creek Station	Administrative ORder	WS	Murphy	New case.

E:NPM/CI-I251302.FRM

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 9 INFORMATIONAL

This pertains to the FY89 Construction Grants Priority System and FY89-90 Priority List.

The Department of Natural Resources, Environmental Protection Division, is responsible for the establishment of the Priority System and State Project Priority List according to federal regulations.

The Priority System is required by federal regulation to be reviewed annually for needed changes, either as a reflection of changes in federal law which are mandatory changes, or beneficial departmental changes needed to more efficiently carry out the goals and requirements of the Federal Water Pollution Control Act. At this time, the Department is not aware of any mandated changes; and likewise, staff has not identified any needs to alter the Priority System for FY89. Thus, we are recommending that there be no changes made to the existing Priority System for FY89.

The State Project Priority List is made up of two lists, one a fundable list which is used to identify those projects which qualify to receive the grant funds allotted to Iowa in any one year, and second a planning list which consists of the remaining projects which may utilize future grant funds. All State Project Priority List facilities are rescored every two years using the Point Source Rating Criteria contained in the Priority System. All facilities have now been rescored for FY89-90, and the resulting draft funding list has been proposed for FY89. The draft list shows the segmented projects of Des Moines and Ames as well as the smaller unsewered or small community-alternative technology projects which qualify for funding under the Mandated Grant Fund Reserves. Because of the recent April 1, 1988 closing date for submitting project facility plans needed to be eligible for FY89 funds, there may be some shuffling of these smaller Reserve projects if a late arrival(s) rank higher than ones on this draft list.

The following schedule is proposed for adoption of a FY88 State Priority List (in reverse order):

October 1, 1988 -	FY88 Priority List in effect
August 31, 1988 -	FY88 Priority List submitted to EPA
August 16, 1988 -	FY88 Priority List adopted by Commission
July 29, 1988 -	Agenda Item Due--Responsiveness summary and recommendation to Commission
July 11, 1988 -	Public comment period closes
June 29, 1988 -	Public hearing
May 31, 1988 -	Public notice published
May 17, 1988 -	Proposed Priority List to Commission; Authorization to go to hearing in June
May 2, 1988 -	Agenda item due--Proposed list and hearing recommendation
April 29, 1988 -	Preliminary List to EPA

April 25, 1988 - Draft List to Commission for information
April 1, 1988 - Cutoff for project submittals; cursory review for Draft List. Compile tentative list and format for draft list.

Lavoy Haage
4-8-88

(I13.MIN)

PROPOSED

STATE OF IOWA

IOWA DEPARTMENT OF NATURAL RESOURCES

FISCAL YEAR 1989

CONSTRUCTION GRANTS STATE PROJECT PRIORITY LIST

FOR COMMENT AT PUBLIC HEARING

CONSTRUCTION GRANTS FUNDING SUMMARY

The attached funding summary is condensed from the proposed Fiscal Year 1989 State Project Priority List. It includes, in priority order, projects anticipated to be funded with available federal allotments and projected allotments through Fiscal Year 1989. Projects from the Fiscal Year 1988 Fundable List which have not been awarded a grant are shown in the first column. Projects in the second column comprise the proposed Fiscal Year 1989 Fundable List, providing a federal appropriation is made. The Fiscal Year 1989 Fundable List is based on an assumed allotment of $15,542,500 for Fiscal Year 1989.

It is emphasized that the list as shown is dependent upon appropriation of the full Fiscal Year 1989 federal authorization and the allotment of $15,542,500 for Iowa.

FY 1989 CONSTRUCTION GRANTS STATE PROJECT PRIORITY LIST

CONSTRUCTION GRANTS FUNDING SUMMARY

		ESTIMATED EPA GRANT ASSISTANCE ***	
STEP	PROJECT	FY 1988	FY 1989
3	Des Moines ICA (segmented)	16,291,970	9,325,500
3	Iowa City		4,599,980
4	Algona	1,088,390	
4	Chelsea */**		528,710
4	Randall *	378,340	
4	Waucoma *	371,030	
4	Parnell *	320,700	
4	St. Olaf */**	176,490	
4	Harvey */**		336,870
4	Lineville *	782,150	
4	Dakota City **	222,420	
4	Glidden **	387,800	
4	Ricketts **	124,080	
4	Cumming */**		145,750
4	St. Marys */**		295,680
4	Panama */**	242,880	
	FISCAL YEAR FUNDING ESTIMATES	$20,376,250	$15,232,490

FUNDING FOR PROJECTS IN THE AMOUNTS SHOWN IS BASED ON A FY 1989 ALLOTMENT OF $15,542,500 TO IOWA. VARIATION OF ACTUAL ALLOTMENTS FROM THIS ASSUMPTION MAY REQUIRE A REVISION OF THE LIST.

PROJECT STEP KEY

3 Construction

4 Combination grant for design and construction. Available only when the grant amount is less than $3 million, the project has not been segmented, and the population is under 25,000.

* Unsewered community

** Small community-alternative technology

*** Grant amount shown is the basic 55% (or 75%) grant. A project may also qualify for innovative/alternative bonus funding.

FY 1989 SUMMARY OF FUNDS

I. Estimated EPA Assitance Required

A. Estimated assistance for projects			$35,608,740
B. Designated reserve for grant increases			3,680,151
C. Reserve for grant increases for alternative technology			
	FY 1988	$1,080,237	
	FY 1989	$ 543,988	1,624,225
D. Reserve for grant increases for innovative technology			
	FY 1987	$ 89,643	
	FY 1988	$ 155,425	
	FY 1989	$ 77,713	322,781
E. Reserve for state management assistance	FY 1987	$1,314,048	
	FY 1988	$1,314,048	
	FY 1989	$ 657,024	3,285,120
F. Reserve for water quality management planning 205j(1)			
	FY 1987	$ 298,869	
	FY 1988	$ 310,850	
	FY 1989	$ 155,425	765,144
G. Reserve for nonpoint management planning 205j(5)			
	FY 1987	$ 156,690	
	FY 1988	$ 310,850	
	FY 1989	$ 155,425	622,965
H. Reserve for advances of allowances (no need projected for FY 1989)			
Total grant needs			$45,909,126

II. Nonadditive Set-Aside Reserve Funds

A. Reserve for alternative systems for small communities		
	FY 1988	$1,243,400
	FY 1989	$ 621,700
		$1,865,100
B. Quota for unsewered communities	FY 1988	$1,554,250
	FY 1989	$ 777,125
		$2,331,375

III. Available Funds

A. FY 1973-86 Carryover	(4/01/88)	$ 283,119
B. FY 1987 Allotment Balance	(4/01/88)	1,869,602
C. FY 1988 Allotment Balance	(4/01/88)	28,213,905
D. Anticipated FY 1989 Allotment		15,542,500
		$45,909,126

PROPOSED

STATE OF IOWA

IOWA DEPARTMENT OF NATURAL RESOURCES

FISCAL YEAR 1989

CONSTRUCTION GRANTS STATE PROJECT PRIORITY LIST

FOR COMMENT AT PUBLIC HEARING

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ENVIRONMENTAL PROTECTION COMMISSION

ITEM 10 INFORMATION

DES MOINES AREA CARBON MONOXIDE STUDY

Phase II of a study to demonstrate attainment of the carbon monoxide standard in the Des Moines Central Business District (CBD) is complete. This cooperative study involving the Des Moines Area Transportation Planning Committee, Polk County, the Department of Transportation, and the Department of Natural Resources shows [illegible] can be redesignated as in attainment with the carbon monoxide standard. The report contains air monitoring data and air quality modeling that supports this conclusion.

Phase I of the study defined the extent of the carbon monoxide problem in Des Moines and demonstrated that all of Lee Township and portions of Des Moines Township in the City of Des Moines had attained air quality that met the primary standard for carbon monoxide. The Phase I study was submitted to EPA on May 13, 1987. EPA suspended action on the redesignation request pending receipt of the Phase II study.

The documentation contained in the Phase I and Phase II studies demonstrate that the entire City of Des Moines should be redesignated as attainment with the carbon monoxide standard. A redesignation request will be submitted to EPA.

POLK COUNTY PHYSICAL PLANNING DEPARTMENT

[redacted]

Administration
[redacted]
Air Pollution Control
[redacted]
Animal Control
[redacted]
Building Inspection
[redacted]
Planning - Zoning
[redacted]
Real Estate
[redacted]
Environmental
Services
[redacted]

April 7, 1988

Rex Walker, Supervisor
Air Quality Section
Iowa Department of Natural Resources
900 East Grand Avenue
Des Moines, Iowa 50319

Dear Mr. Walker:

The Phase II Polk County Carbon Monoxide Demonstration has been transmitted to you separately.

Volume III is the summary document for the air quality study of the central business district. Volume IV provides the supporting material for the conclusions drawn in the summary document.

The Phase II demonstration for the central business district was approved on April 7, 1988 by the Des Moines Area Transportation Planning Committee. The Phase I report, together with the Phase II report provide sufficient justification for redesignation of the entire Des Moines area to attainment for carbon monoxide.

It is our understanding that the formal redesignation request will be presented to the Environmental Protection Commission at their April meeting in Ames.

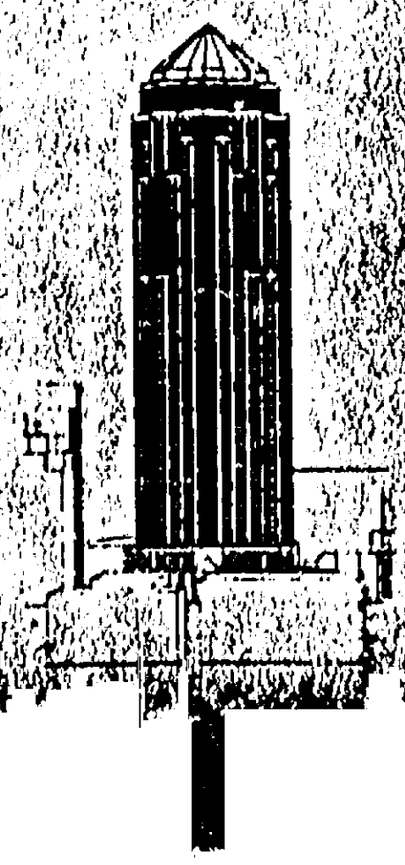
We appreciate your assistance with the carbon monoxide study.

Sincerely,

Gary L. Pryor, Director

CC: Rudy Wagner
DMATPC

GLP:JT:jka



POLK COUNTY

CARBON MONOXIDE DEMONSTRATION

DES MOINES CARBON MONOXIDE DEMONSTRATION
PHASE II

Volume III - Summary Document	Page
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3. Air Quality Monitoring	2
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POLK COUNTY

CARBON MONOXIDE

DEMONSTRATION

Volume III

Prepared by

Polk County Physical Planning Department

Air Pollution Control Division

in cooperation with

Des Moines Area Transportation Planning Committee

Iowa Department of Natural

Resources and

Iowa Department of Transportation

March 7, 1988

Volume III - Summary Document

1. Purpose - This report has been prepared by the Air Pollution Control Division of the Polk County Physical Planning Department. The report documents the improvement in air quality in the central business district of Des Moines. The report provides justification for seeking a redesignation of the entire area to attainment for carbon monoxide.

2. Background - Polk County operates a local air pollution control program under a certificate of acceptance issued by the Iowa Environmental Protection Commission. The certificate allows the Polk County Physical Planning Department to act as an agent of the State to monitor air pollutants, and to enforce federal, state and local air quality regulations. The local air pollution control program has been in existence since the late 1960's.

The State of Iowa, through the Iowa Department of Natural Resources, is required by the Federal Clean Air Act to develop air pollution control plans which will assure that air quality standards are met in all areas of the State. The control plans are collectively known as the Iowa State Implementation Plan or the SIP. The first control strategy for carbon monoxide in the Des Moines area was developed by CIRALG in 1978 and 1979. This plan was accepted by the State and submitted to EPA for approval in 1979.

On March 6, 1980, EPA published approval of that initial SIP control strategy. The 1979 SIP indicated that the air quality standard of 9.0 parts per million eight hour average carbon monoxide standard would be met by December 31, 1982, the Clean Air Act deadline.

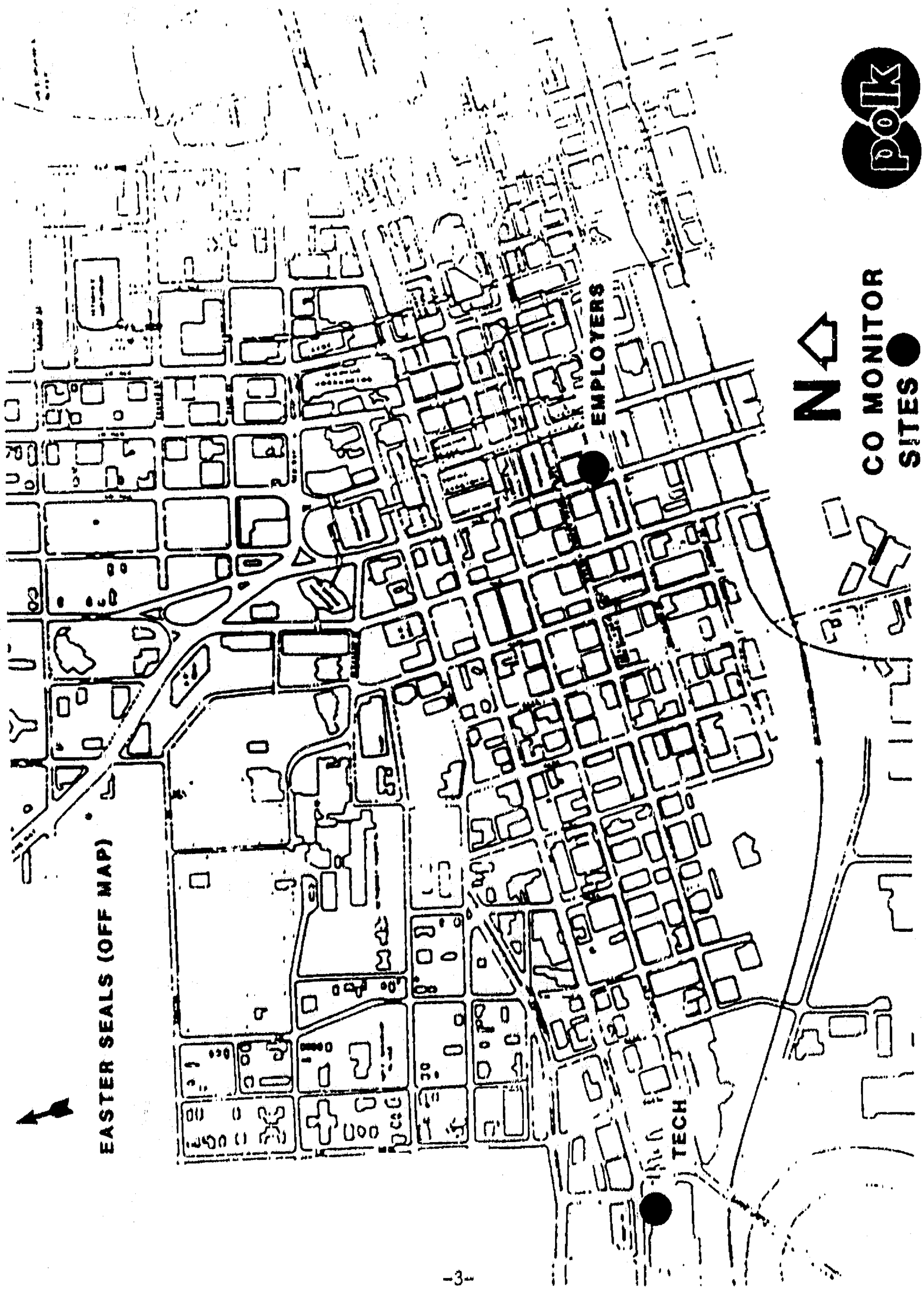
Violations of the eight hour standard for carbon monoxide were recorded at the YWCA through 1984, when the monitor was moved to the Employer's Mutual Building. There have been no monitored violations of the eight hour standard since the monitor was installed at the new site at 8th and Mulberry.

In response to potential Clean Air Act sanctions, the State and Local governments developed a cooperative agreement in 1984. This agreement defined the respective roles of the Iowa Department of Natural Resources, the Iowa Department of Transportation, the Des Moines Area Transportation Planning Committee and the Polk County Physical Planning Department. The result of this cooperative effort was a Phase I Carbon Monoxide Demonstration report. This Phase I report demonstrated that the areas outside of the CBD were attaining the ambient air quality standard for carbon monoxide. The State of Iowa accepted this report and submitted a formal redesignation request to EPA on May 13, 1987.

The project was initially divided into two phases because of differences in the demonstrations required for each area. In the Phase I study, remote intersections were modeled and were considered as a single entity with a background carbon monoxide value that is widely applicable. In the Phase II study, it was anticipated that adjacent intersections would have a cumulative impact on projected air quality concentrations. The Phase I study also provided a forum to establish acceptable modeling methodology. EPA has reviewed the Phase I modeling and is in agreement with the approach to modeling that was used (See June 3, 1986, letter from Carl Walter to Darrell McAllister in Phase I report Appendix).

3. <u>Air Quality Monitoring</u> - The County currently operates three continuous monitoring stations to record carbon monoxide concentrations in the Des Moines area. The three sites (Figure 1) each have a different classification depending on the monitoring purpose and the scale of representativeness. The monitor located at the Easter Seal Center, 2920 30th Street is intended to monitor residential exposure to carbon monoxide. Since the location is typical of Des Moines neighborhoods in terms of housing density and traffic, the monitoring results can be used to represent background concentrations in other residential areas of the City.

Figure 1



The monitor at the old Tech High School site at 18th and Grand Avenue is a middle scale monitor. The monitored results at this site can be considered representative of air quality surrounding other traffic corridors in Des Moines with similar traffic counts. Because of the scale of representativeness for this monitor, air quality data from this site was used to establish background carbon monoxide values for the CBD modeling study.

The Employers Mutual Site on 8th Street just north of Mulberry is a microscale site. As the name implies, the scale of representativeness is very small. The probe inlet is lower and closer to the street than the probe at the Tech High site. The probe location makes this site very sensitive to local traffic conditions.

Historically, there have been three other monitor locations within the CBD (Figure 2). Two of the sites were located at the intersection of 6th and Locust, first in the old Bankers Trust Building and then later in the Des Moines Building. Both sites were discontinued by 1978, in addition the probe inlets were closer to the street and intersection than more recent EPA guidance would suggest is reasonable. Therefore, it is difficult to compare this data with data collected more recently.

The monitor located at the YWCA site at 8th and Grand Avenue was a microscale monitor. The traffic counts at this intersection are typical of the core area within the CBD. The data from this site has been used to determine the amount of reductions needed to achieve CO attainment in the central business district.

The data collected from these continuous carbon monoxide monitoring sites is summarized in Table 1. The monitor at Tech High has not had a violation since 1982. The monitor at Employers Mutual has never recorded a violation, nor has the monitor at the Easter Seal Center. The monitor at

Figure 2

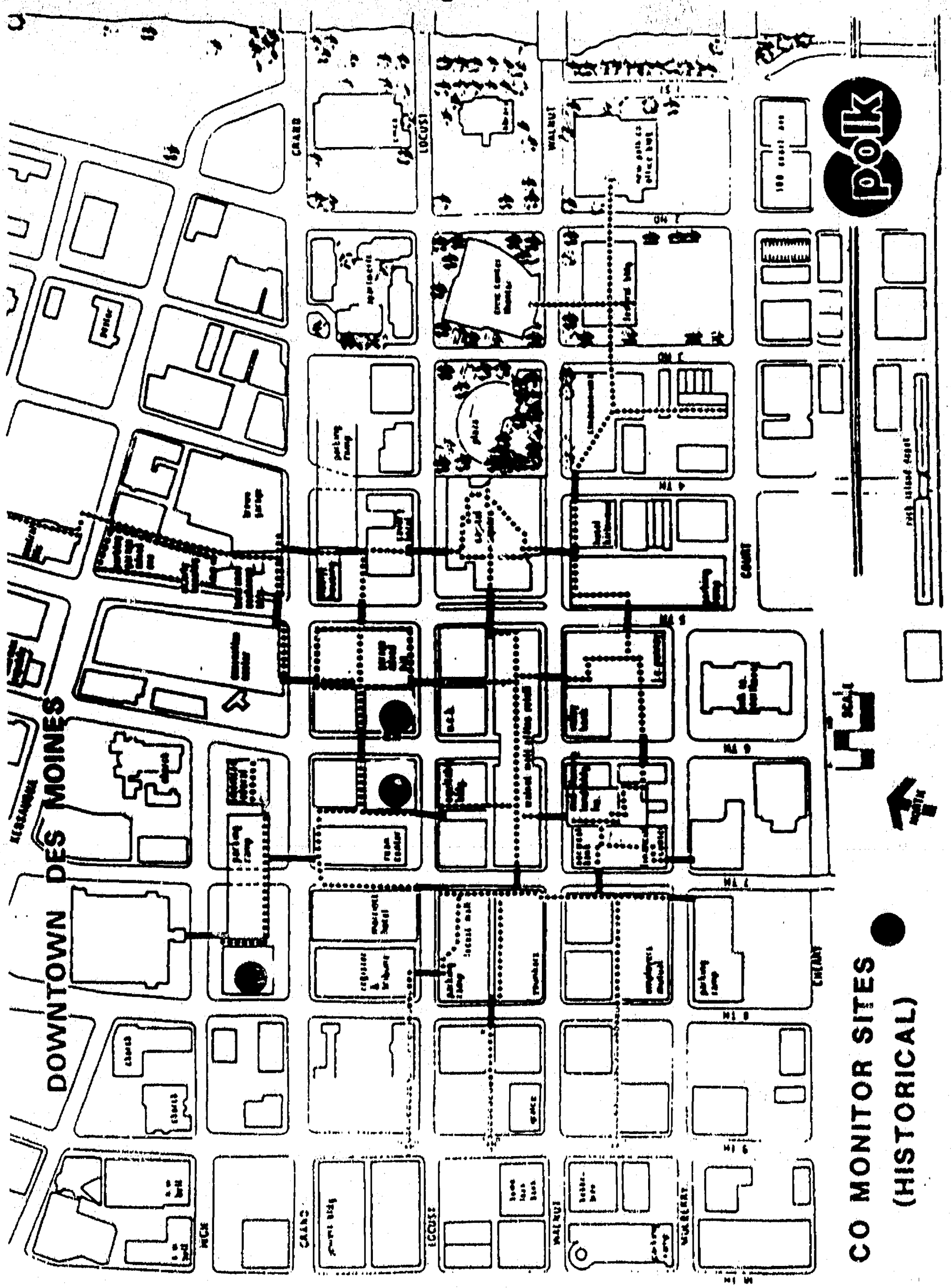

DOWNTOWN DES MOINES
CO MONITOR SITES
(HISTORICAL)
polk
GRAND
LOCUST
WALNUT
COURT
CHERRY
SCALE
NORTH

Table 1

DES MOINES CARBON MONOXIDE
MONITORING SUMMARY

CARBON MONOXIDE - 1 HOUR CONTINUOUS SAMPLES
(Parts Per Million)

Site Location	Year	# of Samples	Maximum 1-Hour	Second Maximum 1-Hour	Number of Samples Exceeding 1-Hour Standard	Maximum 8-Hour	Second Maximum 8-Hour	Number of Samples Exceeding 8-Hour Standard	Arith. Mean
Discon-tinued Sites									
Des Moines Bldg. 6th and Locust	1976	7,727	26.5	21.5	0	17.3	11.9	9	2.5
	1977	8,447	18.5	17.5	0	10.6	10.3	5	2.2
	1978*	3,029	18.0	17.5	0	10.6	10.0	5	2.3
YWCA Bldg. 8th and Grand	1976*	743	22.5	22.0	0	10.9	10.5	5	3.0
	1977	8,527	26.0	23.5	0	10.9	10.8	13	2.7
	1978	7,916	22.0	21.0	0	12.2	12.1	26	3.7
	1979	8,491	23.1	22.1	0	14.8	12.1	73	4.8
	1980	8,050	20.5	19.0	0	12.3	11.9	41	4.3
	1981	8,600	15.6	15.1	0	9.9	9.8	5	3.0
	1982	8,310	17.7	16.6	0	10.0	8.9	1	3.1
	1983	8,189	13.4	13.4	0	10.9	10.5	7	3.2
	1984*	5,753	13.6	13.6	0	10.6	10.0	3	---
Current Sites									
Tech High School 19th and Grand	1979*	2,632	15.5	13.1	0	9.4	7.2	1	1.9
	1980	7,410	16.0	12.5	0	10.2	7.4	1	1.3
	1981	8,037	21.6	15.1	0	10.9	10.2	2	1.2
	1982	7,522	13.1	11.9	0	10.[illegible]	5.6	1	1.3
	1983	8,476	8.3	8.3	0	7.[illegible]	5.3	0	1.1
	1984	7,977	8.7	7.4	0	4.3	4.2	0	.7
	1985	6,739	10.6	6.4	0	4.7	4.7	0	.8
	1986	7,799	10.5	9.9	0	8.6	8.5	0	1.0
	1987								
Employers Mutual Bldg. 8th and Mulberry	1985	7,118	11.4	10.9	0	7.1	7.1	0	2.3
	1986	8,129	17.2	13.1	0	6.3	6.1	0	1.2
	1987								
Easter Seal Center	1985	5,765	4.8	4.6	0	2.6	2.4	0	.3
	1986*	3,203	10.6	7.7	0	5.4	3.9	0	.4
	1987								

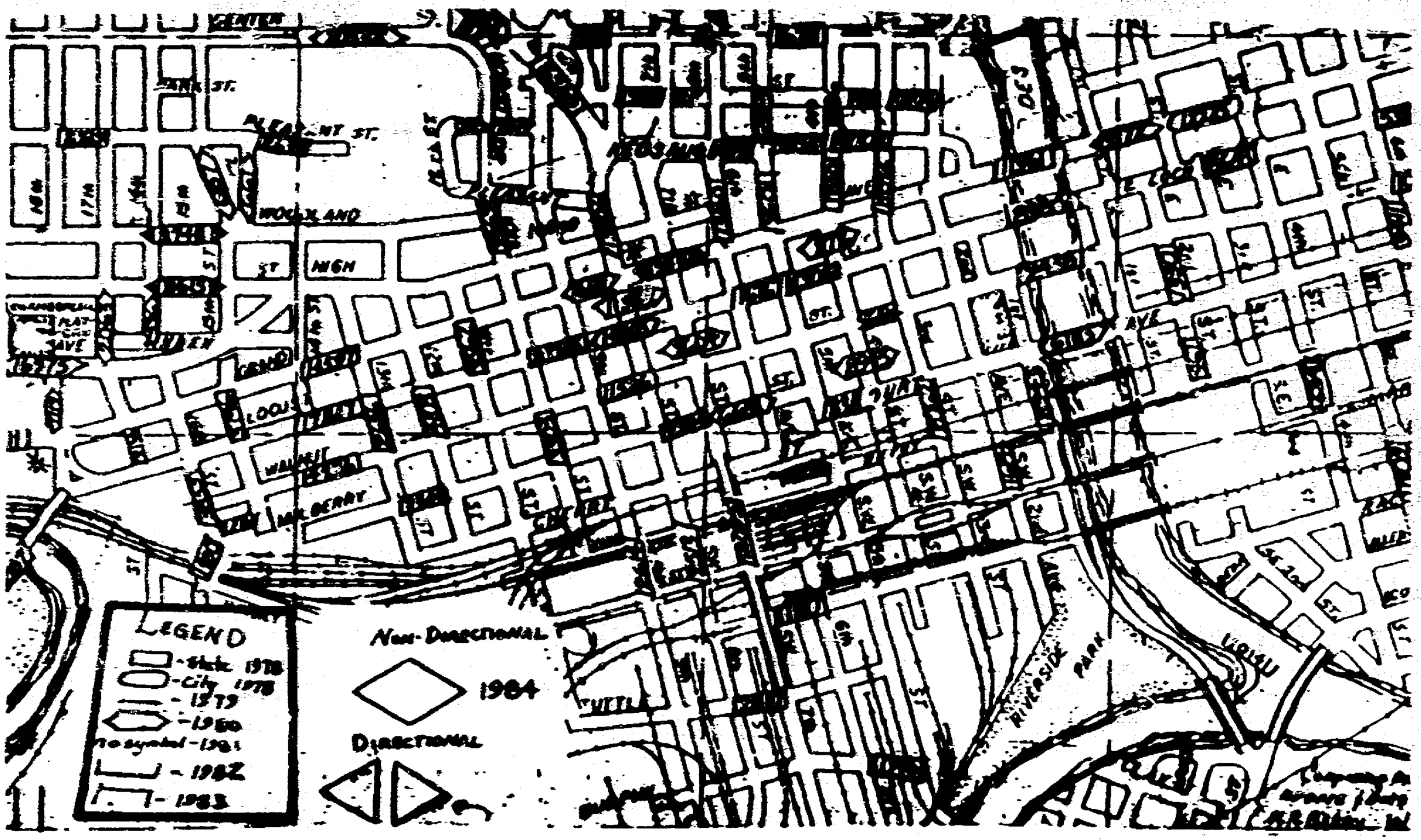
Employers Mutual has recorded over three years of attainment data. EPA redesignation policy requires at least two years of attainment data and approved dispersion modeling to demonstrate attainment.

4. Air Quality Modeling - The following sections describe the approach to modeling air quality in the downtown area. The modeling predicts that the ambient air quality standard for carbon monoxide has been met. The basis for this conclusion is explained as well.

   a. Intersection Selection--Traffic data for the Des Moines central business district was evaluated for those streets which had the highest daily and hourly traffic counts, as well as the highest potential for congestion and traffic delay. The counts on Locust and Grand Avenue between 5th Street and 9th Street are the highest in the downtown area. Figure 3 shows the relative traffic densities in the downtown area. Some of this information had been collected to support the selection of a new monitoring site for the downtown area during 1984.

   Average daily traffic counts through the intersection at 18th and Grand Avenue/Fleur Drive intersection are higher, but this area is nine blocks from the area of densest traffic for the downtown area. Modeling from the Phase I study would indicate that traffic flow through this intersection would not have a significant impact on modeled concentrations in the downtown areas. Additionally, Polk County Physical Planning Department operates a middle scale carbon monoxide monitor at this location. The data from the air quality monitor is an adequate characterization of carbon monoxide levels in the vicinity of this intersection.

   b. Traffic Data--Traffic data was supplied by the City of Des Moines. Actual traffic counts were submitted for 1984 and 1986-1987. This



1984 - DIRECTION OF TRAVEL

HOUSE NUMBERING DIVISION BOUNDARY

OFFICE OF THE CITY ENGINEER

DES MOINES IOWA

CITY DATUM

TRAFFIC COUNT MAP USED TO IDENTIFY C.B.D.
HIGH TRAFFIC INTERSECTIONS

Figure 3

data was adjusted to account for truck traffic effects on the counters and for seasonal variations to arrive at annual average daily traffic counts. The 1987 data was collected after the Walnut Transit Mall had been completed. Growth factors of 1.66% per year, which is consistent with the year 2000 long range transportation plan, were used to develop traffic count projections for 1988 through 1990. The traffic count information used in the air quality modeling is shown on Figures 4 through 9. In addition to the count information, data on street widths, turning movements, traffic signal cycles and hourly variation in traffic flow were provided by the City of Des Moines. The peak eight hours of traffic for the entire downtown area occurs between 10:00 a.m. and 6:00 p.m. While these might not be the peak eight hours for an individual link, they are the busiest eight hours for the system of streets described in the air quality dispersion modeling. The detailed information submitted by the City was used as input into the CALINT intersection emission factor program. CALINT is based upon U.S. EPA's Volume 9 "Guidelines for Air Quality Maintenance Planning and Analysis" and provides estimates of excess emissions, queue lengths, and average delay time per vehicle.

The approach used in the modeling analysis was to take 6% of the annual average daily traffic counts as being representative of the average hourly volume during the peak eight hours of traffic in the area. The EPA Region 1 modeling guidance suggests the use of an hourly average that represents conditions which will prevail for the highest continuous eight hour period. In this way, the average hourly analysis can be used to represent the eight worst case hours.

c. <u>Meteorological Conditions</u> --During the Phase I carbon monoxide study for Des Moines, it was demonstrated that winter time conditions provide the worst case scenario for both emission strength

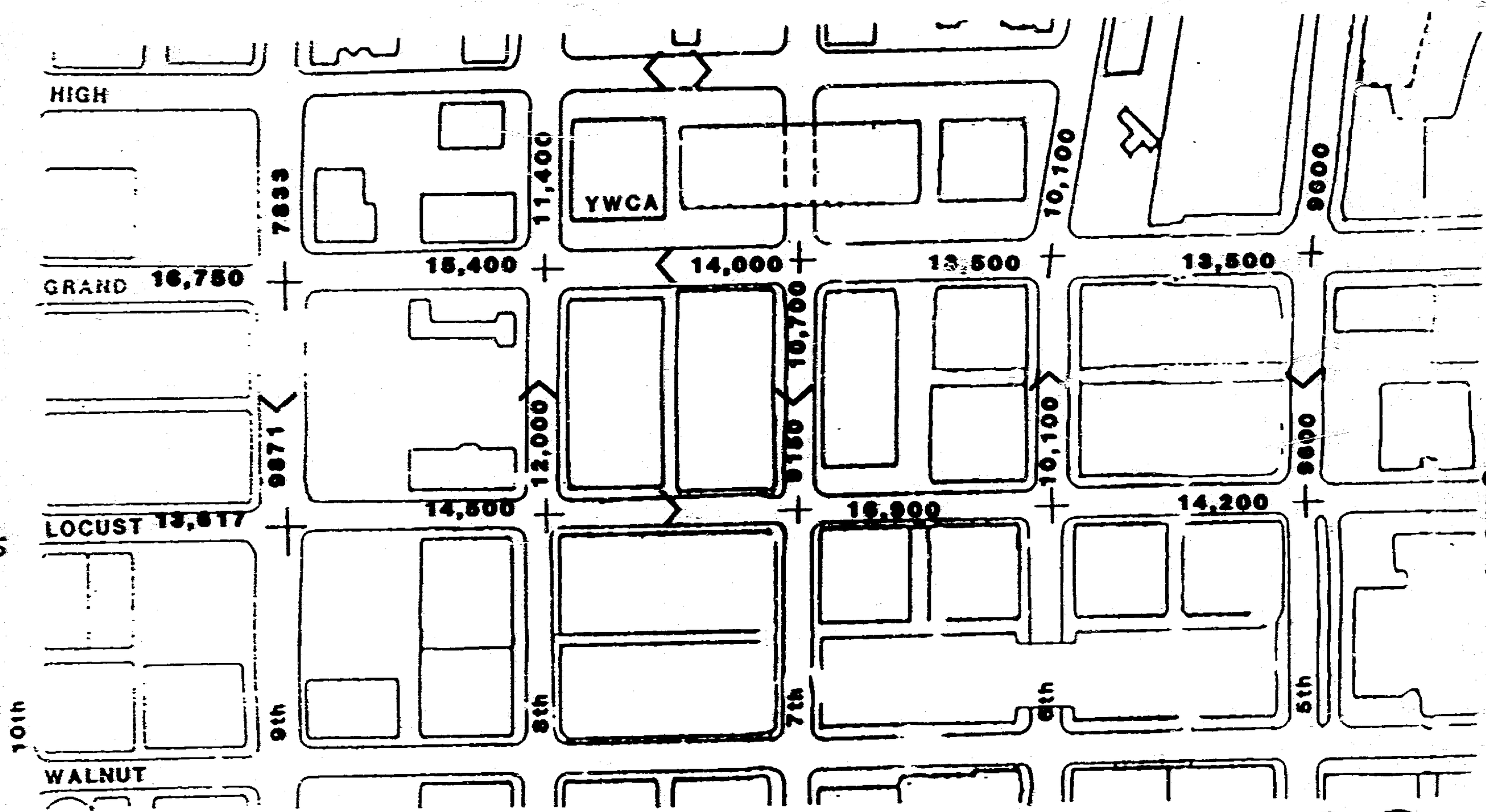


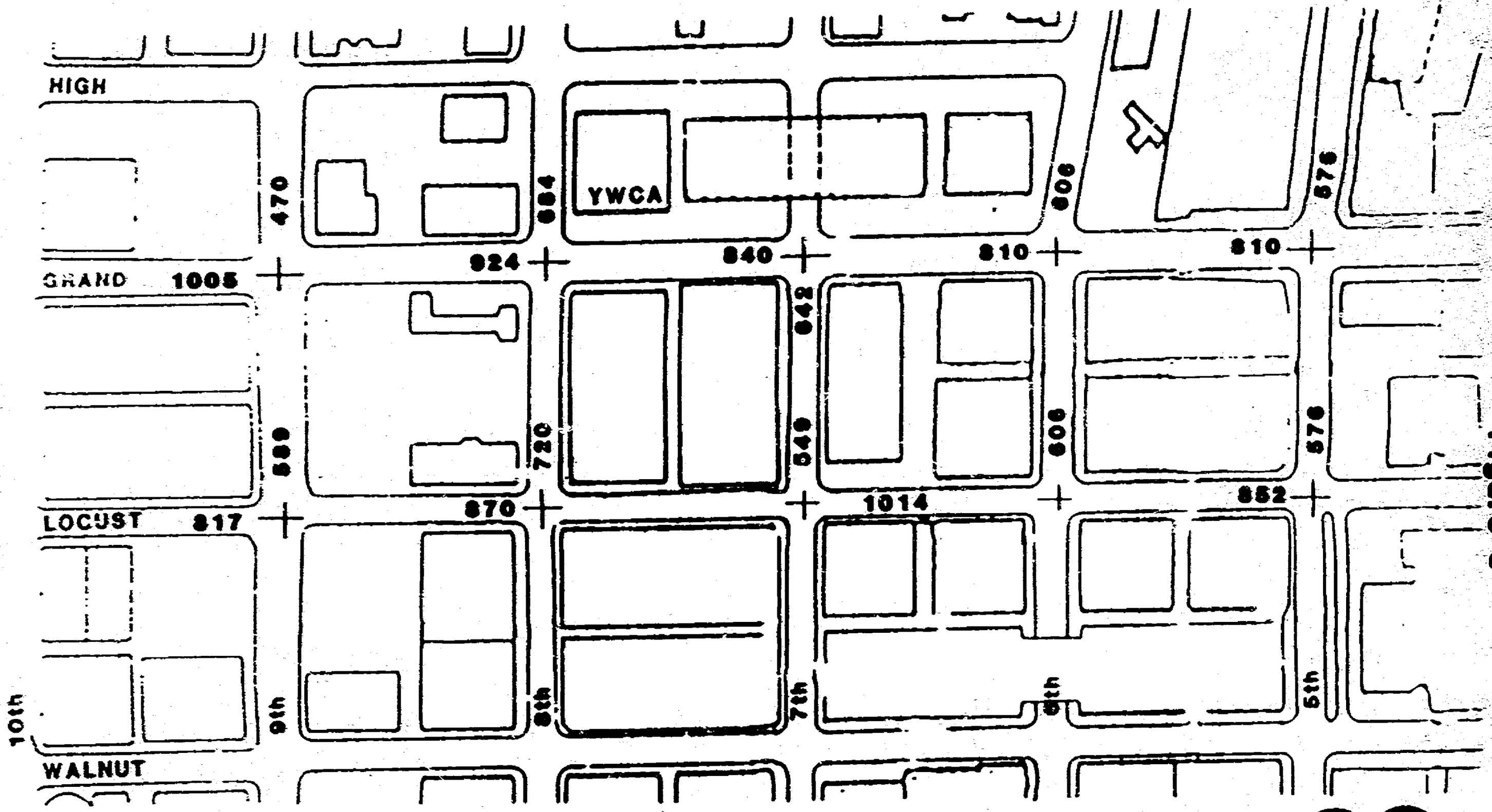
Figure 4

polk

N

1984
ANNUAL AVERAGE DAILY TRAFFIC (AADT)

COUNT 0000
FLOW DIRECTION >



1984
HOURLY TRAFFIC COUNTS (6% OF AADT)

COUNT 0000

Figure 5

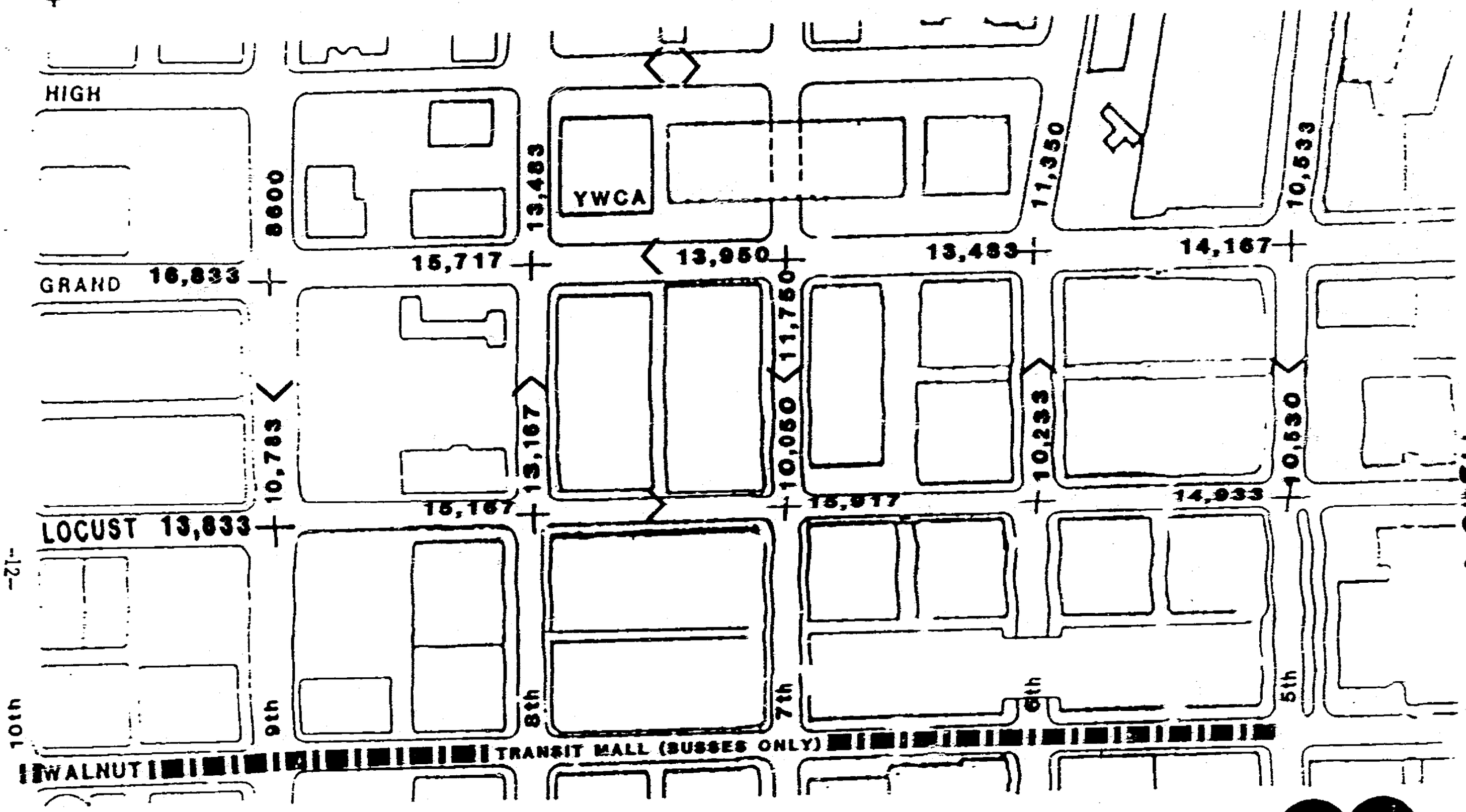


Figure 6

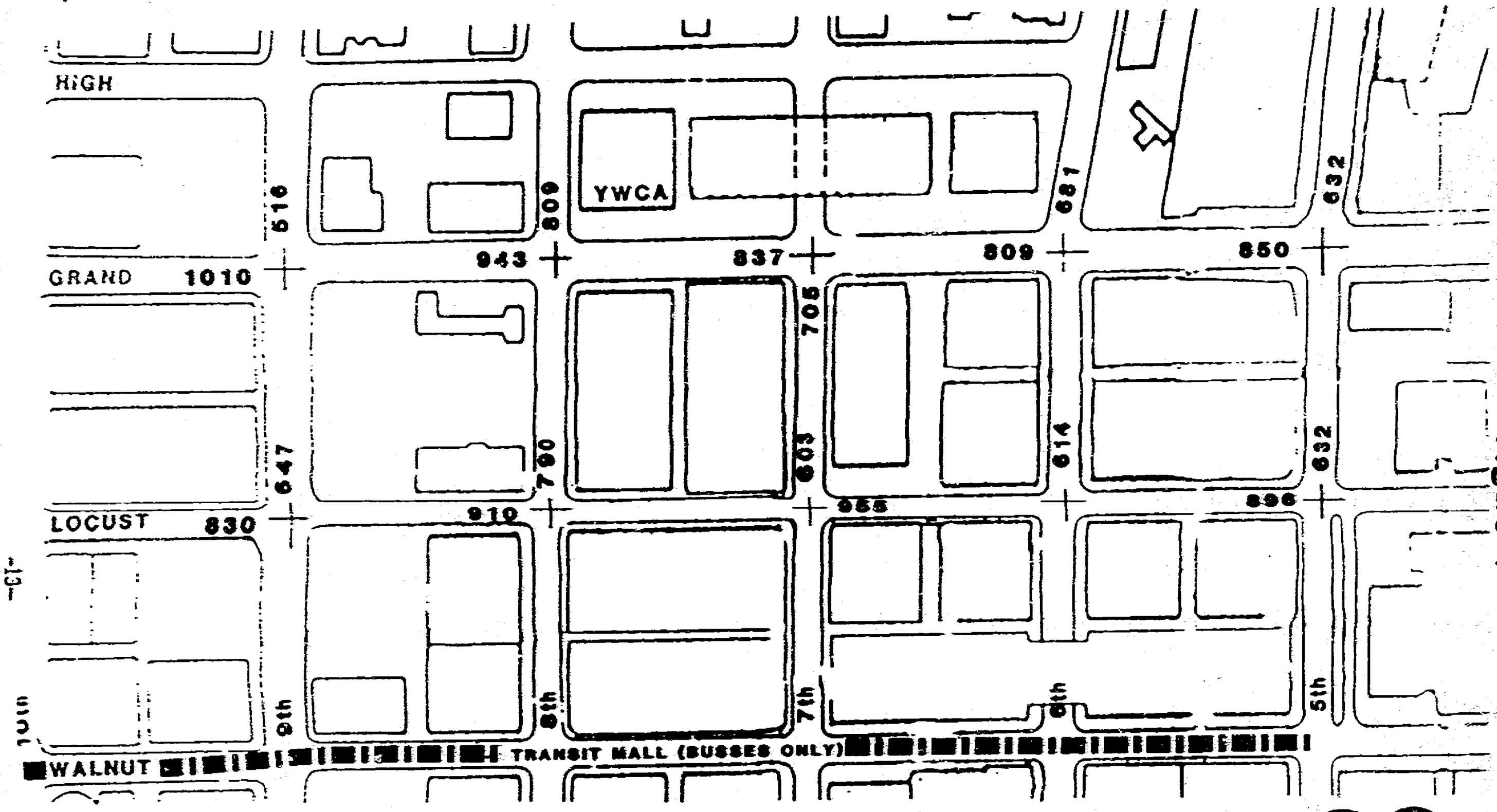
1987

ANNUAL AVERAGE DAILY TRAFFIC(AADT)

