EPC COMMISSION
MINUTES & AGENDA

MONTH February

YEAR 1988

ADM-1-1-1
February 1988
Environ. Protection Com.

MINUTES
ENVIRONMENTAL PROTECTION COMMISSION
Wallace State Office Building
Fourth Floor Conference Room
Des Moines, Iowa
February 15-16, 1988

The meeting of the Environmental Protection Commission was held at the Wallace State Office Building in Des Moines, Iowa convening at 1:00 p.m. on Monday, February 15, 1988.

MEMBERS PRESENT

Keith Uhl, Gary Priebe, Nancylee Siebenmann, Donna Hammitt, Richard Timmerman, Robert Schlutz, Charlotte Mohr, Catherine Dunn, and Clark Yeager (after 2:00 p.m.)

ADOPTION OF AGENDA

The following appointments were added to the agenda:

- Michael Neary, Attorney for Dennis Greiner, 3:15 p.m. (Feb. 15)
- Representative for City of Iowa City, 10:45 a.m. (Feb. 16)

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

ADOPTION OF MINUTES

Motion was made by Richard Timmerman to approve the minutes of January 19-20, 1988 as presented. Seconded by Donna Hammitt. Motion carried unanimously.

DIRECTOR'S REPORT

Director Larry Wilson distributed a recently updated table of organization for the DNR, a revised Real Estate Transfer-Groundwater Hazard Statement, and a brochure explaining the Public Hearings on Groundwater Standards and listing dates and locations of same. Discussion followed regarding these items.

FINAL RULE--CHAPTER 209, SOLID WASTE GRANTS

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

The attached rule provides for financial assistance in the form of grants to encourage the adoption of alternatives to landfilling of solid waste. A description of the rule and development is provided in the preamble to the rule.

ENVIRONMENTAL PROTECTION COMMISSION [567]
Department of Natural Resources
Notice of Intended Action

Pursuant to the authority of 1987 Iowa Acts, H.F. 631, sections 111 and 405, the Environmental Protection Commission gives notice of intended action to adopt a new Chapter 209, "Solid Wastes Grants," under new Title XII Iowa Administrative Code.

The purpose of Title XII, Chapter 209 is to provide financial assistance through grants and other means to encourage the adoption of alternatives to land filling municipal solid wastes. The state of Iowa has determined that it is beneficial to the state's environment and economy to encourage such activities. This program is designed to demonstrate alternative means of solid waste management that may be applied throughout the state. The state will also examine the environmental impacts of solid waste landfill alternatives under this grant program.

These same rules were noticed in a notice of intended action on November 18, 1987 as ARC 8137 originally filed by the Energy and Geological Resources Division (565). These rules were proposed prior to the staffing of the new Waste Management Authority which has the authority for proposing these rules. Termination of the Energy and Geological Resources Division's notice of intended action is being filed simultaneously with these rules, and will appear in ARC ____.

New title XII is being added to the Environmental Protection Commission rules to accommodate the Waste Management Authority rules.

Any interested person may make written suggestions or comments prior to January 19, 1988. Such written materials should be directed to the Waste Management Authority Division, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319.

Persons who wish to convey their views orally should contact Stuart Schmitz, 515/281-8499, or at the Department's offices on the fifth floor of the Wallace State Office Building, Des Moines, Iowa 50319. Also, there will be a public hearing on Tuesday, January 19, 1988 at 11:00 a.m. in the conference room on the fifth floor of the Wallace State Office Building, Des Moines, Iowa. Interested persons who wish to present their views orally or in writing at this hearing should contact Stuart Schmitz at least one day prior to the public hearing.

This rule is intended to implement 1987 Iowa Acts, H.F. 631, sections 111 and 405.

ITEM 1. New Title XII and Chapter 209 is proposed as follows:

Title XII
Chapter 209
Solid Wastes Grants

567--209.1(72 GA, H.F. 631, sections 111 and 405) Goal. The goal of this program is to demonstrate alternative methods for managing solid wastes. Also, the program is designed to reduce the environmental effects related to disposal of solid wastes in Iowa landfills. These goals will be achieved through specific actions, as outlined in 1987 Iowa Acts, H.F. 631, the Groundwater Protection Act, and include the following hierarchy of waste management priorities in descending order of preference: (a) volume reduction at the source; (b) recycling/reuse, (c) combustion with energy recovery and refuse derived fuels production; and (d) combustion for volume reduction.

209.2(72 GA, H.F. 631, sections 111 and 405) Purpose. The purpose of this program is to provide grants and other financial assistance to local governments and commercial establishments for the purpose of demonstrating innovative alternatives to solid waste disposal. Projects sponsored by the Department of Natural Resources must meet one of the criteria outlined in the program goal for reducing materials being disposed of in sanitary landfills.

209.3(72 GA, H.F. 631, sections 111 and 405) Definitions.

"Sanitary landfill" means a sanitary disposal project where solid waste is buried between layers of earth.

"Eligible candidate" means any unit of local government, not-for-profit organization and for profit commercial establishments located in Iowa.

"Eligible project" means any project which is capable of recycling solid wastes, reducing the amount of solid wastes sent to a sanitary landfill, or producing energy from the solid wastes.

"Energy production" is defined as the direct conversion of solid wastes into useful process heat and/or electricity or the production of processed fuels which can be used in place of coal, natural gas or oil.

"Department" means the Iowa Department of Natural Resources.

"Grants" means financial assistance in the form of cash payments to eligible candidates for certain considerations.

"Financial assistance" means monetary assistance other than grants including interest buydowns on loans.

"Groundwater protection act" means 1987 Iowa Acts, H.F. 631 which sets forth laws pertaining to the protection of Iowa's groundwater resources through reduced disposal of solid wastes at landfills, and pesticides and provides grants to encourage better management of Iowa's groundwater resources.

"Petroleum overcharge allocation" means 1987 Iowa Acts, S.F. 517 which allocates and appropriates Iowa's petroleum overcharge refunds generated from Stripper Well, Exxon, Amoco and other petroleum overcharge settlements.

"Waste management authority" means the waste management authority division of the Department of Natural Resources established by 1987 Iowa Acts, S.F. 396.

209.4(72 GA, H.F. 631, sections 111 and 405) Role of the Department of Natural Resources. The Department of Natural Resources is responsible for the administration of funds for projects sponsored under these rules. The Department will assure that funds disbursed will meet guidelines established by the Groundwater Protection Act, the Allocation of Petroleum Overcharge Funds, the Waste Management Authority Act.

Any eligible project may be submitted by any eligible candidate for grant consideration under this chapter. The Director will determine which projects will receive funding after review by the Waste Management Authority Division, the Energy and Geological Resources Division and the Environmental Protection Division of the Department.

209.5(72 GA, H.F. 631, sections 111 and 405) Funding sources. The Department will use funds appropriated by the legislature, and other sources that may be obtained for the purpose of achieving the goals outlined in these rules. The Department will assure that monies appropriated for use in this section meet both federal and state guidelines pertaining to their use.

209.6(72 GA, H.F. 631, sections 111 and 405) Eligible projects. The Department may provide grants to eligible candidates for the following types of projects: (a) volume reduction at the source, (b) source separation/recycling; (c) the production of energy or densified refuse-derived fuels; (d) other projects which reduce the amount of material disposed of in

landfills; and (e) environmental testing related to the use of municipal solid waste as an energy source. If projects are to be funded from the petroleum overcharge funds, projects must demonstrate either energy savings or the production of fuels which can replace imported sources of energy.

209.7(72 GA, H.F. 631, sections 111 and 405) Project award. Projects will be awarded based on the following criteria. The Department will determine the relative value of each of these factors in deciding which projects will receive funding. The criteria include: (a) the project's nearness to completion; (b) transferability of the project to other communities and commercial establishments; (c) cost-share by community or commercial establishment; (d) environmental benefits and acceptability; and (e) percentage of municipal solid waste diverted from the landfill; (f) extent to which the project incorporates and reflects the hierarchy of waste management priorities of the state solid waste management policy. When energy projects are being considered for funding, the following additional criteria will be included: (a) commitment from energy market; (b) recovery of noncombustibles, (c) implementation of recycling/source separation projects in conjunction with the energy recovery project.

209.8(72 GA, H.F. 631, sections 111 and 405) Environmental assessments of landfill alternatives. The Department shall reserve funds for determining the environmental consequences of alternatives to solid waste landfilling. Such projects shall include, but not be limited to, testing air emissions generated by the combustion of municipal solid waste and an analysis of the ash generated as a result of the combustion of municipal solid waste.

Dated this 15th day of December, 1987.

Larry J. Wilson, Director

Mrs. Bender asked the Commission for approval of this rule with immediate implementation.

Motion was made by Richard Timmerman to approve Final Rule--Chapter 209, Solid Waste Grants. Seconded by Catherine Dunn. Motion carried unanimously.

APPROVAL OF SOLID WASTE GRANTS

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

The 1987 Iowa Code Supplement, Section 455b.484 requires that the Environmental Protection Commission approve all contracts and agreements, in excess of $25,000, entered into by the Waste Management Authority Division (WMAD). Two solid waste grants are currently being negotiated that may exceed $25,000. The Commission's approval of these grants is requested.

Solid waste grant proposals were submitted under a competitive grants program for energy conservation and renewable resource projects which is funded by oil overcharge funds. This grant program is separate from the Solid Waste Grant Program which is funded with oil overcharge funds through the Groundwater Protection Fund. Three solid waste grant proposals received approval under

the competitive grant program. The Energy Fund Disbursement Council which oversees the allocation of oil overcharge funds recommended that the three solid waste grant proposals seek funding from the Solid Waste Grant Program.

WMAD has been negotiating with the three possible grantees to assure that the grant projects meet the criteria of the Solid Waste Grant Program. The two grant contracts that require Commission approval are:

1. A grant with the Lee County Solid Waste Management Commission to construct a recycling center and to establish a curbside and dropoff collection program for recyclable materials. The total cost of the project is $314,576. The original grant request was for $229,000. WMAD is currently negotiating with the Lee County Solid Waste Management Commission and expects to reduce the state's match.

2. A grant with Jendro Sanitation Services, Inc. of Charles City to conduct an in-depth evaluation and financial analysis for a solid waste incineration and energy generation project. The project cost included in the original grant proposal was $115,000. A $75,000 state match was requested. WMAD is currently negotiating with Jendro Sanitation Services and expects the total project cost, as well as the state's match, to be reduced.

Negotiations on these two grants will continue over the next couple weeks. Final negotiated figures will be provided at the February 15 Commission meeting for approval.

Mrs. Bender gave an in-depth explanation of each grant project. She added that the grant amount for Lee County Solid Waste Management Commission is $200,800; and the grant amount for Jendro Sanitation Services is $26,000.

Motion was made by Catherine Dunn to approve the solid waste grants as presented. Seconded by Charlotte Mohr.

Richard Timmerman asked how the grant decision is made in regards to study projects versus actual demonstration projects.

Mrs. Bender stated that priority will go to projects that are near to completion; however, feasibility studies will also be looked at but they will be steered towards resulting in some kind of recommendation for a demonstration project.

Keith Uhl asked why these two grants get up-front preferential treatment.

Mrs. Bender explained that this is a unique problem this year because these projects submitted proposals under a competitive grant program that will not be in existence in the future. They ranked in the top twenty in the competitive grant program and there may have been an incompatibility in their funding with the solid waste program. Staff decided that, if these projects could fit the criteria developed for the solid waste grants program, they would be evaluated, negotiated, and funded under those criteria. The pool of funding will be diminished in relation to the proportion that these two projects are funded.

Discussion followed regarding procedural due process and the possibility of all counties not having the opportunity to compete for the funds.

Chairman Schlutz requested a roll call vote on Catherine Dunn's motion to approve the grants to Lee County Solid Waste Commission and Jendro Sanitation Services, Inc.

"aye" votes were cast by Commissioners Dunn, Mohr, Priebe, Siebenmann and Schlutz. "Nay" votes were cast by Commissioners Hammitt, Timmerman and Uhl. Motion carried 5 to 3.

Director Wilson commented that, as he understands it, the concern of the Commission is that there must be a method of notifying all counties and interest groups of the availability of these funds, to provide equal opportunity for all, as well as prioritization of projects. He stated that this could be addressed by implementing an application period and deadline for awarding the grants.

ISU CONTRACT -- GROUNDWATER IMPACTS OF AGRICULTURAL BEST MANAGEMENT PRACTICES

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

The Department requests approval to enter into a contract with the Iowa State University Cooperative Extension Service to evaluate groundwater impacts of agricultural Best Management Practices. The $13,250 contract cost will be paid with 100 percent federal water quality nonpoint source planning funds (205J(5)).

The contractor is to develop a list of Best Management Practices used in Iowa for Departmental approval. Once approved, the contractor is to review available research data pertaining to the practice and evaluate the impacts that the use of the practice may have in allowing or preventing the movement of agriculturally related pollutants to the groundwater.

The work required is scheduled to be completed by July 31, 1988.

Motion was made by Catherine Dunn to approve the ISU Contract -- Groundwater Impacts of Agricultural Best Management Practices as presented. Seconded by Nancylee Siebenmann. Motion carried unanimously.

REVIEW OF FY89 BUDGET RECOMMENDATIONS

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

Following is a summary of the Governor's appropriation recommendations for the Department of Natural Resources.

Description	Budget FY 1987	Request FY 1988	Recommendations FY 1988
Operator-Regular	$10,529,892	$12,337,825	$10,570,488
USGS Cooperative Prg.	185,983	185,983	185,983
5% Sewage Works Grants	1,276,730	3,312,000	0

Sewage Works Revolving	0	3,285,120	0
Low-Level Waste Compact	*	78,000	78,000
Miss. Basin Assoc.	*	35,000	0
Green Thumb Program	199,800	199,800	200,000
General Fund Capitals	39,960	2,679,000	0

Note*: The DNR also requested several supplemental general fund appropriations for FY88 including $437,013 for salary adjustments; $493,000 for the 5% sewage grant program to replace the AIDEX appropriation; $250,000 to complete the Union Grove project; $35,000 for the Mississippi River Basin Association; and $60,600 for current dues to the Low-Level Radioactive Waste Compact. The Governor did not recommend any of these requests to the G.A. However, it is our understanding that DOM is considering handling the FY87 Low-Level dues and the salary adjustment by means of an administrative appropriation transfer.

With the exception of the projects funded through the lottery program, all of the projects and programs funded with federal funds or earmarked state funds were recommended by the Governor as requested by the DNR.

The DNR requested $7,017,000 from lottery revenues for various capital and special projects. The Governor recommended $1,000,000. For FY1988, the last G.A. appropriated $2.0 million for this program.

With the exception of positions affected by the next phase of state government reorganization, all of the current level positions plus the positions funded by Groundwater and other special funding were recommended. Three and a half FTE positions were eliminated as a result of the Governor's recommendation to further downsize state government. The DOM will also be proposing an early retirement bill, similar to the effort used during the reorganization, to eliminate a number of positions. It can reasonably be inferred that the DNR will ultimately lose several additional current positions funded by the general fund through this program.

This was an informational item; no action was required.

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
FEBRUARY 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	2/16/88	*2/09/88		—				
2. Ch. 5 - Petition for Rulemaking	2/16/88	*2/09/88		—				
3. Ch. 22 - NPDES & NESHAPS	10/20/87	11/18/87	12/10/87	12/09/87 12/10/87 12/11/87	1/19/88	*1/19/88	*2/16/88	*3/16/88
4. Ch. 38 Private Well Construction Permit	12/15/87	1/13/88	2/11/88	2/03/88 2/05/88 2/08/88				
5. Ch. 47 Grants to Counties	2/16/88	*2/09/88		3/29/88 3/31/88 4/04/88				
6. Ch. 91 - Conservation Grants	10/20/87	11/18/87	12/10/87	12/08/87	1/19/88	1/19/88	2/16/88	3/16/88
7. Chs. 100, 102 - Liquids in Landfills	10/20/87	11/18/87	12/10/87	12/09/88 12/10/87 12/11/87	2/16/88	*2/16/88	*3/09/88	*4/13/88
8. Ch. 102 Sewage Sludge at Landfills	11/17/87	12/14/87	1/05/88	1/04/88 1/07/88 1/08/88				
9. Chs. 100,101 Landfill Ground Water Monitoring	10/20/87	11/18/87	12/10/87	1/04/88 1/07/88 1/08/88				
10. Ch. 135 - Shelter Wall Criteria	10/20/87	11/18/87	12/10/87	12/09/87 12/17/87 12/11/87	2/16/88	*2/16/88	*3/09/88	*4/13/88
11. Ch. 209 - Solid Waste Energy Grants	12/14/87	12/23/87	1/05/88	1/19/88	2/16/88	*2/16/88	*3/09/88	*2/16/88

*Projected

MONTHLY VARIANCE REPORT 1/31/88

No.	Facility	Program	Engineer	Subject	Decision	Date
1	Middletown, City of	Wastewater Const.	French-Reneker	Lagoon Shape	approved	01/23/88
2	Middletown, City of	Wastewater Const.	French-Reneker	Storm Sewer Within Dike	approved	01/25/88
3	Highway 70 Bridge	Flood Plain	Iowa DOT	Freeboard	approved	01/02/88
4	Waposie Vly Crary-Indep.	Watersupply Const.	Crawford Engr.	Siting Criteria	approved	01/19/88

REPORTS OF HAZARDOUS CONDITIONS

During the period of January 1, 1988 through January 31, 1988, reports of 54 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
1/04/88 MARION	Over the New Year weekend, a pinhole leak developed at a fitting in a 125-gallon dip tank at 102 Main Street in Pella, Iowa. The entire contents - a 50% solution of alodine and water - ran into the sanitary sewer. Alodine consists of 30% phosphoric acid.	Reliscreen Company 102 Main Street Pella, Iowa 50219	The city's wastewater treatment plant was notified. The fitting was repaired and the tank and all other fittings were inspected.
1/18/88 ALLAMAKEE	On January 18, 1988, a leak of about 3,000 gallons of gasoline was discovered from an above-ground storage tank by Highway 76 near Waukon, Iowa. The material had surfaced from under the tank.	Northeast Farm Service Decorah, Iowa 52101	The storage tank was emptied and removed. Holes were dug in the area and about 300 gallons of product were recovered. A consultant will be hired to determine the extent of groundwater contamination.