COUNT 0000

FLOW DIRECTION >

N



1987

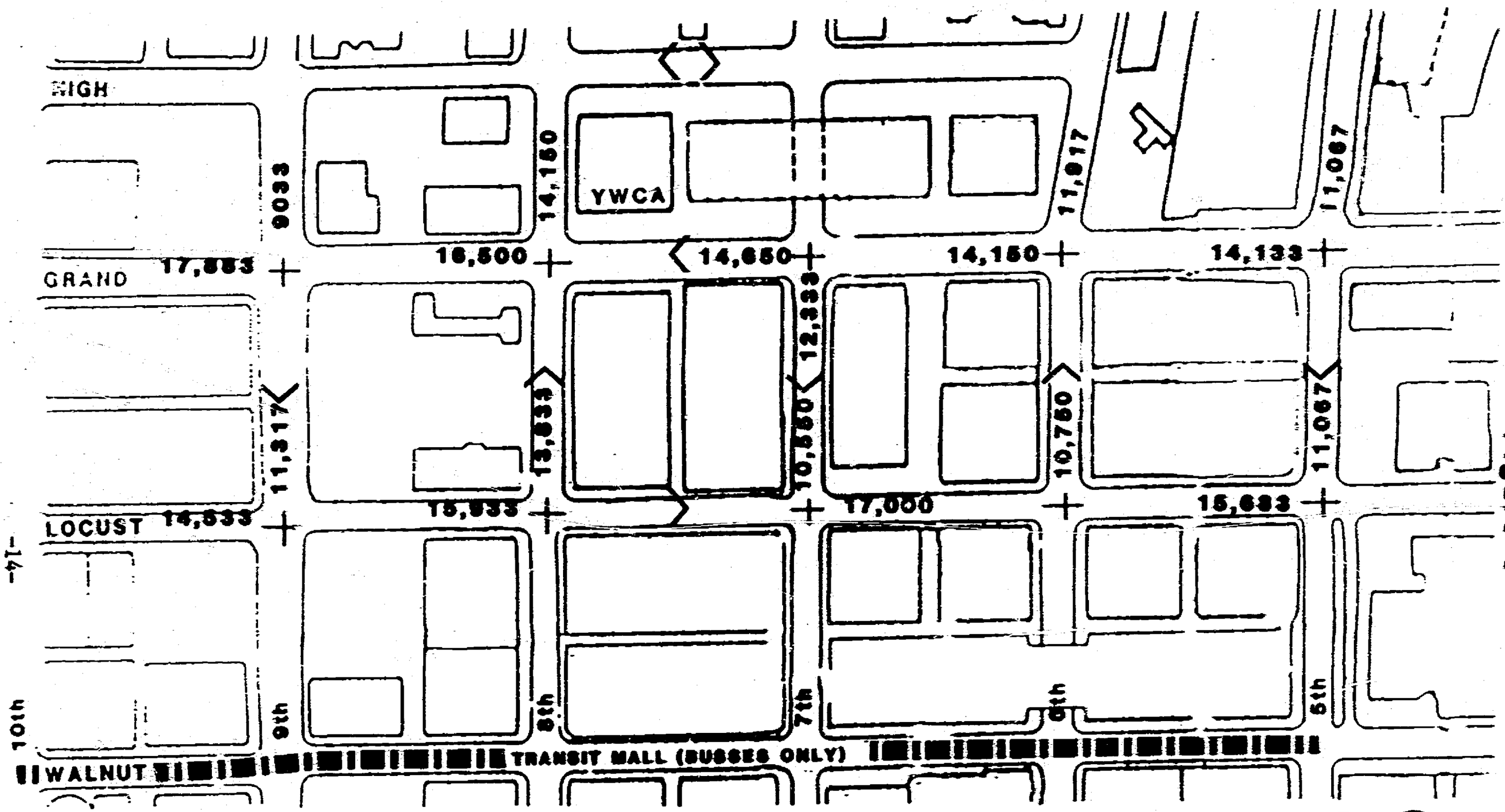
HOURLY TRAFFIC COUNTS (6% OF AADT)

COUNT 0000

N

polk

Figure 7



PROJECTED 1990
AADT (BASED ON 1.66% ANNUAL GROWTH)

COUNT 0000

FLOW DIRECTION ⟩

N

polk

Figure 8

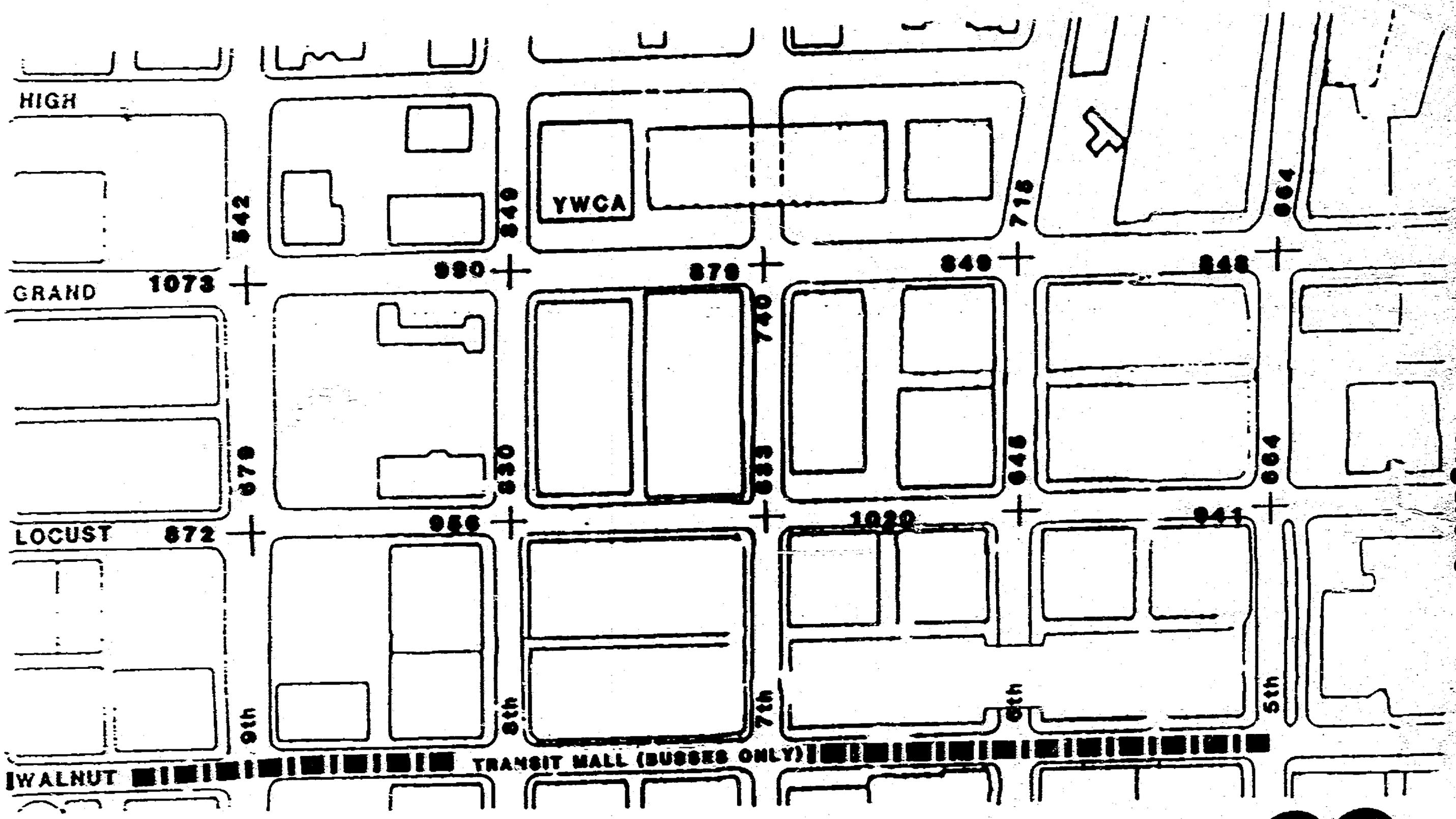


Figure 9

PROJECTED 1990
HOURLY TRAFFIC COUNTS
(6% AADT AT 1.66% ANNUAL GROWTH)

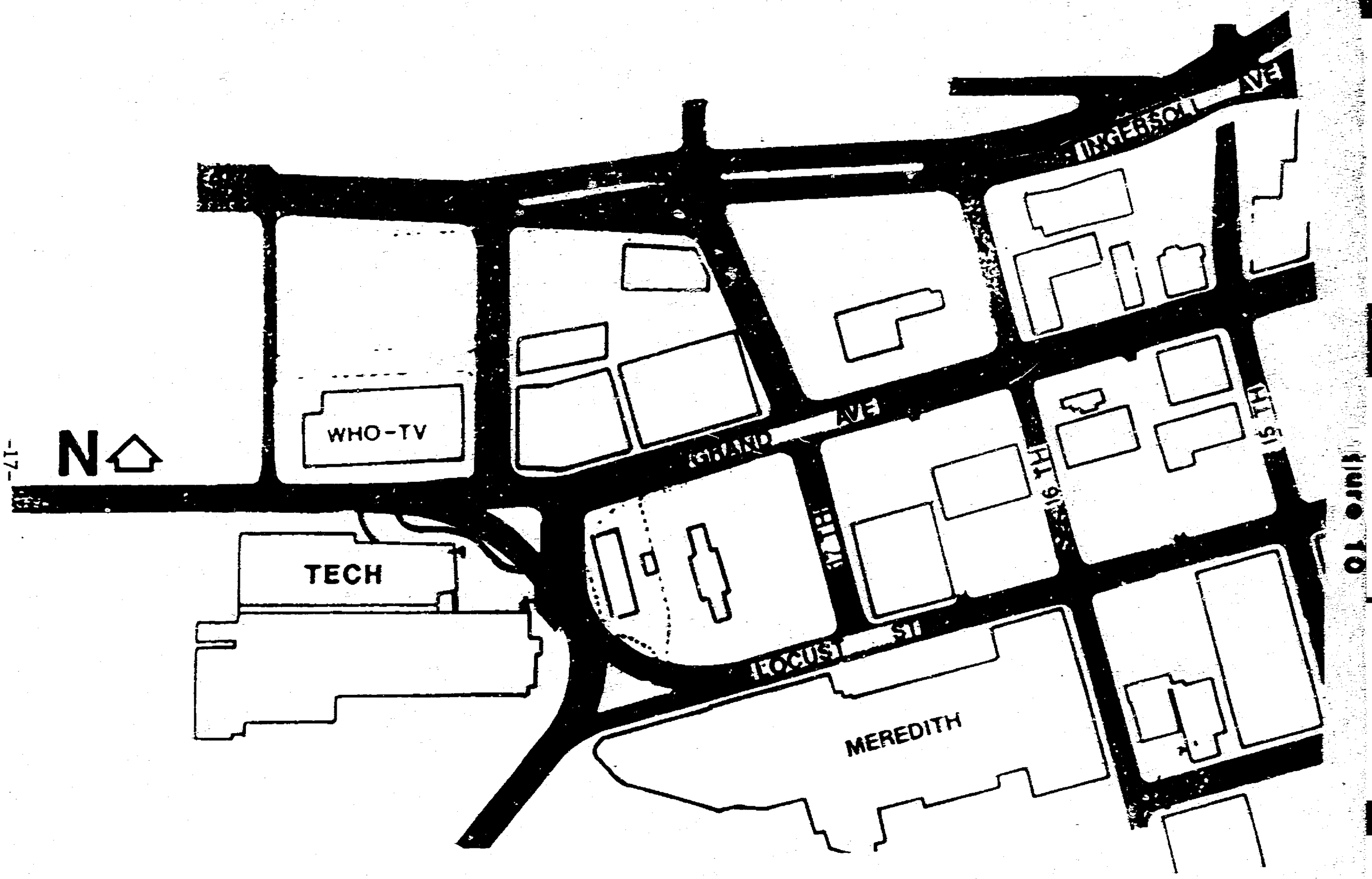
COUNToooo

N

polk

and dispersion characteristics. Specifically, Mobile-3 emission factors for 20°F were used for a number of low operating speeds. The minimum amount of sunlight occurs during the winter solstice, December 22, when the sunrise is at 7:38 a.m. and the sun sets at 4:48 p.m. The EPA guidance indicates that the stability class 5 is appropriate to use in urban settings after sunset and for one hour prior to sunset. To account for the changes in stability class, the CALINE-3 dispersion analyses were replicated for stability class 4 and 5. The results were then averaged for six hours of stability class 4 and two hours of stability class 5. The wind direction conventions will be explained in the modeling approach section.

d. Background Carbon Monoxide Concentrations--Initially, a background value of 4.2 parts per million (ppm) was selected for use in the dispersion modeling. This value is the second highest value at the Tech High School site for 1984. This site is a middle scale monitor and is located just outside of the central business district. The 1986 second high values for Tech High were not used due to undue influence of school bus parking and idle emissions impacting the monitor in fall of that year. Some of the change in CO values at Tech High school occurred after a change in the use of this facility. Prior to the fall of 1986, the area adjacent to the probe inlet was used only as a parking lot for school administration officials. In 1986, the parking lot was changed to accommodate the loading and unloading of buses for students using the new Central Campus program. Figure 10 shows the probe inlet on the northeast corner of the Tech High School Building and the adjacent parking lot. On February 25, 1987, Polk County and City officials investigated emissions from the school buses using this facility. The report of this investigation and the comparison of the effect on 8-hour values is included in the Appendix.



TECH HIGH SCHOOL MONITORING SITE

Another unusual monitoring event occurred December 14th and 15th, 1986, at the Tech High site. High CO values began at 5:00 p.m. on the 14th which continued through the hour of 8:00 p.m. on December 15, 1986. A similar event occurred on January 12, 1987, with elevated values starting at 7:00 p.m. and ending at midnight. A review of the National Weather Service meteorological records for December, 1986, indicates that the winds were calm to 10 miles per hour. The wind direction was unusually persistent for 24 hours from the south. A plausible explanation is that emissions from the Fleur Drive link and the adjacent intersection were causing the elevated concentrations. On January 12, 1987, winds were calm to 9 miles per hour with a persistently southern bearing. National Weather Service observations during these two periods are contained in the Appendix to this report. The occurrence of calm conditions is probably the most significant factor common to these two events.

A draft modeling description was sent to EPA Region VII on November 25, 1987. One of the comments made by EPA was to review the background concentration values used against meteorological conditions. Data from the U.S. Weather Bureau was gathered for selected days from 1984 thorugh 1986 when the 10:00 a.m.-6:00 p.m. concentrations at the Tech High site were elevated (See Table #2). The period after initiation of the Central Campus program at Tech was not used because of the impact of school bus parking and idling emissions mentioned earlier.

Concentrations at the Tech High site appear to be strongly influenced by emissions from the surrounding street network. Grand Avenue to the east of Tech High is on a 75° bearing from the monitor site. Wind directions from 120° to 180° will have a tendency to "sweep" emissions from the adjacent intersection toward the monitor probe. Wind from the west or 270° will funnel emissions

Table 2

TECH HIGH SCHOOL
Daytime (10:00 a.m.-6:00 p.m.) High 8-Hour Averages
for Winter Conditions December-March

Date	10:00 a.m.-6:00 p.m. 8-Hour Average (ppm)	Wind Speed Knots	Wind Direction Range
1/3/84	1.06	7-18	210-270°
2/9/84	1.65	3- 6	110-160°
3/7/84	1.94	5- 9	100-200°
3/10/84	1.96	15-30	210-300°
3/13/84	2.4	5- 7	120-180°
3/27/84	1.88	6-11	50- 80°
12/6/84	1.64	7-11	180-260°
12/14/84	1.64	6- 8	270-360°
1/3/85	2.68	3- 7	150-200°
1/29/85	2.45	4-14	160-190°
2/5/85	2.16	3- 9	220-280°
12/6/85	3.02	4-11	140-290°
12/13/85	3.61	8-12	290-310°
1/3/86	2.19	3- 8	140-160°
1/28/86	2.65	5- 9	140-190°
2/3/86	1.88	10-13	50- 70°
2/13/86	2.05	13-18	160-200°

from Grand Avenue west of the monitor. The wind speeds are low to moderate with persistent wind direction being the most important factor contributing to elevated concentrations. It would seem reasonable that these concentrations could be used to represent background concentrations for the downtown area. Caution should be used when comparing wind directions between the meteorological data and the modeling data. The street description coordinates in the model assume that Grand and Locust run truly east/west rather on a 75 degree bearing.

Because of the overriding impact of automobile emissions, one approach to forecasting future background concentrations is to factor in expected changes in vehicle fleet emissions. Using a linear rollback model of:

$$C_{bf} = C_{bp} \times (Vf/V_p) \times (EF_f/EF_p)$$

where V = vehicles registered
EF = fleet-averaged emission factor
Pf = subscripts indicating present or future year.

Using this approach for the Des Moines area, the following is projected:

	'84	'86	'87	'88	'89	'90
EF @ 11mph grams/vehicle mile	105.81	93.44	87.57	82.18	77.5	73.45
	Background concentration with 1.66% growth					
Resulting ppm	4.2	3.8	3.7	3.5	3.3	3.2

A review of the long term trends at carbon monxoide monitoring sites tends to support this type of analysis. This is especially true for the annual average values. Although the exact amount of annual reduction might be somewhat arguable, the fact there will be reduction over time seems certain.

The Phase I study used a background value of 2.4 ppm which was recorded in 1985 at the Easter Seal site. The background value used for the Phase I report was the second highest eight hour average for 1985 at this site. The 1986 second highest eight hour concentration was 3.9 ppm. During 1986, the monitor at Easter Seal was not consistently available, and was replaced shortly after the 3.9 ppm value was recorded. A review of the strip charts for November, 1986, indicates that the monitor data is of questionable accuracy and should probably not be relied upon for that period.

Data from the Employer Mutual location was not used because the site is designed to monitor the impacts of local traffic within the CBD. This microscale site is unduly influenced by nearby traffic and is not suitable for determination of background carbon monoxide values. The second highest eight hour value for this site was 7.1 ppm in 1985 and 6.1 ppm in 1986. Carbon Monoxide data for the Des Moines area is summarized in Table 1.

e. Receptor Location Convention--The location conventions used in the modeling study are based upon carbon monoxide probe siting criteria described in Appendix E of 40 CFR Part 58. Specifically, all receptors are located at least 10 meters from the edge of any roadways, in addition there is a 15-meter setback from any intersection. For purposes of siting a microscale monitor, a midblock location is acceptable. The monitor probe siting criteria recommends a 3.0 meter height for the inlet location. Part of the rationale for this height is to avoid vandalism of the air intake.

For the purpose of the modeling study, a height of 1.8 meters is used to more accurately describe the breathing zone. This approach has been used before in modeling studies and is recommended by the EPA.

f. Modeling Approach--The basis for the selection of intersections has been described, the traffic data was supplied by the City of Des Moines, the meteorology was selected to demonstrate the worst case conditions, the background values are based on the Tech High monitoring for 1984, the base year for the study, and the receptor locations conventions have been described. The purpose of this section is to describe the logic for progressing through the dispersion modeling study, and the basis for selection of a more limited number of receptors and wind directions for subsequent year analysis.

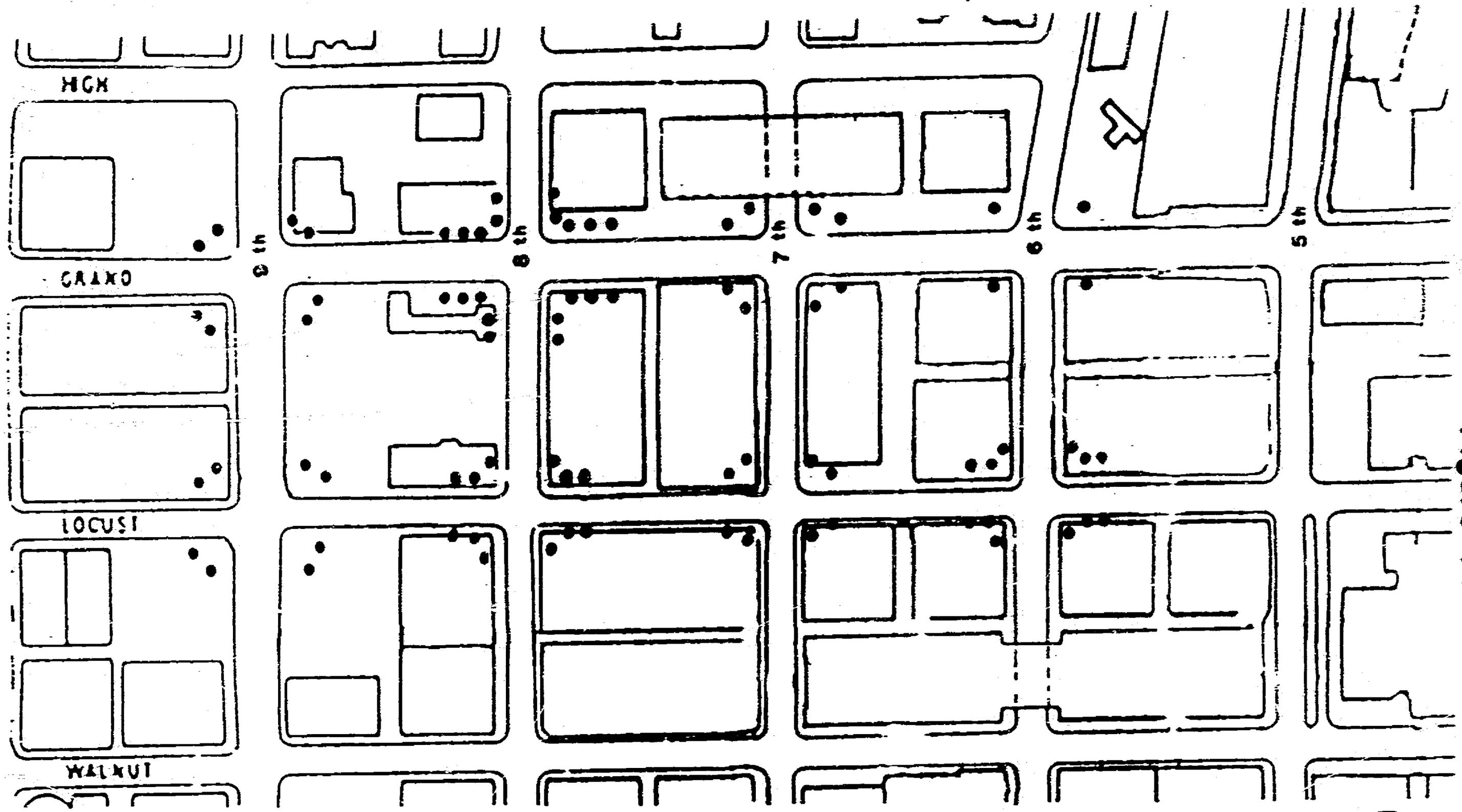
The dispersion model used for this analysis was CALINE-3, an EPA approved line source model for dispersion analysis. Because of the proximity of the high traffic streets in the downtown area, it was decided to analyze the high traffic count streets as a group. In this way, the interaction between intersections can be quantified and accounted for in the total concentration. A 60-link modification of CALINE-3 developed by EPA Region 1 was installed on the Iowa Department of Transportation's main frame computer in Ames. A special SAS data entry program was developed to facilitate data handling on the guideline model. The downtown area streets were described as 19 different links.

The CALINE-3 model is limited to twenty different receptors per run. For the first analysis these 20 receptors were placed around the intersection of 8th and Grand Avenue. Using 1984 traffic data, wind directions in 20 degree increments were analyzed for 0

to 360 degrees. These wind directions were also compared to four additional wind angles plus and minus 20 degrees from 90 and 270 degrees. A review of the resulting concentrations showed that the eight worst case wind angles are plus or minus 20 degrees from each of the east-west, north-south links. In addition, the highest concentration receptors were always those eight receptors located closest to the intersection. Based upon this finding, it seemed reasonable to review other intersections in the downtown area with only eight receptors per intersection. A total of eighty receptors (Figure 11) were reviewed to find the worst case receptors in the downtown area. This resulted in the selection of 13 receptors where ambient traffic related predictions for 1984 were greater than 9.0 ppm.

The modeling routines were duplicated using both stability class 4 and stability class 5 to account for the change in meteorological conditions that could occur during a projected worst case eight hour period. The results were then factored to account for six hours of stability class 4 and two hours of stability class 5 to arrive at a representative eight hour average value. Using the thirteen worst case receptors, and eight worst case wind directions, model runs were completed for 1987, 1988, 1989, and 1990 and two different stability classes.

g. Time Based Analysis--The link description methodology in the Phase II report is based upon the amount of time that it takes the average vehicle to travel through that portion of the street segment. Time based analysis uses EPA Volume 9 calculations to predict the elapsed time to travel through the intersections in question. Volume 9 calculations will give average excess running time for a vehicle at an intersection, it also provides acceleration and deceleration distances as well as queue lengths. Time based analysis combines the free flow time with the average delay time and



CALINE-3

RUN RECEPTORS ●

N

N.T.S.

Figure 11

computes the combined accel-decel length to arrive at an average speed for vehicles traveling through the link. The derived average speed can then be used to determine the MOBILE-3 emission factor corresponding to that average speed in miles per hour. (Figure 12)

EXAMPLE: Volume 9 outputs as provided by the CALINT program

free flow speed = 25 mph or 11.2 meters/second
accel or decel zone length = 55.8 meters
queue length = 18.46 meters
average delay per vehicle = 8.43 seconds

Calculations for time based analysis

since the accel and decel zones are symmetrical, the combined link length would be twice the predicted zone length
55.8 meters x 2 = 112 meters

elapsed time through link based upon free flow speed
112 meters divided by 11.2 meters/second = 10 seconds.

average delay time per vehicle plus free flow elapsed time
8.43 seconds + 10 seconds = 18.43 seconds

Average speed calculation
112 meters divided by 18.43 seconds = 6.07 meters/second or 13.6 mph

A MOBILE-3 emission factor can be derived for this speed. For this study MOBILE-3 emission factors were developed for 5, 7, 9, 11, 13 and 15 mph using IDOT central business district fleet default values and 20 degree F conditions. Curves were developed

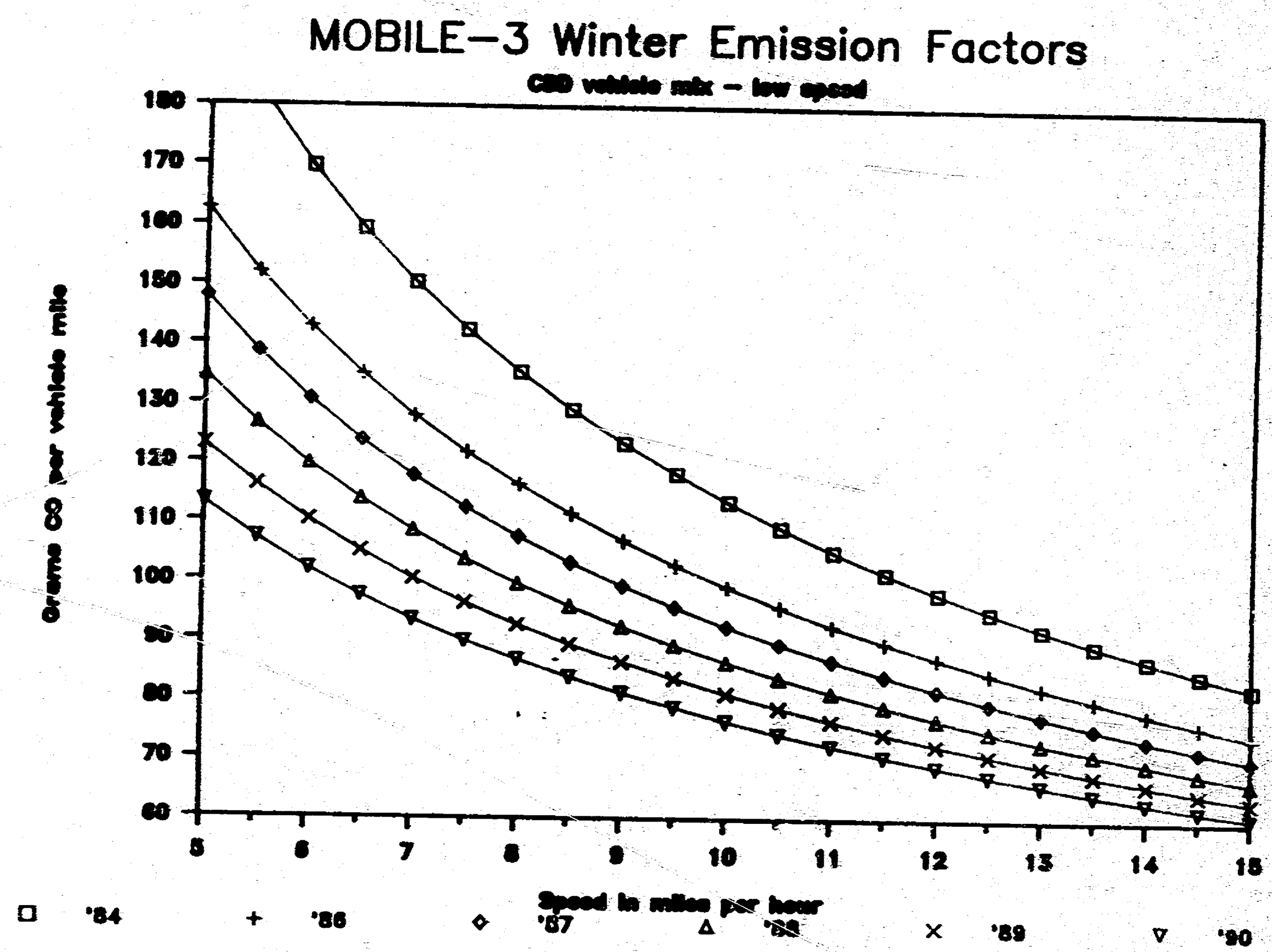

MOBILE-3 Winter Emission Factors
CBD vehicle mix - low speed
Grams CO per vehicle mile
180
170
160
150
140
130
120
110
100
90
80
70
60
5
6
7
8
9
10
11
12
13
14
15
Speed in miles per hour
'84
'86
'87
'88
'89
'90

Figure 12

for the years of the modeling analysis, 1984, 1986, 1987, 1988, 1989 and 1990. The graphical solution to this emission factor and speed relationship were then put into the model to represent emissions occuring from all of the vehicles traveling through this link.

The queue length data was used to locate the center of the accel-decel zone in the link descriptions. In the above example, the queue length is 18.46 meters so the "average vehicle" would stop in the middle of the queue. To account for this, the center of the link is placed 9.23 meters from the stop line of the intersection. The accel and decel zones extend 55.8 meters in either direction from this mid-queue location. This convention was used throughout the link descriptions. There are no gaps in the link descriptions.

The intersections in the central business district are approximately 110 meters apart. This allows all of the segments for Grand and Locust to be described as constant accel-decel zones. There are several advantages to using this approach: first of all there are some economies of staff and computer time in describing the downtown area in this manner. Secondly, the emission estimates are more reliable. Strict Volume 9 methodology would force one to use outdated acceleration-deceleration emission factors based upon 1977 vehicles. Clearly, there has been a great deal of progress made in reducing emissions since that time. Finally, the method is simple to grasp and can be conveniently field checked. Data provided by the Des Moines Traffic and Transportation Department would indicate that the method of predicting delay times is close to that observed by repetitive timed trials through the downtown area. If anything, the time based analysis provides delay times that are longer and hence more conservative than those

observed in the field. A comparison of delay times observed in the field and predicted by the CALINT program is contained in the Appendix.

h. Results--The modeling predicts attainment of the ambient standard for carbon monoxide in 1987. Figure 13 summarizes the predicted concentrations for the worst case receptors. The worst case receptor was in the 8th and Grand intersection. The modeled value for 1984 was 9.8 ppm, the second highest monitored eight hour value in 1984 was 10.0 ppm. This is good agreement considering the amount of information that must be gathered and analyzed for the mobile source modeling demonstration.

As was mentioned in the previous section, the intersection queuing model yields delay times that are reasonably close to delay times observed in the downtown. The modeling that has been done up to this point serves as a baseline description of the downtown which can be used for assessing future growth. Polk County and the City of Des Moines are in the initial stages of discussions regarding assessment of future growth.

One of the beneficial uses of air quality modeling would be to assess future growth to determine if additional transportation control measures are needed to preserve the air quality. Measures that improve air quality also tend to reduce traffic congestion. A proposed 1,000 car city parking garage to be built on 9th Street between Grand and Locust is typical of the kind of project that should undergo an air quality review.

MODELED CO CONCENTRATIONS

With Adjusted Background Values

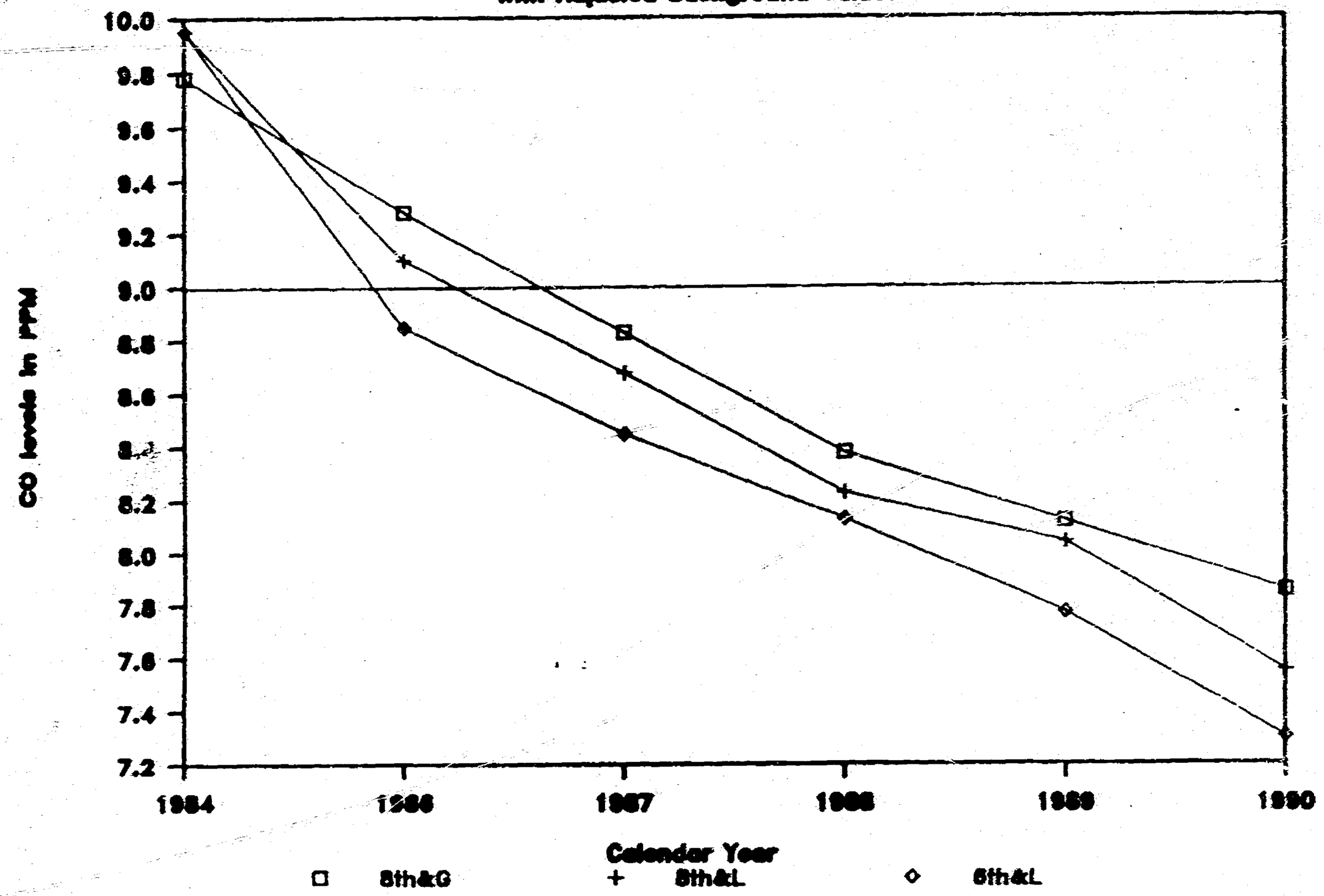


Figure 13

5. Transportation Control Measures

The following report, prepared by the City of Des Moines, describes transportation system improvements that have been implemented in the metropolitan area as well as downtown.

RECEIVED
1988 MAR -8 AM 10:29
POLK COUNTY
PHYSICAL PLANNING DEPT

March 8, 1988

Mr. Gary Fryer, Director
Polk County Physical Planning Department
5885 NE 14th Street
Des Moines, Iowa 50313

Re: Transportation Control Measures

Dear Gary:

The following are Transportation Control Measures taken by the City of Des Moines, since November 4, 1986, which will by themselves or in follow-up actions reduce carbon monoxide emissions within the City.

1. STREET RECONSTRUCTION AND CHANNELIZATION PROJECTS

Grand Avenue Widening - 56th to 63rd Streets completed.
Army Post Road and S.E. 5th Intersection - Project Bid - To be completed in 1988.
Indianola Road Widening - S.E. 1st to S.E. 5th Streets - Project Bid - To be completed in 1988.

2. CENTRAL BUSINESS DISTRICT LOOP ARTERIAL PROJECT

Approval of the Final Environmental Impact Statement has been received from the Federal Highway Administration. The Des Moines City Council has approved the negotiation of the preliminary engineering design (master plan) contract for the entire segment of the CBD Loop west of the Des Moines River and has selected the east/west segment between Fleur Drive and S.W. 2nd Street as the the first priority project.

3. CONSTRUCTION OF DES MOINES SKYWALK SYSTEM

The Des Moines Skywalk System continues to expand with three additional links completed in 1987. The originally approved system is over 90% complete with major expansions in the system presently being planned.

In 1978, Barton Aschman and Associates conducted a Transportation Analysis of the Des Moines Skywalk System and developed data on reductions in vehicular delay resulting from reductions in pedestrian conflicts at intersections within the skywalk district. An update of this information by the Traffic and Transportation Department in 1987 indicates the following current yearly reductions in delays and emissions resulting from the present skywalk system.

Vehicle hours of delay	29,163 Hrs.
CO emissions	10.5 Tons
HC emissions	0.5 Tons
NOX emissions	0.4 Tons

These reductions will continue to increase as the skywalk system is expanded.

4. MAJOR STREET SIGNALIZATION PROJECTS

Three major arterial signal systems have just been completed and are on line. Master control for these systems is provided by an IBM AT Computer located in the Traffic and Transportaion Department. Each of the systems have nine timing plans and will respond with the best plan for conditions that are monitored on the street. The systems can be monitored and data input and retrieval can be handled directly from the office. Although projections have not been developed on the improvement to traffic flow, it is expected that the benefits that will accrue for each of these systems will equal or exceed the benefits obtained from the Fleur Drive Arterial Master Signal System installed in 1983 which based on computer analysis and on actual field observations indicate an annual average reduction in stops of almost 6,000,000 with an average reduction of 28,000 hours of vehicle delay per year. The three systems are located on the following listed streets.

S.E. 14th Street - McKinlay Avenue to Maury Street involving six signals. This system also includes two additional signals on Indianola Road.

S.W. 9th Street - Porter Avenue to Bell Avenue involving five signals.

E. University Avenue - E. 21st Street to E. 33rd Street involving five signals. This system also includes two additional signals on E. 30th Street.

Bids have just been taken on one additional arterial street traffic signal system to be connected to the IBM AT master controller identified above. This system is on Merle Hay Road from Hickman Road to I-35/80 and includes eight signals. This system also includes two additional signals on Merle Hay Road. It has been projected that upon completion, this Summer, this project will result in an annual reduction of 15,470 hours of vehicle delay.

5. TRAFFIC SIGNAL TIMING AND MODIFICATION PROJECT

A project is underway involving the retiming of signals covering a variety of situations ranging from isolated pre-timed to interconnected actuated signals. Retiming plans are being developed for 30 signals included in signal systems and for 28 isolated actuated signals. In addition eight semi-actuated and three fixed-timed signals will be converted to fully-actuated signal control. This project, to be completed this Summer, will result in substantial reductions in delays and emissions.

6. RECONSTRUCTION OF DES MOINES CBD TRAFFIC SIGNAL SYSTEM

This project is included in the City of Des Moines Capital Improvements Program and is scheduled for 1989-1991. It is likely because of the unavailability of funds that further delays in implementation may be required. This project, however would be a good candidate for the use of Federal oil company overcharge refund money as it becomes available.

7. TRAFFIC ENGINEERING CAPABILITIES

The capabilities of the City of Des Moines Traffic and Transportation Department to analyze and optimize traffic signal timing and to analyze the impacts of various development proposals has been enhanced over the past two years through the acquisition of an IBM AT computer and various signal and traffic software programs. The following soft-ware programs are utilized routinely by the Department.

SOAP
CINCH
HIGHWAY CAPACITY SOFTWARE
PASER II 84
TRANSYT 7F (Micro)
AAP

The use of these programs have resulted in design modifications of specific development projects that will result in minimized congestion and thus will also result in reduced vehicle emissions. An example, within the CBD area was a review of the traffic impacts of a proposed 1000 car municipal parking garage on the block bounded by Grand Avenue, Eighth, Ninth and Locust Streets. This analysis resulted in the selection of the best location for exiting traffic from the garage and also resulted in a modification of the garage design to accommodate an additional traffic lane on Grand Avenue approaching Ninth Street.

These projects and the progress being made demonstrates the City of Des Moines' continued commitment to the improvement of air quality within the City and in particular the Central Business District.

If I can be of further assistance to you in this matter, please advise.

Very truly yours,

James A. Thompson

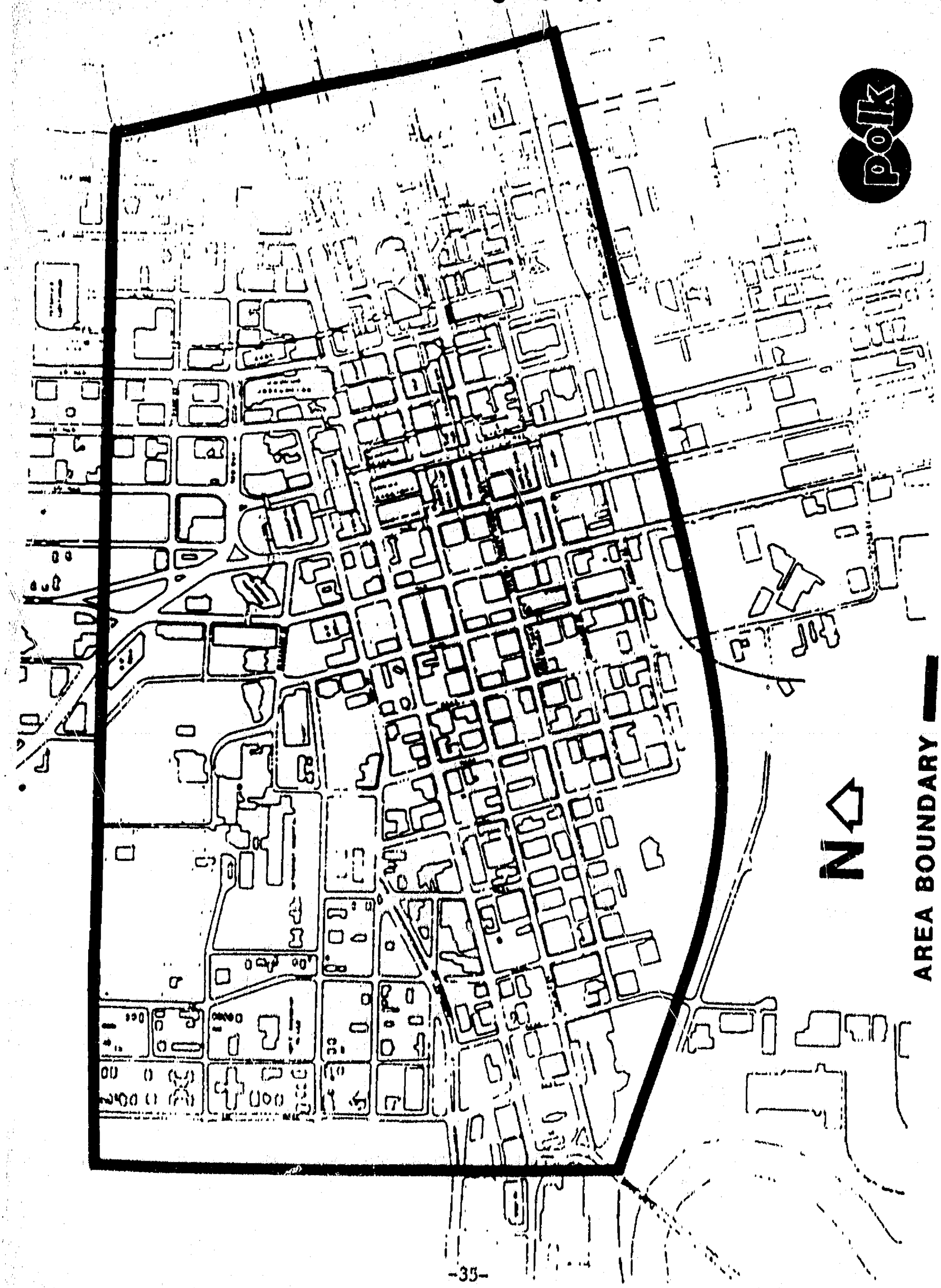
James A. Thompson, Director
Traffic and Transportation

JAT/jr

6. Conclusion - The air quality monitoring and modeling data both support redesignation of the Des Moines CBD area (Figure 14) to attainment for the carbon monoxide standard. Monitoring data at Employers Mutual shows three years of attainment data. The carbon monoxide monitor at the Tech High Site has shown no violations since 1982. The air quality modeling demonstrates that the carbon monoxide standard was attained during 1987 and that the standard will be maintained through 1990.

The air quality modeling methodology described in this report provides a basis for assessing the air quality impacts of significant new projects in the downtown area. The information contained in this report provides the basis for the State of Iowa to request redesignation of the entire Des Moines Metropolitan Area to attainment for carbon monoxide.

Figure 14



IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 11 DECISION

REVISIONS-CHAPTER 22 RULES-AIR QUALITY PERMITS

The commission will be provided copies of proposed revisions to the department's air quality permit regulations. Specifically, the proposed revision will address exemptions from the requirement to obtain air quality construction permits before the construction or use of certain equipment used in the agricultural sector. The intent is to clarify the existing exemptions applicable to "agricultural purposes" to address changes in farm production and management practices which have occurred since these rules were first adopted.

The commission will be asked to approve a Notice of Intended Action to begin the formal rulemaking process.

Allan E. Stokes
Environmental Protection Division
March 7, 1988

88067DNR0001

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission proposes to adopt an amendment to its rules pertaining to the permitting of stationary contaminant sources, Chapter 22, "Controlling Pollution." Specifically, the Department proposes to amend subrule 567--22.1(2), IAC, the sources exempt from the permitting requirements.

Currently, paragraph 22.1(2)"d" provides that equipment used on farms and ranches for agricultural purposes, other than anaerobic lagoons, is exempt from the requirement to obtain an air permit prior to construction, installation, reconstruction or alteration. As a result of the changes in technological and management practices of the farming and ranching industry, the existing exemption no longer clearly identifies the equipment exempt from the permitting requirements. In addition, the term "agricultural purposes" has become a term of art, defined by courts in the context of numerous and widely varied statutory exclusions; and is, therefore, no longer descriptive of the equipment regulated by the Department. For this reason, the term "agricultural purposes" is removed.

A detailed explanation of the proposed exemption is as follows:

1. "Equipment used for cultivating land, harvesting crops or raising livestock other than anaerobic lagoons" refers to the specific activities which, if used, is exempt from the Department's permitting requirements.

2. This exemption does not apply if the equipment is used to remove substances from grain which were applied to the grain by another person.

The Department has become aware of the practice of companies which treat large quantities of grain with anti-fungal agents and the sale of these grains to farmers and ranchers. The individual farmers and ranchers in turn roast these grains to remove the chemicals to acceptable levels for feed or distribution. Because of the type and quantity of toxic air contaminants which result from this practice, the proposed exemption does not apply to equipment used to remove these types of substances.

3. This exemption also does not apply to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, which is normally not fed to livestock owned by that person or another person in a feedlot, as defined in Iowa Code section 172D.1, subsection 6, or a confinement building owned or operated by that person and located in this state. These units are typically large and result in the release of a large quantity of air contaminants.

This exemption does apply to grain driers of all types and grain roasters used for the drying or roasting of wet or moldy grains.

The Department will conduct _____ public hearings to receive comments on this proposed amendment. They will be held at the following times and places:

Written comments will be received by the Department at the Des Moines address given above until _____.

This proposed amendment is intended to implement Iowa Code section 455B.133.

The following amendment is proposed:

Rescind paragraph 567--22.1(2)"d" in its entirety and include the following:

d. Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption is also not applicable to

equipment used by a person to manufacture commercial feed, as defined in section 198.3, which is normally not fed to livestock owned by that person or another person in a feedlot, as defined in section 172D.1, subsection 6, or a confinement building owned or operated by that person and located in this state.

_____
Date

_____
Larry J. Wilson, Director

(EP22.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 12 DECISION

NOTICE OF INTENDED ACTION, CHAPTER 70, WAIVER OF ENGINEERING PLANS FOR FLOODPLAIN PROJECTS

As directed by the Commission, the department staff has drafted rule amendments which would allow the department greater latitude when considering whether to waive the submission of certified engineering plans as part of an application for approval of floodplain development.

The Commission is requested to approve the attached Notice of Intended Action and proposed rule amendment for waiver of engineering plans for floodplain projects.

Riesson
3-31-88

(I14.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.278, the Environmental Protection Commission intends to amend Title V, Floodplain Development, Chapter 70, Scope of Title-Definitions-Forms-Rules of Practice.

Iowa Code section 455B.275 provides that a person desiring to undertake construction on a floodplain shall file a written application with the department setting forth information as required by rule of the Commission. 567--70.4(2)"a", Iowa Administrative Code, provides that an application shall not be considered complete until sufficient engineering plans have been submitted and, furthermore, such engineering plans must be certified by a registered professional engineer as required by Iowa Code Chapter 114. However, submission of certified plans can be waived pursuant to 567--70.4(2)"b", Iowa Administrative Code, if: i) engineering data are not required to determine that the project is minor in scope and conforms to all applicable administrative and statutory criteria or ii) adequate engineering data used to evaluate the dimensions and effects of the project is already available to the engineering staff.

The Environmental Protection Commission feels that there are some floodplain construction projects for which engineering plans are not necessary to determine compliance with applicable administrative and statutory criteria but for which engineering plans cannot be waived under 567--70.4(2)"b" because the project is not minor in scope. The requirement for submission of engineering plans in this instance imposes an unnecessary financial burden on an applicant.

Therefore, the Environmental Protection Commission proposes to amend the provisions of 567--70.4(2)"b", Iowa Administrative Code, to allow the waiver of submission of engineering plans if engineering plans and data are not necessary to determine compliance with applicable approval criteria even if a project is not minor in scope.

Any interested person may file written comments or suggestions on the proposed rules through June 10, 1988. Such written comments should be directed to Jack D. Riessen, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034. Persons are also invited to present oral or written comments at a public hearing which will be held on June 9, 1988 at 1:00 p.m. in the fifth floor conference room, Wallace State Office Building, 900 East Grand, Des Moines, Iowa.

The following rule amendment is proposed:

ITEM 1. Paragraph 70.4(2)"b" is amended to read as follows:

b. Waiver of submission of certified plans. The department may waive the requirement in paragraph "a" of this subrule that the application for approval of a floodplain project be supported by certified engineering plans by making <u>one of</u> the following determinations in the order which approves or disapproves the project:

1) Engineering data are not required to determine that the project ~~is minor in scope and~~ conforms to all applicable administrative and statutory criteria; or

2) Adequate engineering data used to evaluate the dimensions and effects of the project were already available to the engineering staff.

Date

Larry J. Wilson, Director

(EP70A.MIN/sc)

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 13 DECISION

AMENDMENTS TO CHAPTER 41 - WATER SUPPLY RULES

The commission will be asked to approve a notice of intended action to conduct public hearings and receive public comment on the attached proposed rules. These rules are intended to conform state of Iowa regulations to recently adopted federal rules under the mandate of the federal Safe Drinking Water Act.

Allan E. Stokes
Environmental Protection Division
April 12, 1988

88103DNR0016

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission for the Department of Natural Resources gives notice of intended action to amend the rules pertaining to water supply definitions, organic chemicals, monitoring requirements for organic chemicals, and reporting requirements. New rules are proposed concerning public notification requirements concerning lead and prohibiting the use of lead pipes, solder and flux.

Revisions to 567--40(455) include adding definitions for best available technology (BAT), deep well, lead free, nontransient noncommunity water system (NTNCWS), point of entry treatment device, point of use treatment device, and shallow well. Subrule 41.3(2) is amended to add paragraph "d" which sets forth the maximum contaminant levels for synthetic organic contaminants in community water systems and nontransient noncommunity water systems. Subrule 41.4(5) is renumbered as 41.4(6) and new subrule 41.4(5) is added to specify the procedure for determining whether a particular system is in compliance with the maximum contaminant levels for synthetic organic contaminants. Subrule 41.4(7) is renumbered as 41.4(9), and new subrule 41.4(7) is added to provide the requirements and procedures for special monitoring for organic chemicals. Subrule 41.5(1) is revised by adding paragraph "c" to require the owner or operator of a system to notify those served by the system of the availability of sampling results for the special monitoring for organic chemicals.

A new subrule 41.5(4) is added to establish public notification requirements pertaining to lead. A new rule 41.15 is added to prohibit the use of lead pipes, solder and flux in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water supply system. The additions to the rules pertaining to lead are the result of revisions contained in the 1986 amendments to the federal Safe Drinking Water Act.

Subrule 41.6(5) is amended to add paragraph "c" which allows the department to include as a permit condition use of a specific treatment method to achieve compliance with a maximum compliance level for synthetic organic chemicals in connection with a compliance schedule. New subrule 41.12(10) is added to identify the best available treatment technology to achieve compliance with the maximum contaminant level for the synthetic organic chemicals listed in 41.3(2)"d". New subrule 41.16(2) is added to establish when bottled water may be used by a public water system.

Any interested person may file written suggestions or comments on the proposed rule changes through June 27, 1988. Such written materials should be directed to Jim Humeston, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034. Persons who have questions may contact Jim Humeston at 515/281-8914. Persons are also invited to present oral or written comments at public hearings which will be held on June 13, 1988 at 1:00 p.m. in the fifth floor east conference room, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa; on June 14, 1988 at 1:00 p.m. at Iowa Western Community College, Continuing Education Building, Room 006, Council Bluffs, Iowa; and on June 15, 1988 at 1:00 p.m. at the Iowa Department of Natural Resources, Geological Bureau, Trowbridge Hall, Room 115B, 123 North Capitol, Iowa City, Iowa.

Copies of the proposed rules may be obtained from Sarah Detmer, Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034.

These rules are intended to implement Iowa Code Chapter 455B, Division III, Part I.

ITEM 1. Amend rule 40.2(455B) by adding the following definitions in alphabetical order.

"Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the state finds, after examination, for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).

"Deep well" means a well located and constructed in such a manner that there is a continuous layer of low permeability soil or rock at least five (5) feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

"Lead free" means (1) when used with respect to solder and flux refers to solders and flux containing not more than 0.2 percent lead, and (2) when used with respect to pipes and pipe fittings refers to pipes and lead fittings containing not more than 8.0 percent lead.

"Nontransient noncommunity water system or "NTNCWS" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons four hours or more per day, for four or more days per week, for 26 or more weeks per year. Examples of NTNCWSs are schools, day-care centers, factories, offices and other public water systems which provide water to a fixed population of 25 or more people. In addition, other service areas such as hotels, resorts, hospitals and restaurants are considered as NTNCWS if they employ more than 25 people and are open six or more months of the year.

"Point-of-entry treatment device" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

"Point-of-use treatment device" is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

"Shallow well" means a well located and constructed in such a manner that there is not a continuous layer of low permeability soil or rock at least five (5) feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

ITEM 2. Amend subrule 41.3(2) to read as follows:

41.3(2) Organic chemicals. The following are the maximum contaminant levels for organic chemicals. ~~The maximum contaminant levels in paragraphs "a" and "b" of this subrule apply to all community water systems. The maximum contaminant level for total trihalomethanes in paragraph "c" of this subrule applies only to community water systems which serve a population of 10,000 or more individuals and which add a disinfectant (oxidant) to the water in any part of the drinking water treatment process. Compliance with maximum contaminant levels for organic chemicals is calculated pursuant to 41.4(4) and 41.4(5).~~

a. Chlorinated hydrocarbons: ~~(effective June 24, 1977).~~ The maximum contaminant levels apply to all community water systems. Compliance with the maximum contaminant levels is calculated pursuant to 41.4(4).

	Level in milli-grams per liter
Endrin (1,2,3,4,10, 10-hexachloro-6, 7-epoxy-1,4, 4a,5,6,7,8,8a-octa-hydro-1,4-endo, endo-5,8-dimethano naphthalene).	0.0002
Lindane (1,2,3,4,5,6-hexachloro-cyclohexane, gamma isomer).	0.004
Methoxychlor (1,1,1-Trichloro-2, 2-bis [p-methoxyphenyl] ethane).	0.1
Toxaphene ($C_{10}H_{10}Cl_8$-Technical chlorinated camphene, 67-69 percent chlorine).	0.005

b. Chlorophynoxys: (effective -June-24, -1977): The maximum contaminant levels apply to all community water systems. Compliance with the maximum contaminant level is calculated pursuant to 41.4(4).

	Level in milli-grams per liter
2,4-D (2,4-Dichlorophenoxyacetic acid).	0.1
2,4,5-TP Silvex (2,4,5-Trichloro-phenoxypropionic acid).	0.01

	Level in milli-grams per liter
c. Total trihalomethanes.	0.10

The maximum contaminant level for total trihalomethanes applies to community water systems which serve a population of 10,000 or more individuals and which add a disinfectant (oxidant) to the water in any part of the treatment process. Compliance with the maximum contaminant level is calculated pursuant to 41.4(6). Total trihalomethanes is the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform) and trichloromethane (chloroform). The -total -trihalomethane -maximum -contaminant level -shall -become -effective -on -November -29, -1981 -for -community -water -systems serving -75,000 -or -more -individuals -and -on -November -29, -1983 -for -community water -systems -serving -10,000 -to -74,999 -individuals.

ITEM 3. Amend subrule 41.3(2) by adding the following new paragraph "d":

d. Synthetic organic contaminants. The maximum contaminant levels for synthetic organic contaminants (SOC) apply to community water systems and nontransient noncommunity water systems. Compliance with the maximum contaminant level is calculated pursuant to 41.4(5)"i".

	Level in milli-grams per liter
Benzene	0.005
Vinyl chloride	0.002
Carbon tetrachloride	0.005
1,2-Dichloroethane	0.005
Trichloroethylene	0.005
1,1-Dichloroethylene	0.007
1,1,1-Trichloroethane	0.20
para-Dichlorobenzene	0.075

ITEM 4. Rescind paragraph "d" of subrule 41.4(4). Reletter paragraph "e" as paragraph "d" and paragraph "f" as paragraph "e".

ITEM 5. Renumber subrule 41.4(5) as 41.4(6). Add the following as new subrule 41.4(5):

41.4(5) Analysis of the contaminants listed in 41.3(2)"d" for purposes of determining compliance with the maximum contaminent levels shall be conducted as follows:

a. Groundwater systems shall sample at points of entry to the distribution system representative of each well. Sampling must be conducted at the same location or a more representative location each quarter. Groundwater systems must sample every three months for each entry point to the distribution system except as provided in subparagraph "h"(1) of this subrule.

b. Surface water systems shall sample at points in the distribution system representative of each source or at entry points to the distribution system after any application of treatment every three months except as provided in subparagraph "h"(2) of this subrule. Sampling must be conducted at the same location or a more representative location each quarter.

c. If the system draws water from more than one source and sources are combined before distribution, the system must sample at the entry point to the distribution system. The sample must be collected during periods of normal operating conditions.

d. All community water systems and nontransient noncommunity water systems serving more than 10,000 people shall analyze all distribution or entry-point samples, as appropriate, representing all source waters beginning no later than 45 days after the effective date of these rules. All community water systems and nontransient noncommunity water systems serving from 3,300 to 10,000 people shall analyze all distribution or entry-point samples, as required in this subparagraph during the calendar quarter that begins January 1, 1989. All other community and nontransient noncommunity water systems shall analyze distribution or entry-point samples, as required in this paragraph during the calendar quarter that begins January 1, 1991.

e. The department may require confirmation samples for positive or negative results. If a confirmation sample(s) is required by the department, then the sample result(s) shall be averaged with the first sampling result and used for compliance determination in accordance with paragraph "i" of this subrule. The department has the discretion to delete results of sampling errors from this calculation.

f. Analysis for vinyl chloride is required for groundwater systems and surface water systems that have detected one or more of the following two-carbon organic compounds: Trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene or 1,1-dichloroethylene. The analysis for vinyl chloride is required at each entry point to the distribution system at which one or more of the two-carbon organic compounds were found. If the first analysis does not detect vinyl chloride, the department may reduce the frequency of vinyl chloride monitoring to once every three years for that sample location or other sample locations which are more representative of the same source.

g. Upon request, the department may allow public water systems to composite up to five samples from one or more sources. Compositing of samples is to be done in the laboratory by the procedures listed below. Samples should be analyzed within fourteen days of collection. If any organic contaminant listed in 41.3(2)"d" is detected in the original composite sample, a sample from each source that made up the composite sample must be reanalyzed individually within fourteen days from sampling. The sample for reanalysis cannot be the original sample, but can be a duplicate sample. If duplicates of the original samples are not available, new samples must be taken from each source used in the original composite and analyzed for the SOCs specified in

41.3(2)"d". Reanalysis must be accomplished within fourteen (14) days of the second sample. To composite samples, the following procedure must be followed:

(1) Compositing samples prior to gas chromatograph analysis.

Add 5 ml or equal larger amounts of each sample (up to 5 samples are allowed) to a 25 ml glass syringe. Special precautions must be made to maintain zero headspace in the syringe.

The samples must be cooled at 4° C. during this step to minimize volatilization losses.

Mix well and draw out a 5-ml aliquot for analysis.

Follow sample introduction, purging, and desorption steps described in the method.

If less than five samples are used for compositing, a proportionately smaller syringe may be used.

(2) Compositing samples prior to gas chromatograph/mass spectrometric analysis.

Inject 5-ml or equal larger amounts of each aqueous sample (up to 5 samples are allowed) into a 25-ml purging device using the sample introduction technique described in the method.

The total volume of the sample in the purging device must be 25 ml.

Purge and desorb as described in the method.

(h) The department may reduce the monitoring frequency specified in paragraphs "a" and "b" of this subrule as follows:

(1) The monitoring frequency for groundwater systems is as follows:

When SOCs are not detected in the first sample (or any subsequent samples that may be taken) and the system is not vulnerable as defined in subparagraph "h"(4) of this subrule, monitoring must be repeated every 5 years.

When SOCs are not detected in the first sample (or any subsequent sample that may be taken) and the system is vulnerable as defined in subparagraph "h"(4) of this section,

Monitoring must be repeated every 3 years for systems with equal to or greater than 500 service connections; and

Monitoring must be repeated every 5 years for systems with less than 500 service connections.

If SOCs are detected in the first sample (or any subsequent sample that may be taken), regardless of vulnerability, monitoring must be repeated every 3 months, as required under paragraph "a" of this subrule.

(2) The repeat monitoring frequency for surface water systems is as follows:

When SOCs are not detected in the first year of quarterly sampling (or any other subsequent sample that may be taken) and the system is not vulnerable as defined in subparagraph "h"(4), monitoring is required every five (5) years.

When SOCs are not detected in the first year of quarterly sampling (or any other subsequent sample that may be taken) and the system is vulnerable as defined in subparagraph "h"(4) of this subrule,

Monitoring must be repeated in three years for systems with equal to or greater than 500 service connections; and

Monitoring must be repeated every five years for systems with less than 500 service connections.

When SOCs are detected in the first year of quarterly sampling (or any other subsequent sample that may be taken), regardless of vulnerability, monitoring must be repeated every 3 months, as required under paragraph "b" of this subrule.

(3) The department may reduce the frequency of monitoring to once per year for a groundwater system or surface water system detecting SOCs at levels consistently less than the MCL for three consecutive years.

(4) Vulnerability of each public water system shall be determined by the department based upon an assessment of the following factors.

Previous monitoring results. A system will be classified vulnerable if any sample was analyzed to contain one or more contaminants listed in 41.3(2)"d" or 41.4(7)"e" except for trihalomethanes or other demonstrated disinfection by-products.

Proximity of surface water supplies to commercial or industrial use, disposal or storage of volatile synthetic organic chemicals. Surface waters which withdraw water directly from reservoirs are considered vulnerable if the drainage basin up-gradient and within two (2) miles of the shoreline at the maximum water level contains major transportation facilities such as primary highways or railroads or any of the contaminant sources listed in this subparagraph. Surface water supplies which withdraw water directly from flowing water courses are considered vulnerable if the drainage basin up-gradient and within two (2) miles of the water intake structure contains major transportation facilities such as primary highways or railroads or any of the contaminant sources listed in this subparagraph.

Proximity of groundwater supplies to commercial or industrial use, disposal or storage of volatile synthetic organic chemicals. Wells that are not separated from sources of contamination by at least the following distances will be considered vulnerable.

Sources Of Contamination	Shallow Wells as defined in 40.2(455B)	Deep Wells as defined in 40.2(455B)
Sanitary and industrial point discharges	400 ft.	400 ft.
Mechanical waste treatment plants	400 ft.	200 ft.
Lagoons	1,000 ft.	400 ft.
Chemical & mineral storage (above ground)	200 ft.	100 ft.
Chemical & mineral storage including underground storage tanks on or below ground	400 ft.	200 ft.
Solid waste disposal site	1,000 ft.	1,000 ft.

(5) A system is deemed to be vulnerable for a period of three years after any positive measurement of one or more contaminants listed in either 41.3(2)"d" or 41.4(7)"e" except for trihalomethanes or other demonstrated disinfection by-products.

(i) Compliance with 41.3(2)"d" shall be determined based on the results of running annual average of quarterly sampling for each sampling location. If one location's average is greater than the MCL, then the system shall be deemed to be out of compliance. If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, only that part of the system that exceeds any MCL as specified in 41.3(2)"d" will be deemed out of compliance. The department may reduce the public notice requirement to that portion of the system which is out of compliance. If any one sample result would cause the annual average to be exceeded, then the system shall be deemed to be out of compliance immediately. For systems that only take one sample per location because no SOCs were detected, compliance shall be based on that one sample.

(j) Analysis under this paragraph shall be conducted using the following approved methods or their equivalent as approved by the department. These methods are contained in "Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water," September 1966, available from Environmental Monitoring and Support Laboratory (EMSL), EPA, Cincinnati, OH 45266 or the department.

(1) Method 502.1, "Volatile Halogenated Organic Chemicals in Water by Purge and Trap Gas Chromatography."

(2) Method 503.1, "Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography."

(3) Method 524.1, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography."

(4) Method 524.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry."

(5) Method 502.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series."

k. Analysis under this subrule shall only be conducted by laboratories that have received conditional approval by the department according to the following conditions:

(1) To receive conditional approval to conduct analyses for benzene, vinyl chloride, carbon tetrachloride, 1,2-dichloroethane, trichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, and paradichlorobenzene the laboratory must:

Analyze performance evaluation samples which include these substances provided by EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the department.

Achieve the quantitative acceptance limits under this subparagraph for at least six of the seven subject organic chemicals.

Achieve quantitative results on the analyses performed under this subparagraph that are within ±20 percent of the actual amount of the substances in the performance evaluation sample when the actual amount is greater than or equal to 0.010 mg/l.

Achieve quantitative results on the analyses performed under this subparagraph that are within ±40 percent of the actual amount of the substances in the performance evaluation sample when the actual amount is less than 0.010 mg/l.

Achieve a method detection limit of 0.0005 mg/l, according to the procedures in 40 CFR, Appendix B of Part 136, October 26, 1984.

Be currently approved by the department for the analyses of trihalomethanes under 41.4(6).

(2) To receive conditional approval for vinyl chloride, the laboratory must:

Analyze performance evaluation samples provided by EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the department.

Achieve quantitative results on the analyses performed under this subparagraph that are within ±40 percent of the actual amount of vinyl chloride in the performance evaluation sample.

Achieve a method detection limit of 0.0005 mg/l, according to the procedures in 40 CFR, Appendix B of Part 136, October 26, 1984.

Receive approval or be currently approved by the department under subparagraph "k"(1) of this subrule.

l. The department may allow the use of monitoring data collected after January 1, 1983, for purposes of monitoring compliance. If the data is consistent with the other requirements in this paragraph, the department may use that data to represent the initial monitoring if the system is determined by the department not to be vulnerable under the requirements of this section. In addition, the results of the U.S. Environmental Protection Agency's Groundwater Supply Survey can be used in a similar manner for systems supplied by a single well.

m. The department may increase required monitoring where necessary to detect variations within the system.

n. The department may determine compliance or initiate enforcement action based upon analytical results and other information compiled by their sanctioned representatives and agencies.

o. The department may exempt a public water system that obtains treated water from another public water system serving more than 10,000 persons from conducting compliance monitoring for the organic chemicals under 41.3(2)"d," provided that the system from which the water is obtained has conducted the analyses required under 41.3(2)"d".

p. Public water systems exempted by the department under paragraph "o" and which disinfect are required to monitor under 41.4(6).

q. Each approved laboratory must determine the method detection limit (MDL), as defined in 40 CFR, Appendix B of Part 136, October 26, 1984, at which it is capable of detecting SOCs. The acceptable MDL is 0.0005 mg/l. This concentration is the detection level for purposes of subparagraphs "e", "f", "g", and "h" of this subrule.

ITEM 6. Subrule 41.4(6) is to be renumbered as 41.4(8). Renumber 41.4(5) as 41.4(6) and amend as follows:

a. Community water systems which serve a population of 10,000 or more individuals and which add disinfectant (oxidant) to the water in any part of the drinking water treatment process shall analyze for total trihalomethanes in accordance with this subrule. ~~For--systems--serving--75,000--or--more individuals,-sampling-and-analyses-shall-begin-before-November-29,-1980.--For systems-serving-10,000-to-74,999-individuals,-sampling-and-analyses-shall begin-before-November-29,-1982.~~ For the purpose of this subrule, samples to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing water from a single aquifer may, with approval of the department, be considered as one treatment plant for determining the minimum number of samples. All samples required within a calendar quarter shall be collected within a 24-hour period.

ITEM 7. Subrule 41.4(7) is renumbered as 41.4(9). Add the following new subrule as 41.4(7):

41.4(7) Special monitoring for organic chemicals.

a. All community and nontransient noncommunity water systems shall monitor for the contaminants listed in paragraph "e" in this subrule by the date specified below:

Number of Persons Served	Monitoring to begin no later than
Over 10,000	Within 45 Days Of Rule Effective Date
3,300 to 10,000	Jan. 1, 1989
Less than 3,300	Jan. 1, 1991

b. Surface water systems shall sample in the distribution system representative of each water source or at entry points to the distribution system. The minimum number of samples is one year of quarterly samples per water source.

c. Groundwater systems shall sample at points of entry to the distribution system representative of each well. The minimum number of samples is one sample per entry point to the distribution system.

d. The department may require confirmation samples for positive or negative results.

e. Community water systems and nontransient noncommunity water systems shall monitor for the following contaminants except as provided in paragraph "f" of this subrule:

(1) Chloroform
(2) Bromodichloromethane
(3) Chlorodibromomethane
(4) Bromoform
(5) trans-1,2-Dichloroethylene
(6) Chlorobenzene
(7) m-Dichlorobenzene
(8) Dichloromethane
(9) cis-1,2-Dichloroethylene
(10) o-Dichlorobenzene
(11) Dibromomethane
(12) 1,1-Dichloropropene
(13) Tetrachloroethylene
(14) Toluene
(15) p-Xylene
(16) o-Xylene
(17) m-Xylene
(18) 1,1-Dichloroethane
(19) 1,2-Dichloropropane
(20) 1,1,2,2-Tetrachloroethane
(21) Ethylbenzene
(22) 1,3-Dichloropropane
(23) Styrene
(24) Chloromethane
(25) Bromomethane
(26) 1,2,3-Trichloropropane
(27) 1,1,1,2-Tetrachloroethane
(28) Chloroethane
(29) 1,1,2-Trichloroethane
(30) 2,2-Dichloropropane
(31) o-Chlorotoluene
(32) p-Chlorotoluene
(33) Bromobenzene
(34) 1,3-Dichloropropene
(35) Ethylene dibromide (EDB)
(36) 1,2-Dibromo-3-chloropropane (DBCP)

f. Community water systems and nontransient noncommunity water systems must monitor for ethylene dibromide (EDB) and 1,2-Dibromo-3-chloropropane (DBCP) only if the department determines they are vulnerable to contamination by either or both of these substances. For the purpose of this paragraph, a vulnerable system is defined as a system which is potentially contaminated by EDB and DBCP, including surface water systems where these two compounds are

applied, manufactured, stored, disposed of, or shipped upstream, and for groundwater systems in areas where the compounds are applied, manufactured, stored, disposed of, or shipped in the groundwater recharge basin, or for groundwater systems, shallow wells as defined in 40.2(455B) that are less than four hundred (400) feet and deep wells as defined in 40.2(455B) that are less than two hundred (200) feet from underground storage tanks that contain leaded gasoline.

g. Analysis under this section shall be conducted using the recommended methods as follow, or their equivalent as determined by the department: 502.1, "Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography," 503.1, "Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography," 524.1, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography/Mass Spectrometry," 524.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry, or 502.2, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series." These methods are contained in "Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water," September, 1986, available from Environmental Monitoring and Support Laboratory (EMSL), EPA, Cincinnati, Ohio 45268. Analysis of 1,2-dibromo-3-chloropropane (DBCP) and 1,2-dibromoethane (ECB) shall be conducted by Method 504, "Measurement of 1,2,-Dibromoethane (EDB) and 1,2-Dibromo-3-chloropropane (DBCP) in Drinking Water by Microextraction and Gas Chromatography," September 1986, available from EMSL, Cincinnati, Ohio 45268.

h. Analysis under this section shall only be conducted by laboratories approved under 41.4(5)"k". In addition to the requirements of 41.4(5)"k", each laboratory analyzing for ethylene dibromide (EDB) and 1,2-dibromo-3-chloropropane (DBCP) must achieve a method detection limit for EDB and DBCP of 0.00002 mg/l, according to the procedures in 40 CFR Appendix B of Part 136, October 26, 1984.

i. Public water systems may use monitoring data collected any time after January 1, 1983 to meet the requirements for unregulated monitoring, provided that the monitoring program was consistent with the requirements of this section.

j. Monitoring for the following compounds is required at the discretion of the department.

(1) 1,2,4-Trimethylbenzene
(2) 1,2,4-Trichlorobenzene
(3) 1,2,3-Trichlorobenzene
(4) n-Propylbenzene
(5) n-Butylbenzene
(6) Naphthalene
(7) Hexachlorobutadiene
(8) 1,3,5-Trimethylbenzene
(9) p-Isopropyltoluene
(10) Isopropylbenzene
(11) Tert-butylbenzene
(12) Sec-butylbenzene
(13) Fluorotrichloromethane
(14) Dichlorodifluoromethane
(15) Bromochloromethane

k. Instead of performing the monitoring required by this section, a community water system or nontransient noncommunity water system serving fewer

than 150 service connections may send a letter to the department stating that its system is available for sampling. Samples are not required unless requested by the department. The letter must be sent to the state no later than January 1, 1991. All community and nontransient noncommunity water systems shall repeat the monitoring required in this subrule no less frequently than every five years from the dates specified in 41.4(7)"a".

ITEM 8. Renumber subrule 41.4(6) as 41.4(8).

ITEM 9. Renumber subrule 41.4(7) as 41.4(9).

ITEM 10. Renumber subrule 41.4(8) as 41.4(10).

ITEM 11. Renumber subrule 41.4(9) as 41.4(11).

ITEM 12. Renumber subrule 41.4(10) as 41.4(12).

ITEM 13. Renumber subrule 41.4(11) as 41.4(13). Amend the beginning statement to read as follows:

For the purpose of determining compliance with 41.4(1) to through ~~41.4(10)~~ 41.4(12), samples may be considered only if they have been analyzed by a laboratory currently certified by the department except that measurements for turbidity, temperature, pH and free chlorine residual may be performed by any person acceptable to the department.

ITEM 14. Renumber subrule 41.4(12) as 41.4(14).

ITEM 15. Renumber subrule 41.4(13) as 41.4(15).

ITEM 16. Renumber subrule 41.4(14) as 41.4(16).

ITEM 17. Renumber subrule 41.4(15) as 41.4(17).

ITEM 18. Amend subrule 41.5(1) by adding new paragraph "c" as follows:

c. The owner or operator shall notify persons served by the system of the availability of the results of sampling conducted under 41.4(7) by including a notice in the first set of water bills issued by the system after the receipt of the results or written notice within three months. The notice shall identify a person and supply the telephone number to contact for information on the monitoring results.

ITEM 19. Change the title of subrule 41.5(2) to read as follows: General public notification requirements.

ITEM 20. Add new subrule 41.5(4) to read as follows:

41.5(4) Public notification requirements pertaining to lead.

a. Applicability of public notice requirements.

(1) Except as provided in subparagraph "a"(2) of this subrule, within thirty (30) days after the effective date of these rules, the owner or operator of each community water system and each nontransient noncommunity water system shall issue a notice to persons served by the system that may be affected by lead contamination of their drinking water. The department may require subsequent notices. The owner or operator shall provide notice under 41.5(4) even if there is no violation of the lead maximum contaminant level as prescribed in 41.3(1).

(2) Notice required under subparagraph "a"(1) of this subrule is not required if the system demonstrates to the department that the water system, including the residential and nonresidential portions connected to the water system, are lead free as defined in 40.2(455B).

b. Manner of notice. Notice shall be given to persons served by the system either by (1) three newspaper notices (one for each of three consecutive months and the first no later than thirty (30) days after the effective date of these rules); or (2) once by mailing the notice with the water bill or in a separate mailing within thirty (30) days after the effective date of these rules; or (3) once by hand delivery within thirty (30) days after the effective date of these rules. For nontransient noncommunity water systems, notice may be given by continuous posting. If posting is used, the notice

shall be posted in a conspicuous place in the area served by the system and start no later than thirty (30) days after the effective date of these rules, and continue for three months.

c. General content of the notice.

(1) Notices issued under this subrule shall provide a clear and readily understandable explanation of the potential sources of lead in drinking water, potential adverse health effects, reasonably available methods of mitigating known or potential lead content in drinking water, any steps the water system is taking to mitigate lead content in drinking water, and the necessity for seeking alternative water supplies, if any. Use of the mandatory language in paragraph "d" of this subrule in the notice will be sufficient to explain potential adverse health effects.

(2) Each notice shall also include specific advice on how to determine if materials containing lead have been used in homes or the water distribution system and how to minimize exposure to water likely to contain high levels of lead. Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice shall contain the telephone number of the owner, operator, or designee of the public water system as a source of additional information regarding the notice. Where appropriate, the notice shall be multilingual.

d. Mandatory health effects information. When providing the information in public notices required under paragraph "c" of this subrule on the potential adverse health effects of lead in drinking water, the owner or operator of the water system shall include the following specific language in the notice:

"The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain levels of exposure. There is currently a standard of 0.050 parts per million (ppm). Based on new health information, EPA is likely to lower this standard significantly.

"Part of the purpose of this notice is to inform you of the potential adverse health effects of lead. This is being done even though your water may not be in violation of the current standard.

"EPA and others are concerned about lead in drinking water. Too much lead in the human body can cause serious damage to the brain, kidneys, nervous system, and red blood cells. The greatest risk, even with short-term exposure, is to young children and pregnant women.

"Lead levels in your drinking water are likely to be highest:

- if your home or water system has lead pipes, or
- if your home has copper pipes with lead solder, and
- if the home is less than five years old, or
- if you have soft or acidic water, or
- if water sits in the pipes for several hours."

ITEM 21. Amend subrule 41.6(5) by adding paragraph "c" as follows:

If the department determines that a treatment method identified in 41.12(10) is technically feasible, the department may require the system to install or use that treatment method in connection with a compliance schedule issued under the provisions of this subrule. The department's determination shall be based upon studies by the system and other relevant information.

ITEM 22. Amend rule 41.12(455) by adding a new subrule 41.12(10) as follows:

41.12(10) Best available treatment technology.

a. The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with

the maximum contaminant level for synthetic organic chemicals listed in 41.3(2)"d": Central treatment using packed tower aeration or central treatment using granular activated carbon (except vinyl chloride).

b. The department shall require community water systems and nontransient noncommunity water systems to install or use any treatment method identified in 41.12(10) as a condition for granting an interim contaminant level except as provided in paragraph "c". If, after the system's installation of the treatment method, the system cannot meet the maximum contaminant level, that system shall be eligible for a compliance schedule with an interim contaminant level granted under the provisions of 41.7.

c. If a system can demonstrate through comprehensive engineering assessments, which may at the direction of the department include pilot plant studies, that the treatment methods identified in 41.12(10) would only achieve a de minimis reduction in contaminants, the department may issue a schedule of compliance that requires the system to examine other treatment methods as a condition of obtaining an interim contaminant level.

d. If the department determines that a treatment method identified in paragraph "c" of this subrule is technically feasible, the department may require the system to install or use that treatment method in connection with a compliance schedule issued under the provisions of 41.7. The department's determination shall be based upon studies by the system and other relevant information.

ITEM 23. Add new rule 567--41.15(455B) Prohibition on the use of lead pipes, solder and flux. Any pipe, solder or flux which is used in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system shall be lead free as defined in 40.2(455B). This action shall not apply to leaded joints necessary for the repair of cast iron pipe.

ITEM 24. Add new subrule 41.16(2). Use of noncentralized treatment devices.

a. Public water systems shall not use bottled water, point-of-use (POU) or point-of-entry (POE) devices to achieve compliance with a maximum contaminant level in 41.3(2)"d".

b. The department may require a public water system exceeding a maximum contaminant level specified in 41.3(2)"d" to use bottled water as a condition of an interim compliance schedule or as a temporary measure to avoid an unreasonable risk to health. The system must meet the following requirements:

(1) Submit for approval to the department, a monitoring program for bottled water. The monitoring program must provide reasonable assurances that the bottled water meets all the maximum contaminant levels in 41.3. The public water system must monitor a representative sample of the bottled water for all contaminants regulated under 41.3(2)"d" the first quarter that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the department annually.

(2) The public water system must receive a certification from the bottled water company that the bottled water supplied has been taken from an "approved source" as defined in 21 CFR, Part 129, Subpart A, Section 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR, Part 129, Subpart E, Sections 129.80(g)(1) through (3); and the bottled water does not exceed any maximum contaminant levels or quality limits as set out in 21 CFR, Part 103, Subpart B, Section 103.35; 21 CFR, Part 110 and 21 CFR, Part 129. The public water system shall provide the certification to the

department the first quarter after it supplies bottled water and annually thereafter.

(3) The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system, via door-to-door bottled water delivery.

_____
Date

_____
Larry J. Wilson, Director

(EP40.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 14 DECISION

CHAPTER 38 -- PRIVATE WATER WELL CONSTRUCTION PERMITS AUTHORIZED UNDER 455B.187

The Commission is requested to approve the proposed Chapter 38 of the IAC.

Chapter 38 of IAC is proposed to implement the issuing of new private water well construction permits as authorized under Chapter 455B.187, Code of Iowa, as amended by Section 304 of Chapter 225 of the 1987 Session Laws.

Three public hearings on the proposed rules were held throughout the state beginning on February 3, 1988, and written and oral comments were received through February 18, 1988, ten days after the date of the final hearing. The notice of intended action was published in the Iowa Administrative Bulletin on January 13, 1988. Besides, copies of the notice of intended action were sent by ordinary mail to all 99 county boards of supervisors, the USEPA (Region 7), the U.S. Army Corps of Engineers (Omaha and Rock Island Districts), a number of state agencies and several professional organizations and other known and interested and affected parties. A general news release was also prepared and made available to the news media.

Fourteen oral comments were received from the thirty-six persons attending the three public hearings. Also, twenty written comments were received during the comment period.

The proposed rules were revised as a result of the oral and written comments received. Following are descriptions of the revisions to the proposed rules.

38.1(455B) Modified the definition of "contiguous" to limit the radius of a contiguous piece of property to one mile for the purpose of reporting on existing wells.

38.3(1)(455B) Exempt temporary dewatering wells from the construction standards of Chapter 49.

38.3(2)(455B) Exempt "all monitoring wells required as part of a permit or a construction approval issued by the Department" from the permitting requirements of Chapter 38.

38.3(2)c(455B) Require test holes to be properly closed in accordance with the proposed Chapter 39 "Requirements for Properly Plugging Abandoned Wells."

38.4(455B) and 38.7(3)(455B) Allow counties with active delegation of authority the option to develop and use their own application forms subject to the approval of the Department.

38.12(455B) Clarify the conditions that may cause the Director to deny a permit.

38.13(455B) Provide for the appeal of permits denied by counties with active delegation to be administered through the county appeal and judicial review process.

38.14(455B) Provide for the rules to become effective on July 1, 1988.

38.15(4)(455B) Provide for permit applications by state or federal agencies to be made to the Department, only.

49.2(455B) Modify rule 49.2(455B) by requiring irrigation and livestock wells to meet the construction standards of Chapter 49 (Nonpublic Water Wells).

Victor I. Okereke
March 17, 1988

(I12.MIN/sc)

Chapter 38
PRIVATE WATER WELL CONSTRUCTION PERMITS

567--38.1(455B) Definitions.

"Abandoned well" means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impracticable.

"Agreement" means a signed document between the department and the county board of supervisors with which the department delegates the authority to issue private well drilling permits to the county board of supervisors or its designee.

~~"Contiguous" means any number of parcels of land that physically touch one another except that tracts of land separated by roads, railroads, or streams shall be deemed contiguous.~~ "Contiguous" means any number of parcels of land that physically touch one another including tracts of land separated by roads, railroads or streams; except that for the purpose of reporting on other existing wells on the property, the radius of a contiguous piece of land shall be limited to one mile from the site of the new well constructed.

"Contractor" means a person engaged in the business of well construction or reconstruction. The term may include a corporation, partnership, sole proprietorship, association or any other business entity, as well as any employee or officer of such an entity.

"Construction" means the physical act or process of making a water well including, but not limited to, siting, excavation, construction and installation of equipment and materials necessary to maintain and operate the well.

"Department" means the Iowa Department of Natural Resources.

"Director" means the director of the department or a designee.

"Groundwater" means any water below the surface of the earth.

"Inactive water well" means a water well which is not currently in use and is capped or sealed to prevent the entrance of contaminants into the well, but is in such a condition that it can be activated to produce a safe supply of water.

"Landowner" means an individual, trust, partnership, corporation, government or governmental subdivision or agency, association or other legal entity that has legal or equitable title to a piece of land.

"Landowner's agent" means a person who acts for or in place of the landowner by authority from the landowner.

"Private water well" means a well that does not supply a public water supply system.

"Protected source" means a surface water or groundwater source recognized by rule as deserving special protection in order to ensure its long-term availability, in terms of either quality or quantity, or both, to preserve the public health and welfare.

"Public water supply system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the supplier of water and used primarily in connection with such system, and (2) any collection (including wells) or pretreatment storage facilities not under such control which are used primarily in connection with such system.

"Water well" means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for accessing groundwater. Water well does not include an open ditch or drain tiles.

567--38.2(455B) Forms. The following application form is currently in use:
Application for a permit to construct a new private water well. 11/87. 542-0988.

567--38.3(455B) Permit requirement.
38.3(1) When permit required. A landowner or landowner's agent shall not drill or construct a new private water well without first obtaining a well construction permit issued by the department or by a county board of supervisors or the board's designee authorized to issue such permits pursuant to rule 38.15(455B). ~~Examples of private water wells requiring well construction permits include, but are not limited to: domestic wells, livestock wells, irrigation wells, recreational wells, monitoring wells, heat pump wells, industrial wells, and dewatering wells.~~ Examples of private water wells requiring well construction permits include, but are not limited to: domestic wells, livestock wells, irrigation wells, recreational-use wells, monitoring wells, heat pump wells, industrial wells, and dewatering wells, except that dewatering wells shall be exempt from the construction standards of Chapter 49 (nonpublic water wells).
38.3(2) Exemptions. ~~Examples~~ The following types of excavations ~~that are not private water wells and so~~ do not need private water well construction permits: ~~and need not be reported include, but are not limited to:~~ soil borings, percolation test holes, sand and gravel and limestone exploration holes, excavations for storing and extracting natural gas or other products, gravel pits and quarries and all monitoring wells required as part of a permit or a construction approval issued by the Department. Test holes, used to determine the availability, quality or depth of groundwater are also exempt provided that all the following conditions are met.
a. The use of the test hole is limited to the conduct of the test only.
b. The duration of the test is not more than seven consecutive days.
c. The test hole is properly closed immediately after the test is completed in accordance with Chapter 39 "Requirements for Properly Plugging Abandoned Wells" at the end of 38.3(2)c.
38.3(3) Caveat. Nothing in these rules shall be construed as exempting public water supply wells from the construction permit and water withdrawal permit provisions of part 567, Iowa Administrative Code.

567--38.4(455B) Form of application. Application shall be made on forms supplied by the department. However, counties that have active delegation of authority to issue new private well construction permits pursuant to rule 38.15(455B) may develop and use their own application forms subject to the approval of the Department. Each application shall list all wells, including abandoned wells, on the applicant's property contiguous to the well site described in the application and shall describe the location of each well site. The location shall be given in the form of a legal land description (section, township and range) to the nearest quarter of a quarter of a section and noted on a map or aerial photograph. The list of wells to be registered shall include but is not limited to abandoned wells, inactive wells, agricultural drainage wells, irrigation wells, domestic wells and livestock wells.

567--38.5(455) Fees.

38.5(1) Fee payment. Each application shall be accompanied by a nonrefundable fee of twenty-five dollars ($25) in the form of a check or money order payable to the Department of Natural Resources, unless a county board of supervisors or the board's designee is authorized to issue private well construction permits pursuant to rule 38.15(455B). In such cases where the permitting authority is delegated to the county, the county board of supervisors may set a different fee and shall designate the terms for fee payment. More than one proposed well on one contiguous piece of property may be listed on one application and only one fee need be paid irrespective of the number of wells listed on the application form. A proper application shall consist of a fully and properly completed form and nonrefundable fee.

38.5(2) Exemption. The department is exempt from the fee payment requirements of these rules.

567--38.6(455B) Well maintenance and reconstruction. A private well construction permit is required for all replacement wells. A private well construction permit is not required for the repair, maintenance, rehabilitation or reconstruction of an existing well. Changes in physical dimensions included in these exemptions include, but are not limited to: deepening the well and changing the diameter or length of the casing or the screen. ~~Replacement wells do require a private well construction permit.~~

567--38.7(455B) Emergency permits.