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 (48)	43 (32) UST-17	4 (3)	7 (13) UST-1	45 (37) UST-18	1 (0)	5 (9)	1 (0)	1(0)	2 (1)

Total # of Incidents Per Field Office This Period

01	02	03	04	05	06
14	3	5	1	20	10

Enforcement Report Update

The following new enforcement actions were taken last month:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Western Hills Assn, West Burlington (6)	Drinking Water	Compliance schedule, MCL, Radioactivity	Order	1/07/88
Woodsman Subdivision West Burlington (6)	Drinking Water	Compliance schedule, MCL, Radioactivity	Order	1/07/88
Beaverdale Heights Assoc. West Burlington (6)	Drinking Water	Compliance schedule, MCL, Radioactivity	Order/Penalty	1/07/88
City of Rippey (4)	Wastewater	Monitoring/reporting	Order/Penalty	1/07/88
Wagner's Printers, Inc. Davenport (6)	Air Quality	Emission standards/ other violations	Order/Penalty	1/07/88
Warren County Brenton Bank & Trust, Indianola (5)	Underground Tanks	Failure to register	Order/Penalty	1/07/88
City of Lynnville (5)	Wastewater	Monitoring & reporting	Order/Penalty	1/07/88
Lehigh Clay Products (2)	Hazardous Condition	Remedial action	Order	1/07/88
Don Scribner (1) Nashua	Solid Waste	Open dumping	Order/Penalty	1/12/88
City of Hospers (3)	Drinking Water	Monitoring & reporting, operational violations	Order/Penalty	1/12/88
City of Ossian (1)	Wastewater	MIP	Order	1/12/88
City of Cushing (3)	Drinking Water	MCL - Radioactivity	Order/Penalty	1/12/88
Timberline Assoc. Ltd. Des Moines County (6)	Drinking Water	MCL Radioactivity	Referral to AG	1/21/88
Twelve Mile House Bernard (1)	Drinking Water	Monitoring - Bacteria and Nitrate; Operation Permit	Referral to AG	1/21/88
Pleasant Creek Est. Benton County (1)	Drinking Water	Penalty Nonpayment	Referral to AG	1/21/88
City of Newell (3)	Wastewater	MIP Compliance Schedule	Referral to AG	1/21/88
City of Carson (4)	Wastewater	MIP - Certified Operator	Order/Penalty	1/21/88
City of Mt. Pleasant (6)	Wastewater	MIP	Amended Order	1/21/88

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
Kimballton Utilities	100	12-19-87
Hawkeye Tiling (Jesup)	1,000	1-01-88
City of Sheldon	900	1-02-88
Petroleum Marketing Co. (Malcolm)	900	1-12-88
**Lawrence Payne (Ottumwa)	665	1-15-88
Village Oaks Homeowners Ass'n (Blue Grass)	150	1-15-88
City of Mount Vernon	500	1-15-88
H.P. Jensen Subdivision (Ames)	345	1-29-88
City of Earling	500	2-01-88
Kopper Kettle (Minden)	730	2-05-88
**Elings/Catron/Frey (Des Moines)	800	2-15-88
Arlene's Cafe (Turin)	50	2-15-88
City of Arcadia	100	2-19-88
Clark Co. Landfill Comm.	600	2-22-88
Dubuque Municipal Airport	100	3-05-88
Ellie's Bar and Grill (Grand River)	515	3-05-88
AMPEL, Inc. (Des Moines)	1,000	3-05-88
City of Maxwell	1,000	3-05-88
Donald Caraway (Linn County)	500	3-06-88
City of Newell	100	3-07-88
City of Rippey	320	3-09-88
Beaverdale Heights Assoc. (W. Burlington)	1,000	3-11-88
Wagner's Printer's, Inc. (Davenport)	800	3-11-88
Brenton Bank (Indianola)	1,000	3-12-88
City of Lynnville	225	3-13-88
City of Hospers	1,000	3-14-88
Iowa-Illnois Gas and Electric (Davenport)	600	3-15-88
City of Cushing	700	3-19-88
City of Carson	600	3-26-88
Don Scribner (Nashua)	1,000	3-28-88
*Chico's Supper Club (Burr Oak)	954	6-10-88

* Referred to the Attorney General
** On Payment Schedule

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. Lemmon (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
Kossuth County SLF	700
Stan Moser (Hudson)	250
City of Sidney	1,000
City of Tabor	700
Highway #3 Mobile Home Park (Cedar Falls)	490
Hardin County SLF	500
City of University Park	500
White Consolidated Industries (Webster City)	1,000
City of Braddyville	600

The following administrative penalties were paid in January:

NAME/LOCATION	AMOUNT
** Accent Lawn and Leisure (Mt. Joy)	$ 250
City of Lynnville	50
Mark Wallin (Essex)	500
Cotter Elementary School (Columbus Junction)	100
City of Hornick	100
City of Earlville	100
City of Liscomb	50
City of Winfield	200
Tracy Improvement Co. (Tracy)	200
Clarion Farmer's Coop	300
City of Massena	300
City of Morning Sun	300
Four J's Supper Club (Dorchester)	200
Long Branch Tavern (Monmouth)	200
Maynard Rochow (Alden)	700
City of Wilton	500
City of Albion	200
Winnebago Industries	300
** Illings/Catron (Des Moines)	200
	$4,750

* Referred to the Attorney General
** On Payment Schedule

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

DATE RECEIVED	NAME OF CASE	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
10-17-85	City of Bevington	Administrative Order	WM	Hansen	Hearing set for 3-4-88.
1-23-86	Galesia Soil Service	Administrative Order	WM	Lands	Hearing continued; cleanup study progressing.
6-12-86	AEM - Clinton	Administrative Order	Air	Lands	Hearing continued.
10-29-86	Unadi-Klean Company, Inc.	Administrative Order	AQ/WM/SW	Lands	Hearing concluded 12-21-87; briefing schedule.
12-03-86	City of Keokuk	Administrative Order	WS	Hansen	Hearing continued; settlement close.
12-11-86	Eldora Ensco	Permit Condition	FP	Clark	Hearing set for 2-09-88.
12-24-86	Francis Neuberlin	Administrative Order	FP	Clark	Hearing held 1-25-88.
3-18-87	Greiner	Administrative Order	FP	Clark	Proposed Decision 10-19-87; appealed.
5-12-87	Iowa City Regency MHP	Administrative Order	WM	Hansen	Hearing held 11-03-87.
5-28-87	Bianchi-Heyrat Lagoon (Hank Smith)	Administrative Order	WM	Kennedy	Hearing continued.
6-08-87	Hillsboro Creek Dam/Kerble et.al	Permit Issuance	FP	Clark	Negotiating before filing.
6-11-87	Thomas Lannon	Administrative Order	FP	Clark	Hearing set for 01-12-88.
8-10-87	Great Rivers Co-op	Administrative Order	WC	Lands	Hearing continued; study proceeding.
8-17-87	City of Mapulle	Administrative Order	WM	Hansen	Proposed decision 1- -88. Appealed.
8-17-87	City of Donnellson	Administrative Order	WM	Hansen	Hearing continued, settlement close.
9-17-87	Gradert, Kevin and Kreset	Administrative Order	AQ	Lands	Hearing continued; stipulations being prepared.
10-05-87	Scranton County	Permit Denial	SW/AQ	Lands	Dismissed.
10-09-87	Everew Industries, Inc.	NPA Denial	SW	Lands	Settled.
10-22-87	University Park	Administrative Order	WM	Hansen	Hearing continued; settlement proposed.
11-09-87	Nissenlage Industries	Administrative Order	SW	Kennedy	Settled.
11-17-87	White Consolidated Industries	Administrative Order	WM	Murphy	Settled.
11-18-87	City of Brooklyville	Administrative Order	WM	Clark	Negotiating before filing.
11-19-87	City of Albion	Administrative Order	WS/WS	Murphy	Settled.
12-02-87	Kossuth County SLF	Administrative Order	SW	Kennedy	Hearing set for 2-17-88.
12-07-87	Stan Hanes	Administrative Order	SW	Murphy	Hearing set for 2-16-88.
12-11-87	Finlan Landfill	Permit Revocation	SW	Kennedy	Hearing set for 2-19-88.
12-15-87	Delaware Co. Conv. Ctr. (EMP)	Permit Issuance	WS	Clark	Hearing set for 2-18-88.
12-21-87	City of Sidney	Administrative Order	WM	Murphy	Hearing set for 3-08-88.
12-21-87	City of Tabor	Administrative Order	WM	Hansen	Hearing set for 2-22-88.
12-21-87	Sioux CS MHP	Administrative Order	WS	Murphy	New case.
12-21-87	Hardin County SLF	Administrative Order	SW	Kennedy	New case.
12-31-87	City of Tipton	Administrative Order	WM	Hansen	Negotiating before filing.
12-31-87	Milfred Nafes	Administrative Order	WM	Murphy	Negotiating before filing.
1-15-88	First Iowa State Bank	Administrative Order	SW	Kennedy	New Case.
1-22-88	EMP, Fort Dodge	NPDES Permit	WM	Hansen	Negotiating before filing.

Discussion followed regarding the various reports.

CHAPTER 100 -- "SCOPE OF TITLE-FORMS-RULES OF PRACTICE" AND CHAPTER 102 -- "PERMITS"

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

The Commission is requested to adopt the rule amending Chapters 100 and 102 of the ARC.

The amendment to the rule adopts a standard test procedure which will demonstrate the absence or presence of free liquids in either containerized or bulk waste. The rule is intended to implement 455B.304 which prohibits the disposal of uncontained liquid waste in a sanitary landfill.

As authorized by the Commission, public hearings were held at various locations across the state on December 9, 10 and 11, 1987. All comments oral and written were considered.

ENVIRONMENTAL PROTECTION COMMISSION [567]
Adopted Rule

Pursuant to Iowa Code section 455B.304, the Environmental Protection Commission adopts amendments to 567--Chapter 100, "Scope of Title-Definitions-Forms-Rules of Practice," and 567--Chapter 102, "Permits," Iowa Administrative Code. The Commission proposed these amendments in a previously filed Notice of Intended Action, ARC 8145, published in the Iowa Administrative Bulletin on November 18, 1987.

Iowa Code section 455B.304 requires the Commission to adopt rules prohibiting the disposal of uncontained liquid waste in a sanitary landfill.

Federal regulations for hazardous wastes in 40 CFR 264.314 and 40 CFR 265.315 reference a test to demonstrate the absence or presence of free liquids in either a containerized or a bulk waste. The test, called the Paint Filter Liquids Test Method 9095 EPA SW 846, is easily applied to various materials. A 100-milliliter or 100-gram sample is placed on a standard 60-mesh conical paint filter for five minutes. If any liquid passes through the filter after five minutes, the waste is determined to contain free liquids.

The rule change adds the definition of a free liquid to the definitions contained in rule 100.2(455B) and adds a portion to rule 102.13(455B) which prohibits free liquids from being disposed in a sanitary landfill.

The Commission requested comments on the amendment. Two comments were received. The first observed that 100 milliliters was approximately equivalent to 100 grams by weight, not 100 milligrams as published. The intent was to describe approximately equivalent sample specimen whether by weight or volumetric apportioning. The rule as adopted reflects this equivalency. The second requested a small quantity exemption which is not permitted under 455B.304. Public hearings on the Notice of Intended Action were held on December 9, 10 and 11, 1987. The rule was adopted on February 16, 1988.

The amendment is intended to implement Iowa Code section 455B.304 and will become effective on April 13, 1988.

The following amendments are adopted:

ITEM 1. Amend rule 567--100.2(455B) by adding the following definition:
"Free liquid" means the liquid produced when a 100 milliliter or 100 gram representative sample is placed on a standard mesh number 60 (fine mesh size) conical paint filter for five minutes. Method 9095 EPA SW 846.
ITEM 2. Amend rule 567--102.13(455B) by adding the following subrule:
102.13(8) Free liquids or waste containing free liquids. No free liquids or waste containing free liquids shall be disposed in a sanitary landfill.

Date

Larry J. Wilson, Director

Motion was made by Catherine Dunn to approve the Final Rule--Chapter 102, Liquids in Landfills. Seconded by Donna Hammitt. Motion carried unanimously.

FINAL RULE--CHAPTER 135, UNDERGROUND STORAGE TANK MONITORING WELL CRITERIA

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

The Commission is requested to adopt rule 135.9(3) of Chapter 135 of the IAC.

Rule 135.9(3) of IAC is an amendment to the existing Chapter 135, IAC and provides conditions describing the use of the sniffer well for the purposes of leak detection from a regulated underground storage tank.

Three public hearings on these proposed rule amendments were held throughout the state on December 8, 9 and 10 of 1987. Written comments on the proposed amendments were accepted through December 20, 1987. No comments were received either in written form or at the hearings.

ENVIRONMENTAL PROTECTION COMMISSION [567]
Adopted Rule

Pursuant to Iowa Code section 455B.474, the Environmental Protection Commission adopts amendments to Chapter 135, "Underground Storage Tanks," Iowa Administrative Code. The Commission adopts subrule 567--135.9(3) which relates to monitoring for vapors using sniffer wells. Notice of Intended Action, ARC 8140 was published in the Iowa Administrative Bulletin on November 18, 1987. Hearings were held on this amendment on December 8, 9 and 10, 1987. No comments were received.
The amendment adds new rule 567--135.9(3) which states that testing or monitoring for vapors in a sniffer well may be used as a leak detection system provided the backfill material for the well is sufficiently porous, the substance stored in the tank is sufficiently volatile, the vapor monitoring device is not inoperative due to groundwater or moisture in the well, background contamination is not greater than 500 parts per million the vapor monitor's threshold value can be preset for the type of substance stored in the tank, the site has adequate sniffer well placement within the excavation, and the sniffer wells are marked and secured.

This rule is intended to implement Iowa Code section 455B.474 and will become effective on April 13, 1988.

The following amendment is adopted:

135.9(3) Testing or monitoring for vapors using a sniffer well may be used only if:

a. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

b. The stored regulated substance is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation area in the event of a release from the underground storage tank (UST) system;

c. The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture so that a release could go undetected for more than 30 days;

d. The level of background contamination in the excavation area will not interfere with detection of releases from the UST system and, when measured in the soil gas, is no greater than 500 parts per million of total hydrocarbons;

e. The vapor monitors are designed and operated to allow the threshold level to be preset specifically for the type of regulated substance stored in the tank system and are capable of detecting any significant increase in concentration of total hydrocarbons above background levels;

f. In the UST excavation area, the site is assessed to assure compliance with the requirements in paragraphs 135.9(3)(a) through (e) of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation area from any portion of the UST system; and;

g. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

_____

Date

_____

Larry J. Wilson, Director

Motion was made by Catherine Dunn to approve Final Rule--Chapter 135, Underground Storage Tank Monitoring Well Criteria. Seconded by Clark Yeager. Motion carried unanimously.

NOTICE OF INTENDED ACTION--CHAPTER 47, GRANTS TO COUNTIES FOR PRIVATE WELL TESTING AND CLOSURE OF ABANDONED WELLS

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

Proposed rules to implement section 113.5 of the Groundwater Protection Act were distributed at the January meeting of the Commission.

These proposed rules will provide procedures for making grants to counties for administering private well sampling and proper well abandonment programs.

The Commission is requested to approve the Notice of Intended Action to hold three public hearings on these proposed rules. The hearings are planned for March 29, March 31 and April 4, 1988 to be held in Cedar Rapids, Denison and Des Moines.

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to Iowa Code 455B.172(5) as amended by 1987 Iowa Acts, House File 631, section 113.5, the Environmental Protection Commission gives notice of intended action to adopt new Chapter 47, "Private Well Sampling and Abandonment -- Grants To Counties," and to amend Chapter 40, "Scope of Division -- Definitions -- Forms -- Rules Of Practice," Iowa Administrative Code.

Iowa Code section 455B.172(5), as amended by 1987 Iowa Acts, House File 631, section 113.5, directs the Environmental Protection Commission to make grants to counties for the purpose of conducting programs for the testing of private, rural water supply wells and for the proper closing of abandoned, rural, private water supply wells within the jurisdiction of the county. Grants will be funded through an allocation of the agriculture management account of the Groundwater Protection Fund. The department intends to create new Chapter 47, Iowa Administrative Rules, to provide rules to implement these statutory provisions. This new chapter provides procedures and conditions governing grant applications and the making of grants by the department.

The proposed change in Chapter 40 conforms the reference to new Chapter 47 referred to in Chapter 40.

Any interested person may file written comments on the above-referenced new chapter through April 14, 1988, with the Administrator of the Environmental Protection Division, Department of Natural Resources, 900 East Grand Avenue, Des Moines, Iowa 50319-0034. Persons are also invited to present oral or written comments at three (3) statewide public hearing sites which have been set by the Environmental Protection Division of the Iowa Department of Natural Resources, pursuant to action of the Environmental Protection Commission. The public hearings are scheduled to be held at 10:00 a.m. on March 29, 1988 in Room 234 of Cedar Hall, Kirkwood Community College, Cedar Rapids, Iowa; at 10:00 a.m. on March 31, 1988 in the Denison Community Room, 111 North Main Street, adjacent to City Hall, Denison, Iowa; and at 10:00 a.m. on April 4, 1988 in the ground floor auditorium of the Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa.

These rules are intended to implement 1987 Iowa Code section 455B.172(5), as amended by 1987 Iowa Acts, House File 631, section 113.5.

ITEM 1. New Chapter 47 is hereby proposed:

Chapter 47
Private Well Sampling and Abandonment -- 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 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, maximum grant amounts have been established which can be awarded to any one applicant. For the program for testing private water supply wells, $45,000 is the maximum allowed for an individual applicant or to the lead county of a multi-county grant. Up to $20,000 may be included in the total grant award for each additional county in a multi-county grant. For the private, abandoned well closure program, $35,000 is the maximum allowed for an individual applicant or to the lead county of a multi-county grant. Up to $10,000 may be included in the total grant award for each additional county in a multi-county grant.

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.

"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.

"Staffed county program" means staff dedicated by the county to enforce the rules on nonpublic water wells and on-site wastewater treatment and disposal.

"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.

SECTION I

Grants for Well Testing

567--47.6(455B) Goal and Objectives.

47.6(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.

47.6(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--47.7(455B) Eligible grant costs. Grant funds may be approved for, but are not limited to, the following costs:

47.7(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.