38.7(1) Granting of emergency permit. Each county board of supervisors or the board's designee may grant an emergency permit to a landowner or the landowner's agent if emergency drilling is necessary to meet an immediate need for water. The emergency permit and application must be signed by the board of supervisors or the board's designee and shall be on forms obtained from the department prior to the emergency well construction taking place.

38.7(2) Submittal to department. A copy of the permit application signed by the chairperson of the board of supervisors and fee shall be sent to the department within thirty days of the granting of the permit by the county board of supervisors or its designee. In the event the permitting authority has been delegated to the county, no fee need be remitted to the department.

38.7(3) Counties with delegation. Counties with active delegation of authority to issue private water well construction permits, as provided for in rule 38.15(455B), need not follow the special processing and reporting requirements for emergency permits specified in 38.7(1) and 38.7(2). In these counties, emergency permit applications may be made on approved county forms as provided for in 38.4(455B) and the reporting requirements shall be on a routine basis in accordance with rule 38.15(3)(455B).

567--38.8(455B) Permit issuance and conditions.

38.8(1) When issued. Upon receipt of a complete application, the department shall issue a permit to the landowner or landowner's agent except as provided in rules 38.7(455B), 38.12(455B) and 38.15(455B).

38.8(2) Not withdrawal permit. Each permit shall include notification that a private well construction permit is not a water withdrawal permit and does not eliminate the necessity of obtaining any water withdrawal permits required in Chapters 51 and 52 of these rules. A water withdrawal permit is required before an applicant can withdraw more than 25,000 gallons of water per day, from any source or combination of sources in the state of Iowa.

38.8(3) Construction by registered well driller. Each well construction permit shall require that each well shall be constructed by a registered well driller in compliance with Chapters 37 and 49 of these rules. <u>However, temporary dewatering wells at construction sites shall be exempt from the construction standards of Chapter 49.</u>

567--38.9(455B) Noncompliance. Violations of any of the provisions of this chapter may be addressed by the department pursuant to Iowa Code sections 455B.109, 455B.175 and 455B.191.

567--38.10(455B) Expiration of a permit. A private well construction permit shall expire one calendar year from the date of issuance. If construction of the proposed well is not started prior to the expiration date, a new application plus a new nonrefundable fee must be filed with the department or the county board of supervisors pursuant to rule 38.15(455B).

567--38.11(455B) Transferability. A private well construction permit is not transferable.

567--38.12(455B) Denial of a permit. The department may deny a private well construction permit if granting the permit would lead to the violation of state law, would result in groundwater contamination, would lead to withdrawal from a protected source; or the director determines that the well would threaten public health or the environment. <u>Examples of wells that could threaten public health or the environment and therefore may be denied construction permits include, but are not limited to: in-situ mining wells, wells which may result in a negative impact on an identified point source of groundwater contamination and cause leachate plume to spread or migrate, underground injection wells except as provided in 50.6(4) and 62.9 of these rules.</u>

567--38.13(455B) Appeal of a permit denial. Any applicant aggrieved by a decision issued under the provisions of this chapter may file a notice of appeal with the director. The notice of appeal must be filed within thirty (30) days of the date of the permit decision. The form of the notice of appeal and appeal procedures are governed by Chapter 7 of these rules. <u>Appeal of a permit denied by a county which has been delegated authority to issue private water well permits shall be administered by the county in accordance with their appeal or judiciary review process and can only be appealed to the Department if delegation to the county is suspended, rescinded or revoked.</u>

567--38.14(455B) Effective date. The provisions of this chapter of the rules shall become effective on <u>July 1, 1988</u>.

567--38.15(455B) Delegation of authority to county board of supervisors.

38.15(1) Application by board. A county board of supervisors requesting the authority to issue private well construction permits shall apply to the department in accordance with Chapter 28E, Code of Iowa. The application shall include statements of agreement to comply with this chapter of the Iowa Administrative Code. Additional information may be requested by the department.

38.15(2) County standards. The county board of supervisors may impose additional standards as local conditions dictate, but cannot be less stringent than those required by the provisions of this chapter.

38.15(3) Information to department. The delegation agreement shall provide for the method, format and frequency of reporting all permit application information to the department.

38.15(4) Board authority. After delegation of authority to a county board of supervisors, all applications in that county shall be made to the board or its designee <u>except that all new private well permit applications by state or federal agencies shall be made to the Department</u>.

38.15(5) Term of delegation. The delegation of authority may be for up to five years and may be redelegated at the discretion of the department.

567--38.16(455B) Concurrent authority of the department. Notwithstanding the delegation of permit granting authority pursuant to rule 38.15(455B), the department reserves the right to exercise concurrent authority. In cases where the board or its designee fails to act on an application, or the director determines that a particular application cannot be appropriately evaluated by the board or its designee, the department may review such an application without invoking the provisions of rule 38.17(455B).

567--38.17(455B) Revocation of delegation agreement. The department may revoke the delegation to issue private well construction permits if the board of supervisors or its designee: failed or refused to carry out the provisions of this chapter in a timely manner; or violated any of the provisions of the delegation of authority agreement with the department.

_____

Date

_____

Larry J. Wilson, Director

(EP38A.MIN/sc)

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

Rules Pertaining To Chapter 38
"Private Water Well Construction Permits"

PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY

FOR

CHAPTER 38 - PRIVATE WATER WELL CONSTRUCTION PERMITS

The attached information constitutes a summary of written and oral comments received on the proposed rules Chapter 38 - Private Water Well Construction Permits.

Sixty-three comments were received from thirty-three commentors on seventeen sections of Chapter 38 including general comments.

The following information constitutes a summary of comments received through February 23, 1988 and at three public hearings held on February 3, 1988 at Council Bluffs, Iowa; on February 5, 1988 at Des Moines, Iowa; and on February 8, 1988 at Iowa City, Iowa. Three oral comments were received from the thirteen persons attending the hearing in Council Bluffs. Three oral and two written comments were received from the nine persons attended the public hearing in Des Moines. Eight oral and one written comments were received from the fourteen attendees at the hearing in Iowa City.

The responsiveness summary addresses all comments or group of similar-type comments, and each comment or group of comments is followed by a notation of the commentor or commentors, a discussion and a staff recommendation. The interest and input of all the commentors on the proposed Chapter 38 is very much appreciated.

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1. Comment: Too much government intrusion into the individual rights and freedoms.

These commentors expressed opposition to the entire rule-making process. All wondered about state infringement on individual constitutional rights and freedom and expressed the opinion that the proposed rules are just another example of state invasion of individual rights.

Commentors: 1, 2, 6 and 22

Discussion: The relevant statute requires the Department to adopt rules to implement the private well permit program. Therefore, the Department cannot forgo the rule-making process.

Recommendation: No change.

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2. Comment: (38.3) Dewatering wells should be exempt.

A number of commentors feel that dewatering wells for construction projects should be exempt from the permit requirements. In particular, they recommend that Iowa should follow the lead of Oklahoma and Missouri that do not consider construction site dewatering wells to be wells at all. Also, some doubted the wisdom of constructing dewatering wells in accordance with Chapters 37 and 49.

Commentors: 3, 9, 25 and 34

Discussion: Dewatering wells at construction sites are generally temporary, shallow wells that do not penetrate confined aquifers. They are used to dewater a construction site to allow work to proceed, and are often closed or allowed to collapse once construction work is completed. It will be very difficult for these to meet the standards of Chapter 49. These are especially important in those cases where the dewatering wells are not very deep and would only be left open temporarily.

When left open, such wells are potential sources of groundwater contamination. Hence, if such wells are exempt from the requirements of Chapter 38, then there is no way to ensure that they are properly closed once the dewatering operation is completed. Therefore, it is best to exempt them from the construction standards of Chapter 49. Staff feels that it was the intent of the legislature to require a permit and assure proper abandonment.

Recommendation: Rewrite 38.8(3) to exempt temporary dewatering wells from the construction standards of Chapter 49, but require that all dewatering wells be abandoned in accordance with an approved well abandonment procedure.

Therefore, the last sentence of 38.3(1) will read as follows: Examples of private water wells requiring well construction permits include, but are not limited to: domestic wells, livestock wells, irrigation wells, recreational wells, monitoring wells, heat pump wells, industrial wells, and dewatering wells, except that temporary dewatering wells at construction sites shall be exempt from the construction standards of Chapter 49 (Nonpublic Water Wells).

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3. Comment: (38.3) Exempt monitoring wells from the permit requirements.

Several commentors suggested that monitoring wells be exempt from the permit provisions of Chapter 38 because most of these wells already require the approval of the Department before they are constructed. This represents a duplication of the approval or permitting requirements.

Commentors: 11, 24, 25, 26, 33

Discussion: The staff agrees with the opinion of the commentors on the issue of monitoring wells. Therefore, 38.3(2) should be rewritten to exempt those types of monitoring wells that must obtain other construction approvals from the Department.

Recommendation: Exempt those classes of monitoring wells that must be approved by the Department prior to being constructed by rewriting the first sentence of 38.3(2) to read: "Examples of . . . gravel pits and quarries, and all monitoring wells required as part of a permit or construction approval issued by the Department."

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4. Comment: (38.6) Require a permit for major well rehabilitation or reconstruction.

The commentors preferred that permits be required for all major rehabilitation or reconstruction of wells in the state. The idea is that old wells

constitute a significant conduit for contamination into groundwater. Therefore, requiring them to be permitted would help in controlling groundwater contamination. In particular, the owners will be forced to bring their wells up to adequate standards (Chapter 49). This would also help in the identification and location of existing wells.

Commentors: 16, 17, 23, 24, 30

Discussion: Chapter 49 applies construction standards to new well construction and major rehabilitation or reconstruction of existing wells. In comparison, the proposed rule provides a permit program prior to the construction of new wells. However, nothing in the proposed rule exempts well rehabilitation and reconstruction from having to meet the standards of Chapter 49. The Department is simply limiting the requirement to obtain a permit to new wells.

Recommendation: No change.

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5. Comment: (38.1) Change the definition of abandoned well.

One commentor suggested that the definition of an abandoned well be changed to include a time element (six months, one year, etc.) after which an inactive well would become abandoned.

Commentor: 16

Discussion: Adding a time element to the definition of an abandoned well may be beneficial. For instance, if it is decided that a well that is inactive (i.e., one year) should be deemed abandoned, then it will be easier to determine which wells are by definition abandoned. Such a well must therefore be plugged with no consideration being given to its actual physical

conditions. However, the Department believes that a proper definition of an abandoned well must be based on the actual physical condition of the particular well in question. Age, use and inactive time are not very good predictors of the actual conditions of a water well. The condition of a well depends heavily on the quality of its construction and maintenance over the years, and not on how long it has been inactive.

Recommendation: No change.

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6. Comment: (38.1) Modify the definition of public water supply system.

One commentor suggested that the definition of "public water supply system" be modified to include, "15 service connections 'regularly serviced' for at least 60 days a year."

Commentor: 16

Discussion: The definition used is the same that appears in other chapters of the Iowa Administrative Code and is the one adopted by the Environmental Protection Agency. Therefore, modifying the definition of public water supply system would conflict with the federal criteria and will result in confusion between the applicability of Safe Drinking Water Act (Chapters 40 and 41) and the proposed applicability of Chapter 38.

Recommendation: No change.

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7. Comment: (38.4) Application forms.

One commentor wondered if counties with active well programs would be required to use Departmental forms or could they continue to use their existing forms.

Commentor: 16

Discussion: Part of the reason for developing DNR forms for the new well permit program is to provide uniformity and to ensure that minimum standards are met. To meet the minimum requirements, counties must require permit applicants to provide at least all the information required by the Department forms and make them compatible for data entry into the DNR tracking system.

Recommendation: Revise 38.4 to include a statement that counties that accept delegation of authority may develop and use their own forms subject to the approval of the Department. Insert the following after the first sentence of 38.4(455B): "However, counties that have active delegation of authority to issue new private well construction permits pursuant to rule 38.15(455B), may develop and use their own application forms subject to the approval of the Department.

Also, modify 38.7(455B) to allow emergency permits in counties with active delegation of authority to be made on approved county forms, provided that the individual county has an active delegation of authority to issue private well construction permits. Besides, the special processing and reporting requirements of 38.7(1) and 38.7(2) shall not apply to any county with an active delegation of authority pursuant to rule 38.15(455B). Emergency permits issued by such counties shall be reported to the Department along with all other permit information, on a routine basis as specified in 38.15(3) (455B). Insert the following paragraph after 38.7(2):

"38.7(3) Counties with delegation. Counties with active delegation of authority to issue private water well construction permits, as provided for in rule 38.15 (455B), need not follow the special processing and reporting requirement for emergency permits specified in 38.7(1) and 38.7(2). In these counties, emergency permit applications may be made on approved county forms as provided for in 38.4(455B), and the reporting requirements shall be on a routine basis in accordance with rule 38.15(3) (455B)."

8. Comment: (38.4) Modify land description requirements to allow for descriptions other than section (S), township (T) and range (R).

A commentor was of the opinion that requiring an applicant to report the location(s) of each well in terms of section (S), township (T) and range (R) and to note the same on a map or aerial photograph would be very difficult and expensive to accomplish. He thinks that allowing the applicant to report the location of the well (after it is constructed) in terms of some identifiable physical structures on the property would be more appropriate.

Commentor: 16

Discussion: The Department has required the public to provide legal descriptions of property in terms of section (S), township (T) and range (R) for many years without undue hardship. Besides, the above method of locating wells is permanent, can easily be interpreted, can be used by a statewide tracking system, and is the common nomenclature used for all land description at the federal, state and local level and property transfers. Also, the so-called permanent structures (buildings, etc.) are not really permanent reference points.

Recommendation: No change.

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9. Comment: Delegate permit-granting authority to county board of health not to the board of supervisors.

Several commentors expressed the opinion that for all practical purposes it is the board of health rather than the board of supervisors that has the experience to implement and administer the new program. In many counties, the board of health may already have a well program in place. Therefore, it seems logical to delegate the Department's permit granting authority to the board of health rather than to the board of supervisors.

Commentors: 16, 18, 19, 23, 27

Discussion: The statute requires the Department to delegate the permit-granting authority to the board of supervisors or its designee. Therefore, we must delegate to each county board of supervisors which in turn can designate the board of health or any other employee or department of county government.

Recommendation: No change.

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10. Comment: Minimum standards for county sanitarians.

In a joint statement, three commentors expressed opposition to any attempt to set minimum standards for county sanitarians. In their view, each county should be allowed to set its own standards for sanitarians.

Commentors: 18

Discussion: There is no attempt to set standards for county sanitarians in Chapter 38 of Iowa Administrative Code.

Recommendation: No change.

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11. Comment: Qualification and time commitments of the acceptable county designee.

Commentor was of the opinion that 38.15(1) be modified to require the adoption of an ordinance that is not less stringent than the rules adopted by the Department as a condition for delegating permit-granting authority to any county. Besides, the commentor would like the qualifications of the county designee to be no less than that required to be classified as Sanitarian I by the Iowa Department of Personnel and require the designee to commit a minimum of 20 hours a week to the program in any one county. He also suggested that the designee not be allowed to hold an elective office.

Commentors: 23

Discussion: The language of the relevant statutory provisions (455B.187 as amended by the 1987 Iowa Acts, House File 631, Section 304) is such that the rules cannot specify the qualifications of the county designee or his/her time commitment to the program. Specifically, 38.15(2) states that county standards for new private well construction cannot be less stringent than the provisions of the proposed rules.

Recommendation: No change.

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12. Comment: Fees.

One commentor expressed the view that since the Department is already funded by the legislature, no fees should be charged for the private well permits and that the Department should assign staff to make site visits and help the permittee determine the best well site and advise on proper well construction and development. Also, a number of commentors suggested that the private well construction permit fees be increased to $100. They suggested that the additional money be used to (i) hire new staff to administer the program, (ii) provide enforcement and on-site inspection, (iii) provide training to relevant county and DNR personnel, (iv) pay for water quality testing of every new (permitted) well, (v) hire a "circuit rider" to tour all counties to advise and help in program implementation.

Commentors: 3, 15, 20, 21, 28, 30

Discussion: The proposed fee is intended to cover the state's cost in processing applications. These fees are not available to the Department, but are deposited in the state's general fund to be appropriated by the legislature. In order to implement a program as comprehensive as suggested, the fee would have to be substantially higher than the $100 and the legislature would have to provide the necessary resource. In lieu thereof, the Department feels that the best place to provide these services and regulation is by

county government. Sections 38.5(1) and 38.15(2) provide counties which accept delegation the maximum flexibility to charge any fee that they find necessary to support their program and to have requirements more stringent than the state's.

Some proposed rules, Chapter 47, "Private Well Sampling and Abandonment -- Grants to Counties," will provide funds to counties to test private wells and for programs for abandonment of wells. In addition, the Department, through the Geological Survey Bureau, will continue to provide water availability and water quality forecasts to anyone upon request.

Recommendation: No change.

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13. Comment: Standards, training and qualifications of well drillers.

A number of commentors wanted the proposed rules to include provisions for professional standards, training and qualifications of well drillers.

Commentor: 3

Discussion: The qualification, training and all other conditions needed to qualify as a well driller are covered in Chapter 37 of the rules. Therefore, any changes in well driller registration requirements can best be addressed as a modification of that chapter considering the statutory limitations.

Recommendation: No change.

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14. Comment: Exempt sandpoint wells from being installed by a registered well driller.

One commentor agreed that sandpoint wells should require permits, but wondered about the usefulness of requiring a registered well driller to install them.

Many landowners could install their own sandpoints fast, efficiently, and cheaply. Therefore, requiring sandpoints to be installed by a registered well driller would constitute an undue burden on the landowner.

Commentor: 10, 14

Discussion: The rule does not preclude any landowner, if he/she registers as a well driller, from installing his/her own sandpoints or drilling his/her own well. The requirements for well driller registration are such that any landowner could register as a well driller.

Recommendation: No change.

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15. Comment: Require old well abandonment as a condition for a new well construction permit.

Two commentors felt that the new private well permit program would be more effective if proper abandonment of all old wells is made a condition for new permits. Both feel that this will ensure the proper abandonment of unusable wells.

Commentor: 10, 14

Discussion: This is not necessary since well abandonment is being covered by proposed Chapter 39, "Requirements for Properly Plugging Abandoned Wells". The Department plans to issue a permit with caveats, similar to our other permit programs which will remind the permittee that they must hire a registered driller (Chapter 37), construct the well in accordance with Chapter 49, and properly abandon all wells in accordance with proposed Chapter 39. Also, existing statutes (Section 305, Chapter 225 of the 1987 Session Laws) provide for substantial civil penalties that would serve as incentives to encourage landowners to properly plug abandoned wells on their property.

Recommendation: No change.

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16. Comment: (38.3(2)c) Closure of test holes.

Two commentors felt that "properly closed" is not very clear. They suggest that this be changed to "properly sealed," "properly plugged," or that it be referenced to an appropriate well closure approach.

Commentors: 4, 21

Discussion: The Department agrees with the commentors. Therefore, 38.3(2)c will be reworded to include a reference to an acceptable well closure procedure(s).

Recommendation: Add "in accordance with Chapter 39 "Requirements for Properly Plugging Abandoned Wells" at the end of 38.3(2)c.

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17. Comment: Require separate application and fee for each well.

A number of commentors proposed that a separate application and fee be required for each well and that each well must be inspected during construction to ensure compliance to the standards of Chapter 49.

Commentors: 20, 23, 34

Discussion: There is nothing to be gained by requiring a separate application and fee for each well, especially when the wells are on a contiguous piece of property. Each well can be identified on a single form with no significant additional cost in processing.

Recommendation: No change.

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18. Comment: (38.11) Nontransferability of permits.

One commentor would like the language of 38.11 to be modified to allow permits to be transferable in those cases involving minor changes. Cases cited include changes in land ownership, applicant's name or minor design changes.

Commentor: 32

Discussion: The design standards that would be applicable to wells permitted under Chapter 38 are those specified in Chapter 49. Therefore, changes in well design would not invalidate a well construction permit except if such changes violate the applicable provisions of Chapters 37 and 49. Besides, a permit is valid for only one calendar year from the date of issue and the chances are small that a significant number of the 2000 applicants anticipated each year will be affected by a transfer in ownership. Since the new private well permit is a one-time event only, it is reasonable to limit permit transferability to ensure that only those applicants who have decided on drilling a new well within one year would apply. In addition, the $25 fee is relatively small compared to the land valued in all property transfers and the cost of $25 would pose no economic burden. Finally, it is anticipated that the cost of processing a transfer would be the same as issuing the permit.

Recommendation: No change.

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19. Comment: 38.8(1) Turn-around time for permit applications.

Commentor would like the rules to specify the time frame within which an applicant can expect his/her permit to be issued. Such information will help an applicant to plan and schedule construction activities accordingly.

Commentor: 32

Discussion: The speed of processing permit applications would depend on the rate at which applications are received, the staff time allocated to the program, and the number of counties that accept delegation to issue the permits. Therefore, it is not easy to specify a turn-around time for this new program. However, the Department plans to issue the permits as expeditiously as possible. In an emergency, an applicant could invoke the provisions of 38.7 to satisfy an immediate need of water.

Recommendation: No change.

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20. Comment: Lack of agreement between 38.3(1), 38.8(3) and 49.2

Commentor noted that 38.3(1) and 38.8(3) do not agree with 49.2 and would create confusion. 38.3(1) includes livestock and irrigation wells among wells that would require a permit, while 38.8(3) specify that all permitted wells must be constructed in accordance with Chapters 37 and 49. However, 49.2 specifically exempts irrigation and livestock wells from the provisions of Chapter 49 unless they are part of a system that provides water to humans. Commentor would prefer that the Department modify Chapter 49 to remove the exemption provisions for these two types of wells.

Commentor: 21

Discussion: The staff agrees with the commentor that taken as a whole, 38.3(1), 38.8(3) and 49.2 could be confusing. This confusion can be removed by modifying section 49.2.

Recommendation: Modify 49.2 by deleting the last sentence which is: "These regulations do not apply to irrigation or livestock wells unless such wells are part of or are connected to a water system which serves as a source of drinking water for humans; or through poor construction or operation such wells can allow significant contamination to enter groundwater."

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21. Comment: Well inspection to ensure standards.

Many commentors felt that the rules should require inspection of some or all new wells during construction to ensure that they are constructed in accordance with the rules.

Commentors: 9, 20, 21, 27, 28, 30, 34

Discussion: Given the limited resources available, it is impractical for the Department to inspect a meaningful number of private wells during construction given the logistics problem of coordinating the time of inspection with the construction date planned by the contractor and the immediate need for water by the applicant. The most practical way to provide this service is at the local level. If counties seek delegation, they can adopt stricter standards of enforcement which can require inspection by the county. The Department will continue to respond to complaints through our field offices.

Recommendation: No change.

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22. Comment: Rule enforcement; public support.

Several commentors expressed the opinion that the department is not capable of enforcing the proposed rules and that the public is opposed to it. Other commentors feared that the rules will be of little value if they are not enforced. Many expressed the view that the Department's rules always include tough enforcement clauses, but no real enforcement. One commentor felt that better results would be achieved if money is channeled into existing county programs rather than starting new ones by the Department.

Commentors: 10, 11, 17, 22, 27, 28

Discussion: The Department is required by law to adopt rules to implement the new private well perm program. Besides, it is the intent of the Department to enforce the law using the proposed rules as an interpretative vehicle.

However, for the enforcement to be effective, the Department would need the cooperation of county governments, especially those that request and are granted delegation to issue private well construction permits, to provide the degree of policing necessary. The Department plans to rely on public information and education to gain acceptance and voluntary compliance, the fact that Iowans are generally willing to comply with laws, and complaint response investigations.

Recommendation: No change.

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23. Comment: Design and construction standards.

Several commentors felt that specific well construction standards should be incorporated into the proposed rules.

Commentors: 31

Discussion: The relevant construction standards are specified in Chapter 49 and need not be repeated in Chapter 38.

Recommendation: No change.

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24. Comment: Appeal of a permit denied by counties.

Commentor wanted to know what the appeal procedures would be in the case of permits that are denied by counties with delegated permit-granting authority. Does the applicant appeal to the Department, submit a new application to the Department, or initiate a Chapter 7 proceeding?

Commentor: 32

Discussion: The Department agrees with the commentor that the proposed rules do not clearly specify the proper appeal procedures for permits denied by counties. In the opinion of the Department, permit denials by counties with permit-granting authority can best be administered by the counties in accordance with their appeal and judicial review process.

Recommendation: Revise 38.13 by including the following after the last sentence, "Appeal of a permit denied by a county which have been delegated authority to issue private water well permits shall be administered by the county in accordance with their appeal or judicial review process and can only be appealed to the Department if delegation to the county is suspended, rescinded or revoked."

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25. Comment: Concurrent authority of the Department.

Commentor wishes to know how the Department might exercise concurrent authority to issue private well construction permits in counties with active delegation of permit-issuing authority.

Commentor: 32

Discussion: Rule 38.16 is fairly clear on the exercise of concurrent authority by the Department. The Department would prefer that every county seek delegation and to take primary responsibility in enforcing these rules. However, the Department must retain concurrent authority because the relevant statute (Section 304 of Chapter 225 of 1987 Iowa Acts) requires it. Besides, the Department needs to retain concurrent authority in case some counties accept delegation but fail to adequately implement the program. However, it is the intention of the Department to encourage as much local control of this program as possible.

Recommendation: No change.

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26. Comment: (38.12) Permit denial.

Commentor felt that the provisions of this rule are quite vague and should be made clearer and more specific. For instance, the commentor asserts that the Director is given broad powers to deny a permit if "the well would threaten public health or the environment." Yet, the public is not appraised of a sampling of those conditions that would lead the Director to conclude that the well is a threat to public health or the environment. Commentor feels that all of these conditions should be listed and made part of the rule-making process.

Commentor: 32

Discussion: It is not possible to enumerate all the possible conditions that could cause a well to become a threat to public health or the environment. However, some of the conditions include but are not limited to, a well that would be withdrawing from a protected source, wells which may result in a negative impact on an identified point source of groundwater contamination and cause leachate or contaminant plume to spread or migrate, in-situ mining wells, underground injection wells and agricultural drainage wells. The staff agrees with the commentor that 38.12 should be made more specific.

Recommendation: Reword 38.12 by adding the following at the end of the sentence: "Examples of wells that could threaten public health or the environment and therefore may be denied construction permits include, but are not limited to: in-situ mining wells, wells which may result in a negative impact on an identified point source of groundwater contamination and cause leachate plume to spread or migrate, underground injection wells except as provided in 50.6(4)(455B) and 62.9(455B) of these rules, and agricultural drainage wells. "

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27. Comment: (38.15(1)) Information required of the board of supervisors prior to the delegation of permit-granting authority.

Commentor feels that the public needs to know what additional information the Department may request from counties in order to qualify for delegation. Such additional information should be made public, discussed and incorporated into the rule.

Commentor: 32

Discussion: It is the desire of the Department that county governments would accept primary responsibility in implementing the provision of Chapter 38. The Department wanted to allow the county widest possible latitude in selecting administrative personnel or department to handle the permitting process and choices in the complexity of their enforcement, surveillance and compliance efforts. The Department did not want to be overly restrictive. It was felt that the best alternative would be to handle this through negotiations in completion of the 28E agreements.

Recommendation: No change.

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28. Comment: (38.3(1), 38.15(1)) State agencies should not be required to apply to counties for new well construction permits.

Commentor wondered whether state agencies are subject to the new permit requirements on new well construction since new unnumbered paragraph three of section 304, Chapter 225 of the 1987 Session Laws is silent on the issue. If state agencies are subject to the permit requirements, then the commentor suggests that the permit authority be centralized and retained within the Department and not delegated to the counties.

Commentor: 33

Discussion: The Department interprets the provisions of new unnumbered paragraph one, section 304, Chapter 225 of the 1987 Session Laws as being applicable to state agencies. However, the staff agrees with the commentor

that state agencies should not have to apply to counties for new well construction permits.

Recommendation: Reword 38.15(4) to exempt state and federal agencies from the necessity to apply to any county for a new well construction permit. New well construction permit applications from these sources must be processed by the Department. Rule 38.15(4) will henceforth read as follows: "After delegation of authority to a county board of supervisors, all applications in that county shall be made to the board or its designee, except that all new private well permit applications by state or federal agencies shall be made to the Department.

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29. Comment: (38.6) Rewrite section to make it clearer.

A number of commentors interpreted section 38.6 as exempting replacement wells from the provisions of Chapter 38.

Commentors: 9, 13, 33

Discussion: The last sentence of section 38.6 clearly stated that replacement wells do require a private well construction permit. Yet, several commentors read in the opposite meaning. The staff feels that the last sentence of 38.6 should be revised to eliminate any misunderstanding.

Recommendation: Replace last sentence of 38.6 with the following: "A private well construction permit is required for all replacement wells" and insert the sentence at the beginning of the section.

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30. Comment: (38.1) Definition of "contiguous."

Commentor reasoned that the definition of "contiguous" that appeared in 38.1 is badly flawed because it may make the DOT the owner of a contiguous piece of

property that is over 10,000 miles long and which contains numerous buildings and spans 99 counties. The commentor indicated that his department (the State DOT) cannot deal with well management procedures that make it the owner of such an extensive contiguous property. Railroads, counties and even municipalities may run into the same problem if the current definition of "contiguous" is allowed to stand.

Commentor: 33

Discussion: The staff agrees with the commentor that the definition of contiguous that appears in 38.1 could create problems for owners of roads, railroads and other narrow but long strips of land in the state.

Recommendation: Rewrite the definition of contiguous in 38.1 to include a provision that the radius of the contiguous piece be limited to one mile for the purpose of reporting on other existing wells on the property. Replace the definition of "contiguous" shown in 38.1 with the following: "Contiguous" means any number of parcels of land that physically touch one another including tracts of land separated by roads, railroads or streams; except that for the purpose of reporting on other existing wells on the property, the radius of a contiguous piece of land shall be limited to one mile.

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31. Comment: Incorporate the proposed rules into Chapter 49.

Commentor thinks that it is not a good idea to create a new Chapter 38 to implement the provisions of the new private well permit program. Instead, the commentor feels that things would be more straight forward if the provisions of the proposed rules are incorporated into Chapter 49. Enforcement of the rules will be easier and more straight forward, too.

Commentor: 9

Discussion: There may be something to be gained by incorporating the provisions of the new rules into Chapter 49. But, the Department disagrees

with the commentor that modifying Chapter 49 would be more appropriate. In order to incorporate the provisions of Chapter 38 into Chapter 49, the latter would have to be rewritten; not just modified. On the other hand, by creating a new Chapter 38, there would be limited need to modify Chapter 49. Besides, the public will not be confused by frequent changes of existing rules. The Department chose to take the most expeditious process of developing rules for a program that has a legislative mandate of July 1, 1987. In addition, Chapter 38 is also tied to the requirements of Chapter 37, "Registration of Water Well Contractors" and proposed Chapter 39, "Requirements for Properly Plugging Abandoned Wells."

Recommendations: No change.

(EP38.VO/sc)

CHAPTER 38 -- PRIVATE WATER WELL CONSTRUCTION PERMITS
List of Commentors

Oral Commentors:

A - Council Bluffs
February 3, 1988

1. R. Sheer
   Rural Route #1, Box 205E
   Crescent, Iowa 51526

2. D. G. Rhoades
   Rural Route #1, Box 247
   Crescent, Iowa 51526

3. Stephen A. Seliga
   Stang Dewatering, Inc.
   6414 South 84th
   Omaha, Nebraska 68127

B - Des Moines
February 5, 1988

4. Brent Parker
   Jasper County Board of Health
   Courthouse
   Newton, Iowa 50208

5. Charlotte Banks
   R. Banks, Inc.
   Rural Route
   St. Charles, Iowa 50240

6. Noel Westrum
   Rural Route
   Stratford, Iowa 50249

C - Iowa City
February 8, 1988

7. Hillary Maurer
   Johnson County Health Department
   1105 Gilbert Court
   Iowa City, Iowa 52240

8. Joel Garretson
   DNR Field Office #6
   117 N Second Avenue
   P. O. Box 27
   Washington, Iowa 52353

9. H. B. Calvert
   Lee County Health Department
   933 Avenue H
   P. O. Box 427
   Fort Madison, Iowa 52627

10. Jeff Joslyn, Well Driller
    Iowa Water Well Association
    1614 Ridge
    Iowa City, Iowa 52240

11. Graham Daneron
    Johnson County Health Department
    1105 Gilbert Street
    Iowa City, Iowa 52240

12. Dan Kramer
Iowa Environmental Health Association
1105 Gilbert Court
Iowa City, Iowa 52240

13. Tom Langan
Iowa Irrigation Association
106 Second Avenue
Muscatine, Iowa 52761

14. Don Gordon
DNR - Geological Survey Bureau
123 North Capitol
Iowa City, Iowa 52240

Written Commentors:

15. Earl J. Langel
P. O. Box 95
Milford, Iowa 51351

16. Lawrence E. Barker, Administrator
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Bicentennial Building, 5th Floor
428 Western Avenue
Davenport, IA 52801-1004

17. Hillary Maurer
Public Health Sanitarian
Johnson County Health Department
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Iowa City, Iowa 52240

18. Thomas B. Andersen, P.E. (Howard County Engineer/Sanitarian)
Robert F. Voves, (Chairman, Howard County Board of Supervisors)
C. J. Anderson (Co-Chairman, Howard County Board of Health)
Office of Howard County Engineer
Courthouse
Cresco, Iowa 52136

19. Ron Fairchild
Winneshiek County Sanitarian
Winneshiek County Public Health
201 West Main, Courthouse
Decorah, Iowa 52101

20. Iowa Water Well Association
920 Des Moines Street, Suite #200
Des Moines, Iowa 50309

21. Brent Parker, Chairman
Groundwater Bill Advisory Committee
Jasper County Sanitarian
Courthouse
Newton, Iowa 50208

22. Wayne Hansen
Rural Route #1
Audubon, Iowa 50025

23. Doug Bird
Bremer County Sanitarian
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415 East Bremer Avenue
Waverly, Iowa 50677

24. Lyle F. Jackson
Fayette County Sanitarian
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Courthouse
West Union, Iowa 52175

25. Bryce E. Hawthorn, Supervisor
Environmental Services
John Deere Waterloo Works
P. O. Box 270
Waterloo, Iowa 50704-0270

26. Royce J. Fichtner, P.E.
Marshall County Engineer
Courthouse
Marshalltown, Iowa 50158

27. Dan Nolting, RS
Story County Sanitarian
Courthouse
Nevada, Iowa 50201

28. David Manning
Jackson County Sanitarian
Jackson County Board of Health
Courthouse
Maquoketa, Iowa 52060

29. Douivan L. Gordon
Geological Survey Bureau (DNR)
123 North Capitol
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30. Lee G. Dameron, Director
Sally Stutsman, Chairperson
Johnson County Board of Health
1105 Gilbert Court
Iowa City, Iowa 52240

31. Leslie Larson
Larson Well Drilling
Route #2
Mabel, Minnesota 55954

32. Ted O. Yanecek
Public Affairs Council
Iowa Farm Bureau Federation
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West Des Moines, Iowa 50265

33. Darrel Rensink
Acting Director
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34. H. B. Calvert
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Fort Madison, Iowa 52627

(01.WS/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 15 DECISION

CHAPTER 47 -- PRIVATE WELL SAMPLING AND ABANDONMENT -- GRANTS TO COUNTIES

The Department requests Commission approval of the proposed new Chapter 47 rules relating to grants to counties for (1) private well testing programs and (2) for private well closing (plugging) of abandoned well programs.

Three public hearings on the proposed new chapter of the rules were held in Cedar Rapids, Denison and Des Moines on March 29, March 31 and April 4, 1988; and written and oral comments are to be received through April 14, 1988, ten days after the date of the final hearing. The notice was published on March 9, 1988.

There were a total of 48 attendees and 18 commentors at the three hearings, and a total of 18 written and telephone comments were received. There was a universal feeling expressed in the comments that equal grants should be made available to all counties and the competitive rating system for grants to counties should not be used and that costs for closing abandoned wells should be grant eligible. The rules have been changed to accommodate these suggestions.

Copies of the public participation responsiveness summary and the proposed revised rules will be sent to all Commission members and to all hearing attendees and commentors under separate cover.

Wayne Reed
April 11, 1988

(I15.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION [567]
Adopted Rules

Pursuant to the authority of 1987 Iowa Code supplement section 455B.172(5), the Environmental Protection Commission hereby adopts amendments to Chapter 40, "Scope of Division -- Definitions -- Forms -- Rules Of Practice," and adopts new Chapter 47, "Private Well Sampling and Abandonment -- Grants To Counties," Iowa Administrative Code.

These rules cover the making of grants to counties for the purpose of conducting programs for the testing of private water supply wells and for the proper closing of abandoned private water supply wells within the jurisdiction of the county. Notice of Intended Action was published on March 9, 1988 in the Iowa Administrative Bulletin as ARC 8475.

Both oral and written comments were received, and the changes from the Notice of Intended Action are as follows:

1. The chapter title was changed to "Private Well Sampling and Closure -- Grants To Counties."

2. Section 47.2 revised fund distribution to all counties participating equally.

3. Section 47.5 added a definition for "closure," and deleted the definition for "staffed county program."

4. Section 47.17(2) deleted "Nitrate and total coliform bacteria" before sampling costs and added a sentence requiring analysis for nitrate and total coliform bacteria as a minimum (but not restricting tests to those two parameters).

5. Section 47.17(3) was added permitting grant funds to be used for environmental health and public information programs.

6. Section 47.18(4) deleted and changed to "Reserved."

7. Section 47.19(4) deleted "nitrate" and "total coliform bacteria analyses" from the analyses descriptions.

8. Section 47.19(4)"a" deletes the requirement for the multiple tube fermentation method to be used for total coliform bacteria analysis and requires an EPA-approved reference method.

9. Section 47.21 pertaining to a rating system and ranking grant applications was deleted.

10. Section 47.33, title was changed to "eligible grant costs," and wording was changed to include each applicant or multi-county application and to delete the phrase "are not limited to."

11. Section 47.33(5) was changed to provide payment of the costs for properly plugging private, abandoned wells with payment not to exceed $200 for each well.

12. Section 47.34 was deleted.

13. New section 47.34 was added stating that not more than twenty-five percent (25%) of grant funds may be used for administrative costs.

14. Section 47.35 was added pertaining to ineligible grant costs for closure activities before and after the grant period.

15. Sections 47.35 and 47.36 are renumbered to 47.36 and 47.37.

16. Section 47.36(7) was added requiring final reports.

17. Section 47.37 pertaining to a rating and ranking system for distribution of grant funds to counties was deleted.

18. Section 47.48(2), change the dates of acceptance of applications for grants to September 1 through the end of October.

19. Section 47.49(1) added a date of the end of October for the closure of the grant acceptance period. Section 47.49(2) pertaining to the ranking

system was deleted, and sections 47.49(3) and 47.49(4) were renumbered due to elimination of the subsection 47.49(2).

These amendments will become effective June 22, 1988.

These rules are intended to implement 1987 Iowa Code supplement section 455B.172(5).

ITEM 1. Rule 567--40.1(455) is hereby amended by changing the second unnumbered paragraph as follows:

This chapter includes rules of practice, including forms, applicable to the public in the department's administration of the subject matter of this division. Chapter 41 contains the standards and specific permit procedures for the public water supply program. Chapter 42 provides special provisions for the testing of the finished water of certain water supplies for the presence of synthetic organic chemicals and pesticides. Chapter 47 contains provisions for making grants to counties for the purpose of creating programs for (1) the testing of private water supply wells and (2) the proper closure of private, abandoned wells within the jurisdiction of the county. Chapter 49 provides minimum standards for the construction of private water wells.

ITEM 2. New Chapter 47 is hereby adopted:

Chapter 47

Private Well Sampling and Closure -- Grants to Counties

567--47.1(455B) Purpose. The purpose of this chapter is to define procedures to implement Iowa Code subsection 455B.172(5), for making grants to counties for the purpose of creating and administering programs for (1) the testing of private water supply wells and (2) the proper closure of private, abandoned wells within the jurisdiction of the county.

567--47.2(455B) Funds. Monies for these grants are derived from a percentage of the agriculture management account of the groundwater protection fund as specified in subparagraph 455E.11(2)(b)(2)(b) of the Iowa Code. Monies in the agriculture management account are dependent on funds derived from Iowa Code subsections 200.8(4), 206.8(2), and 206.12(3). During any fiscal year period, the base grant amount available to each applicant county or to each county included in a multi-county application for each of the two (2) programs will be the total funds available divided by ninety-nine (99), representing the total number of counties in the state. After it is determined how many counties will not participate in each grant program, the funds allocated for the nonparticipating counties will be divided equally among the participating counties to provide a supplemental grant amount. The total grant amount (consisting of the base grant amount plus any supplemental grant amount) to each participating county for each program will be equal and will be determined by the amount of available funds and the number of participating counties.

567--47.3(455B) Applicability. These rules apply to all grant requests to the department in accordance with Iowa Code subsection 455B.172(5).

567--47.4(455B) Eligibility. Grant applications must be submitted by a county board of supervisors. Only counties which have adopted standards for private water supply and private disposal facilities, at least as stringent and consistent with the standards adopted by the commission, will be eligible for receiving any grant funds or for participating in a multi-county grant program. An application representing more than one county may be submitted

for the purpose of conducting a multi-county program. A county is eligible to submit only one application for each grant program, either as an individual applicant or as a member of a multi-county application.

567--47.5(455B) Definitions.

"Abandoned well" means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impractical.

"Certified laboratory" means a laboratory certified by the department to conduct analytical measurements on specified drinking water contaminants pursuant to the requirements of obtaining such certification in accordance with section 41.4(11) of departmental rules pertaining to water supplies.

"Closure," "closing" or "close" means the proper plugging of an abandoned well to permanently seal the well from contamination by surface drainage or contamination of an aquifer.

"Commission" means the environmental protection commission created under Iowa Code section 455A.6.

"County board of supervisors" means the board of supervisors of a county as established in accordance with the Code of Iowa section 333.201.

"Department" means the department of natural resources created under Iowa Code section 455A.2.

"Private water supply" means any water supply for human consumption which has less than fifteen service connections and regularly serves less than twenty-five individuals.

"Water well" means an excavation that is drilled, cored, bored, augured, washed, driven, dug, jetted or otherwise constructed for accessing groundwater. Water well does not include an open ditch or drain tiles.

47.6 to 47.15 Reserved.

DIVISION I

Grants for Well Testing

567--47.16(455B) Goal and Objectives.

47.16(1) The goal of the grant program is to assist in testing all private water supply wells and to use the test information for programs designed to improve the quality of water in private water supplies.

47.16(2) The specific objectives of the well testing program are:

a. Provide for regular and periodic testing of private water supply wells using proper sampling, handling and analytical techniques.

b. Provide for timely responses and corrective action in instances of contamination of private water supply wells.

c. Establish a reliable and accurate data base of information on the location and construction of private water supply wells, and water quality of private water supply wells.

d. Provide individual or multi-counties with assistance in meeting the above objectives.

567--47.17(455B) Eligible grant costs. Grant funds may be approved for, but are not limited to, the following costs:

47.17(1) Salary, transportation and other associated costs for conducting the private water supply testing program including costs for staff training, sample collection and responding to inquiries related to or resulting from the private well testing program.

47.17(2) Sampling costs including sample collection equipment, sample handling, transport, and the analytical services and analytical reporting by a

certified laboratory. At a minimum, well sampling shall include analyses for nitrate and total coliform bacteria.

47.17(3) Conducting environmental health and public information programs related to the private water supply well testing program.

567--47.18(455B) Ineligible grant costs. Grant funds shall not be used for the following:

47.18(1) Conducting environmental health programs other than those related to the private water supply well testing program.

47.18(2) Conducting private well testing activities either prior to or after the grant period specified in the grant agreement.

47.18(3) Analytical services performed by other than a certified laboratory.

47.18(4) Reserved.

47.18(5) Sampling and analytical costs for testing public water supply wells.

47.18(6) Cost of laboratory analytical equipment.

47.18(7) Sampling and analytical costs for testing of wells other than private water supply wells. Wells not used for human consumption such as wells used solely for irrigation or livestock watering are ineligible.

567--47.19(455B) Performance requirements. The following minimum standards must be met by all grantees:

47.19(1) Sample collection. Private water supply well samples are to be collected using proper sample collection and handling techniques as specified by the department.

47.19(2) Background information. For each well tested, background information shall be collected and recorded, using departmental form No. 542-1207. Information recorded on this form will provide: a description of the well including depth, location and construction; an evaluation of factors affecting water supply quality; general sample collection information; and other information needed to provide follow-up to interpret results or respond to inquiries.

47.19(3) Qualified staff. Staff will be adequately trained or have the necessary experience to collect the background information requested on departmental form No. 542-1207 for each well tested. Staff also must have sufficient experience or training to provide follow-up functions such as responding to inquiries or interpreting test results.

47.19(4) Laboratory analyses. All analyses must be performed by a laboratory certified by the department to perform the analyses being used and will conform to the following:

a. The total coliform bacteria analyses must be performed using an EPA-approved reference method suitable for producing accurate results considering the conditions of the water being tested.

b. Copies of test results must be retained by the grantee and be provided to the owner and user, and to the county board of health of the county in which the well is located. Copies of the test results will be provided to the department upon request.

47.19(5) Follow-up. The grantee will be responsible for follow-up and response to requests from the well owner or well user for assistance and information relative to well test results, the well testing program, and satisfactory well construction and location.

47.19(6) Adopted standards. All counties included in the grant application must have adopted standards for private water supplies and private sewage

disposal facilities which are at least as stringent as and consistent with the standards adopted by the commission, found in the Iowa Administrative Code Chapter 49(455B) for nonpublic water wells and Chapter 69(455B) for on-site wastewater treatment and disposal systems.

47.19(7) Quarterly reports. Grantees must submit to the department status reports on each activity contained in the work plan within 30 days following the end of each fiscal quarter using departmental form No. 542-1208. Each quarter the grantee shall also submit a report summarizing the analytical results and the factors affecting private water supplies.

47.19(8) Final reports. The grantee shall prepare a final report summarizing the findings from the well testing program. The final report shall include a summary of the analytical results as well as any conclusions or findings determined from the testing program relating factors having an effect of the quality of private water supplies.

567--47.20(455B) Contents of grant application. Information requested on departmental form No. 542-1205 must be provided to make a completed grant application. The application shall include, but not be limited to:

47.20(1) The name, address and telephone number of the chairman of the county board of supervisors. For applications representing more than one county, the applicant is the chairman of the county board of supervisors of the lead county responsible for administering the grant.

47.20(2) The name of each county or counties represented in the grant application.