47.7(2) Nitrate and total coliform bacteria sampling costs including sample collection equipment, sample handling, transport, and the analytical services and analytical reporting by a certified laboratory.

567--47.8(455B) Ineligible grant costs. Grant funds shall not be used for the following:

47.8(1) Conducting environmental health programs other than those related to the private water supply well testing program.

47.8(2) Conducting private well testing activities either prior to or after the grant period specified in the grant agreement.

47.8(3) Analytical services performed by other than a certified laboratory.

47.8(4) Analyses other than for nitrate and total coliform.

47.8(5) Sampling and analytical costs for testing public water supply wells.

47.8(6) Cost of laboratory analytical equipment.

47.8(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--47.9(455B) Performance requirements. The following minimum standards must be met by all grantees:

47.9(1) Sample collection. Private water supply well samples are to be collected using proper sample collection and handling techniques as specified by the department.

47.9(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.

47.9(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.

47.9(4) Laboratory analyses. All analyses must be performed by a laboratory certified by the department to perform nitrate analyses and multiple tube fermentation method total coliform bacteria analyses and will conform to the following:

a. The total coliform bacteria analyses must be performed using the multiple tube fermentation method.

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.

47.9(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.

47.9(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.

47.9(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.

47.9(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--47.10(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:

47.10(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.

47.10(2) The name of each county or counties represented in the grant application.

47.10(3) A copy of the adopted standards from each county represented in the application pursuant to 47.9(6).

47.10(4) For multi-county applications, signed Iowa Code Chapter 28E agreements between each participating county and the applicant.

47.10(5) If applicable, an identification of any subcontractor which will participate in the private well testing program, including mailing address and phone number.

47.10(6) The name and address of the certified laboratory(ies) which will be providing analytical services.

47.10(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.

47.10(8) The name 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.

47.10(9) A detailed work plan including, but not limited to, the following:

a) methods to be used by the applicant for selecting private water supply wells for testing;

b) the number of wells to be tested;

c) the number of analyses to be performed;

d) the duties to be performed by staff in collecting samples;

e) the duties to be performed by any subcontractor for any part of this grant;

f) a description of the follow-up activities to be performed by staff in responding to test results;

g) record keeping and reporting, and

h) a schedule for completing the above activities contained in the work plan.

47.10(10) A complete, detailed, itemized budget showing all costs and income sources and amount of grant funds requested to conduct the activities described in the work plan. Include staffing in terms of staff weeks, salary, etc. and other costs required to conduct the well testing program for activities such as well selection for testing, sample collection, sample transport, notification of sample results, proposed follow-up activities, reporting and record keeping activities.

567--47.11(455B) Application rating system. All complete grant applications will be scored as described below. For each application, total points will be summed. The applications will be scored and ranked with applications having the most points as highest priority.

47.11(1) Points will be given to each application on the basis of the existence of staffed county programs as of January 1, 1988 for regulating private water supplies and private sewage disposal facilities as follows:

a. If all counties represented in the application did not have programs, 50 points will be awarded;

b. If all counties represented in the application had programs, no points will be awarded;

c. For multi-county applications, points will be awarded based on the percentage of the counties represented in the application without programs using the formula: [(number of counties represented in the application without programs divided by the total number of counties represented in the application) multiplied by 50 points)].

47.11(2) Points will be awarded to each application on the basis of the grant cost per well to be tested as follows:

a. For each application, the grant cost per well to be tested will be calculated using the equation: G divided by N, where G represents the total amount of the eligible grant award request (not including local contributions) and N represents the number of wells to be tested.

b. Each calculated value will be assigned a rank number, R, using the following procedure. All calculated values will be placed in numerical order from smallest to largest. The smallest calculated value will be ranked as 1 (R=1), the second smallest as 2 (R=2), etc. The same rank number, R, will be applied to identical calculated values.

c. Points will be awarded to each application using the rank numbers obtained in 47.11(2)(b) in the formula: 50 points multiplied by [(R_T - R)

divided by (R_T - 1)], where R_T equals largest overall rank number, R equals rank number of the application.

47.11(3) For multi-county applications, points will be awarded as follows: [(total number of participating counties) - 1] x 10 points.

SECTION II

Grants for Programs to Close Private, Abandoned Wells

567--47.12(455B) Goal and Objectives.

47.12(1) The goal of the grant program for the closure of private, abandoned wells is to assist in initiating programs designed for closing all private, abandoned wells.

47.12(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.

567--47.13(455B) Eligible costs. Grant funds may be approved for, but are not limited to the following administrative costs:

47.13(1) Costs of developing and adopting county or multi-county private, abandoned well closure programs consistent with departmental private, abandoned well closure rules.

47.13(2) Costs of systematically identifying all private, abandoned wells within the program area jurisdiction and maintaining a data base inventory system.

47.13(3) Costs of administering a private, abandoned well closure program.

47.13(4) Costs of administering public information programs emphasizing the benefits of the private, abandoned well closure program.

47.13(5) Costs of assisting the private, abandoned well owner in applying for available grant funds for private, abandoned well closure.

567--47.14(455B) Ineligible grant costs. Grant funds shall not be used for the following:

47.14(1) Costs of private, abandoned well closures.

47.14(2) Costs of conducting private, abandoned well closure activities either prior to or after the grant period specified in the grant agreement.

567--47.15(455B) Performance requirements. The following minimum standards must be met by all grantees:

47.15(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.

47.15(2) For each private, abandoned well, grantees will maintain the following minimum records:

a. The name and address of 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.

47.15(3) Summary reports, including the information identified in 47.15(2) will be submitted to the department upon request.

47.15(4) Programs will stress the need for private, abandoned well closure through public awareness.

47.15(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.

47.15(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.

567--47.16(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:

47.16(1) The name, address, 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.

47.16(2) The name of each county or counties represented in the grant application.

47.16(3) A copy of the adopted standards from each county represented in the application pursuant to 47.15(5) and a copy of each county's authority to 47.15(1).

47.16(4) For multi-county applications, signed Iowa Code Chapter 28E agreements between each participating county and the applicant.

47.16(5) If applicable, an identification of any subcontractor which will participate in the private, abandoned well closure program, including mailing address and phone number.

47.16(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.

47.16(7) The name of 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.

47.16(8) A detailed work plan including but not limited to the following:

a. Methods of identifying private, abandoned wells.

b. Methods of record keeping and reporting information on each private, abandoned well.

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. A schedule for conducting the above activities.

47.16(9) A complete, detailed, itemized budget showing all costs, income sources and amount of grant funds requested to conduct the activities described in the work plan. Include staffing in terms of staff weeks spent, salary, etc. and other costs required to administer a well closure program, including public awareness programs, record keeping, reporting, identifying private abandoned wells, etc.

567--47.17(455B) Application rating system. All complete grant applications will be scored as described below. For each application, total points will be summed. The applications will be scored and ranked with applications having the most points as highest priority.

47.17(1) Points will be given to each application on the basis of the existence of staffed county programs as of January 1, 1988 for regulating private water supplies and private sewage disposal facilities as follows:

a. If all counties represented in the application did not have programs, 50 points will be awarded;

b. If all counties represented in the application had programs, no points will be awarded;

c. For multi-county applications, points will be awarded based on the percentage of the counties represented in the application without programs using the formula: [(number of counties represented in the application without programs divided by the total number of counties represented in the application) multiplied by 50 points)]

47.17(2) Points will awarded to each application on the basis of the grant cost per private, abandoned well to be identified as follows:

a. For each application, the grant cost per private, abandoned well to be identified will be calculated using the equation: G divided by N, where G represents the total amount of the eligible grant award request and N represents the number of wells to be identified.

b. Each calculated value will be assigned a rank number, R, using the following procedure. All calculated values will be placed in numerical order from smallest to largest. The smallest calculated value will be ranked as 1 (R=1), the second smallest as 2 (R=2), etc. The same rank number, R, will be applied to identical calculated values.

c. Points will be awarded to each application using the rank numbers obtained in 47.17(2)(b) in the formula: 50 points multiplied by [(R_T - R) divided by (R_T - 1)], where R_T equals largest overall rank number, R equals rank number of application.

47.17(3) For multi-county applications, points will be awarded as follows: [(total number of participating counties) - 1] x 10 points.

SECTION III

For Both Grant Programs

567--47.18(455B) Grant application submission.

47.18(1) Application content. Each application submitted on departmental form No. 542-1204 or form No. 542-1205 must contain sufficient detail as 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 47.10(455B) for the private well testing program or rule 47.16(455B) for the private, abandoned well closure program.

47.18(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 January 1 through the end of February prior to the start of the fiscal year.

47.18(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.

47.18(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 to complete the grant application.

567--47.19(455B) Grant application selection.

47.19(1) Consideration withheld. Upon closure of the grant acceptance period, the department will not consider any application which is not complete.

47.19(2) Grant application ranking. Points will be assigned to applications by the department based on the point system contained in section 47.11 for the grants for programs for well testing and in section 47.17 for grants for programs to close private abandoned wells.

47.19(3) Applicant notification. Applicants will be notified of their score and ranking and will be advised of the date on which the commission will act on the applications.

47.19(4) Commission selection. The commission will review the department's ranking of applications and select those to be funded. In the event of tie scores on applications, the commission will determine selection. 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--47.20(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--47.21(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--47.22(455B) Grant agreement. Following commission selection, the department will negotiate the terms of and will issue the grantee a grant agreement stipulating specific terms of the grant award.

567--47.23(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--47.24(455B) Payment.

47.24(1) Grant amount. The grantee will be eligible to receive a sum up to the amount specified in the grant agreement.

47.24(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--47.25(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--47.26(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. Grants cannot be increased above the amount stated in 567--47.2.

567--47.27(455B) Termination or forfeiture of grant funds.

47.27(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.

47.27(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.

47.27(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.

ITEM 2. 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.

Dated this _____ day of February, 1988.

_____

Larry J. Wilson, Director

Mr. Stokes distributed a list of possible modifications for Chapter 47 along with a listing of Status of Programs in Counties.

Mr. Stokes stated that staff is proposing that the rules be approved as presented.

Keith Uhl asked how the average citizen will know about grant money being available to them once the money gets out to the counties.

Mr. Stokes stated that it is primarily the function of the individual counties to get the word out to their constituency. Some types of information will be set out through the DNR Information and Education Bureau to let people know that the program is available.

Discussion followed regarding whether or not a percentage of grant money should go to actual closing of wells. The original proposal provided that it would not be grant eligible to spend any of the money for plugging holes.

Mr. Stokes stated that staff's opinion is that the department should be fostering programs to get the information out to the public, to provide them with the technical advice and assistance on how to properly plug wells, and to work with people to make sure that the wells are properly plugged.

Clark Yeager stated that the question is whether we want wells closed or whether we want to add bureaucratic staff in all the counties. Mr. Yeager stated that adding staff in counties will not get wells closed.

Gary Priebe stated that people probably will not go through all of the required paperwork to receive $100 towards closing a well. He added that people will just shove dirt in the hole and forget it.

Motion was made by Keith Uhl to approve Notice of Intended Action--Chapter 47, Grants to Counties for Private Well Testing and Closure of Abandoned Wells, as written which provides no funds go to actual closure of abandoned private water supply wells and further that the Department solicit comments through the Notice of Intended Action as to whether monies should go for well closing. Seconded by Catherine Dunn.

Chairman Schlutz requested a roll call vote. "Aye" votes were cast by Commissioners Dunn, Mohr, Siebenmann, Timmerman, Uhl and Schlutz. "Nay" votes were cast by Commissioners Hammitt, Priebe and Yeager. Motion carried 6 to 3.

DISCUSSION -- FLOODPLAINS, WAIVER OF ENGINEERING PLANS

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

At their January meeting, the Commission directed staff to prepare a discussion item addressing when engineering review and plans are needed for determining "after the fact" approval of floodplain projects. The Commission is concerned about requiring preparation of plans for projects which may have been constructed many years before preparation of the plans. The Commission

is also interested in exploring whether some form of intermediate plan review and preparation, short of full-scale engineering plans, could be used for determining approvability of such projects.

Staff will present a discussion of these topics.

Mr. Stokes stated that the rules and laws under which we operate do not specifically apply only to channel changes. The rules also apply to construction, deposition, and excavation, as well as other actions in a floodplain.

Mr. Stokes read the rules under which plans are required, and the rules relating to floodplain permitting authority. He also covered Chapter 114 relating to the requirements for certified plans by a registered professional engineer. Additionally, Mr. Stokes reviewed the rules under which a waiver of plans may be granted.

Mr. Stokes stated that it is important for staff to have the information contained in engineering plans in order to determine technical decisions that have to be made.

Mr. Stokes suggested two possibilities to address the issue; each would involve a rule change. One possibility would be a discretionary waiver, the other would be to provide an automatic waiver of the need for submitting engineering plans for after-the-fact permit applications after "x" number of years. He explained each option in detail and addressed possible problems that could occur if implemented.

Mr. Stokes recommended that the Commission not change rules that have been in place for a long time and have worked well.

Discussion followed regarding regulation requirements twenty years ago, the Commission's policy on working things out with citizenry, and what time factor would be acceptable regarding a waiver. The Commission directed the Department to prepare draft rules for an automatic waiver for further discussion at their next meeting.

APPOINTMENT -- MICHAEL NEARY

Michael Neary, attorney for Dennis Greiner, addressed the Commission and repeated some of the facts that are present in the Greiner case. Mr. Neary also responded to several topics in Mr. Stokes' presentation. He added that the engineering fees in Mr. Greiner's case would be $3,000 to $4,000. Mr. Neary asked that the Commission remove Mr. Greiner's case from the table and consider allowing Mr. Greiner to proceed without engineering plans.

Motion was made by Keith Uhl that staff take to normal rulemaking an additional provision to 70.5(2) to establish an automatic waiver of engineering plans should "x" amount of time have transpired, and leave open for comment from the public what the "x" amount of time would be. Seconded by Charlotte Mohr. Motion carried unanimously.

PROPOSED CONTESTED CASE DECISION -- DENNIS GREINER

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

This matter was tabled by the Commission last month. The Commission may choose to make a final decision on this matter as a result of discussion under the previous agenda item.

Motion was made by Charlotte Mohr to remove the Dennis Greiner case from the table. Seconded by Catherine Dunn. Motion carried unanimously.

Motion was made by Nancylee Siebenmann that the Commission reverse the administrative decision, request the department waive the requirement for engineering plans in view of the time that has transpired, and that a permit be issued to this party. Furthermore, this should be done on a case-by-case basis until, and unless, rule changes occur to the contrary. Seconded by Donna Hammitt. Motion carried unanimously.

Chairman Schlutz informed Mr. Neary and Mr. Greiner that the decision of the Commission can be overruled by the Attorney General of the State of Iowa.

PROPOSED RULES -- CLOSURE OF ABANDONED WELLS

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

Rules have been developed for implementing Iowa Code chapter 455B, House File 631, section 305, pertaining to properly plugging abandoned wells. Copies will be made available to the commission at the February meeting. An abandoned well in this rule is defined as 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 (Section 455B.171 par. 24 IAC).

Abandoned well owners are required to certify on a form provided by the department that abandoned wells have been properly plugged in accordance with the requirements of this chapter and the following time schedules.

Category I - Safety. Abandoned wells larger than eight (8) inches in diameter abandoned prior to the effective date of this rule shall be properly plugged within six (6) months after the effective date of this rule.

Category II - Contamination. Abandoned wells abandoned prior to the effective date of this rule (1) located less than 200 feet from an active well supplying potable water or (2) located less than one-eighth of a mile (660 feet) from a point source of contamination (such as an industrial waste site, an uncontrolled hazardous waste site, a petroleum storage area, a hazardous waste handling or disposal area, an agricultural chemical storage area, a feedlot or a wastewater treatment facility) shall be properly plugged by July 1, 1990.

Category III - All other wells abandoned prior to the effective date of this rule. All other wells abandoned prior to the effective date of this rule shall be properly plugged by July 1, 1993.

Category V - Wells abandoned after the effective date of this rule. Wells abandoned after the effective date of this rule shall be properly plugged within 90 days of the date of abandonment.

Approved sealing materials, fill materials and procedures for properly plugging various types of wells are described. Requirements for standby wells are presented, along with provisions for variances from the rules.

The Commission will be requested to approve a Notice of Intended Action at the March, 1988 meeting.

Mr. Stokes gave a detailed explanation of the proposed rules.

Discussion followed regarding whether or not this includes agricultural drainage wells.

This was an informational item; no action is required.

NOTICE OF INTENDED ACTION -- CHAPTER 4, RULEMAKING PROCEDURES

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

The Commission is requested to approve the filing of a Notice of Intended Action to adopt uniform rules on "Agency Procedure for Rulemaking." The uniform rules were adopted by a task force established by the Governor's Office to develop a series of uniform rules on a variety of agency procedures, for use by state agencies. The governmental authorities overseeing agency activities have strongly urged us and other agencies to adopt these rules.

As with other rules of this type, our intent is to have the Director file the "main" Notice of Intended Action and ultimately the Adopted Rule, as Chapter 4 in Part 561 "Department of Natural Resources," of the Iowa Administrative Code. That rule will adopt the uniform rules (enclosed) by reference, with appropriate references to this agency. In turn, this Commission and the Natural Resource Commission will adopt 561--4 by cross-reference, as their rulemaking rules. In your case, this will appear in the Administrative Code as 567 (your Part)--4. This rulemaking action will require you to rescind existing WAWM Chapter 5, on this subject.

Since this rulemaking action will not result in much, if any, comment, and since we have been urged to expeditiously adopt these rules and delete the WAWM chapter, we will not set a public hearing on this action, but will go through the normal public notice and opportunity for comment procedures.

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to the authority of Iowa Code sections 455A.6, 455B.105 and 17A.3, the Environmental Protection Commission of the Iowa Department of Natural

Resources hereby gives Notice of Intended Action to adopt a new Chapter 4, "Agency Procedure for Rulemaking," which will supersede Chapter 900-5, which covers the same subject for the Water, Air and Waste Management Commission. The proposed rules are published in full at ARC ___ this same date. The Commission intends to adopt Chapter 561--4, Iowa Administrative Code by cross-reference.

Any interested person may make written suggestions or comments on these proposed rules on or before March 29, 1988. Such written materials should be directed to the Chief, Government Liaison Bureau, Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034. Persons who want to convey their views orally may contact Mike Murphy at 515/281-8973.