47.20(3) A copy of the adopted standards from each county represented in the application pursuant to 47.19(6).

47.20(4) For multi-county applications, signed Iowa Code Chapter 28E agreements between each participating county and the applicant.

47.20(5) If applicable, an identification of any subcontractor which will participate in the private well testing program, including mailing address and phone number.

47.20(6) The name and address of the certified laboratory(ies) which will be providing analytical services.

47.20(7) A description of the existing programs including staffing for regulating private water supplies and private sewage disposal facilities for each county represented in the application.

47.20(8) The names and qualifications of personnel responsible for carrying out the proposed program. If personnel is not known at the time of application, include a description of experience or training requirements of staff expected to conduct the grant program as well as listing required responsibilities.

47.20(9) A detailed work plan including, but not limited to, the following:

a) a description of any proposed environmental health and public information programs related to the well testing program;

b) methods to be used by the applicant for selecting private water supply wells for testing;

c) the number of wells to be tested;

d) the number of analyses to be performed;

e) the duties to be performed by staff in collecting samples;

f) the duties to be performed by any subcontractor for any part of this grant;

g) a description of the follow-up activities to be performed by staff in responding to test results;

h) record keeping and reporting, and

i) a schedule for completing the above activities contained in the work plan.

47.20(10) An estimated budget that relates the work to be done to conduct the activities described in the work plan with the amount of grant funds requested.

47.21 to 47.31 Reserved.

DIVISION II

Grants for Programs to Close Private, Abandoned Wells

567--47.32(455B) Goal and Objectives.

47.32(1) The goal of the grant program for the closure of private, abandoned wells is to assist in initiating and administering programs designed for closing all private, abandoned wells.

47.32(2) The specific objectives of the private, abandoned well closure grant program are:

a. To identify all private, abandoned wells and administer private, abandoned well closure programs.

b. To assist counties in developing private, abandoned well closure plans in accordance with departmental rules relating to the priority order and the proper closure of private, abandoned wells.

c. To ensure the proper closure of all private, abandoned wells.

d. To provide cost-sharing grants of up to $200 per well to owners to assist in the costs of properly plugging private, abandoned wells.

567--47.33(455B) Eligible grant costs. Grant funds to each applicant or each county of a multi-county application may be approved for the following costs:

47.33(1) Costs of developing and adopting county or multi-county private, abandoned well closure programs consistent with departmental private, abandoned well closure rules.

47.33(2) Costs of systematically identifying all private, abandoned wells within the program area jurisdiction and maintaining a data base inventory system.

47.33(3) Costs of administering a private, abandoned well closure program.

47.33(4) Costs of administering public information programs emphasizing the benefits of the private, abandoned well closure program.

47.33(5) Payment of the costs for properly plugging private, abandoned wells providing that such payment may not exceed $200 for each well.

567--47.34(455B) Not more than twenty-five percent (25%) of grant funds may be used for costs associated with 47.33(1) through 47.33(4).

567--47.35(455B) Ineligible grant costs. Grant funds shall not be used for the costs of conducting private, abandoned well closure activities either prior to or after the grant period specified in the grant agreement.

567--47.36(455B) Performance requirements. The following minimum standards must be met by all grantees:

47.36(1) Each county participating in the grant must have the authority to regulate the proper closure of private abandoned wells at least as stringent as and consistent with departmental rules.

47.36(2) For each private, abandoned well, grantees will maintain the following minimum records:

a. The name and address of the private, abandoned well owner.

b. Private, abandoned well location to the quarter, quarter section.

c. Physical integrity of private abandoned well head.

d. Potential for surface water contamination to enter the private, abandoned well.

e. Distance of private, abandoned well to an active water supply well.

f. Records of dates for closing private, abandoned wells.

g. Past uses of private, abandoned wells if known.

47.36(3) Summary reports, including the information identified in 47.36(2) will be submitted to the department upon request.

47.36(4) Programs will stress the need for private, abandoned well closure through public awareness.

47.36(5) Adopted standards. All counties included in the grant application must have adopted standards for private water supplies and private sewage disposal facilities which are at least as stringent as and consistent with the standards adopted by the commission found in the Iowa Administrative Code Chapter 49(455B) for nonpublic water wells and Chapter 69(455B) for on-site wastewater treatment and disposal systems.

47.36(6) Quarterly reports. Grantees must submit to the department status reports on each activity contained in the work plan within 30 days following the end of each fiscal quarter using departmental form No. 542-1208.

47.36(7) Final reports. The grantee shall prepare a final report summarizing the findings from the well closure program. The final report shall include a summary of the activities completed in carrying out the work plan including the number of wells properly closed and the amount of grant funds used for the costs of properly plugging private, abandoned water supply wells.

567--47.37(455B) Contents of grant application. Information requested on departmental form No. 542-1204 must be provided to make a completed grant application. The application shall include, but not be limited to:

47.37(1) The name, address and telephone number of the chairman of the county board of supervisors. For applications representing more than one county, the applicant is the chairman of the county board of supervisors of the lead county responsible for administering the grant.

47.37(2) The name of each county or counties represented in the grant application.

47.37(3) A copy of the adopted standards from each county represented in the application pursuant to 47.36(5) and a copy of each county's authority to regulate the proper closure of private abandoned wells pursuant to 47.36(1).

47.37(4) For multi-county applications, signed Iowa Code Chapter 28E agreements between each participating county and the applicant.

47.37(5) If applicable, an identification of any subcontractor to the county which will participate in the private, abandoned well closure program, including mailing address and phone number.

47.37(6) A description of the existing programs including staffing for regulating private water supplies and private sewage disposal facilities for each county represented in the application.

47.37(7) The names and qualifications of personnel responsible for carrying out the proposed grant program. If the personnel is not known at the time of application, include a description of experience or training requirements of staff expected to conduct the grant program as well as listing required responsibilities.

47.37(8) A detailed work plan including but not limited to the following:

a. A description of any proposed environmental health and public information programs related to the closure of private, abandoned wells.

b. Methods of identifying private, abandoned wells.

c. Methods of record keeping and reporting information on each private, abandoned well.

d. Method of setting private, abandoned well closure priority based on department rules.

e. Methods of notifying private, abandoned well owners.

f. Estimated number of private, abandoned wells to be closed.

g. A schedule for conducting the above activities.

47.37(9) An estimated budget that relates the work to be done to conduct the activities described in the work plan with the amount of grant funds requested.

47.38 to 47.47 Reserved.

DIVISION III

For Both Grant Programs

567--48.48(455B) Grant application submission.

47.48(1) Application content. Each application submitted on departmental form No. 542-1204 or form No. 542-1205 must contain sufficient detail to clearly describe how funds will be utilized and how the grant program will be implemented. Specific requirements for content of the grant applications are listed in rule 47.20(455B) for the private well testing program or rule 47.37(455B) for the private, abandoned well closure program.

47.48(2) Time of submission. At least thirty (30) days prior to the grant application acceptance period, the department will notify each county board of supervisors. Completed applications must be received by the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, by the close of business on the last business day of the grant acceptance period. Grant applications for the 1989 state fiscal year (July 1, 1988 to June 30, 1989), will be accepted by the department for a period of 60 days after these rules become effective. Grant applications for state fiscal years, beginning with 1990, will be accepted from September 1 through the end of October prior to the start of the fiscal year.

47.48(3) Application acceptance. Applications for these grants will be accepted from any eligible county board of supervisors. Only those counties which have adopted standards for private water supply and private sewage disposal facilities, at least as stringent and consistent with the standards adopted by the commission, will be eligible for receiving any grant funds or for participating in a multi-county grant program.

47.48(4) Notification of receipt. Following the receipt of a grant application, the department will notify the applicant of such receipt. After a preliminary review, the department will notify the applicant if not complete. If adequate time exists, the applicant may submit the required information by the end of October to complete the grant application.

567--47.49(455B) Grant application selection.

47.49(1) Consideration withheld. Upon closure of the grant application acceptance period at the end of October, the department will not consider any application which is not complete.

47.49(2) Applicant notification. Applicants will be notified of the acceptance of their completed application and will be advised of the date on which the commission will act on the applications.

47.49(3) Commission selection. The commission will review the list of completed applications received by the department and will act on them for funding. Successful grant applicants will be notified of the commission decision and will be issued a grant agreement. All grant applications not approved for funding will be returned to the applicant. All applicants,

regardless if successful or not, must reapply for a grant in future years if they are to be considered for a future grant.

567--47.50(455B) Multi-county grant applications. Two or more counties may join together to apply for a grant. However, for the purposes of multi-county grant programs, the department will accept only one application from the counties involved. The application is to identify the lead county responsible for administering the grant. For multi-county programs, the department will make one grant to the lead county and not to each individual participating county.

567--47.51(455B) Grant period. Grants will be awarded to successful applicants on an annual basis concurrent with the state fiscal year beginning on July 1 and ending on June 30 of the following calendar year.

567--47.52(455B) Grant agreement. Following commission approval, the department will negotiate the terms of and will issue the grantee a grant agreement stipulating specific terms of the grant award.

567--47.53(455B) Timely commencement. Grantees will be expected to commence work plan activities in an expeditious manner. Failure of the grantee to meet the schedule contained in the work plan may be cause for the department to terminate the grant.

567--47.54(455B) Payment.
47.54(1) Grant amount. The grantee will be eligible to receive a sum up to the amount specified in the grant agreement.
47.54(2) Billing periods. The grantee may submit immediately a billing for a prepayment (up to 25 percent) of the grant amount for approved eligible costs to initiate work as described in the work plan. This amount will be negotiated and be a part of the grant agreement. Normal billing periods will coincide with the quarterly reporting periods.

567--47.55(455B) Record keeping and retention. A grantee shall retain all records and supporting documents related to the administration of the grant for a period of three (3) years. Representatives of the state auditor's office and the department or the department's designee shall have access to all files, accounts and documents pertaining to the grant.

567--47.56(455B) Grant amendments. Grant agreements for which grants have been approved may be amended, if funds are available, to increase or decrease the program scope or to increase or decrease the program costs. Changes must be well documented and be approved by the department prior to their beginning.

567--47.57(455B) Termination or forfeiture of grant funds.
47.57(1) The grant will be forfeited if it is determined that the grant was obtained by fraud or misrepresentation regardless of whether grant monies have already been given to the grantee. Any grant money received or spent shall be repaid to the department.
47.57(2) If the department determines that activities agreed upon in the grant agreement have not been satisfactorily completed, forfeiture of a portion of or the entire grant may result.

47.57(3) The continuation or renewal of a grant shall be contingent upon the county's acceptable performance in carrying out its responsibilities described in the work plan and, of meeting the grant program goals and objectives. All grants will be issued for not more than a period of one (1) year concurrent with a state fiscal year. Applicants must reapply to continue or renew any grant within the specified grant application acceptance period. The department may, subject to approval of the commission, deny awarding of a grant extension or withdraw a grant if it is determined by the department that the county has not, nor is expected, to carry out the responsibilities for which the grant was awarded.

Adopted this _____ day of April, 1988.

_____
Larry J. Wilson, Director

(EP47A.MIN/110A-88/sc)

IOWA DEPARTMENT OF NATURAL RESOURCES

GRANT APPLICATION
WELL CLOSURE PROGRAM
(See instructions and continuation of form on back side.)

PART A - GENERAL INFORMATION AND REQUIREMENTS

1) List each county (counties) represented by this grant application.

_____

_____

2) Applicant Name: _____
Street, R.R., Box: _____
City and State: _____ Zip Code _____
Phone: ( ) _____

3) For each county represented by this grant application, attach a copy of the county's adopted standards for private water supplies and private sewage disposal facilities and authority to regulate the closure of private, abandoned wells which are at least as stringent but consistant with the standards adopted by the Environmental Protection Commission.

4) For any application representing more than one county, attach signed copies of Iowa Code Chapter 28E agreements between each county listed in Part A, Item 1 above with the lead county responsible for administering the grant.

5) If applicable, identify any subcontractor which will conduct any portion of the grant program for the applicant, include mailing address & phone number.

_____

_____

6) For each county represented by this grant application describe on a separate sheet the existing programs including staffing for regulating private water supplies and private sewage disposal facilities.

7) Identify personnel responsible for carrying out the proposed grant program. Provide names, responsibilities and experience of staff if known. If personnel to conduct the grant program is not known at the time of this application, describe experience or training requirments of staff expected to conduct the grant program as well as their required responsibilities.

PART B - WORK PLAN

Attach a detailed work plan describing the applicant's proposed activities for carrying out the grant program. The work plan shall include but not be limited to describing the following:

a) A description of any proposed environmental health and public information programs related to the closure of private, adbandoned wells.
b) Methods to be used by the applicant for identifying private abandoned wells;
c) Method of setting private abandoned well closure priority based on department rules;
d) Methods of notifying private abandoned well owners;
e) Estimated number of private abandoned wells to be closed;
f) Recordkeeping and reporting; and
g) A schedule for conducting the above activities.

PART C - REQUEST

Attach an estimated budget that relates the work to be done to the activities described in the work plan contained in Part B, and attach a request for the amount of grant funds desired.

PART D - CERTIFICATION

I certify the above information is true and correct to the best of my knowledge and that I will furnish additional information to the department as may be requested.

Signature | Date

SPECIAL INSTRUCTIONS FOR COMPLETING

Part A, Item 2. APPLICANT. The applicant must be the chairman of the county board of supervisors. For applications representing more than one county, the applicant must be the chairman of the county board of supervisors of the lead county responsible for administering the grant.

Part A, Item 3. The standards adopted by the Environmental Protection Commission can be found in 567 Iowa Administrative Code Chapter 49 for Non-public Water Wells and Chapter 69 for On-Site Wastewater Treatment and Disposal Systems.

Part A, Item 4. Only signed Iowa Code Chapter 28E agreements are necessary for a completed application. Filing of these agreements with the Secretary of State and recording agreements at the county recorder's office will be required of grantees in the grant agreement.

Mail Completed Applications To: Grants to County(s) Coordinator
Department of Natural Resources
Wallace State Office Building
Des Moines, IA 50319-0034

For Information Call: 1-800/532-1114

IOWA DEPARTMENT OF NATURAL RESOURCES
GRANT APPLICATION
WELL TESTING PROGRAM
(See instructions and continuation of form on back side.)

PART A - GENERAL INFORMATION AND REQUIREMENTS

1) List each county (counties) represented by this grant application.

_____

_____

2) Applicant Name: _____
Street, R.R., Box: _____
City and State: _____ Zip Code _____
Phone: ( ) _____

3) For each county represented by this grant application, attach a copy of the county's adopted standards for private water supplies and private sewage disposal facilities which are at least as stringent but consistent with the standards adopted by the Environmental Protection Commission.

4) For any application representing more than one county, attach signed copies of Iowa Code Chapter 28E agreements between each county listed in Part A, Item 1 above with the lead county responsible for administering the grant.

5) If applicable, identify any subcontractor which will conduct any portion of the grant program for the applicant, include mailing address and phone number.

_____

_____

6) List the certified laboratory(ies) providing analytical services (list name(s) and address(es) of all to be used).

_____

_____

7) For each county represented by this grant application describe on a separate sheet the existing programs including staffing for regulating private water supplies and private sewage disposal facilities.

8) Identify personnel responsible for carrying out the proposed grant program. Provide names, responsibilities and experience of staff if known. If personnel to conduct the grant program is not known at the time of this application, describe experience or training requirements of staff expected to conduct the grant program as well as their required responsibilities.

PART B - WORK PLAN

Attach a detailed work plan describing the applicant's proposed activities for carrying out the grant program. The work plan shall include but not be limited to describing the following:

a) a description of any proposed environmental health and public information program related to the well testing program;
b) methods to be used by the applicant for selecting private water supply wells for testing;
c) the number of wells to be tested;
d) the number of analyses to be performed;
e) the duties to be performed by staff in collecting samples;
f) the duties to be performed by any subcontractor for any part of this grant;
g) a description of the follow-up activities to be performed by staff in responding to test results;
h) recordkeeping and reporting; and
i) a schedule for completing the above activities contained in the work plan.

PART C - REQUEST

Attach an estimated budget that relates the work to be done to the activities described in the work plan contained in Part B, and attach a request for the amount of grant funds desired.

PART C - CERTIFICATION

I certify the above information is true and correct to the best of my knowledge and that I will furnish additional information to the department as may be requested.

Signature _____ Date _____

SPECIAL INSTRUCTIONS FOR COMPLETING

Part A, Item 2. APPLICANT. The applicant must be the chairman of the county board of supervisors. For applications representing more than one county, the applicant must be the chairman of the county board of supervisors of the lead county responsible for administering the grant.

Part A, Item 3. The standards adopted by the Environmental Protection Commission can be found in 567 Iowa Administrative Code Chapter 49 for Non-public Water Wells and Chapter 69 for On-Site Wastewater Treatment and Disposal Systems.

Part A, Item 4. Only signed Iowa Code Chapter 28E agreements are necessary for a completed application. Filing of these agreements with the Secretary of State and recording agreements at the county recorder's office will be required of grantees in the grant agreements.

Mail Completed Applications To: Grants to County(s) Coordinator
Department of Natural Resources
Wallace State Office Building
Des Moines, IA 50319-0034

For Information Call: 1-800/532-1114

State of Iowa
Department of Natural Resources

GRANT AGREEMENT

Section One. Parties.

This agreement is entered into by the Department of Natural Resources (hereafter, the Department) and _____ (hereafter, the Grantee).

Section Two. Authority.

The Department, having determined that the described grant application is eligible for assistance under the ground water protection fund, that the grant application conforms with the applicable rules of the Department and that the grant is necessary for the accomplishment of the state's policy of ground water protection, is authorized to enter into this agreement by Chapter 455B, Division III, Part 1, Subsection 455.172(5) of the Iowa Code. The funds for this grant were derived from a percentage of the agricultural management account of the ground water protection fund as specified in subparagraph 455E.11(2)(a)(11)(2)(b) of the Iowa Code.

Section Three. Description of the Grant.

This grant is for the purpose of carrying out programs for the: *(check one)*

☐ testing of private water supply wells.

☐ proper closure of abandoned, private water wells.

located within the jurisdiction of the county(ies) in the program created by the Grantee during the period from _____ to _____ not to exceed a period of one year.

The scope of activities funded through this agreement is limited to those activities contained within the work plan as submitted as Part B of departmental Form No. 542-120__, the grant application.

Section Four. Eligible Costs.

The eligible cost of the grant application as determined by the Department is $_____.

The eligible grant application cost may be amended, if funds are available to increase or decrease the program scope or costs, if changes are well documented and approved by the Department prior to initiation, and the maximum grant amount is not exceeded.

Section Five. Agreements.

5.1 Grant Amount - Consideration of the Department.

The Department agrees to pay to the Grantee all eligible costs specified in Section Four (4), unless performance problems have been identified by the Department.

5.2 Consideration of the Grantee.

The Grantee agrees to:

a) Proceed expeditiously with and complete the activities in accordance with the schedule contained in the work plan. Failure to meet the schedule contained in the work plan may be cause for the Department to terminate the grant.

b) Maintain complete records of all costs and income sources for activities described in the approved work plan. All records and supporting documents relating to the administration of the grant shall be retained for a period of three (3) years.

c) Prepare quarterly progress reports due thirty (30) days following the end of each fiscal quarter using departmental Form No. 542-1208.

d) Comply with the minimum performance requirements described in 567--47.__ (455B).

e) File with the Secretary of State and with each appropriate County Recorder's Office any Iowa Code Chapter 28E agreements submitted in accordance with Part A of departmental Form No. 542-120__, the grant application.

Section Six. Time of Payment.

The Grantee may immediately submit a billing for a prepayment not to exceed twenty-five percent (25%) of the grant amount, to wit $_____ for approved eligible costs to initiate activities described in the work plan. Any prepayment will be credited against the first quarterly payment.

Payments will be made by the Department on a fixed price quarterly payment basis during each quarterly reporting period.

The quarterly payment shall be $_____.

Quarterly payments shall be made upon the Department's receipt and acceptance of the quarterly progress reports. The first quarterly payment request shall be due on _____. Quarterly payments may be withheld for nonperformance.

Section Seven. Conditions Precedent.

This grant agreement shall be effective only if the following conditions precedent are fulfilled.

1. That the grant offer is accepted by the Grantee and such acceptance is shown by subscription of an agent of the Grantee authorized by resolution number _____ of the governing body, a certified copy of which is attached as an Appendix, to accept the offer of the Department on behalf of the Grantee.

2. That the Attorney General approve this grant agreement as to form, and such approval is shown by the subscription of the Attorney General.

Section Eight. Effective Date.

The effective date shall be the date on which the Attorney General subscribes and dates this document.

On behalf of the Grantee, I, the undersigned, being duly authorized to take such action as evidenced by the Appendix to this agreement do hereby accept the grant of the Department under the terms herein stated.

Date _____ By _____

Title _____

Attest _____

(Seal)

As authorized by Section 455B.172(5), Code of Iowa, and authority delegated by the Department of Natural Resources Environmental Protection Commission, I execute this agreement on behalf of the state of Iowa and the Department of Natural Resources.

Larry J. Wilson
Director
Department of Natural Resources

Date _____ By _____
Division Administrator
Environmental Protection Division

This agreement is approved as to form.

Thomas J. Miller
Attorney General of Iowa

Date _____ By _____
Assistant Attorney General

IOWA DEPARTMENT OF NATURAL RESOURCES

PRIVATE WATER SUPPLY GRANT PROGRAM
WELL TESTING BACKGROUND INFORMATION
(See reverse side for instructions on completing and continuation of this form.)

1) Location of Well: ___ 1/4 of ___ 1/4, Section _____, T___N, R___, _____ County.

2) Well Identification: _____

3) Well Owner and Well User Information (provide information requested below):

WELL OWNER	WELL USER (if different from well owner)
Name _____	Name _____
Street, RR, Box _____	Street, RR, Box _____
City/State _____ Zip _____	City/State _____ Zip _____
Phone (___) _____	Phone (___) _____

4) Well Description

	Provide in the space below the information requested in the left hand column	Reliability of Information* Check (✓) Appropriate Box K	E	U
well depth in feet				
type of well construction (drilled, driven, bored, dug, other (specify))				
casement material (steel, concrete, plastic, other (specify))				
diameter of casement in inches				
year constructed				

*K = Known; E = Estimate; U = Unknown

5) Well Assessment

Describe the physical integrity of the wellhead (the portion of the casement above the ground). _____

Describe any noticeable conditions which would allow surface water to contaminate the well. _____

Describe any nearby potential ground water contaminant sources (e.g., nearby septic tanks, abandoned wells, chemical storage or mixing area, livestock facilities, etc.).

Indicate if there have been any known spills near the well or incidences of back siphonage or other actual known occurrences of direct contamination. _____

6) **Sample Collection Information**
Does the private water supply receive any type of treatment process prior to water usage? [] Yes [] No. If yes, describe the type of treatment (e.g., filtering, softening, disinfection). _____

From what location in the water supply system was the sample collected (e.g., sink faucet, outdoor faucet)? _____ If treatment is provided, where is the sample collection location in relation to such treatment? Before [] or After [].

Name of the sample collector _____

7) **Other Information**
Include any other information that would assist in providing follow up or responding to test results. _____

INSTRUCTIONS

1. Location of Well. Provide well location to the nearest quarter, quarter section. Also include township (T), range (R), section numbers and county name.

2. Well Identification. If the well owner has more than one well located in the same quarter, quarter section, provide some identification (i.e., a sketch) to distinguish the location of the well that was tested from the location of other wells.

3. Well Owner and Well User Information. Provide information as requested.

4. Well Description. Provide the requested information that pertains to describing the well. Also indicate the reliability of the recorded information by checking the appropriate box.

5. Well Assessment. Provide the requested information that pertains to assessing the condition of the well.

6. Sample Collection Information. Provide the requested information.

7. Other Information. Record any information, observations, etc. that would assist in responding to test results.

IOWA DEPARTMENT OF NATURAL RESOURCES

QUARTERLY REPORTING AND BILLING FORM
(See instructions on back side.)

1) Name of Grantee _____

2) This quarterly reporting and billing form is submitted in accordance with the requirements of the: (*check one*)

☐ testing of private water supply wells.

☐ proper closure of private, abandoned wells.

3) The period for which this quarterly reporting and billing form is being submitted:

☐ JUL 1 - SEP 30 ☐ OCT 1 - DEC 31 ☐ JAN 1 - MAR 31 ☐ APR 1 - JUN 30

YEAR: _____

4) Describe on separate sheets in narrative form the status of work completed during the reporting period. (See instructions for types of activities to be reported.)

5) Provide, attached on separate sheets, documentation of all costs incurred during the reporting period. (See instructions for types of costs that need to be documented.)

6) I hereby request a quarter payment of $_____ for the above specified grant program. I certify that the billing is correct and just and is based upon actual payments and expenses of record; that complete documentation is on file to support said payments and expenses; and that payment from the State has not been received.

Signature	Date	Name
		Title

SPECIAL INSTRUCTIONS FOR COMPLETING FORM

1) Grantee - Grantee must be the chairman of the County Board of Supervisors as described in the Grant Agreement.

2) A separate copy of this completed form must be submitted for each grant program in the event a grantee is participating in both grant programs.

3) This completed form is due within 30 days following the end of each fiscal quarter period as identified on the front.

4) The types of activities which need to be reported for each grant program during the quarter include, but are not limited to the following:

Testing of private water supply wells -

a) environmental health and public information programs;
b) methods used for selecting private water supply wells for testing;
c) the number of wells tested;
d) the number of analyses performed;
e) the duties performed by staff in collecting samples;
f) the duties performed by any subcontractor for any part of this grant;
g) a description of the follow-up activities performed by staff in responding to test results; and
h) a summary showing detailed listing of all wells sampled including depths, locations, type of construction, year constructed and the sample results.

Proper closure of private, abandoned wells -

a) environmental health and public information programs;
b) methods used for identifying private abandoned wells;
c) methods used for setting private abandoned well closure priority based on department rules;
d) methods used for notifying private abandoned well owners; and
e) number, location and depth of private abandoned wells closed.

5) The types of costs which need to be documented for each grant program during the quarter are:

a) Include staffing in terms of staff weeks, salary, etc. and other costs required to conduct the well testing program for activities such as public awareness programs, well selection for testing, sample collection, sample transport, notification of sample results, follow-up, recordkeeping and reporting activities.

b) Include staffing in terms of staff weeks spent, salary, etc. and other costs required to administer a well closure program, including public awareness programs, recordkeeping, reporting, identifying private abandoned wells, etc.

6) Quarterly payments may be made for actual costs incurred during each quarterly reporting period. The total of quarterly payments, however, shall not exceed the eligible cost amount specified in the Grant Agreement and quarterly payments shall be made only upon the department's receipt and acceptance of the quarterly progress reports.

RESOLUTION NO. _____

RESOLUTION OF THE COUNTY OF _____, IOWA

BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF _____, IOWA, that the Board authorizes administration of a program for the purpose of: *(check one)*

☐ testing of private water supply wells

☐ closing private abandoned wells

BE IT FURTHER RESOLVED that the Board accepts the offer of a state grant of $_____ under the terms specified in the Grant Agreement and that _____, Chairman, and _____, Clerk of the Board of Supervisors, are hereby authorized and directed to execute the Grant Agreement and any amendments thereto and affix the seal of the County thereto on behalf of the County and that _____ is authorized and directed to sign and date the documents required by the Comptroller of Iowa for payment of the grant amount by the State.

- - - - - - - - - - - - - - -

The undersigned duly qualified and acting Clerk of the Board of Supervisors for the County of _____, Iowa, does hereby certify:

That the above Resolution is a true and correct copy of the Resolution accepting the Grant Agreement regularly adopted at a legally convened meeting of the Board of Supervisors of the County of _____, Iowa, duly held on the _____ day of _____, 19____; and further that the resolution has been fully recorded in the books and records of the Board of Supervisors.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 19____.

_____
Clerk of the Board of Supervisors of the County of _____, Iowa

(Seal)

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY

FOR

RULES TO IMPLEMENT 1987 IOWA CODE SECTION
455b.172(5), AS AMENDED BY 1987 IOWA ACTS,
HOUSE FILE 631, SECTION 113.5

CHAPTER 47: PRIVATE WELL SAMPLING AND CLOSURE--GRANTS TO COUNTIES

The attached information constitutes a summary of written and oral comments received on the above proposed new chapter of the rules.

Eighteen oral comments, twenty-five written comments and two telephone comments were received from thirty-five commentors on thirty-four separate topics concerning the proposed new chapter of the rules. A total of forty-eight persons attended the three public hearings held.

The following information constitutes a summary of comments received at three (3) statewide public hearings held on March 29, 1988 at Kirkwood Community College, Cedar Rapids; on March 31, 1988 in Denison; and on April 4, 1988 in Des Moines; and comments received through April 14, 1988 addressed to the department. This responsiveness summary addresses all comments or groups of similar type comments, and each comment or group of comments is followed by a notation of the commentor or commentors; a discussion; and a staff recommendation. The interest and input of the many commentors on the proposed Chapter 47 is very much appreciated.

1) Comment: These commentors felt the proposed application rating system is inequitable in that it rewards those counties which have done little or nothing and penalizes those which have active programs. The 50 points given to unstaffed counties is more than a staffed county could ever receive from other sections of the rating application. All counties, staffed or otherwise, should be rated on an equal basis at the start of the rating. Some feel the rating criteria is not needed at all. They believe it is only needed if you're trying to limit participation and this rule should be trying to encourage participation. Some thought that existing county programs might be terminated to enhance their chances for receiving a grant.

Commentor: 1, 2, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 35

Discussion: The rating system proposed may have the effects described and discourage grant applications both from counties with and without current programs. It is recommended the system be changed.

Recommendation: Revise the grant distribution method to make equal amounts available to all counties without using a ranking system.

2) Comment: Commentors feel that grant funds should be made available to all eligible counties and the amount should be based on a percentage of the county's household units using private water supplies when compared to the entire state where households are using private water supplies. These figures are available in the 1980 census. Any excess grant funds left over could then be made available to counties for starting new water and waste water programs to introduce more educational programs, or awarding extra money to promote multi-county applications.

Commentor: 1, 4, 15, 20, 21, 24, 26, 28, 32, 33, 35

Discussion: Any statistical system that might be used based on a limited group of parameters could introduce inequities. For example, counties with widespread service available from rural water systems might have fewer active individual household well supplies, so would gain less in grant funds. Yet these same 0

counties might have more abandoned wells than others (partly due to the rural water system connections) and therefore greater need for grant funds for closing wells.

It is felt that the equal distribution of grant funds to all eligible counties will be more equitable than the method originally proposed or the method described in this comment.

Recommendation: Change the grant method as described under the recommendation for comment No. 1.

3) Comment: These commentors believe a maximum grant amount needs to be established for each well tested for example, $50 each. This would be a more equitable method for distributing grant funds and also within the quarterly reports the county could simply report the number of wells tested and the grant amount would be based on such.

Commentor: 1, 2, 5, 26

Discussion: This proposal is attractive because of its simplicity. However, it does not address the point made in other comments of encouraging education and public information activities, since no credit would be given for costs incurred for such activities.

Recommendation: Adopt a system making an equal grant amount available to each of the eligible participating counties. All counties would be eligible for grant funds if they wished to participate, made application and met the proposed conditions.

4) Comment: This commentor, in agreement with those in Comment No. 1, goes a step further and asked that Sections 47.21(1) and 47.37(1) (contained in official 3/9/88 Notice of Intended Action published under ARC 8475) relating to the awarding of points based on staffed or un-staffed county programs, be struck from the rule as they are unfair and biased.

Commentor: 2

Discussion: The staffing status of counties would not be a factor under the changes described in the recommendations in response to comments numbers 1, 2, and 3.

Recommendation: Already given in the recommendations under Comments Nos. 1, 2 and 3, (to give equal grants to all counties).

5) Comment: The Groundwater Protection Act 1987 collects approximately five million dollars annually from fertilizer and chemical association members. Our concern is that there be a finite beginning and ending to these private well programs and that the results are accurate and meaningful to Iowa citizens.

Commentor: 3

Discussion: Both well testing and plugging of abandoned wells will always be necessary to a certain extent. However, the current program of addressing the backlog of abandoned wells which have not been properly plugged and determining the analyses for many previously untested private wells requires special effort which may not always be needed. Results are expected to be meaningful and positive.

Recommendation: No change.

6) **Comment:** EPA has conducted a pilot study in three states in two or three counties on domestic and on ten to fifteen community water wells for pesticide residues. A summary report was issued in September, 1987, and a copy is attached. It is recommended that DNR work with EPA on a similar joint program. This would reduce costs and provide a more accurate and detailed report. If a joint venture cannot be worked out then a DNR program, similar to that completed on Iowa public water supplies, should be initiated on a statistically representative number of rural wells, giving a complete statewide picture of Iowa's groundwater.

Commentor: 3

Discussion: DNR is participating in both the National Pesticide Survey and a DNR statistical sampling program. These programs have objectives that are distinct from the objectives of this program. The legislative intent for the current program is to provide grants to counties to assist well owners in assessing and improving the quality of water from wells.

Recommendation: No change.

7) **Comment:** This commentor feels the proposed grant amounts are too large and feels a smaller grant should be given to more counties and should be based on the most cost effective programs. Allow all applicants to start from the same point - staffed versus non-staffed. This will provide a greater impact on the total picture of Iowa groundwater.

Commentor: 4, 5, 15, 16, 29

Discussion: It appears that the proposed grant amounts were too large as suggested.

Recommendation: Reduce the grant amounts by dividing the total available funds between all participating counties equally and not using a rating system.

8) Comment: Within the Definition of "abandoned well" the following should be added at the end, <u>or creates a potential for groundwater contamination</u>.

Commentor: 4

Discussion: The definition of an abandoned well is in the Iowa Code and can only be changed by revising other sections of the Iowa Code. Also, the proposed definition would create a problem in detecting, identifying and proving contamination caused by an abandoned well.

Recommendation: No change.

9) Comment: With Section 47.6(2)a (changed to 47.16(2)a) Goals and Objectives - please clarify "regular and periodic".

Commentor: 4

Discussion: The "regular and periodic testing" term is used to refer to the general objectives of the grant program. Numerical guidelines have not at this time been established. "Regular and periodic testing" can be implied to mean that private water well testing should be institutionalized so that the users of these wells can be assured that they are drinking water of known quality.

Recommendation: No change.

10) Comment: Within Section 47.8(7) (changed to 47.18(7)), If a private water supply is found to be contaminated and is located next to a well not used for human consumption, then this well also should be sampled and be grant eligible. Thus section 47.8(7)(changed to 47.18(7)) should be deleted.

Commentor: 4, 16, 21, 26, 29

Discussion: There is no objection to sampling a well next to a contaminated well, and it could be included in the grant program if it is a private water supply well. The grant program written to conform with the legislative mandate does not include wells other than private water supply wells.

Recommendation: No change.

11) Comment: This commentor appreciates the legislative intent of the rule and that to be eligible counties must adopt programs for regulating private sewage and water. He feels that the testing and plugging private well program (Chapter 47) is generally good.

Commentor: 5

Discussion: The comment indicates an understanding and appreciation for the effort to develop rules consistent with the legislative intent.

Recommendation: No change.

12) Comment: This commentor feels the total coliform bacteria analyses using the multiple tube fermentation process exclusively is unnecessary as other methods such as the membrane filter technique are also reliable. The multiple tube method will increase both the cost and the time involved.

Commentor: 5, 8, 10, 33

Discussion: The multiple tube fermentation method was recommended to minimize the effects of interference from substances which may be present in private well waters in some areas of the state, such as iron, manganese and turbidity. Other methods are acceptable if accurate results can be obtained, depending upon the water being tested.

Recommendation: Change the rules to permit other testing methods to be used.

13) Comment: Commentor wants every participating county to be eligible to receive a small base grant, such as $5-7,000 for well testing and approximately $3,500 for well closure. These counties must adopt water and wastewater standards and must test say two percent of the household wells within the county based on statistics from the 1980 census. After gaining exposure from these grant programs, then perhaps county budgets would be expanded to start county programs.

Commentor: 5, 26, 31

Discussion: This approach to grants is similar to that suggested by other commentors to make universal equal distribution of available grant funds without the use of rating points or rankings. It appears to be a more equitable approach than the rating system. It is preferred that limits not be placed on the number of wells tested so that as many as possible will be included in the program and to encourage the development of education and public information programs.

Recommendation: Change the distribution of grant funds to equal amounts for all participating counties as discussed under this and previous comments.

14) Comment: Suggests providing incentives beyond basic grant amounts to counties that have not previously adopted regulations, say ten dollars per well for testing or for each abandoned well.

Commentor: 5

Discussion: The provision of grant money should be sufficient incentive to encourage counties to apply and eligibility will be contingent upon adoption of the state standards for private water supply and private wastewater disposal facilities.

Recommendation: No change.

15) Comment: Again the commentor suggests providing more incentive for counties to go with multi-county applications, which will lessen the administrative overhead for DNR and will encourage combined training and expertise in the counties. Another ten dollars per well could be added for further incentive to go the multi-county route. Initially a larger amount of money is needed to get two or more counties to combine. Bonus grant money could also be given to counties with problem areas.

Commentor: 5, 16, 20, 26

Discussion: The original system provided additional points for the multi-county system but did not provide additional funds due to the savings available in administrative costs. The multi-county approach is welcomed but does not justify bonus dollars to put it into effect.

Recommendation: No change.

16) Comment: Recommends that DNR work more closely on Chapter 47 with the Groundwater Ad Hoc Advisory Committee made up the following organizations: Iowa Environmental Health Association; Iowa Public Health Association; Iowa Groundwater Association; Public Health Directors of Iowa; Iowa Water Well Association and the Land and Improvement Contractors Association. With these groups input, rules can be developed that are satisfactory to all of them. Feels there is a breakdown of communication and that the Ad Hoc Groundwater Committee's recommendations were not taken into account.

Commentor: 5, 15, 26, 29, 32, 35

Discussion: It is unfair to develop rules with only a limited group. Public hearings allow all groups to express their concerns and provide an opportunity for input from many interested and affected organizations and individuals, as well as the Ad Hoc committee recommendations. As a result, changes to the rules are being proposed incorporating many of the suggestions made by the Ad Hoc Committee and others.

Recommendation: No change.

17) Comment: Commentor feels grant money should be used for well plugging on a cost share basis. Well owners need cost incentive to initiate well plugging. Doesn't feel well abandonment program will work without cost share money. Commentor felt the legislative intent was that grant money was to be used for actual well closure.

Commentor: 6, 7, 11, 12, 13, 16, 27, 29, 35

Discussion: Direct grants or cost-sharing for well plugging may be an effective means of securing participation by well owners, and can be made available through the rules. However, it should be recognized that there is much more well plugging work to be done than can be funded with available grant dollars. It is estimated there may be at least 40,000 abandoned wells in the state. If each were given a $10 cost sharing grant, all the grant funds would be used without significantly reducing the cost for plugging to each well owner. It is important to note that the required deadlines for plugging various categories of wells are applicable whether or not the well owners receive grants to help defray the costs.

Recommendation: Provide in the rules for the use of grant money to help defray the costs of well plugging.

18) Comment: Commentor feels that grant applications should be submitted by Boards of Health rather than Boards of Supervisors.

Commentor: 7

Discussion: The legislation calls for grants to counties, not grants to county health departments, so the Boards of Health are not empowered to enter into contracts of this type or to receive funds for the program other than through the County Boards of Supervisors. Also, the grant agreements between DNR and the counties need to be signed by the group responsible for county governments, which is the board of supervisors.

Recommendation: No change.

19) Comment: Because the ranking system is based in part upon cost per well tested or plugged, the concern is that in an effort to be competitive and efficient, minimal funds will be spent on well surveying, individual follow-up communication, or educational programs - all three of which are important public health activities.

Commentor: 14, 15, 16, 17, 26, 30

Discussion: Well surveying, individual follow-up communication and educational programs are important as suggested and should be included in the items for which grant funds may be used.

Recommendation: Change the rules to allow use of grant funds for the items mentioned, all of which can be included in a category identified as environmental health and public information programs.

20) Comment: Give each qualifying county applicant a smaller amount, say $10-15,000, and let them cost share with well owner. Forget all the paper work and fancy grant rules and let the counties do their job. Get the grant money out to the rural counties rather than giving larger grants to a few well established programs.

Commentor: 15, 16, 19, 20, 31

Discussion: This is similar to the sentiments expressed by many commentors, and the rules can be simplified somewhat. However, the legislation requires counties to perform in order to continue getting grants, and it is necessary for the DNR to know that the funds are being properly used, so some reporting by the counties must be required.

Recommendation: Simplify the grant application requirements and procedures and allow all counties to participate equally by adopting the state standards while maintaining the necessary reporting requirements to assure proper use of the funds.

21) Comment: Virtually no sanitarians, outside of those from large county staffed programs, have background experience in writing grant applications and work proposals which the rules require. This will result in many cases where counties will not apply due to (1) lack of experience and confidence and (2) lack of time because the sanitarian is overworked already. This will result in only larger counties getting higher ranking points. Unstaffed counties will have no one to attempt the grant application process. To expect unpaid boards of supervisors to attempt such an application on a competitive basis would be unreasonable. Net effect of the rule therefore is no new programs and no change in the smaller county programs.

Commentor: 15, 16, 17, 26, 30

Discussion: Simplification of the grant application procedure is called for by this comment to encourage participation.

Recommendation: Simplify the requirement for budgeting in connection with the grant application, and base payment of grant funds on the actual cost of work performed by the counties in carrying out these programs. The DNR will plan to provide training in preparing grant applications which will be made available to all counties.

22) Comment: It is felt the boards of supervisors must know that there will be a relatively constant supply of funds that will last at least a few years. Large caps on the grant amounts, as proposed by the rule, will have two drawbacks: (1) counties will hesitate to apply if they feel grants will be only temporary and (2) if accepted in year one to start a program and then in year two the grant funds are lost, the most likely outcome will be that the county will end the program totally, thus the long term goal of starting new programs is not being met. Counties don't want programs started with grant money and then after a few years the programs get dumped on counties totally without grant money.

Commentor: 16, 17, 19, 22, 25, 30, 32, 35

Discussion: Initial grant funding for these programs has been projected for a five year period. Beyond that, the availability of such funds is unknown and subject to legislation, but will possibly be influenced by the participation in and success of the programs during the initial years they are in effect.

Recommendation: No change.

(23) Comments: The month of application acceptance needs to be moved up. County budgets need to be set by the end of December. Therefore grant applications need to be accepted in October and November and approved in December. There also needs to be a grace period built in, for example two weeks for correcting errors. Any applicant can make an error or mistakenly omit some part of the application and should be given a chance to correct it.

Commentor: 16, 20, 26, 29, 31

Discussion: There is an apparent need to adjust the time of application submittal and provide time for correction of applications.

Recommendation: Change the time for acceptance of applications to September 1st through the end of October, with final corrections to be made by the end of October. Counties should submit applications early enough during the acceptance period to allow time for the correction of errors by the end of October.

(24) Comment: This commentor proposed a detailed plan for funding approximately 55 counties. The grants would be approximately $12,600 for well testing and some $6,700 for well closure; or a total of $19,300 per county for both programs. This concept was thought to be a more equitable and worthwhile plan to maximize the benefits on a statewide basis.

Commentor: 16

Discussion: All counties should be given the opportunity to share equally in the available grant funds simply by establishing acceptable programs and adopting state standards. If the actual number of counties that participate turns out to be only 55, then larger grant amounts can be made available to each county.

Recommendation: Change the rules to provide equal distribution of grants to all participating counties.

25) Comment: Is the DNR going to back up these grants to county programs or merely sit in Des Moines, where the programs are started, and then leave all of the problems at the local level?

Commentor: 19

Discussion: The DNR with its associated field offices is always available to offer advice, support and guidelines for programs such as these. However, the DNR does not have staff or funding to perform the on-site contacts or administrative tasks involved. It was the intent of the legislature that the counties receive the grants based on rules established by DNR, and that administration of tasks performed with grant monies be done at the local level by the counties. State law requires that the counties enforce the rules promulgated by the state.

Recommendation: No change.

26) Comment: Counties should be given the maximum level of flexibility as to how they can spend their grant - like such things as allowing them to cost share with the well owner. Allow the results of the programs to justify their expenditures rather than expecting expenditures to dictate the setting of unclear goals or program levels.

Commentor: 20, 31, 32

Discussion: There is merit in an approach which gives greater flexibility to the counties in the expenditure of grant funds and permits cost sharing for well closures. The legislation provides for grants to counties for programs for testing of private water supply wells and proper closing of abandoned private water supply wells. The DNR is to administer the grants to the counties and conduct oversight of county-based programs. The goals and objectives of the programs are clearly spelled out in Chapter 47.

Recommendation: Revise the rules to permit cost sharing for plugging abandoned wells and allow the counties to develop their own programs and be reimbursed for expenditures with grant funds.

27) Comment: This groundwater bill provision of grants to counties is greatly needed, but the only way it is ever going to work is to organize and educate all areas of the state. Only when there are trained people in every county will there be an equitable attainment of enforcement throughout the state, which is what the intent of the law is. DNR needs to address in the rule, and then take a more active role, in getting out to the counties for assisting and encouraging them to prepare applications. Most county supervisors do not have the expertise or the knowledge to apply for these programs.

Commentor: 22, 24, 26

Discussion: DNR will provide a training course in preparing grant applications for counties throughout the state to help in attaining the objectives of the groundwater legislation. Sufficient funding is not available to DNR to carry out all of the activities suggested.

Recommendation: No change.

28) Comment: The proposed rules don't require sending test results to the state, only a summary of such. Section 47.6(1) (changed to 47.16(1)) outlines the objectives of the program and it is also believed that an inventory of wells and contaminants is an objective of the Groundwater Protection Law. This needs to be further addressed in the rules.

Commentor: 26

Discussion: The rules state that copies of the test results will be provided to the department upon request. This can provide some of the information needed on which to base future programs designed to improve the quality of water in private water supplies.

Recommendation: No change.

29) Comment: Commentor feels that Section 47.9(3) (changed to 47.19(3)), pertaining to qualified staff, needs to be more specific as to experience and/or training requirements.

Commentor: 28

Discussion: It would be desirable to develop standards for training, certification and experience of sanitarians and other county health department staff involved with carrying out well programs and other duties. Such standards are not now available at the state level. Programs such as the proposed ones may provide useful information on which to base development of such standards in the future.

Recommendation: No change.

30) Comment: Pertaining to Section 47.6(2)(changed to 47.16(2)), this commentor feels the words "timely response" in connection with contaminated private water supply wells needs to be more specifically defined since there are many such wells existing.

Commentor: 30

Discussion: It would be very difficult at the state level to further define the meaning of "timely response", and it is felt that this should for the present be left to the discretion of the local administrative authority.

Recommendation: No change.

31) Comment: In Section 47.6(2)c (changed to 47.16(2)c) pertaining to reliable and accurate data base on the location and construction of private water supply wells and the water quality of such wells, the commentor questions what the state would do with all the records.

Commentor: 30

Discussion: The objective was to have the counties develop the complete inventory information described for use by them in their day-to-day activities. It would further provide the basis for determining the effectiveness of the program, the extent and severity of contamination and the need for increased or continued testing activity. Summaries of such information from all counties would be useful to the state in charting the course for future contamination control and reduction efforts.

Recommendation: No change.

32) Comment: In reference to Section 47.9(3) (changed to 47.19(3)) regarding adequately trained staff, this commentor asks where does one get proper training and who pays for it? It was felt that training expense could preclude a county from entering into a grant program.

Commentor: 30

Discussions: Cost for training is reimbursable expense through the grant programs.

Recommendation: No change.

33) Comment: The rule allows testing only for nitrates and coliform bacteria. While recognizing that testing for synthetic organic compounds (SOC's) is expensive, why not at least look at a county proposal

on a case by case basis to determine if the county program merits inclusion of these more expensive tests.

Commentor: 31

Discussion: It was felt that more private well owners could benefit by limiting testing to the two parameters selected. However, testing for other contaminants such as SOC's might be appropriate in some cases, so this option should be made available.

Recommendation: Retain the requirement for testing for nitrate and total coliform bacteria as a minimum, but remove the restriction against testing for other contaminants.

34) Comment: The comments were directed at two areas of concern: (1) the need for groundwater standards in order to provide guidance to the owners in regard to safety of the water supply; and (2) the need for an adequate Quality Assurance/Quality Control (QA/QC) program to accompany the program from start to finish.

A detailed report was submitted presenting procedures, data, and references in support of the above two items, including suggested parameters for coliform bacteria and nitrate. It was stated that there is a need for groundwater standards for coliform bacteria and nitrate in order to provide a basis of comparison for the owner of the private water supply to determine if continued use is advisable, in addition to well owner notification and followup sampling where health based levels are exceeded, and on-site review and guidance for corrective assistance in regard to well construction or an alternative water source.

Commentor: 34

Discussion: The issue of groundwater standards is being handled in a separate activity being conducted by DNR. It would be premature at this time to propose groundwater standards in this rulemaking activity. The comments will be provided to the staff working on the groundwater standards.

The level of quality assurance and quality control of data varies from program to program depending on the use of the data. The quality assurance/control program detailed by the commentor is not consistent with the needs of this program. Each grantee will be encouraged to develop and follow a quality assurance work plan in collecting and shipping samples. The laboratories being used are required to be certified; therefore the analyses of samples will follow the quality control program adopted by each laboratory.

The objective of the program is to establish a reliable and accurate data base on the water quality of private water supply wells. By requiring qualified personnel to collect samples and provide well owners with the results, plus the use of certified laboratories, DNR feels the objectives of the program will be achieved.

INDEX OF COMMENTORS

Commentor Number	Name	Title	Representing	Comment Presentation Written	Oral at Hearing	telephone
1	Joe Cook	Administrative Supervisor	Linn Co. Health Dept. 751 Ct. Pt. Rd. N.E. Cedar Rapids		X	
2	Tom Hart	Supervising Sanitarian, Environmental Division	Linn Co. Health Dept. 751 Ct. Pt. Rd. N.E. Cedar Rapids	X	X	
3	Winton Etchen	Executive Vice President	Iowa Fertilizer and Chemical Association, 323 University Des Moines	X	X	
4	Judy Harrison	Environmental Director	Lee Co. Health Dept. 933 Ave N. Ft. Madison	X	X	
5	Lee G. Dameron	Director	Johnson County Health Dept. 1105 Gilbert Court, Iowa City	X	X	
6	Lyle F. Jackson	County Sanitarian	Fayette County, Box 269 Courthouse, West Union	X	X	
7	Ron Fairchild	County Sanitarian	Winneshiek Co. Public Health 201 W. Main, Decorah	X		
8	Bobby Baker	Chief Sanitarian	Polk County Physical Planning Dept. 5895 N.E. 14th Street, Des Moines	X		
9	Doug Bird	County Sanitarian	Bremer Co. Health Dept. Courthouse 415 E Bremer Ave., Waverly	X		
10	Brent L. Mangold	Manager	Mangold Environmental Testing, 1715 N. Lake Ave., Storm Lake	X		X
11	Thomas B. Anderson	P.E., Co. Engineer/Sanitarian	Howard County Engineer Courthouse, Cresco	X		
12	Robert F. Voves	Chairman	Howard Co. Bd. of Supervisors Courthouse, Cresco	X		
13	C. J. Anderson	Co-chairman	Howard Co. Bd. of Health	X		
14	J. Mark Linda	Disease Prevention Manager	Black Hawk County Health Dept. 1407 Independence Ave., Waterloo	X		
15	Jim Ulveling	County Sanitarian	Carroll County Health Dept. 603 N. Adams, Carroll	X	X	
16	Stephen Patterson	County Sanitarian	Guthrie County Health Dept. Courthouse, Guthrie Center	X	X	
17	Steve Buckingham	County Sanitarian	Mills Co.		X	
18	Mrs. Paul Venner	President	Carroll Co. Farm Bureau Breda		X	
19	David Irwin	County Sanitarian	Sac County Public Health S. State St., Sac City		X	
20	Tricia Fazzini	Communications Director	Iowa State Association of Counties 700 Third Street		X	
21	Don Nolting	Health Sanitarian	Story County Courthouse Nevada		X	
22	Stanley I. Rooker	Deputy Health Officer	Ottumwa Health Dept. & Wapello Co. City Hall, Ottumwa		X	

INDEX OF COMMENTORS, CONT'D.

Commentor Number	Name	Title	Representing	Comment Presentation Written	Oral at Hearing	telephone
23	Fred Diers	County Supervisor	Poweskiek County, Montezuma		X	
24	Al Moore	Environmental Health Director	Scott Co. Health Dept. 428 Western Ave., Davenport		X	
25	Jack Bradley	Sanitarian	Webster County 602 3rd Ave. N., Fort Dodge		X	
26	Brent Parker	County Sanitarian & Chairman of Groundwater Ad Hoc Advisory Committee	Jasper County, Newton, and Groundwater Ad Hoc Advisory Committee	X	X	
27	Arden Hinners	Chairman	Carroll Co. Bd. of Supervisors Courthouse Carroll	X		
28	Lawrence E. Barker	Administrator	Scott Co. Health Department 428 Western Ave., Davenport	X		
29	Lawrence J. Lerdal	Sanitarian	Humboldt County Courthouse Dakota City	X		
30	John W. Akers	Sanitarian	Warren County Board of Health Box 237, Indianola	X		
31	Ted I. Yanecek	Public Affairs Counsel	Iowa Farm Bureau 5400 University, West Des Moines	X		
32	David Manning	Sanitarian	Jackson County Dept. of Health Courthouse, Maquoketa	X		
33	Dr. Julius Connor	Director, Polk County Health Center	Polk County Health Advisory Comm. 1915 Hickman Rd., Des Moines	X		X
34	Larry E. Crane, PE	Principal Engineer Eugene A. Hickok & Assoc.	National Agricultural Chemicals Association	X		
35	Maureen Morris	Administrator	Van Buren Co. Public Health Nursing Service, Courthouse, Keosauqua	X		

Comments on

Iowa Department of Natural Resources

Chapter 47

Private Well Sampling and Abandonment
Grants to Counties

Specifically: Section 47.19(4)

Presented to:

Environmental Protection Commission
26 April 1988

Presented by:

K. L. Cherryholmes, Ph.D.
Assistant Director
Hygienic Laboratory
The University of Iowa

I am Dr. Keith L. Cherryholmes, Assistant Director of the Hygienic Laboratory. The Hygienic Laboratory by statutory authority is Iowa's Environmental and Public Health Laboratory. Today I would like to specifically address the language of Section 47.19 (4) of the Private Well Sampling and Closure -- Grants to Counties. The need to address this matter today stems from language changes subsequent to the public hearings and the drafting of the final proposed rules you have before you today.

UHL recommended the multiple-tube fermentation coliform test (the MPN) for private well water samples to be analyzed in this study based upon experience with the membrane filter (MF) methodology on compliance samples of both surface and groundwater from Iowa's public water supplies.

On 1 July 1982, UHL changed the analytical procedure for total coliform analysis of public water samples from MPN to MF on the basis of anticipated program economics. The laboratory continued to perform MPN analyses on private water samples because of our decades of experience examining these waters. During the first month (2,277 samples) we encountered a resample rate of 42.8% compared to an average resample rate of 5.4% using the MPN. The rate of resamples which generated subsequent resamples was 54.4%. There was no significant difference in the number of resamples generated from chlorinated vs. nonchlorinated supplies.

On 6 August 1982, we abandoned MF for resamples and on 25 August 1982 we abandoned MF on all non-chlorinated samples. On 6 September 1982, we abandoned the MF altogether. Our experience with MF is similar to anecdotal experiences reported in the surrounding states of Wisconsin, Minnesota and Kansas.

Iowa groundwater has a high mineral content and many active rural wells are old, poorly constructed and inadequately maintained. Private well samples submitted for bacterial analysis frequently contain high levels of particulates (iron oxides, etc.) and potential interfering organisms (non-coliform bacteria).

The MF test is subject to several problems when used on water containing non-coliform bacteria and/or particulate material such as:

- mechanical blockage of membrane filters
- toxic interference from metals
- overgrowth by competing microorganisms
- atypical colony morphology

Private water samples that will be tested in this program are subject to several variables which we anticipate will create technical problems if the MF test is used. Examples of these problems are:

- seasonal blooms of non-coliform organisms
- source-water quality variability
- well construction, condition and maintenance

We estimate that over 50% of the initial water samples tested by MF methodology will require resampling and that most of these will ultimately be tested by MPN methods at considerable additional inconvenience and expense.

The Hygienic Laboratory believes that the multiple tube MPN procedure provides higher reliability for detection of coliform bacteria in Iowa groundwaters than the membrane filter method. Supporting documentation for this assertion is contained in the literature cited at the end of this formal presentation in addition to the experiences cited above.

A modification of the MPN procedure called Colilert™, which uses enzyme detection systems, has recently been developed, thoroughly evaluated and marketed. The *Colilert* test was compared to the MPN and MF methods in a large national collaborative test funded by a grant from the American Water Works Association Research Foundation. The results of this study have been exhaustively evaluated by the EPA and that agency is so enthusiastic about the merits of the test that it has placed it on a fast track for agency approval. Unfortunately it is anticipated that it will take 6-12 months to complete the required Federal rule making process.

Colilert was designed to achieve the following goals:

- specifically enumerate the required minimum one coliform/100 mL in a maximum of 24 hours
- simultaneously, specifically enumerate one <u>Escherichia coli</u>/100 mL in the same test

- not be subject to heterotrophic (or non-coliform) inhibition
- not require confirmatory tests
- grow injured coliforms or those requiring resuscitation steps
- be easy to inoculate
- be very easy to interpret.

These advantages make the test an ideal replacement for the MF test for total and fecal coliform analysis. They also make it the ideal test for bacterial analysis in this project. Objections to the *Colilert* test because presently it is not an EPA approved method are shortsighted since private water supplies are not subject to regulation in Iowa. Any hint of regulatory action or intent could jeopardize full participation by owners of private water supplies.

Because the results of coliform and nitrate analyses will be used to identify wells for follow-up testing, it is important to select the most sensitive method and the method most appropriate for the waters encountered. For this reason we strongly recommend that laboratories use appropriate methodology for the array of waters encountered and that the same methodology be used for all coliform analyses to enhance the scientific merit of the data collected.

The Hygienic Laboratory has received assurances from the manufacturers of the *Colilert* test that the product will be made available for use in certified laboratories in Iowa at cost for this important study.

We urge reconsideration of rule 47.19(4) to require use of a bacteriological procedure appropriate for the broad array of well waters encountered. This opinion is based on sound scientific and professional judgement which in this non-regulatory screening program must take precedence over any regulatory attitudes or considerations. The major goal of this program is to determine the potability of private water supplies by the most economical, scientifically sound and rapid means available.

On behalf of the professional chemists and microbiologists on the UHL staff, I thank you for this time on your busy agenda.

REFERENCES

Edberg, S. C., F. Ludwig and D. B. Smith. 1987. Rapid, Specific Autoanalytical Method for the Simultaneous Detection of Total Coliforms and E. Coli from Drinking Water. Presented at the Waater Quality Technology Conference, AWWA, Baltimore, Maryland.

Hsu, S. C. and T. J. Williams. 1982. Evaluation of factors affecting the membrane filter technique for testing drinking water. *Applied and Environmental Microbiology*. 44:453-460.

Jacobs, N. J., W. L. Zeigler, F. C. Reed, T. A. Stukel and E. W. Rice. 1986. Comparison of membrane filter, multiple-fermentation tube, and presence-absence technique for detecting total coliforms in small community water systems. *Applied and Environmental Microbiology*. 51: 1007-1012.

Standridge, J. H. and J. J. Delfino. 1982. Underestimation of total-coliform counts by the membrane filter verification method. *Applied and Environmental Microbiology*. 44: 1001-1003.

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 16 INFORMATION

ONE TIME TESTING OF PUBLIC WATER SUPPLIES - UPDATE

The commission will be given an update of the current status of water supplies in addressing problems noted during the legislatively mandated one time testing for the presence of synthetic organic compounds.

Allan E. Stokes
Environmental Protection Division
April 12, 1988

88103DNR0017

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 17 DECISION

REFERRALS TO THE ATTORNEY GENERAL

The Director requests the referral of the following to the Attorney General for appropriate legal action. Litigation reports have been provided to the Commissioners and are confidential pursuant to Iowa Code section 22.7(4).

Iowa City - wastewater (tabled item)
Lakewood Sanitary District - wastewater (tabled item)
City of Waterloo - wastewater
City of Mt. Pleasant - wastewater
City of Sheldon - wastewater
Ellie's Bar and Grill(Grand River) - water supply/penalty

Mike Murphy
April 6, 1988

88097DNR0010

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 18 DECISION

PROPOSED CONTESTED CASE DECISION: THOMAS E. LENNON

On May 11, 1987, the department issued administrative order 87-FP-04 to Thomas E. Lennon. That action required Mr. Lennon to degrade a levee or obtain after-the-fact approval for it, and to pay a $700.00 penalty. That action was appealed and the matter proceeded to administrative hearing on January 12, 1988. The hearing officer issued the attached Proposed Findings of Fact, Conclusions of Law, and Order on April 4, 1988. The decision affirms the department's order.

Either party may appeal the Proposed Decision to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the Proposed Decision. If there is no appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

Mike Murphy
Government Liaison Bureau
April 6, 1988

88097DNR0019

BEFORE THE IOWA DEPARTMENT OF
NATURAL RESOURCES

IN THE MATTER OF:	)	DIA NO. NHS 870210
	)	
Thomas E. Lennon	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	DECISION & ORDER

This case involves levee construction on the flood plain of the South Branch Lizard Creek. The Department of Natural Resources (department) issued Administrative Order No. 87-FP-04 to Thomas E. and Marigene Lennon on May 11, 1987. Mr. Thomas Lennon filed Notice of Appeal from the Administrative Order.

A Notice of Hearing was issued on July 2, 1987. Mr. Lennon filed his Petition on July 23, 1987. On August 7, 1987, an Order continued the hearing. The department filed its Answer on August 17, 1987. On August 18, 1987, the Appellant served interrogatories on the department. On August 27, 1987, an Order continued the hearing. On September 14, 1987, the department filed a Request for Prehearing Conference and Disclosure, and Answers to Interrogatories on September 17, 1987.

On September 24, 1987, an Order set the telephone prehearing conference. The Appellant filed a Motion for a Continuance on September 28, 1987, which was granted by an Order dated October 6, 1987.

The department filed a Request for Inspection on October 9, 1987. The Appellant filed a Resistance to said request for inspection on October 13, 1987. The department filed a Response and Motion on October 16, 1987. The Appellant filed a Response on October 21, 1987. On October 22, 1987, a Order was entered permitting the inspection and setting a new hearing date. The department filed a copy of the survey from the inspection on December 9, 1987. The department filed its Exhibit List, Amendment to Interrogatory Answer, and Motion on December 11, 1987. An Order was issued December 15, 1987 ordering the Appellant to submit Witness and Exhibit Lists. On December 31, 1987, the appellant filed Witness and Exhibit Lists.

The hearing was held on January 12, 1987 in the fifth floor conference room, Wallace State Office Bldg, 900 E. Grand, Des Moines, Iowa. Mr. Lennon was represented by Kurt L. Wilke, attorney, and the department was represented by Randall L. Clark, attorney. The undersigned hearing officer presided.

THE RECORD

The evidentiary record in this case includes the above pleadings, motions, discovery and orders, the recorded testimony of the witnesses, and the following exhibits.

Appellant's Ex. 1 - photograph
Appellant's EX. 2 - photograph
Appellant's Ex. 3 - photograph
Appellant's Ex. 4 - photograph
Appellant's Ex. 5 - photograph
Appellant's Ex. 6 - photograph
Appellant's Ex. 7 - photograph
Appellant's Ex. 8 - photograph
Appellant's Ex. 9 - photograph
Appellant's Ex. 10 - photograph
Appellant's Ex. 11 - photograph
Appellant's Ex. 12 - photograph
Appellant's Ex. 13 - photograph
Appellant's Ex. 14 - diagram

Department Ex. 1 - letter dated October 25, 1983 from Erwin Janssen, Lucian Roberts, Zane Meier, and Donald Lang to the department.

Department Ex. 2 - transparency
Department Ex. 3 - letter dated 11/10/87 from the Department to Mr. Kurt Wilke
Department Ex. 4 - copy of field notes by Michael Smith
Department Ex. 4a - photograph dated 3/13/84
Department Ex. 4b - photograph dated 3/13/84
Department Ex. 4c - photograph dated 3/13/84
Department Ex. 4d - photograph dated 3/13/84
Department Ex. 5 - letter dated 3/19/84 from Michael Smith to Mr. Tom Lennon.
Department Ex. 6 - letter dated 4/17/84 from Kurt Wilke to Michael Smith.
Department Ex. 7 - letter dated 6/21/84 from Michael Smith to Kurt Wilke.
Department Ex. 8a - photograph dated 10/28/87
Department Ex. 8b - photograph dated 10/28/87
Department Ex. 8c - photograph dated 10/28/87
Department Ex. 9 - photograph dated 3/19/86
Department Ex. 10 - photograph
Department Ex. 11 - photograph dated spring 1987
Department Ex. 12 - field inspection report dated 3/28/85 by Dave Claman
Department Ex. 12a, 12b, 12c and 12d - photographs dated 3/28/85 (note: these photographs are of the part of the levy which is not in issue in this case).
Department Ex. 13 - field investigation report dated 6/14/85 by Dave Claman
Department Ex. 13a - photograph dated 6/13/85

Department Ex. 13b - photograph dated 6/13/85 (note question re: where photographer standing when took this picture)
Department Ex. 13c - photograph dated 6/13/85
Department Ex. 14 - letter dated 4/4/86 from Dave Allen to Tom Lennon
Department Ex. 15 - correspondence between Mr. Wilke and Mr. Allen from 4/7/86 through 2/13/87
Department Ex. 16 - survey
Department Ex. 16a - photograph dated 11/24/87
Department Ex. 16b - photograph dated 11/24/87
Department Ex. 16c - photograph dated 11/24/87
Department Ex. 16d - photograph dated 11/24/87
Department Ex. 16e - photograph dated 11/24/87
(note: Mr. Lennon's testimony that this photo is deceptive.)
Department Ex. 16f - photograph dated 11/24/87
Department Ex. 16g - photograph dated 11/24/87
Department Ex. 17 - photograph dated 10/28/87

Five depositions were also admitted as unnumbered exhibits on behalf of the Appellant: John Russell, Edmund James Condon, Roger Coppinger, William Thomas, and William Hill.

FINDINGS OF FACT

1. The parties stipulated that the channel change in the northwest corner of Mr. Lennon's property was constructed in 1980.

2. Mr. Thomas Lennon, the Appellant, is the owner with his wife of a farm generally described as the SE 1/4 of section 8, Johnson Township, Webster County, Iowa. Mr. Lennon began farming the property in 1965 , and purchased the farm in 1978.
(testimony of Mr. Lennon; Department Exhibit 2).

3. The South Branch Lizard Creek flows through Mr. Lennon's farm described above. This creek drains approximately 90 square miles at the southern edge of Mr. Lennon's property.
(testimony of Mr. Lennon; Mr. Mike Smith; Department Exhibit 2,3).

4. Mr. Lennon has had extensive problems with flooding on his land from Lizard Creek. The prior owner had constructed a channel change in the southern and middle part of the property, and a levee system along the east side of the new channel. This old work is not at issue in this case.

In 1980, Mr. Lennon straightened the channel of Lizard Creek in the northwest corner of his property. The channel change itself is not at issue in this case. Also in 1980, Mr. Lennon constructed what he called a terrace and what the department called a flank levee along the northern border of his land. In 1983, Mr. Lennon constructed a levee from approximately the northwest corner of his property down along the east side of Lizard Creek approximately 1000 feet. The levee along the creek

is connected to the terrace or flank levee at the northwest corner of Mr. Lennon's property on the east side of the creek. This work done in 1980 and 1983 was done without a permit from the department. The terrace or flank levee was construced for flood control. Testimony to the contrary was not credible.
(testimony of Mr. Lennon; Department Exhibits 1,4a-4d,7,16)

5. The part of Mr. Lennon's land containing this channel change and levee system is on the flood plain of the South Branch Lizard Creek.
(testimony of Mr. Smith; Mr. Lennon; Department Exhibit 2).

6. In 1984, the department, after inspecting the property, ordered Mr. Lennon to submit certified engineering plans of the projects so the department could evaluate the effects of Mr. Lennon's construction and whether the construction violated departmental criteria.
(testimony of Mike Smith; Department Exhibits 3,4,5).

7. Mr. Lennon decided the cost of preparing the required engineering plans was too great, so he decided to degrade the levee.
(testimony of Mr. Lennon; Department Exhibit 6).

8. Mr. Lennon began degrading the levee along the creek in June of 1984. While he was in the middle of degrading, on June 21, 1984, the department sent Mr. Lennon's attorney a letter. Michael Smith stated in the letter that when the levee was degraded, "the remaining fill should not be more than one foot higher than adjacent natural ground along the levee alignment."
(testimony of Mr. Lennon; Department Exhibit 7).

9. Mr. Lennon completed his work during the summer of 1984. In March and June 1985, the department inspected the property again. During the June visit, the department discovered the existence of the terrace or flank levee for the first time. Department environmental engineers David Claman and Jeff Simmons surveyed the levee system during the June visit. The results of the survey showed that the height of the terrace or flank levee ranged from two and one-half to three feet above adjacent ground, and the height of the levee along the creek ranged from almost two and one-half to almost four feet above adjacent ground.
(testimony of Mr. David Claman; Department Exhibit 12 and 13).

10. On April 4, 1986, Mr. Allen of the department sent Mr. Lennon a letter stating that he had to either (1) seek after the fact approval for his construction of the levees or (2) degrade the levees.
(Department Exhibit 14).

11. On April 7, 1986, Mr. Lennon's attorney (Mr. Kurt Wilke) sent a letter to Mr. Allen of the department stating that Mr. Lennon had cut down the levee system to not more than one foot above existing grade. He stated, "Furthermore, your crew surveyed from

the field to the bank giving them their elevations. It was pointed out that much of the bank's elevation was done in the 1950's and that the bank on the other side of the stream, which does not belong to Mr. Lennon, is easily as high or higher than the bank in question."
(Department Exhibit 15).

12. On May 12, 1986, Mr. Allen of the department sent a letter to Mr. Wilke which stated, "If a new channel was made in the early 1980's, a new channel bank was made or created. As it currently exists, a levee 2.5 to 4.0 feet high runs along this new channel. Quite properly the levee height was measured in relation to the adjacent cropland. Please refer to Mike Smith's letter to you dated June 21, 1984, in which he stated that"...the remaining fill should not be more than one foot higher than adjacent natural ground along the levee alignment." (emphasis added). The term "existing grade" was not used by this department. The bank or levee elevation established in the 1950's is not pertinent in this reach of the stream....

Since the northern segment of the levee was constructed in 1983 without a flood plain development permit, it is considered to be in violation with Iowa Code section 455B.275. In addition to this levee, a recently constructed flank levee 2.5 to 3.0 feet in height was observed along the north property line. This flank levee was also constructed without a flood plain development permit and thus, constitutes a violation of state flood plain law."

13. On June 9, 1986, Mr. Wilke called Mr. Allen and stated that Mr. Lennon decided to degrade the levee. Mr. Lennon requested that Mr. Allen "stake out" the area that needed to be degraded.
(Department Exhibit 15).

14. On August 7, 1986, Mr. Allen showed Mr. Lennon what to degrade.
(Department Exhibit 15).

15. On September 4, 1986, Mr. Allen sent Mr. Lennon a letter asking how Mr. Lennon intended to bring his levee into compliance.
(Department Exhibit 15).

16. Mr. Wilke, Mr. Lennon's attorney, wrote a letter to Mr. Allen on September 16, 1986, stating it was Mr. Lennon's intent to submit a plan, and asking Mr. Allen to provide necessary specifications.
(Department Exhibit 15).

17. On September 22, 1986, Mr. Allen sent Mr. Wilke the requested specifications. On November 3, 1986, Mr. Allen again wrote to Mr. Wilke, requesting a timetable for compliance.
(Department Exhibit 15).

18. On November 5, 1986 Mr. Wilke called Mr. Allen and stated they would submit plans by December 31, 1986.
(Department Exhibit 15).

19. On January 20, 1987, Mr. Allen sent Mr. Wilke a letter requesting plans. Mr. Wilke sent a letter on February 13, 1987, stating that his client would submit the plans within thirty days.
(Department Exhibit 15).

20. On May 11, 1987, the department issued Administrative Order No. 87-FP-04, ordering the Lennons to degrade the levy or submit an application for after the fact approval.

21. On November 24, 1987, Jeff Simmons surveyed the levee system on Mr. Lennon's property, and prepared a report dated December 8, 1987. Attempts by Mr. Lennon to discredit the accuracy of the survey were not persuasive. The survey showed that height of the top of the flank levee or terrace ranged from 1.4 to 3.2 feet above the level of the field twenty feet south of the levee. The survey showed that the height of the top of the levee along the creek ranged from 2.6 to 4 feet above the level of the field fifty feet east of the levee. (testimony of Mr. Jeff Simmons; Department Exhibit 16).

22. If Mr. Lennon were to seek after the fact approval, it would be necessary for the department to review the entire levee system. This is because the northern 1000 feet and flank levee cannot be separated and distinguished from the southern part of the levee system when evaluating the hydraulic effect of the levee system.
(testimony of Mr. Dave Allen).

23. No evidence was presented which definitively established the elevation of Mr. Lennon's bank along Lizard Creek prior to his construction. The elevation of the opposite stream bank is not an accurate measurement of what the elevation of Mr. Lennon's bank was prior to his construction. Opposite bank elevations are rarely the same. Usually one side is lower than the other.
(testimony of Mr. Dave Claman; Mr. Michael Smith).

24. The hydraulic effect of a levee is that it restricts flood flow, which increases flood stages (heights) upstream of the levee. The restricted flow increases velocity downstream, which usually increases bank erosion, although there is not necessarily an increase in flood levels downstream. This is true even if there is a levee on only one side of a stream.
(testimony of Mr. Claman).

25. The department needs the engineering plans required in the application process to evaluate the effect of Mr. Lennon's levee. Mr Dave Claman, departmental environmental engineer, testified that in his opinion Mr. Lennon's levee affected upstream flood levels, but he didn't know exactly how much because he did not have engineering plans.

(testimony of Mr. Claman).

26. The department's interpretation of what it meant by degrading the levee is that Mr. Lennon was to degrade the levee so that an engineer could not see any evidence that a levee existed. The level of the levee was to be the same as adjacent ground. Adjacent natural ground level meant the ground level as the department found it during the inspection in 1984. Mr. Michael Smith picked the "not more than one foot" figure to give Mr. Lennon a little leeway when degrading, not to allow him to keep a one foot high levee.
(testimony of Mr. Smith; Mr.Claman).

CONCLUSIONS OF LAW, DECISION AND ORDER

"The department has jurisdiction over the public and private waters in the state and the lands adjacent to the waters necessary for the purposes of carrying out this part." Iowa Code §455B.264(1)(1987).

The department is granted the authority to "establish and enforce rules for the orderly development and wise use of the flood plains of any river or stream within the state." Iowa Code §455B.276(1987).

567 Iowa Administrative Code 70.1 provides that "The department has jurisdiction over all flood plains and floodways in the state for the purpose of establishing and implementing a program to promote the protection of life and property from floods and to promote the orderly development and wise use of the flood plains of the state."

"Flood plains' means the area adjoining a river or stream which has been or may be covered by flood water." Iowa Code §455B.26(1) (1987). "Floodway" means the channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any river or stream." Iowa Code section 455B.261(2) (1987).

"A person shall not construct or install works of any nature for flood control until the proposed works and the plans and specifications for the works are approved by the department." Iowa Code §455B.277(1987).

Iowa Code section 455B.275(3)(1987) provides: "If a person desires to erect or make or to permit a structure, dam, obstruction, deposit, or excavation, other than a dam constructed and operated under chapter 469, to be erected, made, used, or maintained in or on any floodway or flood plains, the person shall file a written application with the department, setting forth information as required by rule of the commission. The department, after an investigation, shall approve or deny the application imposing conditions and terms as prescribed by the department."

In 1968, the Iowa Supreme Court interpreted §455A.33 (now §455B.275(3)). The Court stated that the code section required any person who desired to erect a structure on a flood plain to file an application, and that completion of the structure prior to submitting the application did not excuse one from conforming with the statute's requirement. Iowa Natural Resources Council v. Van Zee, 158 N.W.2d 111, 116 (Iowa 1968). The Court stated that §455A.33 applied to all structures erected subsequent to the effective date of the act. The Court further stated "The council contends defendant should be required to file the application for a permit even though the structure has been completed so that the orderly procedure set out in chapter 455A can be effectively followed. We agree." Van Zee, supra, at 119.

567 I.A.C §71.4(1) provides that approval by the department for levee construction and maintenance is required in rural areas when the levee is "located on the flood plain or floodway of any stream or river draining more than ten (10) square miles."

Mr. Lennon was required by statute to file an application for a permit for his construction prior to beginning the construction. Iowa Code §455B.275(3) (1987); §455B.277 (1987).

Mr. Lennon did not apply for a permit. Even though the levee construction has already been completed, the department still has the authority to require Mr. Lennon to file an application.

The department has the authority to impose conditions on the grant of an after-the-fact flood plain development permit. This includes the authority to require relocation and/or degradation of levees, and to impose wildlife and fisheries mitigation conditions. Osborne v. Iowa Natural Res. Council, 336 NW2d 745 (Iowa 1983); Young Plumbing and Htg. v. Iowa Natural Res. Council, 276 NW2d 377 (Iowa 1979).

Iowa Code §455B.264(3) (1987) provides that: "Upon application by any person for approval of the construction or maintenance of any structure, dam, obstruction, deposit, or excavation to be erected, used, or maintained in or on the flood plains of any river or stream, the department shall investigate the effect of the construction or maintenance project on the efficiency and capacity of the floodway. In determining the effect of the proposal the department shall consider fully its effect on flooding of or flood control for any proposed works and adjacent lands and property, on the wise use and protection of water resources, on the quality of water, on fish, wildlife, and recreational facilities or uses, and on all other public rights and requirements."

Iowa Code §455B.275(1) (1987) provides that: "A person shall not permit, erect, use or maintain a structure, dam, obstruction, deposit, or excavation in or on a floodway or flood plains, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, or adversely affect the control, development, protection, allocation, or utilization of the water

resources of the state, and the same are declared to be public nuisances."

The department ordered Mr. Lennon to either file an application for after the fact approval or to degrade the levee to "not more than one foot higher than adjacent natural ground." Mr. Lennon contends that he has degraded the levee according to the department's specifications. He does not contend that the levee height is within one foot of the ground level next to the levee as it currently exists. Mr. Lennon contends that "adjacent natural ground" means the ground level that existed before he performed any of his construction work. He contends that when he built the levee system, he scraped dirt off the ground level to fill in low areas, and then built his levee on top of this new lowered ground level. Then, he contends, he degraded the levee in 1984 so that the top of the levee was within one foot of what he says was the natural ground level before he scraped dirt off it when he built his levee.

The department's action in refusing to accept this argument was reasonable. There is no way to definitively determine what the ground level was before Mr. Lennon began construction. Mr. Lennon himself testified that it would be difficult to tell what the elevation had been. Mr. Lennon did not apply for a permit prior to beginning construction as required by law. He did so at his own peril. It is reasonable for the department to require Mr. Lennon to degrade his levee system to within one foot of the adjacent ground level, with that level being measured by what exists at the present time.

Administrative Order number 87-FP-04 ordered Thomas and Marigene Lennon to degrade the northerly 1000 feet of parallel levee and all of the flank levee or to submit an application for after the fact approval of the entire levee system on the Lennon property. This Order was correct.

It is therefore ORDERED that Administrative Order Number 87-FP-04 is hereby affirmed.

Amy Christensen Couch
Hearing Officer
Department of Inspections and Appeals
Lucas State Office Building
Des Moines, Iowa 50319-0083

ACC/nlh

copy to: Kurt Wilke
Randall Clark

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 19 DECISION

PROPOSED CONTESTED CASE DECISION: HANDI-KLASP COMPANY, INC. AND ROYAL PRODUCTS COMPANY, INC.

On October 7, 1986, and February 13, 1987, the department issued and amended Administrative Order Nos. 86-SW-23, 86-AQ-15, and 86-WW-41 to Handi-Klasp Company, Inc. and Royal Products Company, Inc. That action assessed a $1000 penalty and required remedial measures at a disposal site. That action was appealed and the matter proceeded to administrative hearing on October 13, November 3, December 10, and December 21, 1987. The hearing officer issued the attached Proposed Findings of Fact, Conclusions of Law, and Order on March 18, 1988. The decision affirms the department's order for the most part.

Either party may appeal the Proposed Decision to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the Proposed Decision. If there is no appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

Mike Murphy
Government Liaison Bureau
March 28, 1988

88083DNR0024

BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF: Handi-Klasp Company, Inc Royal Products Company, Inc.	))))	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DIA NO. NHS 870002

On October 7, 1986 the Iowa Department of Natural Resources (Department) issued Administrative Orders Nos. 86-SW-23, 86-AQ-15, 86-WW-41 to HANDI-KLASP Company, Inc, Royal Products Company, Inc. (HANDI-KLASP). On October 29, 1986, Handi-Klasp appealed from the issuance of the above Administrative Orders. A Notice of Hearing set the hearing for January 7, 1987.

On November 18, 1986 the Department served 23 Interrogatories and 20 Requests for Admissions upon Handi-Klasp. On December 5, 1986, Handi-Klasp filed its Petition. On December 18, 1986 Handi-Klasp filed its Response to Request for Admissions and its Answers to Interrogatories. On December 22, 1986 the Department filed its Answer. On December 29, 1986 the Department filed a Motion for Continuance of the hearing until February 19, 1987. On December 30, 1986 Handi Klasp filed a Joinder in Motion and Objection to Time Requested. On December 31, 1986 Handi-Klasp filed an Application to Transfer Hearing. On January 8, 1987 the Department filed its Resistance to Application for Transfer of Hearing. On January 20, 1987 the Application to Transfer Hearing was denied by the Environmental Protection Commission.

An Order set the hearing for March 12, 1987. On February 4, 1987 the Department filed a Request for Official Notice. On February 25, 1987 the Request for Official Notice was denied.

Department served Handi-Klasp with 22 Interrogatories. On February 13, 1987, the Department filed Amended Administrative Order Nos. 86-SW-23, 86-AQ-15, and 86-WW-41. On March 6, 1987 the Department filed a Motion for a Continuance, and on March 13, 1987 a Joinder in Motion for a Continuance was filed by Handi Klasp. The hearing was continued to April 16, 1987. The April 16, 1987 hearing was continued indefinitely to allow Handi Klasp adequate time to review written materials provided by the Department.

On August 24, 1987 the Department filed a Motion for Rescheduling Hearing. An Order set the hearing for October 13, 1987. On September 9. 1987 the Department filed an Amended Answer. On September 9, 1987 the Department filed Affidavits of four witnesses to be introduced in Lieu of Testimony. On September 16, 1987 Handi Klasp filed a request to produce and reserved its right to object to the introduction of the affidavits at the time of their proposed introduction. On September 21, 1987, the

Ruling on Admission of Witnesses Affidavits in Lieu of Testimony was filed. On October 6, 1987 the Response to Request to Produce was filed by the Department.

The hearing was held on October 13, November 3, December 10, and December 21, 1987 in conference rooms of the Wallace State Office Building, 900 E. Grand, Des Moines, Iowa 50319. On December 10, 1987 Handi Klasp filed a Notice to Hearing Officer and to Defendants as to Additional Witnesses, which was allowed over the Department's objection. Representing the parties were Mark Landa, counsel for the Department and Stewart H.M. Lund, Counsel for Handi Klasp. The undersigned hearing officer presided.

The Record

The evidentiary record in this case consists of the recorded testimony of the witnesses, the above pleadings, and the following Exhibits:

Department's Exhibit 1	Thompkin's phone log summary dated 3-26-86.
Department's Exhibit 2	Gross' phone log summary dated 3-26-86.
Department's Exhibit 3	Letter from L. Nichols to Gross dated 3-27-86.
Department's Exhibit 4	Letter from Gross to L. Nichols dated 5-22-86.
Department's Exhibit 5	Thompkin's phone log summary dated 5-27-86.
Department's Exhibit 6	Thompkin's phone log summary dated 5-27-86.
Department's Exhibit 7	DNR complaint form dated 5-30-86.
Department's Exhibit 8	Thompkin's phone notes 5-30-86.
Department's Exhibit 9	Gross' phone log dated 5-30-86.
Department's Exhibit 10	Gross' phone log dated 5-30-86.
Department's Exhibit 11	Letter from P. Nichols to Gross and attached Safety Data Sheets.
Department's Exhibit 12	Thompkin's phone log dated 6-3-86.
Department's Exhibit 13	Admission denied.
Department's Exhibit 14	Letter from Gross to L. Nichols dated 6-4-86.

Department's Exhibit 15	Gross' phone log dated 6-12-86.
Department's Exhibit 16	Gross' report dated 8-12-86.
Department's Exhibit 17	Letter from L. Nichols to Jinkinson dated 8-22-86.
Department's Exhibit 18	Gross' memo dated 12-10-86.
Department's Exhibit 19	No exhibit
Department's Exhibit 20	Inspection Report of Sandifer and material safety data sheets
Department's Exhibit 21	University Hygienic Laboratory (UHL) file (21-1 to 21-3)
Department's Exhibit 22	UHL file (22-1 to 22-8)
Department's Exhibit 23	Applehons' Curriculum Vitae
Department's Exhibit 24	Map Webster City and area south
Department's Exhibit 25(a)	Sittig, Handbook of Toxic and Hazardous Chemicals, pp 111-114
Department's Exhibit 25(b)	Id. pp. 805-807
Department's Exhibit 25(c)	Id. pp. 931-932
Department's Exhibit 25(d)	Id. pp. 868-870
Department's Exhibit 25(e)	Id. pp. 412-414
Department's Exhibit 26	Emergency Action Guides Reference Manual (pp.97-102, 693-698, 739-744, 787-792)
Department's Exhibit 27	No Exhibit
Department's Exhibit 28	No Exhibit
Department's Exhibit 29	No Exhibit
Department's Exhibit 30	Soil Survey of Hamilton County, Iowa, Map 16 and Glossary terms
Department's Exhibit 31	Admission denied
Department's Exhibit 32	Admission denied
Department's Exhibit 33	Admission denied

Department's Exhibit 34	Meyer, Chemistry of Hazardous Materials
Department's Exhibit 35	Sketch of Handi Klasp-Royal Products property by P. Nichols
Department's Exhibit 36	1 quart UHL glass jar
Department's Exhibit 37	40 m.l. UHL glass vial
Appellant's Exhibit A(1-10):	Photographs of Handi-Klasp dumpsite taken October, 1986
Appellant's Exhibit B(1-11):	Slides of dumpsite taken December 2, 1987

Findings of Fact

1. Handi Klasp Company, Inc, of Webster City, Iowa, has been in operation since 1959. The company's manufacturing process involves the fabrication of steel to make livestock restraining equipment. Royal Products Company, Inc., is located adjacent to Handi Klasp and began operating in 1970. Royal Products was engaged in the manufacture of fiberglass. The raw materials used by Royal Products include gel coat, paste wax, acetone, and styrene monomer. No manufacturing activity has taken place at Royal Products since before April 1986. Lewis Nichols is the owner and president of both companies.
(Testimony of Patrick Nichols, Lewis Nichols)

2. The property upon which Handi Klasp, Royal Products, and the Nichol's residence is located was purchased by Lewis Nichol's father in 1937. There was a small disposal site on the property when it was purchased. Currently the disposal site measures 137 feet long (Southwest to East) 42 feet wide (in the middle) and 40 feet deep (at its deepest point). Initially the disposal site was used for household refuse, leaves and five or six car bodies. Beginning in 1970, it was used for refuse from the manufacturing processes at Royal Products and Handi Klasp. Among the items put in the disposal site are fiberglass trimmings, defective fiberglass parts, rinsed plastic gallon jugs which previously contained catalyst, wadded up cardboard scraps with paint drippings, and a few small pieces of hardened polyester resin and worn out fiberglass molds. These trade wastes were not hazardous when they were disposed.
(Testimony of Patrick Nichols; Lewis Nichols Donald Sandifer)

3. Since 1959, the disposal site was covered twice a year with a foot of clay-type soil which was taken from beneath the topsoil in the area of the landfill. Handi Klasp's custodian would use a caterpiller to compact the soil layer.
(Testimony of Patrick Nichols; Lewis Nichols, Department Exhibit 2)

4. On March 25, 1986 an employee of Royal Products took hot ashes from a woodburner and placed it in the disposal site. Normally the ashes are put in a different area for four to six months and then deposited in the disposal site. Employees had been informed not to put hot ashes directly into the landfill. Within a halfday the hot ashes started a fire in the disposal site.
(Testimony of Patrick and Lewis Nichols, Department Exhibit 2)

5. The fire in the disposal site smoldered. Patrick Nichols became aware of the fire on March 26, 1986 and called the Webster City Fire Department. The fire department may have initially attempted to put the fire out with water, but quickly discovered that it would have to be smothered. The fire department smothered the fire with dirt. Greg Malmstrom, the director of public works for Webster City, contacted the Mason City field office of the Iowa Department of Water, Air, and Waste Management (now Department of Natural Resources) Malmstrom inquired if there would be a hazard with vapors from burning fiberglass. Al Tompkins of the Department informed him that the fire could produce irritating or poisonous gases. Tompkins said the fire should be put out with CO_2 or dry chemical, not water, and firefighters should remain upwind. Tompkins further stated that the Department would investigate the site for open dumping. Within ten minutes, William Gross of the Department called Lewis Nichols, and Nichols provided Gross with information concerning the fire.
(Testimony of Patrick Nichols, Al Tompkins; Department Exhibit 1,2)

6. The disposal site is approximately one half (1/2) mile from the Boone River. There is no history of the Boone River flooding in the area of the landfill. At the Handi Klasp facility, parts were usually washed in the paint room with LSP-60, a phosphotizer supplied by Madison Chemical Company. The Material Safety Data Sheet for LCP-60 lists one hazardous ingredient, 5% phosphoric acid. Pat Nichols, manager of Handi Klasp, testified that when the paint room was congested they would sometimes wash the parts over a drain in the parking lot. The drain is tiled down over a hill, and the wash water ran into the same ravine as the landfill, but further east. Pat Nichols admitted that there is a creek into which the wash water could flow. Pat Nichols also told Donald Sandifer, E.P.A., that the wash water flows to the creek.
(Testimony of Pat Nichols; Department Exhibit 20)

7. On March 27, 1986, William Gross, Environmental Specialist from Region 2, Mason City, Iowa, notified Lewis Nichols by certified mail that the fire incident was a violation of the State's open burning rules (Rule 900-23.2(455B). Iowa Administrative Code). Gross stated that the rule does not discriminate between intentional and accidental activities.
(Testimony of William Gross, Department Exhibit 3)

8. On May 16, 1986 William Gross visited the disposal site on the Handi Klasp property. It was raining, and he noticed a pungent odor in the area. Gross observed white steam or smoke coming out of the disposal site. The odor was stronger at lower elevations, which is consistent with hydrocarbon vapors. Gross asked Pat Nichols for one of his respirators, and he asked Pat to watch him while he took a water sample. Gross climbed down to the east toe (bottom) of the landfill and let the water which appeared to be running through the landfill and out the east toe flow into a University Hygienic Laboratory (UHL) one quart sample jar. This water ran into a tributary which flowed to the Boone River. Gross either held the lid of the jar in his other hand while the water flowed in or he placed it in his pocket. After the jar was full, Gross screwed the top back on. The UHL provides clean sample jars and vials to the Department for their use. The jars and vials have labels on them for identifying information. All Department personnel carry the UHL sample jars or vials with them. Gross conceded pumping gasline could leave traces of hydrocarbons on his fingers, but he could not recall the last time he pumped gas prior to the taking of the sample. The chance that the sample was contaminated from hydrocarbons on Gross' fingers is very remote.
(Testimony of William Gross; Department Exhibit 4)

9. Gross placed the quart jar directly in the cooler in his car and drove back to Mason City. Since it was Friday evening the Purolator Courier would not be picking up packages for the UHL until the following Monday. Gross placed the quart jar in the office refrigerator. On Monday, Gross called the UHL to tell them that the water sample would be coming and was told by UHL that it would be best if he transferred the sample into 40 m.l. vials before he sent it to the lab. Using the table designated to handle samples, Gross carefully opened the lids of the quart jar and the UHL 40 ml vial and filled the vial to the top of the rim and then sealed it so that no air bubble would be caught. He repeated this process with two more 40 ml vials. Gross then filled out the UHL sample data sheet, requested that the samples be tested for styrene and other fiberglass components, placed the vials and sample sheet in a cooler, and sealed it with tape. He set the cooler out to be picked up by Purolator Courier.
(Testimony of William Gross)