These rules are intended to implement Iowa Code section 17A.3.

ITEM 1. Adopt a new 567--Chapter 4, "Agency Procedure for Rulemaking," as follows:

567--4.1(17A) Adoption by reference. The commission adopts by reference 567--Chapter 4, Iowa Administrative Code.

ITEM 2. Rescind 900--Chapter 5, Iowa Administrative Code.

_____
Date

_____
Larry J. Wilson, Director

CHAPTER X
AGENCY PROCEDURE FOR RULE MAKING

Agency No.—X.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa Administrative Procedure Act, and the provisions of this chapter.

Agency No.—X.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)"*a*," solicit comments from the public on a subject matter of possible rule making by the agency by causing notice to be published in the administrative bulletin of the subject matter and indicating where, when, and how persons may comment.

Agency No.—X.3(17A) Public rule-making docket.

X.3(1) *Docket maintained.* The agency shall maintain a current public rule-making docket.

X.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the agency. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the (commission, board, council, director) for subsequent proposal under the provisions of Iowa Code section 17A.4(1)"*a*," the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

X.3(3) *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)"*a*," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

a. The subject matter of the proposed rule;

b. A citation to all published notices relating to the proceeding;

c. Where written submissions on the proposed rule may be inspected;

d. The time during which written submissions may be made;

e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;

f. Whether a written request for the issuance of a regulatory flexibility analysis, an economic impact statement, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal note has been issued, and where any such written request, analysis, statement, or note may be inspected;

g. The current status of the proposed rule and any agency determinations with respect thereto;

h. Any known timetable for agency decisions or other action in the proceeding;

i. The date of the rule's adoption;

j. The date of the rule's filing, indexing, and publication;

k. The date on which the rule will become effective; and

l. Where the rule-making record may be inspected.

Agency No.—X.4(17A) Notice of proposed rule making.

X.4(1) *Contents.* At least thirty-five (35) days before the adoption of a rule the agency shall cause Notice of its Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule;
b. The specific legal authority for the proposed rule;
c. Except to the extent impracticable, the text of the proposed rule;
d. Where, when, and how persons may present their views on the proposed rule; and
e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

X.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule X.12(2) of this chapter.

X.4(3) *Notices mailed.* Persons desiring to receive mailed copies of future Notices of Intended Action by subscription must file with the agency a written request indicating the name and address to which such notices should be sent. Within seven (7) days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail a copy of that notice to subscribers who have filed such a written request with the agency for mailed Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of (specify time period).

Agency No.—X.5(17A) Public participation.

X.5(1) *Written comments.* For at least twenty (20) days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to (identify office and address) or the person designated in the Notice of Intended Action.

X.5(2) *Oral proceedings.* The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency shall schedule an oral proceeding on a proposed rule if, within twenty (20) days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rule review committee, a governmental subdivision, an agency, an association having not less than twenty-five (25) members, or at least twenty-five (25) persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least twenty-five (25) members and the address and telephone number of the person signing that request.
3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

X.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* or subrule X.6(6) of this chapter.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than twenty (20) days after notice of its location and time is published in the administrative bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The agency, a member of the agency, or another person designated by the agency who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the agency does not preside, the presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the agency at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the agency decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the agency.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

X.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

Agency No.—X.6(17A) Regulatory flexibility analysis.

X.6(1) *Definition of small business.* For purposes of this rule "small business" shall have the same definition as in Iowa Code section 17A.31(1).

X.6(2) *Notice in Iowa Administrative Bulletin.* If the agency proposes a rule which may have an impact on small business, the Notice of Intended Action published in the Iowa Administrative Bulletin according to the requirements of Iowa Code section 17A.4(1)"*a*" shall expressly recite this possibility and describe the procedure to be followed for making a timely request of the agency for the issuance of a regulatory flexibility analysis.

X.6(3) *Mailing list.* Small businesses or organizations of small businesses may be registered

on the agency's small business impact list by making a written application addressed to (designate office). The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing twenty-five (25) or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of twenty-five (25) or more small businesses. The agency will periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within thirty (30) days after the letter is sent.

X.6(4) *Time of mailing.* Within seven (7) days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the agency shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

X.6(5) *Requests for analysis.* A request for a regulatory flexibility analysis that is calculated to reduce the impact of a rule on small business may be made within twenty (20) days after the publication of the Notice of Intended Action. A request is made when mailed or delivered to the agency and must be in writing and must identify the proposed rule for which the analysis is requested by ARC number and by Iowa Administrative Bulletin citation, if known. The request must also indicate whether the analysis is desired for the entire rule or only for specified portions of the rule. Such a request may be accompanied by a brief or other information relevant to the contents of the requested regulatory flexibility analysis. The agency shall issue a regulatory flexibility analysis that conforms to the requirements of Iowa Code section 17A.31(4) after a proper request from:

a. The governor;

b. The administrative rules review committee;

c. A political subdivision of the state;

d. Twenty-five (25) or more persons who sign the request, provided that each represents a different small business;

e. An organization of at least twenty-five (25) small businesses that is registered on the agency's small business impact list. That organization shall list the name, address, and phone number of not less than twenty-five (25) small businesses it represents.

X.6(6) *Analysis: publication and comments.* When the agency is required to issue a regulatory flexibility analysis for a proposed rule, the agency shall cause to be published in the Iowa Administrative Bulletin a concise summary of the regulatory flexibility analysis at least twenty (20) days prior to the adoption of the proposed rule. In the case of a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2), the agency shall cause the summary to be published within ninety (90) days after publication of the adopted rule. The published summary shall state how interested persons may obtain a copy of the full text of the regulatory flexibility analysis for the cost of its reproduction. The published summary shall also establish a time and place for oral proceedings in which interested persons may make oral presentations on the analysis.

X.6(7) *Agency initiated analysis.* The agency may also prepare a regulatory flexibility

analysis in advance of the publication of the Notice of Intended Action or at any other time. The agency may publish a summary of such an analysis with the Notice of Intended Action and provide the opportunity for oral presentation and submission of comments on the analysis simultaneously with those provided for in the Notice of Intended Action.

Agency No.—X.7(17A) Economic impact statement and fiscal note.

X.7(1) *Issuance of impact statement.* Upon written request of two or more members of the administrative rules review committee or the administrative rules coordinator the agency shall issue a statement indicating its estimate of the economic impact of a proposed rule or a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2) or made effective in reliance upon Iowa Code section 17A.5(2)"*b*," on all persons affected by it and upon the agency itself, or a statement indicating that such an estimate cannot be formulated and the reasons for this conclusion. The agency may also issue an economic impact statement for a proposed or adopted rule on its own motion.

X.7(2) *Impact statement contents.* When an economic impact statement is issued in response to a written request from two or more members of the administrative rules review committee or the administrative rules coordinator, the impact statement shall conform to all lawful and feasible requirements for that impact statement imposed by the requester. An economic impact statement may contain one or more of the following:

a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

b. A description of the probable quantitative and qualitative impact of the proposed rule upon affected classes of persons;

c. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

d. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;

e. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;

f. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

g. An indication of both the short-term and long-term consequences of the proposed rule;

h. An indication of the precise methodology used to reach its estimates and the particular data, if any, used to formulate its estimates and their source; and

i. Quantification of the data relied upon to formulate any estimate contained in that impact statement.

X.7(3) *Publication and notice of impact statement.* The economic impact statement or statement indicating the reasons why such an estimate is impossible shall be published in the Iowa Administrative Bulletin at least fifteen (15) days in advance of the adoption of the rule if it is requested for a proposed rule, or within forty-five (45) days of the time it is requested if it is requested for a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2) or made effective in reliance upon Iowa Code section 17A.5(2)"*b*."

X.7(4) *Fiscal note.* If a proposed rule is likely to necessitate additional expenditures by political subdivisions or agencies and entities that contract with a political subdivision to provide services which are beyond the expenditures explicitly provided by state law, a fiscal note estimating those costs shall be formulated by the agency. In addition to that estimate, the fiscal note shall indicate the precise methodology used to reach that estimate and the data, if any, used to formulate that estimate and their source. The agency shall indicate in its Notice of Intended Action where and how persons may obtain copies of the fiscal note prepared for that proposed rule, which shall, if feasible, be available by the date the Notice of Intended Action is published in the Iowa Administrative Bulletin. If the agency determines at the time it adopts a rule that the fiscal note issued in the proceeding upon which the rule is based contains errors, the agency shall, at the time, issue a corrected fiscal note.

Agency No.—X.8(17A) Time and manner of rule adoption.

X.8(1) *Time of adoption.* The agency shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within one hundred eighty (180) days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

X.8(2) *Consideration of public comment.* Before the adoption of a rule, the agency shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory flexibility analysis, economic impact statement, and fiscal note issued in that rule-making proceeding.

X.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

Agency No.—X.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

X.9(1) The agency shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

X.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question the agency shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

X.9(3) The agency shall commence a rule-making proceeding within sixty (60) days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the agency finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three (3) days of its issuance.

X.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

Agency No.—X.10(17A) Exemptions from public rule-making procedures.

X.10(1) *Omission of notice and comment.* To the extent the agency for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the agency may adopt that rule without publishing advance Notice of its Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

X.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them).

X.10(3) *Public proceedings on rules adopted without them.* The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule X.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than twenty-five (25) members, or at least twenty-five (25) persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule X.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within sixty (60) days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subsection, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule X.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

Agency No.—X.11(17A) Concise statement of reasons.

X.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within thirty (30) days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to (specify the office and address). The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

X.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

X.11(3) *Time of issuance.* After a proper request, the agency shall issue a concise statement of reasons by the later of the time the rule is adopted or forty-five (45) days after receipt of the request. A copy of the concise statement of reasons shall be mailed to the requesting party within two (2) working days of the date it is issued.

Agency No.—X.12(17A) Contents, style, and form of rule.

X.12(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

a. The date the agency adopted the rule;

b. A statement of the purpose of the rule;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule; and

f. The effective date of the rule.

X.12(2) *Incorporation by reference.* The agency may incorporate, by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive,

or otherwise inexpedient. The reference in the agency proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The agency may incorporate such matter by reference in a proposed or adopted rule only if the agency, organization, association or other persons originally issuing that matter makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this agency, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

X.12(3) *References to materials not published in full.* When the Code Editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall prepare and submit to the Code Editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text at actual cost upon request.

At the request of the Code Editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

X.12(4) *Style and form.* In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

Agency No.—X.13(17A) Agency rule-making record.

X.13(1) *Requirement.* The agency shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

X.13(2) *Contents.* The agency rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the agency, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the (agency head), in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory flexibility analysis, economic impact statement, or fiscal note prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for exceptions to, amendments of, or repeal or suspension of, the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to that objection; and

j. A copy of any executive order concerning the rule.

X.13(3) *Effect of record.* Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

X.13(4) *Maintenance of record.* The agency shall maintain the rule-making record for a period of not less than five (5) years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.

Agency No.—X.14(17A) Filing of rules. The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal note and any concise statement of reasons that was issued with respect to that rule. If a fiscal note or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five (5) working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

Agency No.—X.15(17A) Effectiveness of rules prior to publication.

X.15(1) *Grounds.* The agency may make a rule effective after its filing at any stated time prior to thirty-five (35) days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

X.15(2) *Special notice.* When the agency makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"*b*"(3), the agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the agency to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following: radio, newspaper, television, signs, mail, telephone or personal notice.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"*b*"(3), shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule X.15(2).

Agency No.—X.16(17A) General statements of policy.

X.16(1) *Compilation, indexing, public inspection.* The agency shall maintain an official,

current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(7)"*a*," "*c*," "*f*," "*g*," "*h*," "*k*." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)"*f*," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

X.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule X.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

Agency No.—X.17(17A) Review by agency of rules. At least every five (5) years, the agency shall review all of its rules and decisions of particular applicability to determine whether any new rule should be adopted or any existing rule should be amended or repealed. In conducting that review, the agency shall prepare a written report summarizing its findings, its supporting reasons, and any proposed course of action. A copy of the agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

Motion was made by Catherine Dunn to approve Notice of Intended Action -- Chapter 4, Rulemaking Procedures. Seconded by Richard Timmerman. Motion carried unanimously.

NOTICE OF INTENDED ACTION -- CHAPTER 5, PETITION FOR RULEMAKING

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

This item is essentially identical to the prior item. The Commission is asked to authorize us to proceed with adoption of uniform rules, this time on "Petitions for Rulemaking." A copy of these uniform rules is enclosed.

UNIFORM RULES ON AGENCY PROCEDURE

Governor Terry E. Branstad appointed a nine-member task force in the summer of 1985 to draft proposed uniform rules of agency procedure. The members of the task force are as follows: Arthur E. Bonfield, Chair, Barbara B. Burnett, Robert F. Holz, Jr., Kathryn J. Hayes, Duncan J. Hugel, Elizabeth M. Cunningham, John F. Pottorff, Joseph A. Royce, and Ted Yenerich. The hope is that the proposed uniform rules will be suitable for adoption by all or most state agencies and that they will reflect the need for fair state agency procedures on the one hand and the need for effective and efficient government on the other hand.

On December 16, 1985, the task force presented a report to the Governor. The Governor has accepted the task force recommendations on petitions for rule making and petitions for declaratory rulings. On December 3, 1986, the Governor accepted the task force recommendation for agency procedure for rule making for adoption by state agencies.

CHAPTER X
PETITIONS FOR RULE MAKING

Agency No.—X.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the agency at (designate office). A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink and must substantially conform to the following form:

(AGENCY NAME)

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule X.4(17A).

X.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

X.1(2) The agency may deny a petition because it does not substantially conform to the required form.

Agency No.—X.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

Agency No.—X.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to (designate official by full title and address).

Agency No.—X.4(17A) Agency consideration.

X.4(1) Within fourteen days after the filing of a petition, the agency must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

X.4(2) Within sixty days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

X.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

Motion was made by Catherine Dunn to approve Notice of Intended Action -- Chapter 5, Petition for Rulemaking. Seconded by Charlotte Mohr. Motion carried unanimously.

ROADSIDE MANAGEMENT GRANTS TO COUNT CONSERVATION BOARDS

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

The 1987 session of the Iowa General Assembly passed the Groundwater Protection Act, which established an agriculture management account of the Groundwater Protection Fund, among other things. Of the 13 percent of that fund allocated for financial incentive programs, the law allowed that not more than $50,000 is appropriated for the fiscal year beginning July 1, 1987 and ending June 30, 1988 to the Department of Natural Resources for grants to county conservation boards for the development and implementation of projects regarding alternative practices in the remediation of noxious weed or other vegetation within highway rights-of-way. [455E.11[2]b(2)(d)] This brief identifies the process by which county conservation boards may apply for grants for local roadside vegetation management projects, assuming funds in fact become available.

The department will provide simple application forms to the county conservation boards which are to be completed and signed by the chairperson of the applying board or boards and be accompanied by a copy of the official minutes of the meeting at which the request was approved. Applications must be received by the department and postmarked no later than 12 midnight, April 15, 1988 to be considered for grant money.

Applications will be reviewed by a review and screening committee made up of the following individuals:

1. Chief of the Governmental Liaison Bureau or designee, DNR.

2. Chief of the Surface and Groundwater Protection Bureau or designee, DNR.

3. Chief of the Planning Bureau or designee, DNR.

4. Representative selected by the Secretary of Agriculture.

5. Chairperson of the Iowa Association of County Conservation Boards or designee.

6. Chairperson of the County Conservation Directors Association or designee.

The review committee will screen projects based upon the following criteria:

1. Emphasis on groundwater protection.

2. Project scope including geographical area affected and the number of counties affected.

3. Educational value, whether as a demonstration project or as planning assistance.

4. Acres of land affected.

5. Wildlife habitat benefits.

6. Effects on road use and transportation.

7. Project costs paid for by or in cooperation with the local sponsor. These local costs could include county conservation budget dollars or donations to the sponsor from private organizations or individuals.

Although this program is established as a grant program, preference will be given to those projects in which local-sponsored dollars or donations are provided.

The review and screening committee will make recommendations to the director concerning projects to be funded. Projects selected by the director will be formalized by a contract between the county board or boards and the department. Contracts involving a grant in excess of $25,000 will be brought to the commission for prior approval.

Following are examples of projects that may be funded by this program. Please remember that these are only examples and that unique and experimental methods of roadside vegetation management will be looked upon favorably. These ideas are the result of meetings over the last nine months involving representatives of the county boards and department staff.

1. Program planning and technical guidance. This can include expenses to develop a regional or state plan for roadside vegetation management and for expenses associated with advising governmental entities responsible for roadside vegetation management. This may include salary, travel costs and administrative cost. The program will not provide reimbursement for unemployment compensation.

2. Roadside vegetative management technical information. The program may include the cost of the development and production of technical education material to be used for promotion of roadside vegetative management techniques. This may include slide/tape programs, educational video tape programs and brochures.

3. The program may provide dollars for roadside vegetation management demonstration projects. This may include the costs of roadside vegetation inventories, equipment rental or, if no other option exists, equipment purchase, seed bed or seedling bed preparation and planting including the cost of labor and gasoline, seed or seedlings, signing of demonstration sites.

Products or equipment that is purchased by county conservation boards with state assistance under this program shall be used primarily for the purpose of roadside vegetation management. The Department of Natural Resources reserves the authority to reassign or sell equipment funded under this program if the associated county conservation board decides that that equipment or product is no longer necessary in the local program. Grants will not be available for expenses incurred prior to the grant agreement.

County conservation boards may apply for reimbursement from this program upon project completion or, in the case of very large projects, in increments of no less than $5,000. Boards that receive funds shall keep adequate records relating to the administration of the program, particularly relating to all incurred costs. These records must at least include copies of cancelled warrants and invoices. This information will be provided with the request for reimbursement by the board. This information will also be made available upon request for audit by appropriate personnel of the Department of Natural Resources and the state Auditor's office.

IOWA'S COUNTY CONSERVATION BOARD PROGRAM

Enabling legislation for the formation of county conservation boards was approved by the 1955 session of the Iowa General Assembly. The voters in 16 counties approved the formation of county conservation boards in their counties in the 1956 elections. The purpose of these boards is to acquire, develop, maintain and make available to the county inhabitants public parks, preserves, parkways, playgrounds, recreation centers, county forests, wildlife and other conservation areas, to promote and preserve the health and general welfare of the public, to encourage the orderly development and conservation of natural resources, and to cultivate good citizenship by providing programs of public recreation.

In the early years of the program, county conservation boards oriented their efforts toward local county parks. As time passed, their efforts became more broad and more fully met the county conservation law. The conservation boards now provide 284 county parks as well as a multitude of wildlife areas, river access sites, historical sites, preserves and environmental education facilities.

Iowa is blessed with the most successful county conservation program in the United States with 98 of the 99 counties having operational boards that manage 1,152 areas encompassing 87,367 acres of land.

These county conservation boards operate under their own budgets as a part of county government. The majority of their funds come from county tax dollars with the remainder coming from grant and cost-share programs and user fees. The emphasis in the past five years has been programmatic. The counties now have taken the leadership roll in environmental education programming in Iowa. Forty-three counties now employ 45 full-time naturalists and provide 18 nature centers. Seventy-eight of the county conservation boards work with private landowners in acres for wildlife programs in which they assist the private landowner in planting native grasses and seedling trees on portions of the private land to encourage wildlife habitat. Some conservation boards have become involved in roadside vegetation management programs in their counties. Recently, six county conservation boards have taken over the responsibility of noxious weed control in their counties. These county conservation boards have hired trained, professional individuals to establish roadside vegetation management programs. The emphasis of these programs is to eliminate indiscriminate chemical spraying of road ditches and to incorporate nonchemical methods of noxious weed control. These counties, in conjunction with staff of the Department of Natural Resources, recently produced an informational slide/tape program to inform the general public about the values of professional roadside vegetation management. We anticipate that in the

near future, many more county conservation boards will become involved in roadside vegetation management at the county level and that we will see more successful alternative practices including a reduced use of herbicides in Iowa's noxious weed control programs.

This was an informational item; no action is required.

GROUNDWATER PROGRAM EVALUATION CRITERIA

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

Section 108.7 of HF631 requires the Director of the Department of Natural Resources to "develop and adopt by administrative rule, criteria for evaluating groundwater protection programs by July 1, 1988." These criteria are to be used to evaluate the effectiveness of the various aspects of Iowa's groundwater protection program at meeting the goals and policies stated in HF631.

The Department is beginning the process of developing and adopting these evaluation criteria rules. We will be consulting with all of the involved state agencies and with soil district commissioners and local agencies to gain their input on how we should measure the success or failure of all parts of Iowa's groundwater protection program.

We intend to place the initial set of evaluation criteria rules on Notice of Intended Action in March of 1988, hold public hearings in April/May, and adopt the rule final by July 1, 1988. As we gain better insight into the program, we may refine and expand the evaluation criteria so that they measure the truly significant aspects of program implementation and effectiveness.

This was an informational item; no action is required.

RECESS

Chairman Schlutz recessed the meeting at 5:00 p.m., Monday, February 15, 1988.

MEETING RECONVENES 8:30 A.M., TUESDAY, FEBRUARY 16, 1988

PROPOSED CONTESTED CASE DECISION -- CITY OF WAPELLO

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

On July 30, 1987, the Director issued Administrative Order No. 87-WW-48 to the city of Wapello requiring the city to comply with an implementation schedule for wastewater facility improvement and to pay a $500 penalty. The city appealed that order, and the matter proceeded to administrative hearing on October 27, 1987. The parties subsequently filed written briefs with the hearing officer, and the hearing officer issued the attached Findings of Fact, Conclusions of Law, and Order on January 13, 1988. The decision affirms the Director's Order.

The city may appeal this order to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the decision. If there is no appeal or review of the decision, it automatically becomes the final decision of the Commission.

James Combs stated that the City of Wapello has appealed; therefore, no action is required today.

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).

City of Iowa City - wastewater
Aspro, Inc. - air quality
Kimballton Utilities - penalty collection
City of Donnellson - wastewater

James Combs stated that the referral for City of Iowa City will be taken up at 10:45 a.m. today as they have an appointment to address the Commission at that time.

ASPRO, INC

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

Clark Yeager asked how many days of violation occurred in this case.

Mark Landa responded that there are at least three, maybe four, days of violation.

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

KIMBALLTON UTILITIES

James Combs stated that notice has been received that Kimballton will pay the administrative penalty; therefore, no Commission action is required.

CITY OF DONNELLSON

James 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 Donna Hammitt. Motion carried unanimously.

LEGISLATION REVIEW

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

Mr. Combs distributed to each Commissioner a listing of bills that may be of interest to the Commission. Also distributed was a copy of the bill dealing with the Iowa Sewage Works Financing Program.

Mr. Combs expanded on the contents of each bill and answered questions regarding same.

SF 2125 -- Mr. Combs stated that this bill restricts the service area of sanitary landfills to six counties or less.

SF 2126 -- Mr. Combs stated that this bill passed the Senate 46-0 yesterday. There were considerable discussion regarding this bill which restricts the time period for the initiation of administrative or judicial actions to remove or eliminate certain structures, dams, obstructions, deposits, excavations or stream straightenings to a floodway.

Keith Uhl asked if this bill would stop the department from doing any injunctive relief if there is a six-year-old dam that is ready to collapse. He added that, if that is the case, all members of the Commission should point out that there are some other ramifications in the bill in addition to trying to protect people who have made changes.

Allan Stokes stated that, as he understands it, the bill did not follow the normal legislative process; it came up in committee and they suspended the rules and passed it out of committee in the same day.

Chairman Schlutz asked that a copy of this bill be given to the Commissioners along with a list of the members of the House and Senate Natural Resources Committees.

The Commission agreed that they are opposed to the bill as it is written.

Chairman Schlutz directed the legislative committee (Commissioners Uhl, Mohr and Timmerman) to meet with the authors of the bill and relate the Commission's concerns. An appointment was made for this committee to meet with Senator Dale Tieden at 3:00 p.m. this afternoon.

Keith Uhl pointed out that the legislature should be made aware of what this Commission is doing on rulemaking as it pertains to post-construction permits. With the proposed rulemaking, this bill is not necessary.

SF 2133 -- Extends the deadline for registration of agricultural drainage wells to June 30, 1988.

SF 2143 -- Requires the Commission to establish rules for conditional permits for disposal projects, including sewer systems. Mr. Combs explained that this would allow communities to install sewers before they install a sewer system. It would also conflict with the federal NPDES permit program.

Allan Stokes stated that, again, this bill encroaches on the Commission's authority as it provides that the rules that the Commission promulgates shall provide for issuance of what is called a conditional permit. It would essentially legalize discharge of untreated wastewaters to the state.

Discussion followed regarding other bills listed in the summary.

PUBLIC PARTICIPATION

Chairman Schlutz announced public participation at 10:30 a.m.

Cindy Hildebrand, Legislative Chair, Iowa Audubon Council, stated that this group is concerned with possible repercussions of any rules, law or case changes in regards to the Greiner business. Ms. Hildebrand stated that in her previous work on drainage issues she learned that we have already lost about 5,000 miles of streams to straightening in this state. Second, that illegal channel changes have taken place, and continue to take place without being discovered. Third, the floodplain program is underfunded and understaffed. Finally, there is already a certain amount of economic benefit to doing illegal channel changes. She added that they would be very concerned about any changes or case precedents that would encourage people to go ahead and make even more illegal channel changes than are already being done. Ms. Hildebrand added that it is an individual's responsibility to find out what permits are needed when they are considering doing any type of work. She stated that she will request time to speak specifically to this subject at the Commission's next meeting. In conclusion, Ms. Hildebrand asked the commission to consider the possible repercussions of grandfathering in any kind of illegal channel change.

REFERRALS TO THE ATTORNEY GENERAL (Continued)

CITY OF IOWA CITY

Diana Hansen, Legal Bureau, stated that there are two main parts of the city's proposed construction that are referred to in her report, those being: 1) the north plant which is due for upgrading, and 2) the south plant which is an entirely new facility located in Johnson County. The main item the department is concerned with is the city's failure to meet various dates in the schedule and order regarding upgrading of the north facility. The reason the department is concerned is that the upgrading of the north plant is crucial to the city meeting final effluent limitation for this facility by July 1, 1988. This is the deadline under the Clean Water Act by which all municipal facilities are to come into compliance with final effluent limitation. Mrs. Hansen stated that the department has met with representatives of the city to try to negotiate a consent decree.

Mrs. Hansen stated that the city has experienced problems which affect the city's ability to complete the entire plan it has proposed to the department. However, the department's position is that, various of the city's problems, it should not directly impact upon the city's ability to upgrade the north facility. Mrs. Hansen gave a detailed history of the case. She added that the city has encountered problems regarding land acquisition, problems with their engineering firm delaying completion of plans, and with obtaining zoning for the south plant. Additional problems encountered are with the University of Iowa filing suit against the city regarding its rate structure.

Keith Uhl inquired as to who is involved in the lawsuit. Mrs. Hansen replied that it involves the University of Iowa, Board of Regents, and the State of Iowa.

Keith Uhl asked if there would be difficulty with the Attorney General's Office representing the department and the Board of Regents. Mrs. Hansen replied that two separate divisions of the Attorney General's Office would handle it.

Discussion followed regarding submittal of plans, compliance deadline, history of by-passes by the city, and payment of fines and fees to date.

APPOINTMENT -- TERRY TIMMINS -- CITY OF IOWA CITY

Terry Timmins, City Attorney for the City of Iowa City, stated that a report was prepared and submitted to the DNR staff in January, 1988. The report outlines the history and status of the project and a copy has been distributed to each Commissioner. Mr. Timmins explained that the City of Iowa City has been unable to proceed with the project due to problems encountered with the University of Iowa and their lawsuit against the city over sewer rates, as well as zoning problems with Johnson County. He expanded on the details of these problems and explained alternatives being pursued by the City to resolve them. Mr. Timmins also covered legislative solutions which may be pursued to expedite the City's project.

In conclusion, Mr. Timmins asked the DNR and the Commission to take a positive position in support of the proposed legislation, rather than letting litigation take its course. He stated that the City is ready to do the project and wants to do it, but they need the Commission's support, not fines and penalties.

Merle Fleming of the Iowa Attorney General's Office, addressed the Commission stating that she is representing the Board of Regents and the University of Iowa. Ms. Fleming stated that this is the first time since 1846 that the City and University have been in court over some issues. Ms. Fleming stated that the University and Board of Regents, some time ago, changed the manner in which they were paying things and entered into a short-term contract in 1970 as part of the effort for the City to get federally funded. It was a short-term contract to expire in 1983. She added that now, because there was a renegotiation clause in the contract, the City is saying "got-ya." There have been attempts to renegotiate, and the City takes its own position and that's all. The University of Iowa has its own water plant and almost all of the University's facilities are served by the University water plant. Wastewater treatment rates in Iowa City are based on water usage, not on wastewater treatment. Ms. Fleming stated that in large areas in Iowa City there are huge infiltration problems, and that is just one of the factual factors that is present in this system in which the University has resisted the allocation of capital costs. She added that it is one of the problems in the attempts that have taken place on negotiations. The University of Iowa was negotiating with the city council until the City threatened to cut off service. Ms. Fleming stated that it is rumored that the University of Iowa is building its own sewage treatment plant.

Ms. Fleming stated that, in regards to Keith Uhl's question regarding the Attorney General's Office, their office has a number of divisions and it is not unusual to represent state agencies in conflict. She stated that the Board of Regents did approve the litigation.

Senator Jean Lloyd-Jones addressed the Commission stating that she is Chairperson of The Iowa Peace Institute and, as a member of the Iowa City community, it has been difficult to see the city torn apart by this issue. Senator Lloyd-Jones added that, as Chair of the Institute, she believes that this is a case that they could have some impact on and would like to offer the Office of the Peace Institute to mediate the problem. There is a very complex set of issues involved and a breakdown in communications in this case. She stated that the Institute has some in-state people, and there is a possibility of bringing in some people from out-of-state to help mediate.

Keith Uhl commented that additional litigation is going to continue to divide these people and protract the problem to the degradation of the environment of the State of Iowa. Mr. Uhl stated that this could be negotiated without setting a precedent. He added that given the magnitude of the issue and the interplay where the State is partly plaintiff in one case and a third party defendant in the other case, and the fact that it involves the largest university in the state of Iowa, it would seem prudent to enter into a 60-day negotiation period under the auspices of The Iowa Peace Institute.

Motion was made by Keith Uhl to table the Iowa City referral for a period of 60 days under the provision that The Iowa Peace Institute, at that time, bring to this Commission a report as to the fruits or failures of what they have been able to accomplish. Seconded by Nancylee Siebenmann.

Mr. Uhl stated that he had an indication from Mike Thompson, on behalf of The Peace Institute, that there has been preliminary discussion with one or more of the parties about their acceptability to participate in this type of negotiation.

Merle Fleming stated that there has been a willingness on the part of the University to negotiate all along.

Terry Timmins was concerned about obtaining an outcome from the mediation that is final and binding. He stated that there are many other parties that are going to be affected by the outcome that will not be bound by the mediation. He stated that he is concerned that all parties involved be included in the mediation.

Phil Brown, mediator with the Iowa Farm and Creditor Mediation Service, stated that there have been many cases of this type that have been mediated where subsequent courts have recognized the validity of the agreement and have held parties accountable to that agreement. He added that a third party intervention by a neutral mediator can provide the results that are being sought and also fit the required time frame. The Iowa Peace Institute does have competent people here in the state, as well as in the nation.

Mary Newhouser, State Representative from Iowa City, stated that all parties would be very happy to get this resolved. She added that her only concern with the mediation is that she has tried to introduce legislation regarding this, and unless the Commission suggests that she not do so, she would like to continue with it in case the problem is not resolved within 60 days. At that time, it would be too late to introduce legislation and the only avenue remaining would be a prolonged court battle. Representative Newhouser explained that one piece of legislation would override county zoning with

certain procedures, and the other one would officially require that state institutions pay the going rate in the absolutes of any other agreement. It will be introduced by the House Committee on Local Government.

Mr. Timmins asked if the Commission and the department can assist to make sure that the legislation gets introduced.

Director Wilson stated that the department will remain neutral regarding the legislation as he feels it is not the responsibility of the department to get involved in the proposed legislation.

Nancylee Siebenmann asked who will fund the mediation.

Senator Lloyd-Jones stated that the professional mediators, as their first task, identify all parties and get them to the table. Additionally, they have the task of negotiating who is going to pay for what, and how much. If that is not decided, then the whole thing is off. Normally, each party contributes something.

Diana Hansen commented that after the 60 days, if there is an agreement reached through mediation concerning the other problems of the City, the department would still like to try to arrange a consent decree with the City (before the following Commission meeting).

Chairman Schlutz called for a vote on Keith Uhl's motion to table the Iowa City referral for 60 days to allow for mediation. Motion carried unanimously.

Senator Jean Lloyd-Jones will chair the mediation group.

Keith Uhl commented that the Commission needs to know what their duties and obligations are in regards to referral, if necessary, of the University of Iowa and the State Board of Regents.

ADDRESS ITEMS FOR NEXT MEETING

Update On Mediation
Response From A.G.'s Office Regarding Override of Commission
Meeting With Board of Regents Regarding the Three Centers

NEXT MEETING DATES

March 21-22, 1988
April 25-26, 1988
May 16-17, 1988

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairman Robert Schlutz adjourned the meeting at 12:50 p.m., Tuesday, February 16, 1988.

Larry J. Wilson, Director

Charlotte Mohr, Secretary

(2-88.MIN/sc)

ADM-1-1-1
February 1988

MEETING AGENDA
ENVIRONMENTAL PROTECTION COMMISSION
WALLACE STATE OFFICE BUILDING
February 15-16, 1988

Meeting Convenes at 1:00 p.m., February 15, 1988 fourth floor conference room and reconvenes on February 16, 8:30 a.m.

Break	3:00 p.m.
Appointment: Michael Neary, Attorney for Dennis Greiner	3:15 p.m.
Meeting Reconvenes 8:30 a.m. February 16	
Break	10:00 a.m.
Public Participation	10:30 a.m.
Appointment: City of Iowa City	10:45 a.m.

1. Approval of Agenda.
2. Approval of Minutes of January 19-20, 1988.
3. Director's Report. (Wilson) Informational.
4. Final Rule--Chapter 209, Solid Waste Grants. (Bender) Decision.
5. Approval of Solid Waste Grants. (Bender) Decision.
6. ISU Contract--Groundwater Impacts of Agricultural Best Management Practices. (Kuhn) Decision.
7. Review - FY 89 Budget Recommendations. (Kuhn) Informational.
8. Monthly Reports. (Stokes) Informational.
9. Final Rule--Chapter 102, Liquids in Landfills. (Stokes) Decision.
10. Final Rule--Chapter 135, Underground Storage Tank Monitoring Well Criteria. (Stokes) Decision.
11. Notice of Intended Action--Chapter 47, Grants to Counties for Private Well Testing and Closure of Abandoned Wells. (Stokes) Decision.
12. Proposed Rules - Closure of Abandoned Wells. (Stokes) Informational.
13. Discussion - Flood Plains, Waiver of Engineering Plans. (Stokes) Informational.
14. Notice of Intended Action--Chapter 4, Rule Making Procedures. (Combs) Decision.

15. Notice of Intended Action--Chapter 5, Petition for Rule Making. (Combs) Decision.

16. Roadside Management Grants to Counties. (Combs) Informational.

17. Groundwater Program Evaluation Criteria. (Combs) Informational.

18. Proposed Contested Case Decision -- City of Wapello. (Combs) Decision.

19. Proposed Contested Case Decision -- Dennis Greiner. (Combs) Decision.

20. Referrals to Attorney General's Office. (Combs) Decision.

21. Legislation Review. (Combs) Informational.

22. Address Items for Next Meeting.

REMINDER: 1:30 p.m. Tuesday, February 16 - Public Hearings on Groundwater Standards - to be held in the Wallace Building Auditorium - 2nd floor.