10. William Gross has been employed by the Department for 3 1/4 years. He has his Master's Degree in Geography with an emphasis on Environmental Studies from the University of Iowa. He has completed most of his course work for his PHD. since he began working for the department, Gross has taken a number of courses and seminars on proper sampling techniques.
(Testimony of William Gross)

11. On May 22, 1986 Gross notified Lewis Nichols by certified letter of his visual observations on May 16. Gross stated that while the fire had been covered with earth, it had not been smothered completely since smoke and penetrating vapors of the

smoldering fiberglass trimmings were detected at the site. The letter further stated that when exposed to heat and fire, fiberglass may release styrene, a designated hazardous substance under the Federal Water Pollution Control Act. The letter further stated that Nichols should have the smoldering fiberglass waste excavated and have the combustion extinguished as soon as possible, and that solid waste should be taken to a sanitary landfill for proper disposal.
(Department Exhibit 4)

12. On May 27, 1986, region 2 of the department received a phone call from Malmstrom relating two complaints he had received from neighbors 1/4 to 1/2 mile from the disposal site. The neighbors complained of odors from Handi Klasp which were giving them headaches.
(Testimony of Al Tompkins; Department Exhibit 5)

13. Al Tompkins called the Nichols to relate the neighbor's complaints. Lewis Nichols told Tompkins the fire was still smoldering. Nichols objected to Gross' recommendations on how to extinguish the fire, contending it would make the situation worse. Nichols also noted that he had been unable to get a caterpiller on the site because it had been raining for several days, and it was too muddy. Tompkins advised him to put out the fire as soon as possible.
(Testimony of Al Tompkins; Department Exhibit 6)

14. On May 30, 1986 the Department received another complaint from a citizen who lived east of Handi Klasp regarding vapors penetrating her house. She stated the vapors caused watering eyes and headaches.
(Testimony of Bill Gross; Department Exhibit 7)

15. Also on May 30, 1986 Malmstrom called Region 2 again to relate complaints of odors he had received from five neighbors who lived 1/4-1/2 mile from the disposal site.
(Testimony of Bill Gross; Department Exhibit 8)

16. On May 30, 1986 Gross called UHL to find out if they had the results from the water sample. He was told they found benzene, toluene and other aromatics, but no styrene. They still had to quantify the amounts, and they expected the numbers to be less than the original sampled because some contaminants were lost transferring the sample to the vials. Gross then called Pat Nichols who told him that the excavating crew was waiting on site for the surface to dry out. Gross told Nichols about the preliminary sampling results and told him he would be required to remove all waste from the site, extinguish the combustion, and take it to a sanitary landfill. Gross told Nichols that the excavators should wear respirators.
(Department Exhibit 10)

17. Gross visited the disposal site again on May 30, 1986. It was not raining, and there was not as much steam coming from the

site. Gross noticed some odors in the area so he took some Drager tube air samples. A Drager tube is a small glass tube with a diaghram type pumper. The more pumps you need to color the tube, the less the concentration of the substance you are testing for. Gross tested for benzene hydrocarbon. For benzene, normally two pumps are standard to detect significant concentration. Gross needed to pump the Drager tube more than two times before the tube colored to the first calibration. The Drager tube is highly calibrated because it is designed for indoor use. Gross used the Drager tube to detect relative concentrations, and he concluded that the concentrations of benzene were higher over a hot spot in the site and down wind.
(Testimony of William Gross)

18. On June 3, 1986 Pat Nichols called Al Tompkins and told him they had a bulldozer at the disposal site and had been working for two hours. When the material was exposed, the fire flared up. At the direction of the fire department they removed some of the waste and covered it with earth. Pat Nichols stated that they would remove all of the waste at the Department's direction when the fire was completely out.
(Department Exhibit 12)

19. Gross then took water samples in 3-40 m.l. UHL glass vials from the same location as the May 16 sample, the east toe of the landfill. He put the water samples in the cooler in his car. Gross then took a soil sample from a hot spot on the site using a small clean garden trowel. He placed the soil in a one quart UHL jar. Gross chose the hot spot for his sample site because he thought it was the area most likely to contain contaminants. Gross put the soil sample in the cooler and returned to Mason City. Since it was a Friday, Gross again placed the samples in his office refrigerator over the weekend. On Monday, Gross completed the sample sheet for each sample, placed the samples and the sheets in a cooler, and sent them to UHL via a Purolator Courier.
(Testimony of William Gross)

20. On June 4, 1986 Gross notified Lewis Nichols, by certified mail, of the laboratory results of the May 16 water sample. The results indicated significant levels of benzene, toluene, xylenes, and ethylbenzene (.596,.147,.055, and 0.21 mg/l, respectively) but no styrene. Gross further stated that these substances are listed hazardous substance (40CFR, Part 261, subpart D). Short term health advisories for drinking water (10-day, 10kg child) are .233 mg/l for benzene, 6mg/l for toluenes, 7.8 mg/l for xylenes, and 2.1 mg/l for ethylbenzene. Benzene exceeds the maximum allowable level for drinking water, and the others may exceed maximum levels for longer term exposure. These contaminants are toxic to aquatic life at very low concentrations.
(Department Exhibit 14, 21)

21. No evidence introduced at the hearing indicated that the Boone River is utilized for drinking water by any neighboring landowners or Webster City. There is a strong possibility that it is used for wildlife watering.
(Testimony of Dennis Applehons; Testimony of Lewis Nichols)

22. On June 12, 1986 Pat Nichols reported that after the fire flared up following excavation, they covered it with dirt. The fire chief advised them to compact the waste in the site, cover it with another foot of dirt, and wait 30 days before reexcavation and removal. Nichols reported there had been no smoke or odors since that day. The Nichols seeded oats on the top of the landfill to prevent erosion.
(Department Exhibit 15; Testimony of Lewis Nichols)

23. On July 9, 1986 Gross received the laboratory results of the second water sample and the soil sample. The second water sample did not contain quantifiable amounts of styrene, benzene, toluene, xylenes, or ethylbenzene. The soil sample contained the following concentrations: Styrene-5000 parts per billion (ppb); Benzene-4600 ppb; toluene-3900 ppb; Xylenes 650 ppb; ethylbenzene 12,000 ppb.
(Testimony of Bill Gross, Department Exhibit 22)

24. On August 1, 1986 Gross visited the disposal site again. He observed water diversion structures had been installed at the disposal site. A drainageway was constructed along the north side of the site. A tile line was installed along the south side to intercept runoff from the south before it reaches the disposal area. During this visit Lewis Nichols told Gross that he had removed approximately ten loads of the earthash mixture from the disposal site to an undisclosed location. Nichols told the other landowner that the waste would not create any problems for him and refused to disclose the location of the waste.
(Testimony of Lewis Nichols, Bill Gross; Department Exhibit 16)

25. By certified letter dated August 12, 1986, Nichols was informed that if the water diversion structures were not effective in preventing water from flowing through the waste, then he would be required to remove all the waste material as directed in Gross' letter of 6-4-86. In addition, Nichols was informed that the waste he removed from the site had the potential to pollute a surface water or ground water of the state and therefore Nichols was directed to reveal the location of the waste, in writing, by August 22, 1986.
(Department Exhibit 16)

26. On August 22, 1986 Lewis Nichols responded in writing that his attorney had advised him that it has not been proven that the waste does in fact contaminate anything and by revealing the disposal location he could possibly subject other people to the same undue harassment they have undergone. Nichols stated that at its present location the waste would not pollute any surface water and if it did, the Department would undoubtedly be notified

and the problem could be dealt with at that time. At the hearing on December 10, 1987 Mr. Nichols refused to disclose the location of the waste he had removed from the disposal site when questioned by the Department's attorney. The hearing officer ordered Mr. Nichols to answer the question, and again he refused and invoked the Fifth Amendment.
(Department Exhibit 17; Testimony of Lewis Nichols)

27. On September 24, 1986 Gross accompanied Donald Sandifer of the U.S. Environmental Protection Agency (E.P.A.) to the Handi-Klasp, Royal Products property. Sandifer is an environmental engineer who has worked for the E.P.A. for seventeen years. Sandifer has his master of science degree in civil engineering with a specialty in construction management and sanitary engineering. From 1982 to December, 1986 Sandifer was responsible for enforcement of the federal Resource Conservation and Recovery Act (RCRA). Sandifer went to Handi Klasp and Royal Products to determine whether the companies should be regulated under RCRA. In order to be a RCRA hazardous waste the waste generated has to meet certain criteria and characteristics. A substance can be hazardous but not be a RCRA regulated waste. As part of his investigation, Sandifer reviewed the material safety data sheets for the various substances used in the manufacturing processes at each company. Sandifer concluded that the companies were not managing or generating a hazardous waste under RCRA from their manufacturing process.
(Testimony of Donald Sandifer; Department Exhibit 20)

28. Sandifer also testified concerning proper sampling techniques for volatile hydrocarbons. Sandifer testified that upon review of the reports, he saw nothing wrong with the Department's sampling techniques in this case. With regard to the transfer of the water sample from the quart jar to the 40 m.l. vials, Sandifer stated that there would be the potential for the escape of volatile matter, which would result in the sample results showing less concentration of contaminants than the original sample.
(Testimony of Donald Sandifer)

29. Dennis Seeger, Chemist III with the University Hygienic Laboratory, (UHL) testified concerning UHL's testing of the water and soil samples taken by William Gross. Although Seeger did not actually do the testing of the samples, he is responsible for assigning the work in the lab and reviewing the lab reports to verify their accuracy. With regard to the first water sample, Seeger testified that the analysis was done properly. Based on the raw data, Seeger concluded that the source of contamination was not a gasoline spill. Seeger also testified that the transfer of the first water sample from a quart jar to a 40ml vial could have an aerating effect and cause a loss of material from the sample.
(Testimony of Dennis Seeger, Department Exhibit 21)

30. The quart and 40 m.l sample bottles supplied by UHL are thoroughly cleaned and heated to ensure cleanliness. They are usually supplied in a sealed state.
(Testimony of Dennis Seeger)

31. With regard to the second water sample and the soil sample, taken by Gross on May 30, 1986, Seeger testified that the laboratory followed proper procedures. On the soil sample, Seeger decided it was necessary for the lab to do further analysis since several of the peaks of the print out were off scale. The lab used a gas chromatograph interfaced with a mass spectrometer to further analyze the soil sample. Seeger verified the raw data in the final report and concluded it was accurate. Based on the raw data, Seeger could conclude that the source of the contamination was not gasoline, diesel fuel, motor oil, or mineral spirits. Seeger could not determine how long the contaminants had been in the soil. According to Seeger, the different results obtained from the second water sample and the soil sample could be due to differences in the solubility of the substances.
(Testimony of Dennis Seeger)

32. Dennis Applehons, the spill response coordinator for the Department, has his masters of science degree in environmental biology, and has been employed by the Department and its predecessor agencies since 1974. He has held his current position since August, 1982. His responsibilities include responding to hazardous chemical spills, leaking underground storage tanks, ensuring proper field and safety techinques are followed, and evaluating the environmental threat posed by spills. Applehons has attended federal and private training seminars in environmental assessment, and has conducted training seminars. He has also attended EPA and private courses on the interpretation of groundwater flows. In order to assess the risk to the environment or public health from a chemical spill it is necessary to have information of the flammability and leachability of the chemical involved to determine whether it can be transported and broken down in the environment. It is also important to determine the hydrology (flow characteristics and ground water flow) and geology (types of soils) of the area potentially affected. Among the tools and documents Seeger relies upon are topographical maps, technical journals, and reference books relied on by other professionals in the field.
(Testimony of Dennis Applehons)

33. Applehons has never visited the Handi Klasp disposal site. In addition to the tools and documents referred to above, Applehons relied on the inspections reports prepared by the Department and the UHL laboratory reports in making his risk assessment.
(Testimony of Dennis Applehons)

34. The soil in the area of the disposal site is Stordon Hayden soil type. It is a steep, well drained soil, usually found in

steep slopes, and is moderately permeable. The lower part of the subsoil, which is 24 inches thick, is dark yellowish brown, triable loam and clay loam. The elevation reading at the stream bank of the Boone River is approximately 1020 feet. The elevation of the top of the area close to Royal Products is 1090 ft. There is, therefore, approximately a 70 foot drop from the top of the bluff to the river. There is a regular groundwater flow pattern in the area to the southeast. At Handi-Klasp, however, due to the elevation, ravine, and low river, the flow pattern would be from the facility to the river.
(Testimony of Dennis Applehons, Department Exhibit 24,30)

35. Applehons approved the sampling technique of Gross with the exception of the transfer of the first water sample from a quart container to vials. This transfer probably reduced the level of the hydrocarbons in the sample. However, the transfer of the sample did not affect Applehon's acceptance of it for his risk assessment since the actual concentration of the hydrocarbons was not important at that point. It was only important that contaminants were present in the sample.
(Testimony of Dennis Applehons)

36. Benzene, toluene, styrene, xylene, and ethylbenzene have varying solubilities in water, but will flow with water. Applehons concluded that the above listed contaminants in the area of the disposal site would be transferred through the soils with each succeeding rain fall or snow melt. The chemicals would continue to move down through the soil until it reaches the groundwater or an impermeable layer and then would flow by gravity with the groundwater. Applehons testified that it is possible to take samples from the same location at different times with different results. The contaminant can move as a slug (or group). If a sample at the head end of a slug there is a high level of contaminants, but if a sample is taken a few days later after a rainfall the slug may have moved on, and the sample results might not show any contaminants.
(Testimony of Dennis Applehons)

37. Benzene is classified by the EPA as a hazardous substance, a hazardous waste, and a priority toxic pollutant. It is considered to be a carcinogen. It is a clear, colorless, volatile chemical. The threshhold limit value (TLV) level that should not be exceeded for a work environment was 10ppm but was recently amended to 1ppm. The harmful effects and short term symptoms associated with benzene exposure are headache, dizziness, irritated eyes and nose. Long term exposure to benzene has been associated with leukemia. Benzene contained by soil barriers may percolate into soil resulting in the spread of contamination.
(Testimony of Dennis Applehons; Department Exhibit 25A,26)

38. Styrene is classified by the EPA as a hazardous substance. It is a colorless to yellowish, oily liquid with a penetrating odor. Styrene liquid and vapor are irritating to the eyes, nose,

throat, and skin. Acute exposure to high concentrations of styrene may produce irritation of the mucous membranes of the upper respiratory tract, nose, and mouth, followed by symptoms of narcosis, cramps, and death due to respiratory center paralysis. Effects of short term exposure to styrene under laboratory conditions include prolonged reaction time and decreased manual dexterity. Styrene is very slightly soluble in water and lighter, so may be expected to form a floating surface slick that dissolves very slowly. Styrene contained by soil barriers may percolate into soil resulting in spread of contamination.
(Testimony of Dennis Applehons; Department Exhibit 25B,26)

39. Xylene is classified by the EPA as a hazardous substance and a hazardous waste. Xylene is a mobile, colorless, flammable liquid. It is almost completely insoluble in water and lighter, so may be expected to form a floating surface slick. Vapors of xylenes are irritating to eyes, nose, and throat. Acute exposure to xylene vapor may cause central nervous system depression and minor reversible effects upon liver and kidneys. Ingestion of xylenes may result in nausea, vomiting, cramps, headache, kidney and liver injury, coma, and possibly death. Xylene contained by soil barriers may percolate into soil resulting in spread of contamination.
(Testimony of Dennis Applehons; Department Exhibits 25C,26)

40. Toluene is classified by the EPA as a hazardous substance, hazardous waste, and priority toxic pollutant. Vapors of toluene may cause irritation of the eyes, mucous membranes, and upper respiratory tract. High concentrations may cause narcosis and central nervous system depression. Ingestion in significant amounts may result in vomiting, diarrhea, griping, depressed respiration and possibly death. Toluene contained by soil barriers may percolate into soil resulting in spread of contamination.
(Testimony of Dennis Applehons; Department Exhibits 25D,26)

41. Ethylbenzene is classified by the EPA as a hazardous substance and a priority toxic pollutant. It is a colorless liquid with a pungent aromatic odor. It is used in the manufacture of styrene. Significant quantities of ethylbenzene are present in mixed xylenes. Exposure to ethylbenzene may cause irritation of eyes and mucous membranes, headaches, dermatitis, narcosis, and coma.
(Testimony of Dennis Applehons; Department's Exhibit 25E)

42. Upon review of the inspection reports, laboratory results, soil survey, topographical map, and scientific journals, Dennis Applehons concluded that there was the potential for substantial environmental and health hazard to the community from the release of hazardous substances and wastes from the Handi-Klasp disposal site. The contaminants which are moving through the soil pose an environmental threat to the soil, surface water, and ground water. Some people had physical symptoms following the fire, and

if the environmental hazard is left unchecked, more health symptoms could occur in the future. Applehons' risk assessment concluded that further investigation must be done to determine the degree and extent of the contamination. Handi Klasp has estimated the cost of the monitoring wells, testing and analysis required by the Administrative Order to be approximately $40,000 to $80,000. No written estimates were presented at the hearing. Applehons testified that based on his experience with monitoring wells in other clean ups, the cost of four to five monitoring wells and sampling should be approximately $8,000 to $10,000. Applehons could recommend no cheaper alternatives to the monitoring wells. In order to test for environmental and health hazards, recognized methods must be used.
(Testimony of Dennis Applehons)

43. In December, 1986, Lewis Nichols called William Gross and asked him to come to the Handi Klasp property to observe the removal of two underground gasoline tanks. When one of the tanks was removed, Gross felt some of the sand in the area was contaminated with gasoline. However, the tank did not appear to be leaking. Gross concluded the contaminated sand was the result of leakage over the years, and directed the Nichols to remove the sand and spread it out over their parking lot so that volatilization would occur. When the tank was removed, water flowed into the hole, and the water did not seem to be contaminated. The second tank showed no evidence of leaking or contamination.
(Testimony of William Gross, Lewis Nichols)

44. Ronald Nieman, a geologist who has been employed by Eugene A. Hickock and Associates for two years, testified at the hearing for the Appellant. Mr. Nieman has a B.A. degree in Geology, a Masters of Science degree in Landscape Architecture, and is a member of the American Institute of Professional Geologists. He has worked extensively in ground water and coal mining. Prior to his employment with Hickock, Neiman was self-employed as a consultant for seven years and taught high school earth science. Neiman testified regarding proper sampling techniques for volatile hydrocarbons. Nieman was critical of the taking of the first water sample in a quart sample jar instead of 40 m.l. vials and the subsequent transfer of the sample. Nieman was concerned the sample could have been contaminated by hydrocarbons in the atmosphere or on hands during the transfer process. However, Neiman admitted that if the lab had instructed him to transfer the sample he would have done so. Neiman testified that he would have used a tripblank to ensure that the samples did not pick up hydrocarbons between the time they were taken and the time they reached the lab. With regard to a water sample, a tripblank would be a vial of distilled water, placed in the cooler and refrigerator at the same time as the other samples, and transferred to the lab for analysis. If the tripblank's analysis showed the presence of hydrocarbons, then the sampler would know the analysis on his other sample was unreliable. Neiman testified that if he had been handling the sampling, he

would have taken a third water sample and a tripblank, after the second water sample showed no detectable hydrocarbons. Neiman expected that hydrocarbons would be released into the air and water from smoldering fiberglass. However, Nieman did not feel it was practical to require testing and monitoring of every fire involving fiberglass unless there were unique amounts since there are many such fires and the release is typically short. Neiman personally inspected the Handi Klasp disposal site in December, 1987 and did not observe any hot spots on its surface. (Testimony of Ronald Nieman)

Conclusions of Law

1. Iowa Code section 455B.307(1) provides in relevant part:
" It shall be unlawful for any private agency or public agency to dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. This section shall not prohibit a private agency or public agency from dumping or depositing solid waste resulting from its own residential, farming, manufacturing, mining or commercial activities on land owned or leased by it if the action does not violate any statute of this state or rules promulgated by the commission or local boards of health, or local ordinances..."

2. 567 Iowa Administrative Code 101.3(2) provides:
" A public or private agency dumping or depositing solid waste shall do so in a manner that creates no public health hazard, nuisance or degradation of surface water or aquifers that are in actual or deemed to be of potential use as a water resource."

3. 567 Iowa Administrative Code 23.2(1) provides that no person shall allow, cause, or permit open burning of combustible materials, except as provided in subrule 567--23.2(2) (Variances) and 567--23.2(3) (Exemptions)

4. Iowa Code section 455B.307(2) authorizes the director of the Department of Natural Resources to issue any order necessary to secure compliance with or prevent violation of Iowa Code sections 455B.301 through 455B.330 and the rules promulgated thereto.

5. As a manufacturer depositing solid waste from its own manufacturing process on land owned by it, Handi Klasp/Royal Products was exempt from the permit requirement of Iowa Code section 455B.307(1). There was no evidence establishing that prior to the fire, the Handi Klasp disposal site created a public health hazard, nuisance or degradation of surface water or aquifers.

The fire at the disposal site, which continued to smolder for a period of at least 78 days, was started by a negligent employee. Although the Nichols had warned employees not to place hot ashes in the landfill, they remain liable for their employee's negligent act, and therefore violated 562 Iowa

Administrative Code 23.2(1). The Nichols made efforts to extinguish the fire, but some of their efforts were hampered by wet weather and difficulty in obtaining the necessary machinery. However, wet weather and availability of machinery cannot justify allowing the fire to smolder for 78 days.

Lewis Nichols' actions in removing approximately ten truckloads of earth-ash mixture from the disposal site and transporting it to another site is a potential violation of Iowa Code section 455B.307(1) and other statutes. Mr. Nichols never asserted that the waste was removed to a permitted facility. The department has requested by administrative order that Lewis Nichols disclose the location of the waste. The department is entitled to the information, and is entitled to have their request enforced. United States v. Powell, 379 U.S. 48(1964); United States v. Morton Salt, 338 U.S. 632 (1950). The investigation is within the agency's authority, the request is not indefinite, and the information requested is reasonably relevant.

7. Iowa Code section 455B.186 prohibits the discharge of a pollutant into any water of the State unless the discharge is pursuant to a permit issued by the director.

8. Iowa Code section 455B.174(3) authorizes the director to take any action or actions allowed by law which, in the director's judgement, are necessary to enforce or secure compliance with the provision of Part 1 of Division III of Chapter 455B, "Water Quality", and any rule or standard established pursuant thereto.

9. 567 Iowa Administrative Code 62.1(1) provides that the discharge of any pollutant from a point source into a navigable water is prohibited unless authorized by an NPDES permit.

10. The Boone River is classified as a high quality resource water at and below the confluence with Brewer's Creek, downstream from this area, and is protected as a "B(w)" (fisheries resource) in the vicinity of the dumpsite. 567--61.2(2) "f" (8) and 61.3(5)"e" Iowa Administrative Code.

11. The chemical compounds benzene, toluene, styrene, xylene and ethylbenzene constitute hazardous substances as defined by Iowa Code section 455B.411(3) and as defined by Iowa Code section 455B.381(1) and subrule 567--131.1(1). These substances have been designated as "hazardous substances" by the Environmental Protection Agency, 40C.F.R §302.4 and 40C.F.R §116.4A.

12. Iowa Code section 455B.381(2) states: "Hazardous condition" means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a a water of the state, or into the atmosphere, which creates an imminent or potential danger to the public health or Safety or to the environment. For purposes of this division, a site which is an abandoned or uncontrolled disposal site as defined in section 455B.411, subsection 1, is a hazardous condition.

13. Iowa Code section 455B.411(1) defines "abandoned or uncontrolled disposal site" as real property which has been used for the disposal of hazardous waste or hazardous substances either illegally or prior to regulation under this chapter. The preponderence of the evidence did not establish that the Handi Klasp disposal site was an "abandoned or uncontrolled disposal site". Hazardous wastes or substances were not disposed of in the site. The waste in the site did not become a hazardous waste or substance until after the fire.

14. Iowa Code section 455B.386 provides in relevant part:
"Notification of spills-penalty. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department, the local police department, or the office of the sheriff of the affected county as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition." The evidence presented at the hearing was insufficient to establish a violation of this provision. Louis Nichols spoke with Bill Gross on March 26, 1986 at 3:20 p.m. The evidence is unclear as to what time the Nichols became aware of the hazardous condition. It appears that when they become aware of the fire they immediately called the fire department and then the fire department called the Department. Therefore it cannot be concluded as a matter of law that more than six hours had passed before the Department was notified.

15. The evidence introduced at the hearing clearly established that there was a release of hazardous substances onto the land, into the water of the state and into the atmosphere. This release resulted from the burning of the fiberglass parts and products in the landfill. The evidence also established that the release creates an imminent or potential danger to the environment. Therefore, Handi-Klasp violated Iowa Code Section 455B.186 and 567 Iowa Code 62.1(1). Handi-Klasp also violated these provisions when it rinsed its product with LCP-60 over an outside drain that led to the creek.

16. Iowa Code section 455B.416(4)(a) provides:
"If upon receipt of any information, the director determines that the presence of a hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or the release of the waste from the facility or site may present a substantial hazard to human health or the environment, the director may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the facility or site to determine the nature and extent of the hazard.

17. Iowa Code section 455B.416(4)(c) provides:

"An order under this subsection shall require the person to whom the order is issued to submit to the director within thirty days from the issuance of the order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The director may, after providing the person with an opportunity to confer with the director on the proposal, require the person to carry out the monitoring, testing, analysis, and reporting in accordance with the proposal, which may be modified as the director deems reasonable to determine the nature and extent of the hazard or to remove the hazard.

18. Iowa Code section 455B.411(4)(a) provides:
"Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical, or infectious characteristics, has either of the following effects:
1) Causes, or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.
2)Poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. "Hazardous waste" may include but is not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives."

19. Benzene, xylene, and toluene are hazardous wastes. The director received information, i.e. soil and water sample results and neighbor's complaints, upon which he could determine that the release of hazardous wastes from the Handi Klasp disposal site may present a substantial hazard to human health or the environment. Therefore the director is authorized, pursuant to Iowa Code section 455B.416(4)(a) to issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site to determine the nature and extent of the hazard. Considering the potential damage to the environment and human health, the monitoring ordered by the Department is reasonable.

20. Iowa Code section 455B.109 provides in part that the commission may establish, by rule, a schedule or range of civil penalties which may be administratively assessed. The schedule shall provide procedures and criteria for the administrative assessment of penalties of not more than one thousand dollars for minor violations of 455B or rules, permits or orders adopted or issued under 455B. The commission and director shall consider among other relevant factors:
a. The costs saved or likely to be saved by non compliance by the violator.
b. The gravity of the violation
c. The degree of culpability of the violator
d. The maximum penalty authorized for that violation under this chapter.

21. 567 Iowa Administrative Code 10.2 specifies the criteria for screening and assessing administrative penalties. These critera include 1) costs saved or likely to be saved by noncompliance by the violator; 2) Gravity of the violation; 3) Culpability; 4) the

maximum penalty authorized for that violation under Iowa Code chapter 455B.5) Whether the assessment of administrative penalties appears to be the only or most appropriate way to deter future violations, either by the person involved or others similarly situated; and 6) other relevant factors.

22. The department assessed a penalty of $1000.00 based on the following factors: $300.00 for the gravity of the violations, $300.00 for culpability, $300.00 for economic savings, and $100.00 for aggravating factors. Although there was insufficient evidence presented to support the violation of Iowa Code section 455B.386 (notification of spill), that particular violation did not seem to be an important factor in the department's assessment of the penalty. It was mentioned only in the context of the gravity of the violation, but further stated "Each of the separate violations could warrant the assessment of the penalty assessed here." The evidence supported the assessment of the $1000.00 penalty for the reasons stated. The violations did and may continue to threaten the Public Health and Safety, or the environment. The willful refusal to provide the information requested by the department and the failure to properly dispose of trade wastes warrant a $300.00 penalty for culpability. The additional $100.00 penalty for aggravating factors is supported by the evidence of the magnitude of the violations.

It is therefore ORDERED that the issuance of Amended Administrative Order 86-SW-23, 86-AQ-15, and 86-WW-41 is Reversed in part in that the alleged violation of Iowa Code Section 455B.386 was not supported by sufficient evidence, and in all other respects is AFFIRMED.

Dated this 18th day of March, 1988.

Margaret LaMarche

Margaret LaMarche
Hearing Officer
Iowa Department of Inspections
and Appeals

ML/nlh

cc: Stewart H.M. Lund
Mark Landa

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 19A DECISION

PROPOSED CONTESTED CASE DECISION: STAN MOSER

On November 3, 1987, the department issued administrative order 87-SW-26 to Stan Moser. That action assessed an administrative penalty of $250 and directed Mr. Moser to cease and cleanup alleged unpermitted solid waste disposal. That action was appealed and the matter proceeded to administrative hearing on March 7, 1988. The hearing officer issued the attached Proposed Findings of Fact, Conclusions of Law, and Order on April 12, 1988. The decision affirms the department's order.

Either party may appeal the Proposed Decision to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the Proposed Decision. If there is no appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

Mike Murphy
Government Liaison Bureau
April 15, 1988

88106DNR0010

BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF: Stan Moser	) DIA NO. NHS 880167) Findings of Fact, Conclusions) of Law, Decision and Order

On November 3, 1987, the Iowa Department of Natural Resources (Department) issued Administrative Order No. 87-SW-26 to Mr. Stanley Moser, the appellant. The Order ordered Mr. Moser to stop unpermitted solid waste disposal, to remove solid wastes disposed of on his property on or about April 30, 1987, and to pay an administrative penalty of $250.

On December 4, 1987, Mr. Moser filed notice of appeal of the above administrative order.

Notice of Hearing was issued on December 22, 1987. On January 7, 1988, Mr. Moser wrote a letter to the undersigned hearing officer. On January 11, 1988, the undersigned hearing officer sent a letter to Mr. Moser.

Mr. Moser filed his Petition on January 26, 1988. The Department filed its Answer on February 8, 1988.

The Department also filed a motion for a continuance on February 8, 1988. An Order continuing the hearing was issued on February 15, 1988, setting the hearing for March 7, 1988.

On March 4, 1988, Mr. Moser called the office of the undersigned hearing officer. On March 6, 1988, Mr. Moser told the undersigned hearing officer in a telephone conversation that he had not received requested information from the Department, and had not received an answer from the Department. Mr. Moser was twice offered a continuance of the hearing, which he declined.

On March 7, 1988, the hearing was held in the fifth floor east conference room, Wallace State Office Bldg., 900 E. Grand, Des Moines, Iowa 50319. Mr. Moser was present and was unrepresented by counsel. Mr. Michael Murphy appeared for the Department. The undersigned hearing officer presided.

At the hearing, Mr. Moser moved that the department's action be dismissed because he had not received information he had requested from the department. Mr Moser had received the department's Answer. Upon discussion at the hearing, the information requested either had been given, was given at the hearing, did not involve Mr. Moser's case, did not exist, or was not known by the Department or not within the Department's control. The attorney for the Department had told Mr. Moser that he was free to look in the Department's files in Des Moines, and in the Manchester office. Mr. Moser had received some requested

information from the Manchester office. The only item of information which Mr. Moser requested and did not receive for other than the above reasons was a request for the seating capacity of the hearing room. The undersigned hearing officer ruled that there was no prejudice to Mr. Moser, and the hearing proceeded.

The record was left open for 10 days following the hearing so that Mr. Moser could submit additional evidence of statements by Mr. Jerry Ratenburg regarding alleged violations by the City of Hudson. The Department was given 10 days following receipt of that evidence to make any objection.

On March 9, 1988, Mr. Moser called and left a message for the undersigned hearing officer to call him. On March 10, 1988, the undersigned hearing officer initiated a conference call with Michael P. Murphy and Mr. Stan Moser. Mr. Moser was not present, but left a note for his son to read. Mr. Moser alleged in the note that Mr. Murphy was covering up and delaying Mr. Moser getting information from the Manchester office. Mr. Moser's son stated that Mr. Moser was out of town and he was not sure when he would be back. Mr. Murphy responded that he had told the Manchester office that if the requested information was for the purposes of the hearing, and was beyond the statements by Mr. Ratenburg, Mr. Moser was to submit a written request. If the request was for any other purpose, the office was to give Mr. Moser the information. The undersigned hearing officer ruled that: (1) Mr. Murphy was to direct the Manchester office to provide Mr. Moser with whatever information he requested; and (2) what came in as evidence would be ruled on when the evidence was submitted. Mr. Moser's son was directed to tell Mr. Moser to call if he had questions, and that he had until March 17, 1988 to submit his additional evidence.

On March 15, 1988, Mr. Moser called the undersigned hearing officer. A conference call was held. Mr. Moser again stated that the Manchester office would not send him information. Mr. Murphy stated that he had instructed the field office to send him any information. The undersigned hearing officer asked Mr. Moser if he had requested the information since the previous telephone call. Mr. Moser stated he had not, and that he was going to drop it and not submit additional evidence. The undersigned hearing officer suggested that it might be helpful for Mr. Moser to consult with an attorney regarding procedure.

THE RECORD

The evidentiary record in this case consists of the recorded testimony of the witnesses, the above pleadings, letters and orders, the additional evidence stated above, and the following exhibits:

Hearing Officer Exhibit 1 - Certified letter unclaimed by Mr. Stanley Moser.

Appellant Exhibit 1 - Report of Investigation dated August 21, 1985.
Department Exhibit 1 - Map of the City of Hudson, Iowa showing site 2.
Department Exhibit 2 - Letter from officer Paul Michael to Joseph Sanfilippo.
Department Exhibit 3 - Consent Order and Order.

FINDINGS OF FACT

1. Mr. Stan Moser is the owner of real estate located in the NW 1/4, SE 1/4 of section 27, T88N, R14W, Black Hawk County, Iowa. (testimony of Mr. Stan Moser; Administrative Order No. 87-SW-26).

2. On February 27, 1984, Mr. Stan Moser and the Iowa Department of Water, Air and Waste Management (now Iowa Department of Natural Resources) signed a Consent Order. The Consent Order followed an issuance of Administrative Order No. 83-LQ-10 by the Department on September 2, 1983. The Administrative Order alleged violations of statutes and rules regarding open burning and solid waste disposal. By signing the Consent Order, Mr. Moser did not admit the violations alleged in the Administrative Order, and agreed to comply with the following terms:

"a. No disposal of solid waste (as defined in Iowa Code Subsection 455B.301(4) and rule 900--100.2), except for solid waste generated by Stanley Moser, shall be caused, allowed or permitted on property owned or leased by Stanley Moser.

b. Any solid waste generated by Stanley Moser which is to be disposed on property owned or leased by Stanley Moser shall be disposed as required by rule 900--101.3.

c. No open burning of any solid waste, except for landscape waste originating on Stanley Moser's property, shall be caused, allowed or permitted on Stanley Moser's property.

d. Any solid waste presently on the property of Stanley Moser shall be permanently covered with earth or removed from the property."
(Department Exhibit 3; testimony of Mr. Stanley Moser).

3. On April 30, 1987 at approximately 8 p.m., Officer Paul R. Michael of the Hudson Police Department observed Mr. Stan Moser driving an endloader on his property at site number 2 on Department Exhibit 1. Mr. Moser was burying things. Prior to April 30, 1987, Officer Michael had recently observed trucks coming into the area of site number 2 and dumping material there. The trucks were carrying demolition material from houses being torn down. At another time, Officer Michael observed trucks carrying in tree limbs and branches and dumping them in the area. The demolition material Officer Michael observed on April 30th consisted of wood slats, plaster, and plasterboard. He observed parts of some fiberglass "portavet units" being

buried by Mr. Moser, and approximately two pickup truckloads of "white debris". "White debris" is household material such as household garbage, old appliances, and things of that nature. The "white debris" Officer Michael observed being buried by Mr. Moser included a washer and dryer.
(testimony of Officer Paul Michael; Department Exhibit 1,2)

4. Mr. Moser's land at site 2 is low land near a river and a pond. The area floods. Filling in the area, once the fill material was buried, improved the value of the property by raising the elevation, improving its looks, and allowing Mr. Moser more complete access to the property.
(testimony of Mr. Merlyn Boyken; Officer Michael; Department Exhibit 1).

5. Mr. Moser attempted to show that Officer Michael's testimony was not credible. Mr. Moser raised the issue of a prior lawsuit between Mr. Moser and the Hudson Police Department, in which Officer Michael was a named party in his capacity as a police officer.

Mr. Moser also questioned Officer Michael regarding Officer Michael's prior employment. Mr. Moser's brother owns a protavet company and Officer Michael used to work for Mr. Moser's brother.

Mr. Moser's attempts to attack Officer Michael's credibility were unsuccessful. The evidence showed that Officer Michael was a credible witness.
(testimony of Mr. Moser; Officer Michael).

6. The evidence was uncontroverted that Mr. Moser regularly allows contractors to dump material on his property. Although Mr. Moser denied in opening statement that any violation occurred, Mr. Moser's own testimony showed that he allows some illegal material to be dumped on his property at site 2. Mr. Moser testified that he has five woodburning stoves on his property, and he implied that he accepted the wood which he testified he burns in his stoves. Mr. Moser and Mr. Donald Jones testified that City Councilman Patterson comes to Mr. Moser's property and hauls away metal, so obviously Mr. Moser accepts some metal. Mr. Moser also has accepted legal fill materials at site 2. Brick and mortar were brought to site 2 from buildings which were torn down in Waterloo.
(testimony of Mr. Boyken; Officer Michael; Mr. Moser; Mr. Jones).

7. On August 21, 1985, the Department inspected Mr. Moser's property, and found no violations of the Consent Decree.
(Appellant's Exhibit 1).

8. One witness testified that people had dumped things on Mr. Moser's property without Mr. Moser's consent. The witness did not testify as to what material had been dumped without permission, except that on one occasion a load of shingles was dumped. On that occasion, Mr. Moser called the person who dumped

the shingles to come and remove them.
(testimony of Mr. Merlyn Boyken).

9. Mr. Moser does not have a permit allowing for solid waste disposal on his property.
(Administrative Order No. 87-SW-26).

CONCLUSIONS OF LAW, DECISION AND ORDER

Iowa Code Section 455B.307(1)(1987) provides in part:
"It shall be unlawful for any private agency or public agency to dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. This section shall not prohibit a private agency or public agency from dumping or depositing solid waste resulting from its own residential, farming, manufacturing, mining or commercial activities on land owned or leased by it if the action does not violate any statute of this state or rules promulgated by the commission or local boards of health, or local ordinances."

Iowa Code Section 455B.109 gives the department the authority to assess administrative penalties for violations. 567 Iowa Administrative Code Chapter 10 provides the criteria and details regarding assessment of administrative penalties.

567 Iowa Administrative Code Section 102.1 provides that "no public or private agency shall construct or operate a sanitary disposal project without first obtaining a permit from the director."

567 Iowa Administrative Code Section 101.3(1) provides that "open dumping is prohibited except for rubble".

"Rubble" is defined as "stone, brick or similar inorganic material." 567 I.A.C. 100.2.

Administrative Order No. 87-SW-26 ordered Mr. Moser to stop all dumping except legally defined rubble and stop permitting dumping on his property without a permit, to remove the solid waste disposed of on his property on or about April 30, 1987, report the completion of the clean-up to the Department, and pay an administrative penalty of $250.

Administrative Order No. 87-SW-26 was correct. Mr. Moser has violated Iowa Code Section 455B.307(1), 567 Iowa Administrative Code Section 101.3(1), and 567 Iowa Administrative Code Section 102.1. Mr. Moser violated these rules and statute after having already entered into a prior Consent Order.

Therefore, the issuance of Administrative Order No. 87-SW-26 is hereby affirmed, and Mr. Stan Moser is hereby ORDERED to comply with said order.

Either party may appeal this decision by filing a written notice of appeal with the executive director of the Iowa Department of Natural Resources, Wallace Bldg., 900 E. Grand, Des Moines, Iowa 50319, within thirty days of receipt of this decision and order. Dated this 12th day of April, 1988.

Amy Christensen Couch
Hearing Officer
Department of Inspections and Appeals
Lucas State Office Building
Des Moines, Iowa 50319-0083

ACC/nlh

copy to:

Mr. Stan Moser
Mr. Michael Murphy

Item 21

IOWA DEPARTMENT OF NATURAL RESOURCES
Coordination & Information Division

DATE: April 22, 1988

TO: Environmental Protection Commission

FROM: James Combs

SUBJECT: 1988 Legislative Summary

The following is a brief summary of legislation of interest to the Environmental Protection Commission that passed this session. A copy of the enrolled bill is attached if it is available. Many of the bills of interest to the Commission passed in the final days of the session. Therefore, a copy of the final bill is not yet available and this summary is based on our observations of the action taken. When the rest of the bills of interest are available in enrolled form they will be provided to the Commission.

HF 2440 DALS and DNR Appropriations

Generally the Department received the Governor's recommendation as presented to the Commission at a previous meeting. Stan Kuhn will provide more detailed information as it is available.

A copy of the bill is attached.

HF 2369 Oil Overcharge Fund Appropriations

$4 million allocated to the groundwater programs per the 1987 agreement. Additional details are not yet clear.

SF 2092 State Revolving Fund

This bill contains the Governor's bill on the State Revolving Fund as part 2 of a more inclusive "infrastructure" bonding bill. The two parts are completely separate and there were no significant changes made to the original proposal.

HF 2441 Underground Storage Tank Insurance

This bill establishes an underground storage tank insurance program within Chapter 455B but separate from the Department.

An UST Insurance Committee consisting of the Director of DNR, the State Treasurer, the Insurance Commissioner, and two public members with expertise in finance and insurance is established. This Committee is authorized to appoint an Administrator who has insurance or actuarial experience.

The bill establishes an UST Insurance Fund that will pay up to $500,000 per occurance for clean-up only for tank leaks. This coverage will be adjusted to be consistent with Federal regulations when they are finalized. This level of coverage should cover 90%+ of the claims. Third party liability or damages are not covered by this program.

The premiums and deductable levels are set by the bill.

Deductable	Annual Premium (per tank)
$10,000	$400
$20,000	$325
$30,000	$250

Participants in the program may select the level of coverage they desire.

The Fund will be supplemented by an additional fee of $20 per thousand gallons on gasoline sold in August of 1988 and 1989.

The general understanding in the General Assembly was that this is an initial effort to establish an UST Insurance program for Iowa and that there will be additional action on this program by the next General Assembly.

SF 2126 Flood Plain Statute of Limitations

This bill limits the Department from initiating any administrative action against someone for violation of the flood plain law more than 10 years after the construction occured or more than five years after the Department discovered the construction. This bill is retroactive. The only exception to these limits is when the construction poses a threat to public safety.

SF 2246 Water Pollution and Hazardous Waste Disposal Penalties

This is the Attorney General's bill to bring the penalties for violation of State law in these two programs into line with federal and other state's penalties. The civil penalties remain at $5,000 per day for water pollution violations and $10,000 per day for hazardous waste violations.

The bill establishes criminal penalties for negligently or knowingly violating water pollution statutes. A negligent violation is a serious misdemeanor and is punishable by a fine of up to $25,000 per day of violation and/or one year in prison or both; except that all violations after the first one are punishable by a fine of up to $50,000 per day and/or up to two years in prison. A knowing violation is an aggravated misdemeanor and is punishable by a fine of up to $50,000 per day of violation and/or up to two years in prison; except that all violations after the first one are punishable by a fine of up to $100,000 per day and/or up to five years in prison.

The bill establishes criminal penalties for knowingly unlawful disposal, transportation, storage or treatment of hazardous wastes. The first violation is an aggravated misdemeanor and is punishable by a fine of up to $25,000 per day of violation and/or up to two years in prison or both. All subsequent violations are a class "D" felony and punishable by a fine of up to $50,000 per day of violation and/or up to five years in prison.

A copy of the bill is attached.

HF 2338 Penalties

This bill establishes a fund into which payments for penalties of Chapter 455B are deposited. $100,000 of the fund is then transferred to the General Fund; $100,000 is made available to local officials for emergency response activities; and the balance goes to the Household Hazardous Materials Account of the Groundwater Protection Fund.

SF 2245 Laboratory Certification

This is one of the Commissions bills. It requires that all laboratories providing data to the Department be certified by the Department. The certification is valid for two years. The Department must establish rules for certification based on reciprocity.

A copy of the bill is attached.

SF 2250 Groundwater Clean-up

This bill made several corrections, but not significant policy changes, to the groundwater program. It incorporates the Commission's bill on retaining the interest earned on the Groundwater Protection Fund in the Fund. It clarified that the 25¢ per ton solid waste fee remains in place until July 1, 1988, at which time the fee raises to $1.50 per ton. It adds the word "known" to all of the information required on the Groundwater Hazard Statement that must be filed with all real estate transactions. It changes the Household Hazardous Material permit fee to $25 for all retailers versus the current $10, $25, $100 fee structure based on sales.

SF 38 Agricultural Drainage Wells

This bill extends the registration deadline to September 1988. It also clarifies a part of the groundwater bill regarding the allocation of funds from the Agriculture Management Account to the Department of Agriculture and Land Stewardship.

SF 2068 Solid Waste Permits

This bill requires that the public be given an opportunity for a hearing before any sanitary disposal project permit is issued by the Department. This is the only program that does not currently require a public comment period before a permit is issued.

This bill may contain a provision that no new sanitary landfill permits may be issued by the Department after January 1, 1989.

SF 2125 Sanitary Landfills

This bill limits sanitary landfills to accepting solid waste from not more than eight (?) counties.

SF 443 Bottle Bill

This bill allows distributors to accept only their own container for deposit redemption. Copy attached. The Department has asked the Governor to veto this bill. A copy of the Director's letter to the Governor which explains our concerns with the bill is attached.

SF 2313 Hazardous Waste Fees

This bill imposes the following fees on persons required to obtain a USEPA identification number:

Generator of more than 1,000 kilograms per month...$250
Generator of less than 1,000 kilograms per month...$ 25
Transporter of hazardous waste.....$ 25
Operator of a storage, treatment or disposal
facility.....$ 25

The fees are deposited to the Hazardous Waste Remedial Fund.

A copy of the bill is attached.

SF 2171 Reorganization Clean-up

This bill makes several corrections to the Code that were left over from reorganization of State government. I will highlight each of the changes at the meeting.

Attachments

cc: Larry Wilson

SENATE FILE 2245

AN ACT

RELATING TO THE CERTIFICATION OF LABORATORIES WHICH PERFORM ANALYSES OF SPECIMENS FOR THE DEPARTMENT OF NATURAL RESOURCES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 455B.113 CERTIFICATION OF LABORATORIES.