NEXT MEETING DATES
March 21-22, 1988
April 18-19, 1988
May 16-17, 1988

ENVIRONMENTAL PROTECTION COMMISSION

Monday, February 15, 1988

NAME (Please print)	COMPANY OR AGENCY	CITY
Donald A. Torney	IA Co Engr Assoc	Marengo
Dean Tjornehoj	Swiss Valley	
Marianne Michel	Minn Valley Test	Nevada
Jim Gulliford	Dept. Ag & Land Stewardship	
Dan West	Grummark, Inc.	Bloomington, IL.
Ralph Sorchen	N.E.I. Wilton	W'loo
Winton Pitcher	IFCA	D M
Michael Neary		Sigourney
Ronald Gaia		Kent
Steve Scheinbaum		

Tuesday, February 16, 1988

Neal Dooley		
Jane McAllister	—	Norwalk
Keith Chenoweth	Hyg. Lab	Iowa City
Cindy Hildebrand	Audubon	Ames

ENVIRONMENTAL PROTECTION COMMISSION

Tues. Feb. 16, 1988

NAME	COMPANY OR AGENCY	CITY
(Please print)		
Mark Flaherty, Assist A. General		Des Moines
CHUCK SCHROEDER	City of Iowa City	Iowa City
DALE Helling	"	"
TERRY TIMMONS	"	"
STEVE ATKINS	"	"
JOHN McDonald	City of Iowa City	Iowa City
Senator Floyd Jones	" " "	Iowa City
Cyrus Hill	Polk County Conservation	Granger, Ia

ENVIRONMENTAL PROTECTION COMMISSSION

ITEM 4

DECISION

FINAL RULE--CHAPTER 209, SOLID WASTE GRANTS

The attached rule provides for financial assistance in the form of grants to encourage the adoption of alternatives to landfilling of solid waste. A description of the rule and development is provided in the preamble to the rule.

Ruth Bender
February 2, 1988

ENVIRONMENTAL PROTECTION COMMISSION [567]
Adopted Rule

Pursuant to the authority of 1987 Iowa Acts, House File 631, sections 111 and 405, the Environmental Protection Commission adopts a new Chapter 209, "Solid Wastes Grants," under new Title XII "Waste Management Authority," Iowa Administrative Code.

The purpose of Chapter 209 is to provide financial assistance through grants and other means to encourage the adoption of alternatives to land filling municipal solid wastes. The state of Iowa has determined that it is beneficial to the state's environment and economy to encourage such activities. This program is designed to demonstrate alternative means of solid waste management that may be applied throughout the state. The state will also examine the environmental impacts of solid waste landfill alternatives under this grant program.

These same rules were noticed in a Notice of Intended Action on November 18, 1987, [565--Chapter 19] as ARC 8137 originally filed by the Energy and Geological Resources Division [565]. These rules were proposed prior to the staffing of the new Waste Management Authority which has the authority for proposing these rules. Termination of the Energy and Geological Resources Division's Notice of Intended Action was published simultaneously with these rules, and appeared in ARC 8274. These rules appeared in a Notice of Intended Action on December 30, 1987, [567--Chapter 209] as ARC 8273.

New Title XII is being added to the Environmental Protection Commission rules to accommodate the Waste Management Authority rules.

A public hearing was held Tuesday, January 19, 1988, at 11 a.m. at the Wallace Building, Des Moines, Iowa. No one attended. Written comments were received and a responsiveness summary was prepared. No changes were made due to the written comments. One change is proposed to 567--209.2(455B,455E) Purpose. The change is to replace "demonstrating innovative alternatives" with "developing and implementing demonstration projects for landfill alternatives." This change is made to more closely reflect the language in House File 631.

This rule is intended to implement 1987 Iowa Code supplement sections 455E.11 and 455B.301A.

New Title XII and Chapter 209 is proposed as follows:

Title XII
Waste Management Authority
Chapter 209
Solid Wastes Grants

567--209.1(455B, 455E) Goal. The goal of this program is to demonstrate alternative methods for managing solid wastes. Also, the program is designed to reduce the environmental effects related to disposal of solid wastes in Iowa landfills. These goals will be achieved through specific actions, as outlined in 1987 Iowa Acts, House File 631, the Groundwater Protection Act, and include the following hierarchy of waste management priorities in descending order of preference:

(1) Volume reduction at the source;
(2) Recycling/reuse;
(3) Combustion with energy recovery and refuse derived fuels production; and
(4) Combustion for volume reduction.

567--209.2(455B, 455E) Purpose. The purpose of this program is to provide grants and other financial assistance to local governments and commercial establishments for the purpose of developing and implementing demonstration projects for landfill alternatives to solid waste disposal. Projects sponsored by the department of natural resources must meet one of the criteria outlined in the program goal for reducing materials being disposed of in sanitary landfills.

567--209.3(455B, 455E) Definitions. "Sanitary landfill" means a sanitary disposal project where solid waste is buried between layers of earth.

"Eligible candidate" means any unit of local government, not-for-profit organization and for profit commercial establishments located in Iowa.

"Eligible project" means any project which is capable of recycling solid wastes, reducing the amount of solid wastes sent to a sanitary landfill, or producing energy from the solid wastes.

"Energy production" is defined as the direct conversion of solid wastes into useful process heat or electricity or the production of processed fuels which can be used in place of coal, natural gas or oil.

"Department" means the Iowa department of natural resources.

"Grants" means financial assistance in the form of cash payments to eligible candidates for certain considerations.

"Financial assistance" means monetary assistance other than grants including interest buydowns on loans.

"Groundwater protection Act" means 1987 Iowa Acts, House File 631 which sets forth laws pertaining to the protection of Iowa's groundwater resources through reduced disposal of solid wastes at landfills, and pesticides and provides grants to encourage better management of Iowa's groundwater resources.

"Petroleum overcharge allocation" means 1987 Iowa Acts, Senate File 517 which allocates and appropriates Iowa's petroleum overcharge refunds generated from Stripper Well, Exxon, Amoco and other petroleum overcharge settlements.

"Waste management authority" means the waste management authority division of the department of natural Resources established by 1987 Iowa Acts, Senate File 396.

567--209.4(455B, 455E) Role of the department of natural resources. The department of natural resources is responsible for the administration of funds for projects sponsored under these rules. The department will assure that funds disbursed will meet guidelines established by the groundwater protection Act, the allocation of petroleum overcharge funds, the waste management authority Act.

Any eligible project may be submitted by any eligible candidate for grant consideration under this chapter. The director will determine which projects will receive funding after review by the waste management authority division, the energy and geological resources division and the environmental protection division of the department.

567--209.5(455B, 455E) Funding sources. The department will use funds appropriated by the legislature, and other sources that may be obtained for the purpose of achieving the goals outlined in these rules. The department will ensure that monies appropriated meet both federal and state guidelines pertaining to their use.

567--209.6(455B, 455E) Eligible projects. The department may provide grants to eligible candidates for the following types of projects:

(1) Volume reduction at the source;

(2) Source separation/recycling;
(3) The production of energy or densified refuse-derived fuels;
(4) Other projects which reduce the amount of material disposed of in landfills; and
(5) Environmental testing related to the use of municipal solid waste as an energy source.

If projects are to be funded from the petroleum overcharge funds, projects must demonstrate either energy savings or the production of fuels which can replace imported sources of energy.

567--209.7(455B, 455E) Project award. Projects will be awarded based on the following criteria. The department will determine the relative value of each of these factors in deciding which projects will receive funding. The criteria include:
(1) The project's nearness to completion;
(2) Transferability of the project to other communities and commercial establishments;
(3) Cost-share by community or commercial establishment;
(4) Environmental benefits and acceptability; and
(5) Percentage of municipal solid waste diverted from the landfill;
(6) Extent to which the project incorporates and reflects the hierarchy of waste management priorities of the state solid waste management policy.

When energy projects are being considered for funding, the following additional criteria will be included:
(1) Commitment from energy market;
(2) Recovery of noncombustibles;
(3) Implementation of recycling/source separation projects in conjunction with the energy recovery project.

567--209.8(455B, 455E) Environmental assessments of landfill alternatives. The department shall reserve funds for determining the environmental consequences of alternatives to solid waste landfilling. Such projects shall include, but not be limited to, testing air emissions generated by the combustion of municipal solid waste and an analysis of the ash generated as a result of the combustion of municipal solid waste.

Date

Larry J. Wilson, Director

(E19A.RUL/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 5 DECISION

APPROVAL OF SOLID WASTE GRANTS

The 1987 Iowa Code Supplement, Section 455b.484 requires that the Environmental Protection Commission approve all contracts and agreements, in excess of $25,000, entered into by the Waste Management Authority Division (WMAD). Two solid waste grants are currently being negotiated that may exceed $25,000. The Commission's approval of these grants is requested.

Solid waste grant proposals were submitted under a competitive grants program for energy conservation and renewable resource projects which is funded by oil overcharge funds. This grant program is separate from the Solid Waste Grant Program which is funded with oil overcharge funds through the Groundwater Protection Fund. Three solid waste grant proposals received approval under the competitive grant program. The Energy Fund Disbursement Council which oversees the allocation of oil overcharge funds recommended that the three solid waste grant proposals seek funding from the Solid Waste Grant Program.

WMAD has been negotiating with the three possible grantees to assure that the grant projects meet the criteria of the Solid Waste Grant Program. The two grant contracts that require Commission approval are:

1. A grant with the Lee County Solid Waste Management Commission to construct a recycling center and to establish a curbside and dropoff collection program for recyclable materials. The total cost of the project is $314,576. The original grant request was for $229,000. WMAD is currently negotiating with the Lee County Solid Waste Management Commission and expects to reduce the state's match.

2. A grant with Jendro Sanitation Services, Inc., of Charles City to conduct an in-depth evaluation and financial analysis for a solid waste incineration and energy generation project. The project cost included in the original grant proposal was $115,000. A $75,000 state match was requested. WMAD is currently negotiating with Jendro Sanitation Services and expects the total project cost, as well as the state's match, to be reduced.

Negotiations on these two grants will continue over the next couple weeks. Final negotiated figures will be provided at the February 15 Commission meeting for approval.

Ruth Bender
February 2, 1988

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 6 DECISION

ISU CONTRACT -- GROUNDWATER IMPACTS OF AGRICULTURAL BEST MANAGEMENT PRACTICES

The Department requests approval to enter into a contract with the Iowa State University Cooperative Extension Service to evaluate groundwater impacts of agricultural Best Management Practices. The $13,250 contract cost will be paid with 100 percent federal water quality nonpoint source planning funds (205J(5)).

The contractor is to develop a list of Best Management Practices used in Iowa for Departmental approval. Once approved, the contractor is to review available research data pertaining to the practice and evaluate the impacts that the use of the practice may have in allowing or preventing the movement of agriculturally related pollutants to the groundwater.

The work required is scheduled to be completed by July 31, 1988.

Stan Khun
January 28, 1988

(I01.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 7 Information

Review of FY89 Budget Recommendations

Following is a summary of the Governor's appropriations recommendations for the Department of Natural Resources

Description	Budget FY1987	Request FY1988	Recommendation FY1988
Operations-Regular	$10,529,892	$12,337,825	$10,570,488
USGS Cooperative Prg.	185,983	185,983	185,983
5% Sewage Works Grants	[illegible],276,730	3,312,000	-0-
Sewage Works Revolving	-0-	3,285,120	-0-
Low-Level Waste Compact	*	78,000	78,000
Miss. Basin Assoc.	*	35,000	-0-
Green Thumb Program	199,800	199,800	200,000
General Fund Capitals	39,960	2,679,000	-0-

Note*: The DNR also requested several supplemental General fund appropriations for FY88 including $437,013 for salary adjustments; $493,000 for the 5% Sewage grant program to replace the AIDEX appropriation; $250,000 to complete the Union Grove project; $35,000 for the Mississippi River Basin Association; and $60,600 for current dues to the Low-Level Radioactive Waste Compact. The Governor did not recommend any of these requests to the G.A. However, it is our understanding that DOM is considering handing the FY87 Low-Level dues and the salary adjustment by means of an administrative appropriation transfer.

With the exception of the projects funded through the lottery program, all of the projects and programs funded with federal funds or earmarked state funds were recommended by the Governor as requested by the DNR.

The DNR requested $7,017,000 from lottery revenues for various capital and special projects. The Governor recommended $1,000,000. For FY1988, the last G.A. appropriated $2.0 million for this program.

With the exception of positions affected by the next phase of State government reorganization, all of the current level positions plus the positions funded by Groundwater and other special funding were recommended. Three and a half FTE positions were eliminated as a result of the Governor's recommendation to further downsize State government. The DOM will also be proposing an early retirement bill, similar to the effort used during the reorganization, to eliminate a number of positions. It can reasonably be inferred that the DNR will ultimately lose several additional current positions funded by the General fund through this program.

Stan Kuhn

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
February 2, 1988

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
RULEMAKING STATUS REPORT
FEBRUARY 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	2/16/88	*3/09/88		—				
2. Ch. 5 - Petition for Rulemaking	2/16/88	*3/09/88		—				
3. Ch. 23 - NSPS & NESHAPS	10/20/87	11/18/87	12/10/87	12/09/87 12/10/87 12/11/87	1/19/88	*1/19/88	*2/10/88	*3/16/88
4. Ch. 38 Private Well Construction Permit	12/15/87	1/13/88	2/11/88	2/03/88 2/05/88 2/08/88				
5. Ch. 47 Grants to Counties	2/16/88	*3/09/88		3/29/88 3/31/88 4/04/88				
6. Ch. 91 - Construction Grants	10/20/87	11/18/87	12/10/87	12/08/87	1/19/88	3/19/88	2/10/88	3/16/88
7. Chs. 100, 102 - Liquids in Landfills	10/20/87	11/18/87	12/10/87	12/09/88 12/10/87 12/11/87	2/16/88	*2/16/88	*3/09/88	*4/13/88
8. Ch. 102 Sewage Sludge at Landfills	11/17/87	12/16/87	1/05/88	1/06/88 1/07/85 1/08/88				
9. Chs. 100,103 Landfill Ground Water Monitoring	10/20/87	11/18/87	12/10/87	1/06/88 1/07/88 1/08/88				
10. 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
11. Ch. 209 - Solid Waste Energy Grants	12/14/87	12/20/87	1/05/88	1/19/88	2/16/88	*2/16/88	*3/09/88	*2/16/88

*Projected

E:RPM/CI-I251J03.FRM

MONTHLY VARIANCE REPORT 1/31/88

No.	Facility	Program	Engineer	Subject	Decision	Date
1	Middletown, City of	Wastewater Const.	French-Reneker	Lagoon Shape	approved	01/23/88
2	Middletown, City of	Wastewater Const.	French-Reneker	Storm Sewer Within Dike	approved	01/23/88
3	Highway 70 Bridge	Flood Plain	Iowa DOT	Freeboard	approved	01/02/88
4	Maple Vly Crary-Indep.	Watersupply Const.	Crawford Engr.	Siting Criteria	approved	01/19/88

REPORTS OF HAZARDOUS CONDITIONS

During the period of January 1, 1988 through January 31, 1988, reports of 54 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
1/04/88 MARION	Over the New Year weekend, a pinhole leak developed at a fitting in a 125-gallon dip tank at 102 Main Street in Pella, Iowa. The entire contents - a 50% solution of alodine and water - ran into the sanitary sewer. Alodine consists of 30% phosphoric acid.	Rolscreen Company 102 Main Street Pella, Iowa 50219	The city's wastewater treatment plant was notified. The fitting was repaired and the tank and all other fittings were inspected.
1/18/88 ALLAMAKEE	On January 18, 1988, a leak of about 3,000 gallons of gasoline was discovered from an above-ground storage tank by Highway 76 near Waukon, Iowa. The material had surfaced from under the tank.	Northeast Farm Service Decorah, Iowa 52101	The storage tank was emptied and removed. Holes were dug in the area and about 300 gallons of product were recovered. A consultant will be hired to determine the extent of groundwater contamination.

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 (48)	43 (32) UST-17	4 (3)	7 (13) UST-1	45 (37) UST-18	1 (0)	5 (9)	1 (0)	1(0)	2 (1)

Total # of Incidents Per Field Office This Period

01	02	03	04	05	06
14	3	6	1	20	10

E:CHT.KR

DATE: February 1, 1988

TO: EPC

FROM: Mike Murphy

SUBJECT: Enforcement Report Update

The following new enforcement actions were taken last month:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Western Hills Assn. West Burlington (6)	Drinking Water	Compliance schedule, MCL, Radioactivity	Order	1/07/88
Woodsman Subdivision West Burlington (6)	Drinking Water	Compliance schedule, MCL, Radioactivity	Order	1/07/88
Beaverdale Heights Assoc. West Burlington (6)	Drinking Water	Compliance schedule, MCL, Radioactivity	Order/Penalty	1/07/88
City of Rippey (4)	Wastewater	Monitoring/reporting	Order/Penalty	1/07/88
Wagner's Printers, Inc. Davenport (6)	Air Quality	Emission standards/ other violations	Order/Penalty	1/07/88
Warren County Brenton Bank & Trust, Indianola (5)	Underground Tanks	Failure to register	Order/Penalty	1/07/88
City of Lynnville (5)	Wastewater	Monitoring & reporting	Order/Penalty	1/07/88
Lehigh Clay Products (2)	Hazardous Condition	Remedial action	Order	1/07/88
Don Scribner (1) Nashua	Solid Waste	Open dumping	Order/Penalty	1/12/88
City of Hospers (3)	Drinking Water	Monitoring & reporting, operational violations	Order/Penalty	1/12/88
City of Ossian (1)	Wastewater	MIP	Order	1/12/88

MM:bsg/M033L01.01

DATE: February 1, 1988

TO: EPC

FROM: Mike Murphy

SUBJECT: 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 Cushing (3)	Drinking Water	MCL - Radioactivity	Order/Penalty	1/12/88
Timberline Assoc. Ltd. Des Moines County (6)	Drinking Water	MCL Radioactivity	Referral to AG	1/21/88
Twelve Mile House Bernard (1)	Drinking Water	Monitoring - Bacteria and Nitrate; Operation Permit	Referral to AG	1/21/88
Pleasant Creek Est. Benton County (1)	Drinking Water	Penalty Nonpayment	Referral to AG	1/21/88
City of Newell (3)	Wastewater	MIP Compliance Schedule	Referral to AG	1/21/88
City of Carson (4)	Wastewater	MIP - Certified Operator	Order/Penalty	1/21/88
City of Mt. Pleasant (6)	Wastewater	MIP	Amended Order	1/21/88