1. The director shall certify laboratories which perform laboratory analyses of samples required to be submitted by the department by this chapter, by rules adopted in accordance with this chapter, or by permits or orders issued under this chapter.

2. The commission shall adopt rules regarding content of laboratory certification application forms, which shall be furnished by the department.

The commission shall adopt rules regarding reciprocity agreements with other states that have equivalent laboratory certification requirements.

3. The director may charge a fee for processing of an application. The application fee is nonrefundable. In establishing the fee, the director shall take into account the administrative costs incurred and the cost of enforcement of this section. Fees collected shall be retained by the department.

4. A laboratory shall submit an application, every other year, accompanied by the fee determined by the director.

Sec. 2. NEW SECTION. 455B.114 LABORATORY CERTIFICATES.

1. Upon determination by the director that an applicant for certification has the necessary competence, equipment, and capability to perform the laboratory analytical procedures required, the director shall issue a certificate of competency

to the laboratory. The certificate shall indicate the analytical parameters and procedures which the laboratory is certified to conduct.

2. The director may suspend or revoke the certificate of competency of a laboratory upon determination of the director that the laboratory no longer fulfills the requirements for certification.

Sec. 3. NEW SECTION. 455B.115 ANALYSIS BY CERTIFIED LABORATORY REQUIRED.

Laboratory analysis of samples as required by this chapter or by rules adopted, or by permits or orders issued pursuant to this chapter, shall be conducted by a laboratory certified by the director as having the necessary competence, equipment, and capabilities to perform the analysis. Analytical results from laboratories not certificated shall not be accepted by the director.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2245, Seventy-second General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved _____, 1988

TERRY E. BRANSTAD
Governor

SENATE FILE 2246

AN ACT

RELATING TO THE PENALTIES FOR WATER POLLUTION AND HAZARDOUS WASTE DISPOSAL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 455B.191, subsection 1, Code 1987, is amended to read as follows:

1. Any person who violates any provision of part 1 of division III of this chapter or any permit, rule, standard, or order issued under part 1 of division III of this chapter shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation. ~~The civil~~

~~penalty shall be an alternative to any criminal penalty provided under part 1 of division III of this chapter.~~

Sec. 2. Section 455B.191, subsection 2, Code 1987, is amended by striking the subsection and inserting the following:

2. Any person who negligently or knowingly violates section 455B.183 or section 455B.186 or any condition or limitation included in any permit issued under section 455B.183, or who negligently or knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which the person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal and state requirements or permits, negligently or knowingly causes a treatment works to violate any water quality standard, effluent standard, pretreatment standard or condition of a permit issued to the treatment works pursuant to section 455B.133 is guilty of a serious misdemeanor for a negligent violation and is guilty of an aggravated misdemeanor for a knowing violation. A conviction for a negligent violation is punishable by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or both; however, if the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both. A conviction for a knowing violation is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both; however, if the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than one hundred thousand dollars for each day of violation or by imprisonment for not more than five years, or both. As

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used in this section, "hazardous substance" means hazardous substance as defined in section 455B.381 or section 455B.411.

Sec. 3. NEW SECTION. 716B.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Person" means an agency of the state or federal government, a municipality, governmental subdivisions, interstate body, public or private corporation, individual, partnership, or other entity, and includes an officer, or governing or managing body of a municipality, governmental subdivision, interstate body, or public or private corporation.

2. "Department" means the department of natural resources.

3. "Disposal" or "dispose" means disposal as defined in section 455B.411, subsection 2.

4. "Hazardous waste" means a hazardous waste as defined in section 455B.411, subsection 4, or a hazardous substance as defined in 42 U.S.C. § 9601, or a hazardous substance as designated by regulations adopted by the administrator of the United States environmental protection agency pursuant to 42 U.S.C. § 9602.

5. "Storage" or "store" means storage as defined in section 455B.411, subsection 9.

6. "Treatment" or "treat" means treatment as defined in section 455B.411, subsection 10.

Sec. 4. NEW SECTION. 716B.2 UNLAWFUL DISPOSAL OF HAZARDOUS WASTE -- PENALTIES.

A person who knowingly or with reason to know, disposes of hazardous waste or arranges for or allows the disposal of hazardous waste at any location other than one authorized by the department or the United States environmental protection agency, or in violation of any material term or condition of a hazardous waste facility permit, is guilty of an aggravated misdemeanor and upon conviction shall be punished by a fine of not more than twenty-five thousand dollars for each day of

violation or imprisonment for not more than two years, or both. If the conviction is for a violation committed after a first conviction under this section, the person is guilty of a class "D" felony and shall be punished by a fine of not more than fifty thousand dollars for each day of violation or imprisonment for not more than five years, or both.

Sec. 5. NEW SECTION. 716B.3 UNLAWFUL TRANSPORTATION OF HAZARDOUS WASTE -- PENALTIES.

A person who knowingly or with reason to know, transports or causes to be transported any hazardous waste to any location other than a facility that is authorized to receive, treat, store, or dispose of the hazardous waste under rules adopted pursuant to 42 U.S.C. § 9601-9675 is guilty of an aggravated misdemeanor and upon conviction shall be punished by a fine of not more than twenty-five thousand dollars for each day of violation or imprisonment for not more than two years, or both. If the conviction is for a violation committed after a first conviction under this section, the person is guilty of a class "D" felony and shall be punished by a fine of not more than fifty thousand dollars for each day of violation or imprisonment for not more than five years, or both.

Sec. 6. NEW SECTION. 716B.4 UNLAWFUL STORAGE OR TREATMENT OF HAZARDOUS WASTE -- PENALTIES.

A person who knowingly or with reason to know, treats or stores hazardous waste without a permit issued pursuant to 42 U.S.C. § 6925 or § 6926 is guilty of an aggravated misdemeanor and upon conviction shall be punished by a fine of not more than twenty-five thousand dollars for each day of violation or imprisonment for not more than two years, or both. If the conviction is for a violation committed after a first conviction under this section, the person is guilty of a class "D" felony and shall be punished by a fine of not more than fifty thousand dollars for each day of violation or imprisonment for not more than five years, or both.

Sec. 7. NEW SECTION. 716B.5 ENFORCEMENT.

The attorney general or the county attorney for the county in which a violation occurs is responsible for enforcement of this chapter.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2246, Seventy-second General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved _____, 1988

TERRY E. BRANSTAD
Governor

SF 2246

HOUSE FILE 2440

AN ACT

RELATING TO AND MAKING APPROPRIATIONS TO THE DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP AND THE DEPARTMENT OF NATURAL RESOURCES, AND PROVIDING FOR AN INCREASE IN CERTAIN FEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP. There is appropriated from the general fund of the state and the trust funds indicated to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1988, and ending June 30, 1989, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. ADMINISTRATIVE DIVISION

a. From the general fund for salaries, support, maintenance, and miscellaneous purposes:

..... $ 968,311

b. From the fertilizer fund to be transferred to the administration division:

..... $ 51,100

c. From the dairy trade practice fund to be transferred to the administration division:

..... $ 86,813

d. From the commercial feed fund to be transferred to the administration division:

..... $ 51,100

e. Of the amount appropriated from the general fund of the state under paragraph "a" of this subsection, sixty thousand (60,000) dollars shall be allocated for the operations of the statistics bureau.

f. The department of agriculture and land stewardship shall establish annual subscription fees for the regular and periodic publications of the department. However, the subscription fee for a publication by the farm commodity division relating to a livestock market summary shall not exceed ten dollars and a publication by the farm commodity division relating to sheep clippings shall not exceed four dollars. Fees collected from subscribers shall be deposited in the general fund of the state.

g. The department of agriculture and land stewardship shall fund, from moneys appropriated to the department under paragraph "a" for the salary and support of the currently untitled position within the administrative division, the salary and support of the position of programming and planning administrator II.

h. Funds appropriated by this subsection are for the salaries and support of not more than forty-two point twenty-four full-time equivalent positions.

2. FARM COMMODITY DIVISION

a. From the general fund for salaries and support, for not more than twenty-three full-time equivalent positions, maintenance, and miscellaneous purposes:

..... $ 985,278

b. Of the amount appropriated from the general fund of the state under paragraph "a" of this subsection, three hundred forty-six thousand three hundred seventy-nine (346,379) dollars shall be allocated to the horticultural division for the continuation of the agricultural diversification program as enacted by 1986 Iowa Acts, chapter 1246, section 501, subsection 1, paragraph "e".

3. FARMER'S MARKET COUPON PROGRAM

From the general fund of the state to be used by the department to continue and expand the farmer's market coupon program by providing federal special supplemental food program recipients with coupons redeemable at farmer's markets:

..... $ 100,000

4. REGULATORY DIVISION

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a. From the general fund of the state for salaries and support for not more than one hundred forty-nine point twenty full-time equivalent positions, maintenance, and miscellaneous purposes:

..... $ 3,918,737

b. Of the amount appropriated from the general fund of the state under paragraph "a" of this subsection, one hundred forty-nine thousand seven hundred ninety (149,790) dollars shall be allocated for the operations of the grain warehouse bureau.

c. Of the amount appropriated from the general fund of the state under paragraph "a" of this subsection, one hundred seventy thousand twenty-nine (170,829) dollars shall be allocated as follows: twenty-two thousand six hundred twenty (22,620) dollars to the animal health bureau; forty-one thousand eight hundred fifty-nine (41,859) dollars to the grain warehouse bureau; fifty-two thousand eight hundred seventy (52,870) dollars to the meat and poultry bureau; and fifty-two thousand six hundred eighty (52,680) dollars to the weights and measures bureau for the operations of those bureaus.

5. LABORATORY DIVISION

a. From the general fund for salaries, support, maintenance, and miscellaneous purposes:

..... $ 596,283

b. From the commercial feed fund to be transferred to the laboratory division:

..... $ 811,527

c. From the pesticide fund to be transferred to the laboratory division:

..... $ 495,517

d. From the fertilizer fund to be transferred to the laboratory division:

..... $ 832,356

e. Funds appropriated by this subsection are for the salaries and support of not more than ninety full-time equivalent positions.

6. SOIL CONSERVATION DIVISION

a. From the general fund for salaries and support for not more than one hundred seventy-five point seventy-eight full-time equivalent positions, maintenance, assistance to soil conservation districts, and for miscellaneous purposes:

..... $ 4,347,861

b. Of the amount appropriated from the general fund of the state under paragraph "a" of this subsection, three hundred three thousand four hundred thirty-six (303,436) dollars shall be used to conduct soil surveys in conjunction with federal, state, and local agencies in Iowa.

c. To provide financial incentives for soil conservation practices in accordance with the provisions of paragraph "d" of this subsection:

..... $ 6,789,972

d. The following requirements apply to the funds appropriated by paragraph "c":

(1) Not more than five percent may be allocated for cost sharing to abate complaints filed under section 467A.47 and 467A.48.

(2) Not more than ten percent may be allocated for financial incentives not exceeding seventy-five percent of the approved cost of permanent soil conservation practices under chapter 467A on watersheds above publicly owned lakes in accordance with the priority list required in section 10 of this Act.

(3) The soil conservation district commissioners may allocate financial incentives not exceeding sixty percent of the cost of permanent soil conservation practices for special watershed practices or summer construction incentives under section 467A.7, subsections 17 and 19.

(4) Except for the allocations subject to subparagraphs 1, 2, and 3, these funds shall not be used alone or in combination with other public funds to provide a financial incentive payment greater than fifty percent of the approved cost for voluntary permanent soil conservation practices and priority shall be given to family-operated farms.

(5) The soil conservation committee may allocate funds to conduct research and demonstration projects to promote conservation tillage and nonpoint sources pollution control practices.

(6) Not more than thirty percent of a district's allocation may be allocated by the soil conservation district commissioners for the establishment of management practices to control soil erosion on land that is now row cropped.

(7) The financial incentive payments may be used in combination with department of natural resources funds.

e. The provisions of section 8.33 shall not apply to the funds appropriated by paragraph "c". Unencumbered or unobligated funds remaining on June 30, 1992, from funds appropriated for the fiscal year beginning July 1, 1988, shall revert to the general fund on September 30, 1992.

Sec. 2. There is appropriated to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1988, and ending June 30, 1989, from the funds available under section 990.13 the sum of one hundred sixteen thousand five hundred seventy-one (116,571) dollars, or so much thereof as necessary, for volunteer assistance and not more than three full-time equivalent positions for the administration of section 99D.22.

Sec. 3. The department shall not make transfers from the funds established in chapter 192A, 198, 200, or 206, to be used for purposes not authorized in those chapters without notifying the chairpersons and ranking members of the agriculture and natural resources appropriations subcommittee in writing prior to the proposed transfer of funds. The notice from the department shall include information concerning the amount of the proposed transfer, the funds affected by the proposed transfer, and the reasons for the proposed transfer. Chairpersons and ranking members notified shall be given at least two weeks to review and comment on the proposed transfer before the transfer of funds is made.

Sec. 4. Notwithstanding section 83.4, the division of soil conservation of the department of agriculture and land stewardship shall set the fee for a mine site permit at fifteen dollars per site acre which shall be deemed to be the cost of administration.

Sec. 5. DEPARTMENT OF NATURAL RESOURCES. There is appropriated from the general fund of the state to the department of natural resources for the fiscal year beginning July 1, 1988, and ending June 30, 1989, the following amounts, or so much thereof as may be necessary, to be used for the following purposes:

1. For salaries, support, maintenance, and miscellaneous purposes:

..... $ 10,570,400

2. For reimbursement to federal agencies for cooperative contracts:

..... $ 185,983

3. For the green thumb program for the employment of the elderly in conservation and outdoor recreation related fields in coordination with other agencies as provided by law:

..... $ 200,000

4. For the payment of assessments to the midwest interstate low-level radioactive waste compact:

..... $ 70,000

Sec. 6. There is appropriated from the state fish and game protection fund to the department of natural resources for the fiscal year beginning July 1, 1988, and ending June 30, 1989, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

DIVISION OF FISH AND GAME

1. From the state fish and game protection fund for salaries, support, maintenance, equipment, and miscellaneous purposes including not more than two million three hundred sixty-three thousand nine hundred fifty-seven (2,363,957) dollars during the fiscal year beginning on July 1, 1988, which shall be available from the state fish and game protection fund for administrative support:

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---------- $ 14,655,148

2. From the fees deposited under section 321G.7 to the fish and game protection fund for enforcement of snowmobile laws as part of the state snowmobile program:

---------- $ 150,000

3. From the fees deposited under section 106.52 to the fish and game protection fund for administration and enforcement of navigation laws and water safety:

---------- $ 1,000,000

4. Funds remaining in the fish and game protection fund during fiscal year 1988-1989 which are not specifically appropriated by this section are appropriated and may be used for capital projects and contingencies arising during the fiscal year beginning July 1, 1988. A contingency shall not include any purpose or project which was presented to the general assembly by way of a bill or a proposed bill and which failed to be enacted into law. For the purpose of this subsection, a necessity of additional operating funds may be construed as a contingency. Before any of the funds authorized to be expended by this subsection are allocated for contingencies, it shall be determined by the executive council that a contingency exists and that the contingency was not existant while the general assembly was in session and that the proposed allocation shall be for the best interests of the state. If a contingency arises or could reasonably be foreseen during the time the general assembly is in session, expenditures for the contingency must be authorized by the general assembly.

Sec. 7. MARINE FUEL TAX FUND. There is appropriated from the marine fuel tax fund to the department of natural resources for the fiscal year beginning July 1, 1988, and ending June 30, 1989, the following amounts, or so much thereof as is necessary, to be used for the following purposes:

1. For maintenance and development of boating facilities and access to public waters:

---------- $ 387,179

2. For deposit in the state fish and game protection fund for the administration and enforcement of navigation laws and boat safety:

---------- $ 150,000

The balance of the amount computed as provided in section 324.84 for the fiscal year beginning July 1, 1988, and ending June 30, 1989, is appropriated for the purposes provided in section 324.79, subsections 1, 2, 3, and 5. The unencumbered or unobligated balances of funds specifically allocated for such projects for the fiscal year ending June 30, 1989, shall revert to the fund from which appropriated September 30, 1991.

Sec. 8. Funds appropriated by section 5, subsections 1 and 3, and sections 7 and 8 of this Act are for salaries and support for not more than nine hundred seventy point ten full-time equivalent positions.

Sec. 9. The natural resources commission shall establish a priority list of watersheds which are of highest importance based on soil loss to be used for the allocation of funds set aside in the appropriations to the department of agriculture and land stewardship for permanent soil conservation practices.

Sec. 10. Effective July 1, 1988, the department of natural resources shall establish prices of plant material grown at the state forest nurseries to cover eighty percent of all expenses directly related to the growing of plants.

Effective July 1, 1989, the department shall establish prices of plant material grown at the state forest nurseries to cover all expenses directly related to the growing of the plants.

The department shall develop additional programs to encourage the wise management and preservation of existing woodlands and shall increase its efforts to encourage forestation and reforestation on private and public lands in the state.

The department shall encourage a cooperative relationship between the state forest nurseries and private nurseries in the state in order to achieve these goals.

Sec. 11. If the department of agriculture and land stewardship or the department of natural resources makes an appropriation transfer between appropriation line-items, the chairpersons and ranking members of the agriculture and natural resources appropriations subcommittee shall be notified in writing prior to the proposed transfer of funds. The notice from the department shall include information concerning the amount of the proposed transfer, the appropriation line-items affected by the proposed transfer, and the reasons for the proposed transfer. Chairpersons and ranking members notified shall be given at least two weeks to review and comment on the proposed transfer before the transfer of funds is made.

Sec. 12. Section 162.3, Code 1987, is amended to read as follows:

162.3 CERTIFICATE OF REGISTRATION FOR POUND.

No pound shall be operated unless a certificate of registration for the pound is granted by the secretary. Application for the certificate shall be made in the manner approved by the secretary. ~~No fee shall be required for the application or certificate.~~ Certificates of registration shall expire annually on March 1 unless revoked and may be renewed upon application in the manner provided by the secretary. A registered pound may engage in the sale of dogs or cats, or both, under its control, if it obtains a license for such activity~~, but no fee shall be charged therefor unless the registered pound is privately owned~~. The license fee for a registered pound shall be fifteen dollars per year.

Sec. 13. Section 162.5, Code 1987, is amended to read as follows:

162.5 PET SHOP LICENSE.

No person shall operate a pet shop unless the person has obtained a license to operate a pet shop issued by the

secretary. Application for the license shall be made in the manner provided by the secretary. The license shall expire annually on March 1 of each year unless revoked and may be renewed in the manner provided by the secretary. The license fee shall be forty fifty dollars per year or ten thirteen dollars for each quarter or portion of a quarter of a year. The license may be renewed if the licensee has conformed to all statutory and regulatory requirements.

Sec. 14. Section 162.6, Code 1987, is amended to read as follows:

162.6 COMMERCIAL KENNEL OR PUBLIC AUCTION LICENSE.

No person shall operate a commercial kennel or public auction, as defined in section 162.2, unless the person has obtained a license to operate a commercial kennel or a public auction issued by the secretary or unless the person has obtained a certificate of registration issued by the secretary if the kennel is federally licensed. Application for the license or the certificate shall be made in the manner provided by the secretary. The license and the certificate shall expire annually on March 1 unless revoked. The license fee shall be ~~twenty-five~~ forty dollars per year or ~~seven~~ ten dollars for each quarter or portion of a quarter of a year and the certification fee shall be five dollars annually. If the person has obtained a federal license, the person need only obtain a certificate. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary provided if the licensee has conformed to all statutory and regulatory requirements. The certificate may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary.

Sec. 15. Section 162.7, Code 1987, is amended to read as follows:

162.7 DEALER LICENSE.

No person shall operate as a dealer unless the person has obtained a license issued by the secretary or unless the person has obtained a certificate of registration issued by

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the secretary if the kennel is federally licensed. Application for the license or the certificate shall be made in the manner provided by the secretary. The license and certificate shall expire annually on March 1 unless revoked. The license fee shall be ~~fifty~~ one hundred dollars per year or ~~fifteen~~ twenty-five dollars for each quarter or portion of a quarter of a year, and the certification fee shall be five dollars per year. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary, ~~provided~~ if the licensee has conformed to all statutory and regulatory requirements. The certificate may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary.

Sec. 16. Section 162.8, Code 1987, is amended to read as follows:

162.8 COMMERCIAL BREEDER'S LICENSE.

No person shall operate as a commercial breeder unless the person has obtained a license issued by the secretary or unless the person has obtained a certificate of registration issued by the secretary if the kennel is federally licensed. Application for the license or the certificate shall be made in the manner provided by the secretary. The annual license or the certification period shall commence March 1 of each year. The license fee shall be ~~twenty-five~~ forty dollars per year or ~~seven~~ ten dollars for each quarter or portion of a quarter of a year and the certificate fee shall be ~~five~~ twenty dollars per year. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary provided the licensee has conformed to all statutory and regulatory requirements. The certificate may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary.

Sec. 17. Section 162.9, Code 1987, is amended to read as follows:

162.9 BOARDING KENNEL OPERATOR'S LICENSE.

No person shall operate a boarding kennel unless the person has obtained a license to operate a boarding kennel issued by the secretary. Application for the license shall be made in the manner provided by the secretary. The annual license period shall commence March 1 of each year. The license fee shall be ~~fifteen~~ thirty dollars per year or ~~four~~ nine dollars for each quarter or portion of a quarter of a year. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary provided the licensee has conformed to all statutory and regulatory requirements.

Sec. 18. Section 162.10, Code 1987, is amended to read as follows:

162.10 HOBBY KENNEL OWNER'S LICENSE.

No person shall operate a hobby kennel unless the person obtains a license issued by the secretary. Application for the license shall be in the manner provided by the secretary. The annual license period shall commence March 1. The license fee shall be ~~two~~ thirty dollars per year. The license may be renewed upon application in the manner prescribed by the secretary, provided the licensee has conformed to all statutory and regulatory requirements.

Sec. 19. Section 177A.9, unnumbered paragraph 2, Code 1987, is amended to read as follows:

The fees for inspections and certifications shall not be less than ~~fifteen~~ twenty-five dollars nor more than five hundred dollars. Certificates shall be issued to nursery stock growers and dealers on an annual basis. Inspection and certification fees for nursery stock growers shall be ~~fifteen~~ twenty-five dollars plus ~~one dollar~~ five dollars per acre or part thereof, according to the amount of stock inspected. The inspection and certification fee for nursery stock dealers shall be ~~fifteen~~ twenty-five dollars. All fees shall be paid at the time of inspection or before a certificate is issued. Inspection and certification shall take place when necessary to enforce this chapter and the rules pursuant to it.

Certificates issued in accordance with this chapter may be revoked when inspection results determine that conditions violate the standards for which certification was issued.

Sec. 20. Section 199.15, unnumbered paragraph 1, Code 1987, is amended to read as follows:

A person shall ~~not~~ sell, distribute, advertise, solicit orders for, offer or expose for sale, agricultural or vegetable seed without first obtaining from the department a permit to engage in the business. A permit is not required of persons selling seeds which have been packed and distributed by a person holding and having in force a permit. A permit is not required of persons selling or advertising seed of their own production, provided that the seed is stored or delivered to a purchaser only on or from the farm or premises where grown. The fee for a new permit is ten dollars and the fee for a renewed permit is based on the gross annual sales of seeds in Iowa during the previous twelve-month period under the permit holder's label and all permits expire on the first day of July following date of issue. Permits shall be issued subject to the following fee schedule:

Gross sales of seeds		Fee
Not more than	$ 25,000	~~$10~~ <u>30</u>
Over $25,000 but not exceeding	50,000	~~20~~ <u>60</u>
Over $50,000 but not exceeding	100,000	~~30~~ <u>90</u>
Over $100,000 but not exceeding	200,000	~~40~~ <u>120</u>

For each additional increment of one hundred thousand dollars of sales in Iowa the fee shall increase by ten <u>thirty</u> dollars. The fee shall not exceed <u>one thousand</u> five hundred dollars for a permit holder.

Sec. 21. Section 214.1, unnumbered paragraph 2, Code Supplement 1987, is amended to read as follows:

The fee for each license shall be four <u>six</u> dollars per annum, except that the fee for motor vehicle fuel pumps and meters shall be two <u>three</u> dollars per annum if paid within one month from the date the license fee is due.

Sec. 22. Section 215.2, subsection 1, Code 1987, is amended to read as follows:

1. Railroad track scales, ~~fifty~~ <u>sixty-five</u> dollars each.

Sec. 23. Section 215.20, unnumbered paragraph 1, Code 1987, is amended to read as follows:

The secretary of agriculture shall annually inspect and test all liquid meters used for the measurement and retail sale of liquefied petroleum gas and the secretary shall condemn all meters which are found to be inaccurate. A reasonable tolerance within a maximum of two percent, plus or minus, shall be allowed. It is unlawful to use a meter for retail measurement and sale which has been condemned. All condemned meters shall be conspicuously marked "inaccurate", and the mark shall not be removed or defaced except upon authorization of the secretary of agriculture or the secretary's authorized representative. The secretary of agriculture shall charge an annual fee of ten <u>thirty-five</u> dollars for each meter tested but the testing fee provided for by this section shall not be charged more than once in a calendar year to each meter tested. When liquefied petroleum gas is sold or delivered to a consumer as a liquid and by liquid measurement, the volume of liquid sold and delivered shall be corrected to a temperature of 60 <u>degrees</u> F. through use of an approved volume correction factor table, or through use of an approved meter with sealed automatic compensation mechanism. All sale tickets shall show the delivered gallons, the temperature at the time of delivery, and the corrected gallonage, or shall state that temperature correction was automatically made.

Sec. 24. All federal grants to and the federal receipts, not otherwise appropriated, of the agencies appropriated funds under this Act are appropriated for the purposes set forth in

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the federal grants or receipts, unless otherwise provided by the general assembly.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2440, Seventy-second General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved _____, 1988

TERRY E. BRANSTAD
Governor

SENATE FILE 2267

AN ACT

RELATING TO RESIDENTIAL WATER TREATMENT SYSTEMS, INCORPORATING A PENALTY, AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 714.16, subsection 1, Code Supplement 1987, is amended by adding the following new lettered paragraphs:

NEW LETTERED PARAGRAPH. h. "Water treatment system" means a device or assembly for which a claim is made that it will improve the quality of drinking water by reducing one or more contaminants through mechanical, physical, chemical, or biological processes or combinations of the processes. As used in this paragraph and in subsection 2, paragraph "h", each model of a water treatment system shall be deemed a distinct water treatment system.

NEW LETTERED PARAGRAPH. i. "Contaminant" means any particulate, chemical, microbiological, or radiological substance in water which has a potentially adverse health effect and for which a maximum contaminant level (MCL) has been specified in the national primary drinking water regulations.

NEW LETTERED PARAGRAPH. j. "Label", as used in subsection 2, paragraph "h", means the written, printed, or graphic matter permanently affixed or attached to or printed on the water treatment system.

NEW LETTERED PARAGRAPH. k. "Manufacturer's performance data sheet" means a booklet, document, or other printed material containing, at a minimum, the information required pursuant to section 714.16, subsection 2, paragraph "h".

NEW LETTERED PARAGRAPH. l. "Seller", as used in subsection 2, paragraph "h", means the person offering the water treatment system for sale, lease, or rent.

NEW LETTERED PARAGRAPH. m. "Buyer", as used in subsection 2, paragraph "h", means the person to whom the water system is being sold, leased, or rented.

NEW LETTERED PARAGRAPH. n. "Consummation of sale" means completion of the act of selling, leasing, or renting.

NEW LETTERED PARAGRAPH. o. "Consumer information pamphlet" means a publication which explains water quality, health effects, quality expectations for drinking water, and the effectiveness of water treatment systems.

Sec. 2. Section 714.16, subsection 2, Code Supplement 1987, is amended by adding the following new lettered paragraphs:

NEW LETTERED PARAGRAPH. h. It is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state, for which claims or representations of removing health-related contaminants are made, unless the water treatment system:

(1) Has been performance tested by a third-party testing agency that has been authorized by the Iowa department of public health. The testing agency shall use approved methods of performance testing determined to be appropriate by the state hygienic laboratory.

(2) Has met the performance testing requirements specified in the testing protocol.

(3) Bears a conspicuous and legible label stating, "IMPORTANT NOTICE - Read the Manufacturer's Performance Data Sheet" and is accompanied by a manufacturer's performance data sheet.

The manufacturer's performance data sheet shall be given to the buyer and shall be signed and dated by the buyer and the seller prior to the consummation of the sale of the water treatment system. The manufacturer's performance data sheet shall contain information including, but not limited to:

(a) The name, address, and telephone number of the seller.

(b) The name, brand, or trademark under which the unit is sold, and its model number.

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(c) Performance and test data including, but not limited, to the list of contaminants certified to be reduced by the water treatment system; the test influent concentration level of each contaminant or surrogate for that contaminant; the percentage reduction or effluent concentration of each contaminant or surrogate; where applicable, the maximum contaminant level (MCL) specified in the national primary drinking water regulations; where applicable, the approximate capacity in gallons; where applicable, the period of time during which the unit is effective in reducing contaminants based upon the contaminant or surrogate influent concentrations used for the performance tests; where applicable, the flow rate, pressure, and operational temperature of the water during the performance tests.

(d) Installation instructions.

(e) The recommended operational procedures and requirements necessary for the proper operation of the unit including, but not limited to, electrical requirements; maximum and minimum pressure; flow rate; temperature limitations; maintenance requirements; and where applicable, replacement frequencies.

(f) The seller's limited warranty.

(4) Is accompanied by the consumer information pamphlet compiled by the Iowa department of public health.

The consumer information pamphlet provided to the buyer of a water treatment system shall be compiled by the Iowa department of public health, reviewed annually, and updated as necessary. The consumer information pamphlet shall be distributed to persons selling water treatment systems and the costs of the consumer information pamphlet shall be borne by persons selling water treatment systems. The Iowa department of public health shall adopt rules pursuant to chapter 17A and charge all fees necessary to administer this section.

NEW LETTERED PARAGRAPH. i. It is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state for which false or deceptive claims or representations of removing health-related contaminants are made.

NEW LETTERED PARAGRAPH. j. It is an unlawful practice for a person to make any representation or claim that the seller's water treatment system has been approved or endorsed by any agency of the state.

Sec. 3. This Act takes effect July 1, 1988, except that the labeling requirements contained in section 714.16, subsection 2, paragraph "h" do not take effect until July 1, 1989.

However, currently available water treatment systems without testing protocols shall comply within one year after the establishment of the appropriate testing protocols but no later than July 1, 1990.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2267, Seventy-second General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved _____, 1988

TERRY E. BRANSTAD
Governor

SENATE FILE 2171

AN ACT

MAKING NONSUBSTANTIVE, NONCONTROVERSIAL STATUTORY CORRECTIONS TO COMPLY WITH REORGANIZATION CHANGES, IMPROVE CLARITY, REMOVE CONFLICTS AND INCONSISTENCIES, CORRECT REFERENCES, AND CORRECT GRAMMAR AND SYNTAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 2.49, subsection 5, Code 1987, is amended to read as follows:

5. Submit to each member of the general assembly quarterly a report of the current status of major state funds, a comparison of income with estimates used by the general assembly and other revenue and expenditure information which the legislative fiscal committee determines will be informative for members of the general assembly. The state comptroller department of revenue and finance and the department of management shall co-operate with the legislative fiscal bureau in the development of the report. The legislative fiscal committee shall approve the style and format of the report.

Sec. 2. Section 7C.7, subsection 1, Code Supplement 1987, is amended to read as follows:

1. If the bonds are issued and delivered for the purpose or project within the thirty-day period or the forty-day forty-five day extension period provided in subsection 2, the political subdivision or its representative shall within ten days following the issuance and delivery of the bonds or not

later than October 25 of that year, if the bonds were issued and delivered on or before that date, file with the governor's designee, in the form or manner the governor's designee may prescribe, a notification of the date of issuance and the delivery of the bonds, and the actual principal amount of bonds issued and delivered. The filing of the notification shall be done by actual delivery or by posting in a United States post office depository with correct first class postage paid. If the actual principal amount of bonds issued and delivered is less than the amount of the allocation, the amount of the allocation is automatically reduced to the actual principal amount of the bonds issued and delivered.

Sec. 3. Section 8.34, Code 1987, is amended to read as follows:

8.34 CHARGING OFF UNEXPENDED APPROPRIATIONS.

Except as otherwise provided by law, the director of the department of management shall transfer to the fund from which any an appropriation was made, any unexpended or unencumbered balance of such that appropriation remaining at the expiration of three months after the close of the biennial fiscal term for which the appropriation was made. At the time the transfer is made on the books of the department of management, the director shall certify such that fact to the treasurer of state, who shall make corresponding entries on the books of the treasurer's office.

Sec. 4. Section 8.48, Code 1987, is amended to read as follows:

8.48 PENALTY -- REMOVAL -- IMPEACHMENT.

A refusal to perform any of the requirements of this chapter, and the or a refusal to perform any a rule or requirement or request of the governor or the state comptroller director of the department of management made pursuant to or under authority of this chapter, by any a board member, commissioner, director, manager, building committee, or other officer or person connected with any institution, or

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Sec. 16. Section 28D.3, subsection 3, Code 1987, is amended to read as follows:

3. Persons employed by the energy policy council and geological resources division of the department of natural resources under the provisions of chapter 28D shall are not be subject to the twenty-four-month time limitation specified in subsection 2.

Sec. 17. Section 28G.6, Code 1987, is amended to read as follows:

28G.6 ANNUAL REPORT.

A legal entity created pursuant to chapter 28E and operating under this chapter shall report annually to the department of water, air and waste management natural resources. The report shall include information on permits, licenses or franchises granted by the legal entity, contracts entered into, and other information requested by the water, air and waste management environmental protection commission.

Sec. 18. Section 39.22, subsection 1, Code Supplement 1987, is amended to read as follows:

1. BY APPOINTMENT. The county board of supervisors may pass a resolution in favor of filling the offices of trustee and clerk within a township by appointment by the board, and may direct the county commissioner of elections to submit the question to the eligible voters of the township at the next general election. In a township which does not include a city, eligible voters shall consist of the voters of the entire township. In a township which includes a city, eligible voters are those voters who reside outside the corporate limits of a city. The resolution shall apply to all townships which have not approved a proposition to fill township offices by appointment. If the proposition to fill the township offices by appointment is approved by a majority of the eligible voters, the board shall fill the offices by appointment as the terms of office of the incumbent township officers expire.

PARAGRAPH DIVIDED. The election of the trustees and clerk of a township may be restored after approval of the appointment process under this subsection by a resolution of the board of supervisors submitting the question to the eligible voters of the township at the next general election. If the proposition to restore the election process is approved by a majority of the eligible voters, the election of the township officers shall commence with the next primary and general elections. A resolution submitting the question of restoring the election of township officers at the next general election shall be adopted by the board of supervisors upon petition of at least ten percent of the eligible voters of a township. The initial terms of the trustees shall be determined by lot, one for two years, one for three years and one two for four years. However, if a proposition to change the method of selecting township officers is adopted by the electorate, a resolution to change the method shall not be submitted to the electorate for four years.

Sec. 19. Section 39.22, subsection 2, paragraph a, Code Supplement 1987, is amended to read as follows:

a. TOWNSHIP TRUSTEES. Township trustees shall be elected biennially to succeed those whose terms of office expire on the first day of January following the election which is not a Sunday or legal holiday. The term of office of each elected township trustee is four years, except as provided in subsection 1 for initial terms following restoration of the election process.

Sec. 20. Section 76.2, unnumbered paragraph 2, Code 1987, is amended to read as follows:

If the resolution is filed prior to April 1 the annual levy shall begin with the tax levy for collection commencing July 1 of that year. If the resolution is filed after April 1, the annual levy shall begin with the tax levy for collection in the next succeeding fiscal year. However, the governing authority of a political subdivision may adjust a levy of

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issue a warrant on the treasurer of state in payment of such the costs.

Sec. 85. Section 455B.213, subsections 1 and 4, Code 1987, are amended to read as follows:

1. BY DIRECTOR. The director shall certify persons as to their qualifications to supervise the operation of such treatment plants and water distribution systems after considering the recommendations of the board-submitted-through the commission.

4. VIOLATION. An employee of the department who willfully communicates or seeks to communicate such information, and a person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

A member of the board commission who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days.

Sec. 86. Section 455B.277, unnumbered paragraph 2, Code 1987, is amended to read as follows:

This section applies to drainage districts, soil conservation districts, the state-conservation natural resource commission, political subdivisions of the state, and private persons undertaking projects relating to flood control.

Sec. 87. Section 455B.484, subsection 2, Code Supplement 1987, is amended to read as follows:

2. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for deposit into the waste management authority trust fund to be used for programs relating to the duties of the division authority under this part.

Sec. 88. Section 467A.42, subsection 6, Code Supplement 1987, is amended to read as follows:

6. "Conservation folder" means compiled information concerning the topography, soil composition, natural or artificial drainage characteristics, and other pertinent factors concerning a particular farm unit, which are is necessary to the preparation of a sound and equitable conservation agreement for that farm unit. The specific items to be contained in a conservation folder shall be prescribed by administrative rules of the department ~~of soil~~ conservation. The department shall provide by rule that an updated farm plan prepared for a particular farm unit within ten years prior to the effective date of this subsection shall be considered an adequate replacement for the conservation folder for that farm unit.

Sec. 89. Section 467B.14, unnumbered paragraph 2, Code 1987, is amended to read as follows:

The county auditor shall certify to the executive council of the state the amounts allocated to each school district in the previous year, on January 2 of the following each year. ~~The executive council of the state shall deduct this amount from any tax-free land reimbursement claim filed that year under section 284.4, except that in no case shall the deduction result in an amount less than the total of the tax free land reimbursement plus any benefits payable to the school district other than the amounts specified in this paragraph.~~ The remaining ten percent of any such a payment received by the county treasurer from the federal government, or so as much thereof as may be is deemed necessary by the board of supervisors, shall be allocated to the local fire departments of the unincorporated villages, townships, and cities of the county which are principally affected by the federal flood control project involved, to be paid and prorated among them as determined by the board of supervisors. If the funds prorated to local fire departments in any a county are less than ten percent of the total county share of such federal payments for any a year, the amount which exceeds

such the prorations shall revert back to and be divided equally between the secondary road fund and the local school district fund.

Sec. 90. Section 474.9, Code 1987, is amended to read as follows:

474.9 GENERAL JURISDICTION OF UTILITIES BOARD.

The utilities board ~~shall have~~ has general supervision of all pipelines and all lines for the transmission, sale, and distribution of electrical current for light, heat, and power ~~pursuant to the provisions of chapters 476, 478,~~ and 479 and ~~543,~~ and such has other duties as ~~may be~~ provided by law.

Sec. 91. Section 475A.4, subsection 1, paragraph d, Code 1987, is amended by striking the paragraph.

Sec. 92. Section 476.51, Code 1987, is amended to read as follows:

476.51 CIVIL PENALTY.

A public utility which willfully violates a provision of this chapter, a rule adopted by the board, or a provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not more than one hundred dollars per violation or one thousand dollars per day of a continuing violation, whichever is greater. Civil penalties collected pursuant to this section shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the energy research and development fund and to be used only for the low income home energy assistance program and the weatherization assistance program administered by the ~~energy policy council~~ division of community action agencies of the department of human rights. Penalties paid by a rate-regulated public utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to customers.

Sec. 93. Section 499.59, Code Supplement 1987, is amended to read as follows:

499.59 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the association's debts or obligations, and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the association, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

Sec. 94. Section 587D.3, subsection 6, Code Supplement 1987, is amended to read as follows:

6. An assistance program for the facilitation of insurance and financial responsibility coverage for owners and operators of underground storage tanks which store petroleum shall not be affected by the ~~prohibitions~~ exceptions of subsections 2 and 3.

Sec. 95. Section 534.102, subsection 32, Code 1987, is amended by striking the subsection.

Sec. 96. Section 535A.5, subsections 1 and 2, Code 1987, are amended to read as follows:

1. The superintendent of banking or the superintendent's designee shall ~~be responsible for enforcing those~~ enforce the sections in regard to ~~all~~ banks, persons licensed under chapter 536A, and mortgage banking companies.

2. The superintendent of savings and loan associations shall ~~be responsible for enforcing those~~ enforce the sections in regard to ~~all~~ savings and loan associations pursuant to chapter 534 ~~and all persons licensed under chapter 536A~~.

Sec. 97. Section 537.3603, subsection 5, Code Supplement 1987, is amended to read as follows:

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STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

LARRY J. WILSON, DIRECTOR

April 14, 1988

The Honorable Terry E. Branstad
Governor of Iowa
Statehouse
LOCAL

Dear Governor Branstad:

This letter is to respectfully recommend that you not sign into law Senate File 443 as passed by the 1988 General Assembly. This bill would make changes to the beverage containers deposit law. It is my belief that those changes would adversely affect statewide redemption.

Currently, distributors and manufacturers must accept empty beverage containers of the kind, size and brand sold by the distributor regardless of where the redemption center collected the empty containers. Under S.F. 443, redemption centers would be classified as "dealer agents" if they pick up empty beverage containers from retailers for return to the distributor or manufacturer. In addition, distributors could refuse to accept and to pay for any containers collected by a dealer agent outside of the geographic territory served by the distributor. These changes to the beverage containers deposit law are likely to have several negative impacts that are described in the following paragraphs.

Dealer agents would have to separate beverage containers by the geographic territories they serve. In addition, the dealer agent may have to make trips to distributors in some geographic territories in order to redeem containers. This could easily exhaust the narrow profit margins within which dealer agents (current redemption centers) now operate.

Currently some distributors can distinguish between containers sold by them and "foreign containers" sold by someone else. Containers are identified by label codes or variations in design. Such a distributor could easily claim that a dealer agent was trying to redeem containers collected outside the distributor's geographic territory because foreign containers were detected. This situation is likely to occur. Many retailers purchase from different distributors and consumers routinely return containers which are purchased outside the territory. In these cases, the dealer agent would have to sort containers by distributor, not

just by the geographic territory in which the retailer is located. The dealer agent could pass the task and inconvenience of sorting on to the retailer. If significant cost is associated to this activity for the retailer, it is likely to be passed on to the consumer. The separating of containers also assumes that there is a uniform system that retailers and dealer agents could use to distinguish among containers. There is not such a system.

Of greatest concern, however, is the likelihood that, by allowing distributors to refuse to accept containers from outside their geographic territory, the consumer will find it increasingly difficult to redeem containers. Because of the problems outlined in the preceding two paragraphs, retailers and dealer agents will be forced to redeem only containers that their distributor or manufacturer sells.

S.F. 443 was presumably designed to address some inequities among distributors and manufacturers in the amount of refunds that are paid out for beverage containers that were not sold by the distributor or manufacturer. I am not convinced that this is a significant problem especially in light of the unclaimed deposits on beverage containers that are retained by the distributors and manufacturers. In any case, there are other solutions to any inequities that would not have such adverse effects on redemption centers, retailers and consumers. Distributors and manufacturers have authority in the law now to resolve inequities by, for example, setting up a central fund or billing each other for any refunds paid out on foreign containers. If the problem is significant enough on a statewide level, there should be adequate incentive for distributors and manufacturers to seek a solution among themselves. If it is instead a more localized problem, then a statewide system of geographic territories within which redemption centers must operate is not needed.

In summary, S.F. 443 provides an undesirable mechanism for distributors and manufacturers to refuse containers. Their refusal to accept containers will pose a significant and unneccessary hardship on redemption centers, retailers and consumers. S.F. 443 would reduce the convenience of redemption which is the key to the success of Iowa's beverage containers deposit program.

Sincerely,

Larry J. Wilson
Director

SENATE FILE 443

AN ACT

DEFINING AND ESTABLISHING REDEMPTION CENTERS, DEALER AGENTS, AND TERRITORY OF SERVICE BETWEEN DEALER AGENTS AND DISTRIBUTORS, AND SUBJECTING VIOLATORS TO A PENALTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 455C.1, Code 1987, is amended by adding the following new subsections:

NEW SUBSECTION. 11. "Redemption center" means a facility at which consumers may return empty beverage containers and receive payment for the refund value of the empty beverage containers.

NEW SUBSECTION. 12. "Dealer agent" means a person who solicits or picks up empty beverage containers from a dealer for the purpose of returning the empty beverage containers to a distributor or manufacturer.

NEW SUBSECTION. 13. "Geographic territory" means the geographical area within a perimeter formed by the outermost boundaries served by a distributor.

Sec. 2. Section 455C.2, subsection 2, Code 1987, is amended to read as follows:

2. In addition to the refund value provided in subsection 1 of this section, a dealer, or person operating a redemption centery who redeems empty beverage containers or a dealer agent shall be reimbursed by the distributor required to accept the empty beverage containers an amount which is one cent per container. A dealer, dealer agent, or person operating a redemption center may compact empty metal beverage containers with the approval of the distributor required to accept ~~such container~~ the containers.

Sec. 3. Section 455C.3, Code 1987, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A distributor shall accept from a dealer agent any empty beverage container of the kind, size, and brand sold by the distributor and which was picked up by the dealer agent from a dealer within the geographic territory served by the distributor and the distributor shall pay the dealer agent the refund value of the empty beverage container and the reimbursement as provided in section 455C.2.

Sec. 4. Section 455C.4, Code 1987, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A manufacturer or distributor may refuse to accept and to pay the refund value and reimbursement as provided in section 455C.2 on any empty beverage container that was picked up by a dealer agent from a dealer outside the geographic territory served by the manufacturer or distributor.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 443, Seventy-second General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved _____, 1988

TERRY E. BRANSTAD
Governor

SF 443

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SENATE FILE 2313

AN ACT

IMPOSING ADDITIONAL HAZARDOUS WASTE FEES WITH CIVIL PENALTIES APPLICABLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 455B.424, Code 1987, is amended by adding the following new subsection immediately following subsection 4 and renumbering the subsequent subsections:

NEW SUBSECTION. 5. In addition to other fees imposed by this section, a person that is required to obtain a United States environmental protection agency identification number shall pay the following fees:

a. If the person generates more than one thousand kilograms of hazardous waste per month, a fee of two hundred fifty dollars.

b. If the person generates hazardous waste but does not generate more than one thousand kilograms of hazardous waste per month, a fee of twenty-five dollars.

c. If the person is a transporter of hazardous waste, a fee of twenty-five dollars.

d. If the person operates a hazardous waste treatment, storage, or disposal facility, a fee of twenty-five dollars.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2313, Seventy-second General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved _____, 1988

TERRY E. BRANSTAD
Governor