MPM:bsg/M033L01.02

M E M O R A D N U M

DATE: February 1, 1988

TO: Environmental Protection Commission

FROM: Mike 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
Kimballton Utilities	100	12-19-87
Hawkeye Tiling (Jesup)	1,000	1-01-88
City of Sheldon	900	1-02-88
Petroleum Marketing Co. (Malcolm)	900	1-12-88
**Lawrence Payne (Ottumwa)	665	1-15-88
Village Oaks Homeowners Ass'n (Blue Grass)	150	1-15-88
City of Mount Vernon	500	1-15-88
H.P. Jensen Subdivision (Ames)	345	1-29-88
City of Earling	500	2-01-88
Kopper Kettle (Minden)	730	2-05-88
**Elings/Catron/Frey (Des Moines)	800	2-15-88
Arlene's Cafe (Turin)	50	2-15-88
City of Arcadia	100	2-19-88
Clark Co. Landfill Comm.	600	2-22-88
Dubuque Municipal Airport	100	3-05-88
Ellie's Bar and Grill (Grand River)	515	3-05-88

* Referred to the Attorney General
** On Payment Schedule

MPM:rg/E:I122N01.01

Administrative Penalties Due (Continued)

NAME/LOCATION	AMOUNT	DUE DATE
AMPEL, Inc. (Des Moines)	1,000	3-05-88
City of Maxwell	1,000	3-05-88
Donald Caraway (Linn County)	500	3-06-88
City of Newell	100	3-07-88
City of Rippey	320	3-09-88
Beaverdale Heights Assoc. (W. Burlington)	1,000	3-11-88
Wagner's Printer's, Inc. (Davenport)	800	3-11-88
Brenton Bank (Indianola)	1,000	3-12-88
City of Lynnville	225	3-13-88
City of Hospers	1,000	3-14-88
Iowa-Illnois Gas and Electric (Davenport)	600	3-15-88
City of Cushing	700	3-19-88
City of Carson	600	3-26-88
Don Scribner (Nashua)	1,000	3-28-88
*Chico's Supper Club (Burr Oak)	954	6-10-88

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
Kossuth County SLF	700
Stan Moser (Hudson)	250
City of Sidney	1,000
City of Tabor	700
Highway #3 Mobile Home Park (Cedar Falls)	490
Hardin County SLF	500
City of University Park	500
White Consolidated Industries (Webster City)	1,000
City of Braddyville	600

* Referred to the Attorney General
** On Payment Schedule

MPM:rg/E:I122N01.01

The following administrative penalties were paid in January:

NAME/LOCATION	AMOUNT
** Accent Lawn and Leisure (Mt. Joy)	$ 250
City of Lynnville	50
Mark Wallin (Essex)	500
Cotter Elementary School (Columbus Junction)	100
City of Hornick	100
City of Earlville	100
City of Liscomb	50
City of Winfield	200
Tracy Improvement Co. (Tracy)	200
Clarion Farmer's Coop	300
City of Massena	300
City of Morning Sun	300
Four J's Supper Club (Dorchester)	200
Long Branch Tavern (Monmouth)	200
Maynard Rockow (Alden)	700
City of Wilton	500
City of Albion	200
Winnebago Industries	300
** Elings/Catron (Des Moines)	200
	$4,750

* Referred to the Attorney General
** On Payment Schedule

MFM:rg/E:I122N01.01

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

DATE RECEIVED	NAME OF CASE	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
10-17-85	City of Bevington	Administrative Order	WW	Hansen	Hearing set for 3-4-88.
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	Mandi-Klasp Company, Inc.	Administrative Order	AQ/WW/SW	Landa	Hearing concluded 12-21-87; briefing schedule.
12-03-86	City of Waukee	Administrative Order	WS	Hansen	Hearing continued; settlement close.
12-11-86	Eloise Reese	Permit Condition	FP	Clark	Hearing set for 2-09-88.
12-24-86	Francis Meaberlin	Administrative Order	FP	Clark	Hearing held 1-25-88.
3-18-87	Greiner	Administrative Order	FP	Clark	Proposed Decision 10-19-87; appealed.
5-12-87	Iowa City Regency MHP	Administrative Order	WW	Hansen	Hearing held 11-03-87.
5-28-87	Bianchi-Meyrat Lagoon (Hank Smith)	Administrative Order	WW	Kennedy	Hearing continued.
6-03-87	Willow Creek Dam/Zerble et.al	Permit Issuance	FP	Clark	Negotiating before filing.
6-11-87	Thomas Lennon	Administrative Order	FP	Clark	Hearing set for 01-12-88.
8-10-87	Great Rivers Co-op	Administrative Order	WC	Landa	Hearing continued; study proceeding.
8-17-87	City of Wapello	Administrative Order	WW	Hansen	Proposed decision 1- -88. Appealed.
8-17-87	City of Donnellson	Administrative Order	WW	Hansen	Hearing continued, settlement close.
9-17-87	Gradert, Kevin and Ernest	Administrative Order	AQ	Landa	Hearing continued; stipulations being prepared.
10-05-87	Bremer County	Permit Denial	SW/AQ	Landa	Dismissed.
10-09-87	Everco Industries, Inc.	SWA Denial	SW	Larda	Settled.
10-22-87	University Park	Administrative Order	WW	Hansen	Hearing continued; settlement proposed.
11-09-87	Winnebago Industries	Administrative Order	SW	Kennedy	Settled.
11-17-87	White Consolidated Industries	Administrative Order	WW	Murphy	Settled.
11-18-87	City of Braddyville	Administrative Order	WW	Clark	Negotiating before filing.
11-19-87	City of Albion	Administrative Order	WW/WS	Murphy	Settled.

E:MPM/CI-IZ51J02.FBM

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

DATE RECEIVED	NAME OF CASE	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
12-02-87	Kossuth County SLF	Administrative Order	SW	Kennedy	Hearing set for 2-17-88.
12-07-87	Stan Moser	Administrative Order	SW	Murphy	Hearing set for 2-16-88.
12-11-87	Finlan Landfill	Permit Revocation	SW	Kennedy	Hearing set for 2-19-88.
12-15-87	Delaware Co. Conc. Cit. (IBP)	Permit Issuance	HR	Clark	Hearing set for 2-18-88.
12-21-87	City of Sidney	Administrative Order	WW	Murphy	Hearing set for 3-05-88.
12-21-87	City of Tabor	Administrative Order	WW	Hansen	Hearing set for 2-25-88.
12-21-87	Hiway 83 MHP	Administrative Order	WS	Murphy	New case.
12-21-87	Hardin County SLF	Administrative Order	SW	Kennedy	New case.
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.
1-15-88	First Iowa State Bank	Administrative Order	SW	Kennedy	New Case.
1-22-88	IBP, Fort Dodge	NPDES Permit	WW	Hansen	Negotiating before filing.

E:MPM/CI-I251J02.FWM

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 9 DECISION

CHAPTER 100 -- "SCOPE OF TITLE-FORMS-RULES OF PRACTICE" AND CHAPTER 102 -- "PERMITS"

The Commission is requested to adopt the rule amending Chapters 100 and 102 of the ARC.

The amendment to the rule adopts a standard test procedure which will demonstrate the absence or presence of free liquids in either containerized or bulk waste. The rule is intended to implement 455B.304 which prohibits the disposal of uncontained liquid waste in a sanitary landfill.

As authorized by the Commission, public hearings were held at various locations across the state on December 9, 10 and 11, 1987. All comments oral and written were considered.

Thies
2-2-88

(I02.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION [567]
Adopted Rule

Pursuant to Iowa Code section 455B.304, the Environmental Protection Commission adopts amendments to 567--Chapter 100, "Scope of Title-Definitions-Forms-Rules of Practice," and 567--Chapter 102, "Permits," Iowa Administrative Code. The Commission proposed these amendments in a previously filed Notice of Intended Action, ARC 8145, published in the Iowa Administrative Bulletin on November 18, 1987.

Iowa Code section 455B.304 requires the Commission to adopt rules prohibiting the disposal of uncontained liquid waste in a sanitary landfill.

Federal regulations for hazardous wastes in 40 CFR 264.314 and 40 CFR 265.315 reference a test to demonstrate the absence or presence of free liquids in either a containerized or a bulk waste. The test, called the Paint Filter Liquids Test Method 9095 EPA SW 846, is easily applied to various materials. A 100-milliliter or 100-gram sample is placed on a standard 60-mesh conical paint filter for five minutes. If any liquid passes through the filter after five minutes, the waste is determined to contain free liquids.

The rule change adds the definition of a free liquid to the definitions contained in rule 100.2(455B) and adds a portion to rule 102.13(455B) which prohibits free liquids from being disposed in a sanitary landfill.

The Commission requested comments on the amendment. Two comments were received. The first observed that 100 milliliters was approximately equivalent to 100 grams by weight, not 100 milligrams as published. The intent was to describe approximately equivalent sample specimen whether by weight or volumetric apportioning. The rule as adopted reflects this equivalency. The second requested a small quantity exemption which is not permitted under 455B.304. Public hearings on the Notice of Intended Action were held on December 9, 10 and 11, 1987. The rule was adopted on February 16, 1988.

The amendment is intended to implement Iowa Code section 455B.304 and will become effective on April 13, 1988.

The following amendments are adopted:

ITEM 1. Amend rule 567--100.2(455B) by adding the following definition:

"Free liquid" means the liquid produced when a 100 milliliter or 100 gram representative sample is placed on a standard mesh number 60 (fine mesh size) conical paint filter for five minutes. Method 9095 EPA SW 846.

ITEM 2. Amend rule 567--102.13(455B) by adding the following subrule:

102.13(8) Free liquids or waste containing free liquids. No free liquids or waste containing free liquids shall be disposed in a sanitary landfill.

Date

Larry J. Wilson, Director

DEERE & COMPANY

JOHN DEERE ROAD, MOLINE, ILLINOIS 61265-6086 U.S.A.

Safety, Standards, Environment
& Energy Management

10 December 1987

Larry Wilson, Director
Iowa Department of Natural Resources
Henry A. Wallace Building
900 East Grand Avenue
Des Moines, IA 52807

Dear Mr. Wilson:

Deere & Company Comments
Free Liquids Ban

John Deere set a goal of elimination of disposal of liquid wastes in landfills in 1985. The attached graph shows that we have been successful. We still must object to a complete ban on liquids, however. Wastes from spill cleanups, tank cleanouts, etc. sometimes require disposal on short notice. These wastes, while primarily solids, may contain some free liquids which cannot be economically dewatered due to the small quantity.

We believe the rule should be modified to allow disposal of containerized liquids in sanitary landfills. The container should be specified (such as a DOT 17H drum) to insure the container remains intact for a long period of time. The expense of such disposal would discourage large quantities of liquids. This would insure that when the containers do corrode very little liquid will be released.

Disposal of containerized liquids is permitted by Iowa Administrative Code Section 455B.304. A tight container specification will limit its applicability and protect the environment by limiting liquid disposal.

Michael E. McGuire

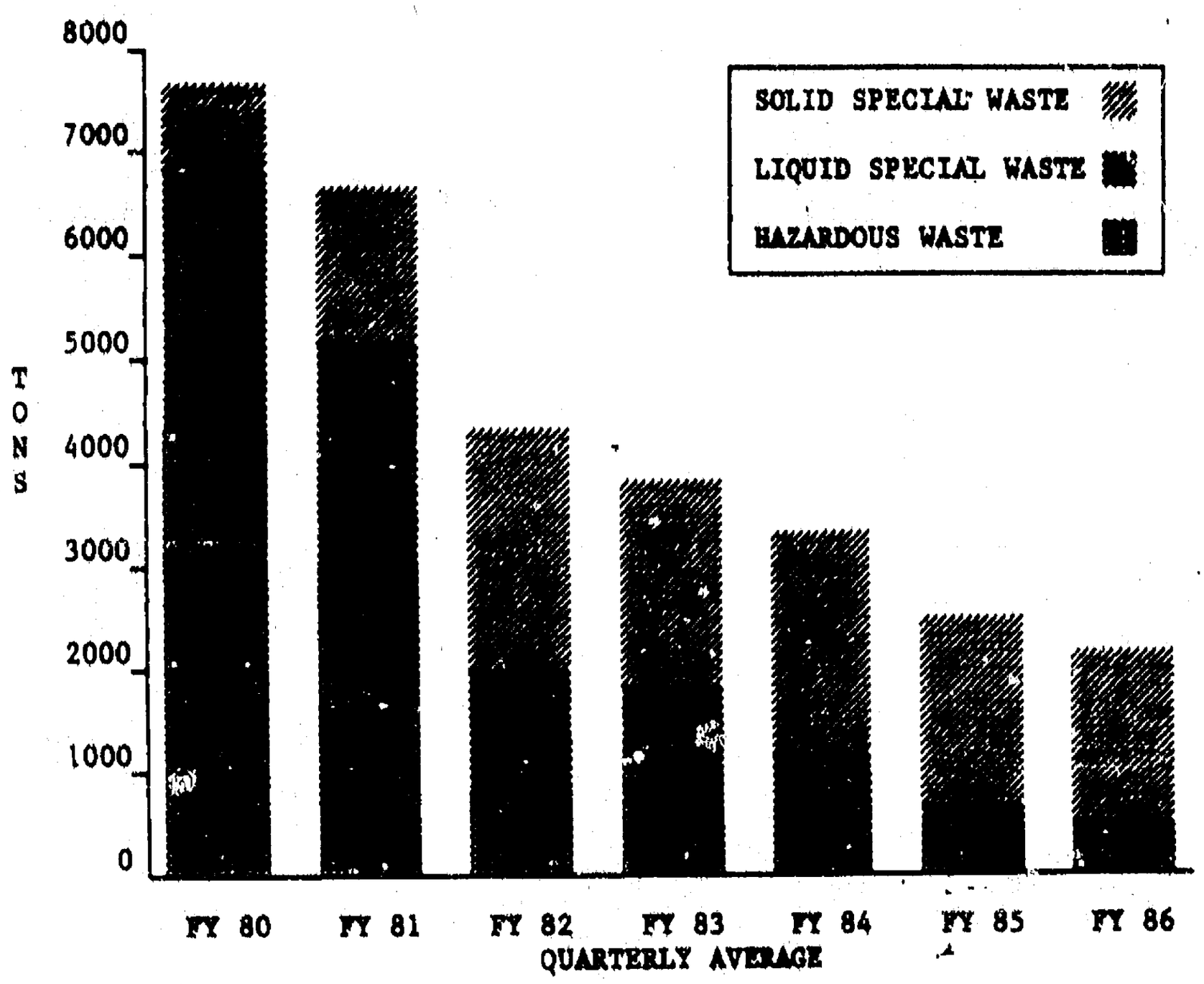
Michael E. McGuire
Manager, Environmental Control

MEM/b
Att.

c: John Smith
Loren Polak, Dubuque
Jack Soener, ABI

RECEIVED BY
DEC 11 1987
DIRECTORS OFF.

WASTES DISPOSED TO LANDFILLS*
FROM U.S. & CANADIAN FACTORIES



*EXCLUDES FOUNDRY SAND AND FLYASH

FIGURE 2

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 10 DECISION

CHAPTER 135 -- UNDERGROUND STORAGE TANKS

The commission is requested to adopt rule 135.9(3) of Chapter 135 of the IAC.

Rule 135.9(3) of IAC is an amendment to the existing Chapter 135, IAC and provides conditions describing the use of the sniffer well for the purposes of leak detection from a regulated underground storage tank.

Three public hearings on these proposed rule amendmonts were held throughout the state on December 8, 9 and 10 of 1987. Written comments on the proposed amendments were accepted through December 20, 1987. No comments were received either in written form or at the hearings.

Allan Stokes

February 2, 1988

M033MJT.3

ENVIRONMENTAL PROTECTION COMMISSION [567]
Adopted Rule

Pursuant to Iowa Code section 455B.474, the Environmental Protection Commission adopts amendments to Chapter 135, "Underground Storage Tanks," Iowa Administrative Code. The Commission adopts subrule 567--135.9(3) which relates to monitoring for vapors using sniffer wells. Notice of Intended Action, ARC 8140 was published in the Iowa Administrative Bulletin on November 18, 1987. Hearings were held on this amendment on December 8, 9 and 10, 1987. No comments were received.

The amendment adds new rule 567--135.9(3) which states that testing or monitoring for vapors in a sniffer well may be used as a leak detection system provided the backfill material for the well is sufficiently porous, the substance stored in the tank is sufficiently volatile, the vapor monitoring device is not inoperative due to groundwater or moisture in the well, background contamination is not greater than 500 parts per million the vapor monitor's threshold value can be preset for the type of substance stored in the tank, the site has adequate sniffer well placement within the excavation, and the sniffer wells are marked and secured.

This rule is intended to implement Iowa Code section 455B.474 and will become effective on April 13, 1988.

The following amendment is adopted:

135.9(3) Testing or monitoring for vapors using a sniffer well may be used only if:

a. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

b. The stored regulated substance is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation area in the event of a release from the underground storage tank (UST) system;

c. The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture so that a release could go undetected for more than 30 days;

d. The level of background contamination in the excavation area will not interfere with detection of releases from the UST system and, when measured in the soil gas, is no greater than 500 parts per million of total hydrocarbons;

e. The vapor monitors are designed and operated to allow the threshold level to be preset specifically for the type of regulated substance stored in the tank system and are capable of detecting any significant increase in concentration of total hydrocarbons above background levels;

f. In the UST excavation area, the site is assessed to assure compliance with the requirements in paragraphs 135.9(3)(a) through (e) of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation area from any portion of the UST system; and;

g. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

_____
Date

_____
Larry J. Wilson, Director

(EP135R.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 11 DECISION

Proposed rules to implement section 113.5 of the Groundwater Protection Act were distributed at the January meeting of the Commission.

These proposed rules will provide procedures for making grants to counties for administering private well sampling and proper well abandonment programs.

The Commission is requested to approve the Notice of Intended Action to hold three public hearings on these proposed rules. The hearings are planned for March 29, March 31 and April 4, 1988 to be held in Cedar Rapids, Denison and Des Moines.

Keith Bridson
2-2-88

(I03.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to Iowa Code 455B.172(5) as amended by 1987 Iowa Acts, House File 631, section 113.5, the Environmental Protection Commission gives notice of intended action to adopt new Chapter 47, "Private Well Sampling and Abandonment -- Grants To Counties," and to amend Chapter 40, "Scope of Division -- Definitions -- Forms -- Rules Of Practice," Iowa Administrative Code.

Iowa Code section 455B.172(5), as amended by 1987 Iowa Acts, House File 631, section 113.5, directs the Environmental Protection Commission to make grants to counties for the purpose of conducting programs for the testing of private, rural water supply wells and for the proper closing of abandoned, rural, private water supply wells within the jurisdiction of the county. Grants will be funded through an allocation of the agriculture management account of the Groundwater Protection Fund. The department intends to create new Chapter 47, Iowa Administrative Rules, to provide rules to implement these statutory provisions. This new chapter provides procedures and conditions governing grant applications and the making of grants by the department.

The proposed change in Chapter 40 conforms the reference to new Chapter 47 referred to in Chapter 40.

Any interested person may file written comments on the above-referenced new chapter through April 14, 1988, with the Administrator of the Environmental Protection Division, Department of Natural Resources, 900 East Grand Avenue, Des Moines, Iowa 50319-0034. Persons are also invited to present oral or written comments at three (3) statewide public hearing sites which have been set by the Environmental Protection Division of the Iowa Department of Natural Resources, pursuant to action of the Environmental Protection Commission. The public hearings are scheduled to be held at 10:00 a.m. on March 29, 1988 in Room 234 of Cedar Hall, Kirkwood Community College, Cedar Rapids, Iowa; at 10:00 a.m. on March 31, 1988 in the Denison Community Room, 111 North Main Street, adjacent to City Hall, Denison, Iowa; and at 10:00 a.m. on April 4, 1988 in the ground floor auditorium of the Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa.

These rules are intended to implement 1987 Iowa Code section 455B.172(5), as amended by 1987 Iowa Acts, House File 631, section 113.5.

ITEM 1. New Chapter 47 is hereby proposed:

Chapter 47
Private Well Sampling and Abandonment -- 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 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, maximum grant amounts have been established which can be awarded to any one applicant. For the program for testing private water supply wells, $45,000 is

the maximum allowed for an individual applicant or to the lead county of a multi-county grant. Up to $20,000 may be included in the total grant award for each additional county in a multi-county grant. For the private, abandoned well closure program, $35,000 is the maximum allowed for an individual applicant or to the lead county of a multi-county grant. Up to $10,000 may be included in the total grant award for each additional county in a multi-county grant.

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.

"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.

"Staffed county program" means staff dedicated by the county to enforce the rules on nonpublic water wells and on-site wastewater treatment and disposal.

"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.

SECTION I

Grants for Well Testing

567--47.6(455B) Goal and Objectives.

47.6(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.

47.6(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--47.7(455B) Eligible grant costs. Grant funds may be approved for, but are not limited to, the following costs:

47.7(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.

47.7(2) Nitrate and total coliform bacteria sampling costs including sample collection equipment, sample handling, transport, and the analytical services and analytical reporting by a certified laboratory.

567--47.8(455B) Ineligible grant costs. Grant funds shall not be used for the following:

47.8(1) Conducting environmental health programs other than those related to the private water supply well testing program.

47.8(2) Conducting private well testing activities either prior to or after the grant period specified in the grant agreement.

47.8(3) Analytical services performed by other than a certified laboratory.

47.8(4) Analyses other than for nitrate and total coliform.

47.8(5) Sampling and analytical costs for testing public water supply wells.

47.8(6) Cost of laboratory analytical equipment.

47.8(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--47.9(455B) Performance requirements. The following minimum standards must be met by all grantees:

47.9(1) Sample collection. Private water supply well samples are to be collected using proper sample collection and handling techniques as specified by the department.

47.9(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.

47.9(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.

47.9(4) Laboratory analyses. All analyses must be performed by a laboratory certified by the department to perform nitrate analyses and multiple tube fermentation method total coliform bacteria analyses and will conform to the following:

a. The total coliform bacteria analyses must be performed using the multiple tube fermentation method.

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.

47.9(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.

47.9(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.

47.9(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.

47.9(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--47.10(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:

47.10(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.

47.10(2) The name of each county or counties represented in the grant application.

47.10(3) A copy of the adopted standards from each county represented in the application pursuant to 47.9(6).

47.10(4) For multi-county applications, signed Iowa Code Chapter 28E agreements between each participating county and the applicant.

47.10(5) If applicable, an identification of any subcontractor which will participate in the private well testing program, including mailing address and phone number.

47.10(6) The name and address of the certified laboratory(ies) which will be providing analytical services.

47.10(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.

47.10(8) The name 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.

47.10(9) A detailed work plan including, but not limited to, the following:

a) methods to be used by the applicant for selecting private water supply wells for testing;

b) the number of wells to be tested;
c) the number of analyses to be performed;
d) the duties to be performed by staff in collecting samples;
e) the duties to be performed by any subcontractor for any part of this grant;
f) a description of the follow-up activities to be performed by staff in responding to test results;
g) record keeping and reporting, and
h) a schedule for completing the above activities contained in the work plan.

47.10(10) A complete, detailed, itemized budget showing all costs and income sources and amount of grant funds requested to conduct the activities described in the work plan. Include staffing in terms of staff weeks, salary, etc. and other costs required to conduct the well testing program for activities such as well selection for testing, sample collection, sample transport, notification of sample results, proposed follow-up activities, reporting and record keeping activities.

567--47.11(455B) Application rating system. All complete grant applications will be scored as described below. For each application, total points will be summed. The applications will be scored and ranked with applications having the most points as highest priority.

47.11(1) Points will be given to each application on the basis of the existence of staffed county programs as of January 1, 1988 for regulating private water supplies and private sewage disposal facilities as follows:

a. If all counties represented in the application did not have programs, 50 points will be awarded;

b. If all counties represented in the application had programs, no points will be awarded;

c. For multi-county applications, points will be awarded based on the percentage of the counties represented in the application without programs using the formula: [(number of counties represented in the application without programs divided by the total number of counties represented in the application) multiplied by 50 points)].

47.11(2) Points will be awarded to each application on the basis of the grant cost per well to be tested as follows:

a. For each application, the grant cost per well to be tested will be calculated using the equation: G divided by N, where G represents the total amount of the eligible grant award request (not including local contributions) and N represents the number of wells to be tested.

b. Each calculated value will be assigned a rank number, R, using the following procedure. All calculated values will be placed in numerical order from smallest to largest. The smallest calculated value will be ranked as 1 (R=1), the second smallest as 2 (R=2), etc. The same rank number, R, will be applied to identical calculated values.

c. Points will be awarded to each application using the rank numbers obtained in 47.11(2)(b) in the formula: 50 points multiplied by [(R_T - R) divided by (R_T - 1)], where R_T equals largest overall rank number, R equals rank number of the application.

47.11(3) For multi-county applications, points will be awarded as follows: [(total number of participating counties) - 1] x 10 points.

SECTION II

Grants for Programs to Close Private, Abandoned Wells

567--47.12(455B) Goal and Objectives.

47.12(1) The goal of the grant program for the closure of private, abandoned wells is to assist in initiating programs designed for closing all private, abandoned wells.

47.12(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.

567--47.13(455E) Eligible costs. Grant funds may be approved for, but are not limited to the following administrative costs:

47.13(1) Costs of developing and adopting county or multi-county private, abandoned well closure programs consistent with departmental private, abandoned well closure rules.

47.13(2) Costs of systematically identifying all private, abandoned wells within the program area jurisdiction and maintaining a data base inventory system.

47.13(3) Costs of administering a private, abandoned well closure program.

47.13(4) Costs of administering public information programs emphasizing the benefits of the private, abandoned well closure program.

47.13(5) Costs of assisting the private, abandoned well owner in applying for available grant funds for private, abandoned well closure.

567--47.14(455E) Ineligible grant costs. Grant funds shall not be used for the following:

47.14(1) Costs of private, abandoned well closures.

47.14(2) Costs of conducting private, abandoned well closure activities either prior to or after the grant period specified in the grant agreement.

567--47.15(455E) Performance requirements. The following minimum standards must be met by all grantees:

47.15(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.

47.15(2) For each private, abandoned well, grantees will maintain the following minimum records:

a. The name and address of 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.

47.15(3) Summary reports, including the information identified in 47.15(2) will be submitted to the department upon request.

47.15(4) Programs will stress the need for private, abandoned well closure through public awareness.

47.15(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.

47.15(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.

567--47.16(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:

47.16(1) The name, address, 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.

47.16(2) The name of each county or counties represented in the grant application.

47.16(3) A copy of the adopted standards from each county represented in the application pursuant to 47.15(5) and a copy of each county's authority to 47.15(1).

47.16(4) For multi-county applications, signed Iowa Code Chapter 28E agreements between each participating county and the applicant.

47.16(5) If applicable, an identification of any subcontractor which will participate in the private, abandoned well closure program, including mailing address and phone number.

47.16(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.

47.16(7) The name of 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.

47.16(8) A detailed work plan including but not limited to the following:

a. Methods of identifying private, abandoned wells.

b. Methods of record keeping and reporting information on each private, abandoned well.

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. A schedule for conducting the above activities.

47.16(9) A complete, detailed, itemized budget showing all costs, income sources and amount of grant funds requested to conduct the activities described in the work plan. Include staffing in terms of staff weeks spent, salary, etc. and other costs required to administer a well closure program, including public awareness programs, record keeping, reporting, identifying private abandoned wells, etc.

567--47.17(455B) Application rating system. All complete grant applications will be scored as described below. For each application, total points will be summed. The applications will be scored and ranked with applications having the most points as highest priority.

47.17(1) Points will be given to each application on the basis of the existence of staffed county programs as of January 1, 1988 for regulating private water supplies and private sewage disposal facilities as follows:

a. If all counties represented in the application did not have programs, 50 points will be awarded;

b. If all counties represented in the application had programs, no points will be awarded;

c. For multi-county applications, points will be awarded based on the percentage of the counties represented in the application without programs using the formula: [(number of counties represented in the application without programs divided by the total number of counties represented in the application) multiplied by 50 points)]

47.17(2) Points will awarded to each application on the basis of the grant cost per private, abandoned well to be identified as follows:

a. For each application, the grant cost per private, abandoned well to be identified will be calculated using the equation: G divided by N, where G represents the total amount of the eligible grant award request and N represents the number of wells to be identified.

b. Each calculated value will be assigned a rank number, R, using the following procedure. All calculated values will be placed in numerical order from smallest to largest. The smallest calculated value will be ranked as 1 (R=1), the second smallest as 2 (R=2), etc. The same rank number, R, will be applied to identical calculated values.

c. Points will be awarded to each application using the rank numbers obtained in 47.17(2)(b) in the formula: 50 points multiplied by [(R_T - R) divided by (R_T - 1)], where R_T equals largest overall rank number, R equals rank number of application.

47.17(3) For multi-county applications, points will be awarded as follows: [(total number of participating counties) - 1] x 10 points.

SECTION III

For Both Grant Programs

567--47.18(455B) Grant application submission.

47.18(1) Application content. Each application submitted on departmental form No. 542-1204 or form No. 542-1205 must contain sufficient detail as 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 47.10(455B) for the private well testing program or rule 47.16(455B) for the private, abandoned well closure program.

47.18(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 January 1 through the end of February prior to the start of the fiscal year.

47.18(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.

47.18(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 to complete the grant application.

567--47.19(455B) Grant application selection.

47.19(1) Consideration withheld. Upon closure of the grant acceptance period, the department will not consider any application which is not complete.

47.19(2) Grant application ranking. Points will be assigned to applications by the department based on the point system contained in section 47.11 for the grants for programs for well testing and in section 47.17 for grants for programs to close private abandoned wells.

47.19(3) Applicant notification. Applicants will be notified of their score and ranking and will be advised of the date on which the commission will act on the applications.

47.19(4) Commission selection. The commission will review the department's ranking of applications and select those to be funded. In the event of tie scores on applications, the commission will determine selection. 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--47.20(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--47.21(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--47.22(455B) Grant agreement. Following commission selection, the department will negotiate the terms of and will issue the grantee a grant agreement stipulating specific terms of the grant award.

567--47.23(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--47.24(455B) Payment.

47.24(1) Grant amount. The grantee will be eligible to receive a sum up to the amount specified in the grant agreement.

47.24(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--47.25(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--47.26(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. Grants cannot be increased above the amount stated in 567--47.2.

567--47.27(455B) Termination or forfeiture of grant funds.

47.27(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.

47.27(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.

47.27(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.

ITEM 2. 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.

Dated this _____ day of February, 1988.

_____

Larry J. Wilson, Director

(EP47.MIN/sc)

MODIFICATIONS REQUIRED IN THE PROPOSED CHAPTER 47 -- GRANTS TO COUNTIES RULES TO INCORPORATE THE ALLOWANCE OF ABANDONED WELL CLOSURE COSTS

1. Add to the end of 47.2 Funds, the last sentence as shown:

   . . . a multi-county grant. An amount not to exceed 50 percent of the grant award for the private, abandoned well closure program may be used for closing private, abandoned wells.

2. Modify 47.13 as follows:

   47.13 Eligible costs. Grant funds may be approved for, but are not limited to the following administrative costs:

3. Add 47.13(6) as follows under eligible costs:

   47.13(6) Costs of private, abandoned well closure not to exceed $100 for the closure of an individual well. Use of grant funds must be approved by the county prior to closure and distributed based upon the established priority for closure.

4. Modify 47.14(1) as follows to list as an ineligible grant cost the following:

   47.14(1) Costs of closing private, abandoned wells closures in excess of $100 per well.

5. Add to the performance requirement of 47.15(1) as shown:

   47.15(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. Private, abandoned well closures must be performed in accordance with departmental rules.

6. Modify "contents of grant application" as shown:

- 47.16(8)e Estimated number of private, abandoned wells to be closed; , method of selecting wells eligible for receiving grant funds for closure, and method for ensuring proper well closure.

- 47.16(9) Add to the end of section a request for an itemized budget the following:

  . . . private abandoned wells; -eter and total and grant funded costs, if applicable, for well closure.

7. Forms need to be revised:

   A. Application form would have to be modified to incorporate #6 above.

   B. Billing and reporting may have to be changed to include well closure as an itemized cost category.

(02.WQP/sc)

STATUS OF PROGRAMS IN COUNTIES

	#1 If Active County Program, Number of Staff	#2 Check If County Has Well Testing Program	#3 Check If County Has Well Abandonment Program		#1 If Active County Program, Number of Staff	#2 Check If County Has Well Testing Program	#3 Check If County Has Well Abondonment Program
1 Adair				51 Jefferson	1		
2 Adams				52 Johnson	7		
3 Allamakee	1			53 Jones			
4 Appanoose	1			54 Keokuk			
5 Audubon	1			55 Kossuth			
6 Benton	1			56 Lee	3		
7 Black Hawk	6			57 Linn	14		
8 Boone	1 (part-time)			58 Louisa	1 (on call)		
9 Bremer	1			59 Lucas			
10 Buchanan	1			60 Lyon			
11 Buena Vista	1			61 Madison	1		
12 Butler				62 Mahaska			
13 Calhoun	1			63 Marion	1		
14 Carroll	1	**		64 Marshall	1		
15 Cass				65 Mills	1		
16 Cedar	1			66 Mitchell	1		
17 Cerro Gordo				67 Monona	1		
18 Cherokee				68 Monroe			
19 Chickasaw				69 Montgomery	1 (vacant)		
20 Clarke				70 Muscatine	1		
21 Clay				71 O'Brien			
22 Clayton	1			72 Osceola			
23 Clinton	1			73 Page			
24 Crawford	1			74 Palo Alto	1		
25 Dallas	1			75 Plymouth			
26 Davis				76 Pocahontas	1		
27 Decatur				77** Polk	1		
28 Delaware				78 + Pottawattamie	1		
29 Des Moines	4			79 Poweshiek	1		
30 Dickinson	1			80 Ringgold			
31 *Dubuque	1			81 Sac			#
32 Emmet				82 Scott	11		
33 Fayette	1			83 Shelby	1		
34 Floyd	1			84 Sioux			
35 Franklin	1			85 Story	1		
36 Fremont				86 Tama	1		
37 Greene	1			87 Taylor			
38 Grundy	1			88 Union	1		
39 Guthrie	1	**		89 Van Buren	1		
40 Hamilton	1			90++ Wapello	1		
41 Hancock				91 Warren	1		
42 Hardin	1			92 Washington			
43 Harrison	1			93 Wayne			
44 Henry	2			94 Webster	1		
45 Howard	1			95 Winnebago			
46 Humboldt	1			96 Winneshiek	1		
47 Ida				97 Woodbury	1		
48 Iowa				98 Worth			
49 Jackson	1			99 Wright	1 (vacant)		
50 Jasper	1						

Total Counties with Staff -65

* City of Dubuque	-	3
** City of Des Moines	-	13
+ City of Council Bluffs	-	4
++ City of Ottumwa	-	2

There have in the past been attempts by ISU Extension Service and community groups such as local F.F.A. chapters to test private wells on a voluntary basis, but there are no structured programs existing for testing all private wells.

** During 1986-87, Guthrie and Carroll Counties contributed $2,500.00 and $3,000.00 per year to cooperate with the U.S.G.S. to set up a selective private well sampling program in their counties. Twenty (20) wells/county were selected in specific alluvial area and were sampled 2X/year and analyzed for 69 different parameters. In Guthrie County in 1986, four in 20 wells and in 1987, nine in 19 wells showed at least one or more pesticides. This is according to Guthrie County Sanitarian Steve Patterson.

Sac County Sanitarian is reportedly taking on a personal program of closing abandoned wells.

DM:rlz/RP-M046J01

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 12 INFORMATION

Proposed New Chapter: Requirements for Properly Plugging Abandoned Wells

Rules have been developed for implementing Iowa Code chapter 455B, House File 631, section 305, pertaining to properly plugging abandoned wells. Copies will be made available to the commission at the February meeting. An abandoned well in this rule is defined as 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 (Section 455B.171 par. 24 IAC).

Abandoned well owners are required to certify on a form provided by the department that abandoned wells have been properly plugged in accordance with the requirements of this chapter and the following time schedules.

Category I - Safety. Abandoned wells larger than eight (8) inches in diameter abandoned prior to the effective date of this rule shall be properly plugged within six (6) months after the effective date of this rule.

Category II - Contamination. Abandoned wells abandoned prior to the effective date of this rule (1) located less than 200 feet from an active well supplying potable water or (2) located less than one-eighth of a mile (660 feet) from a point source of contamination (such as an industrial waste site, an uncontrolled hazardous waste site, a petroleum storage area, a hazardous waste handling or disposal area, an agricultural chemical storage area, a feedlot or a wastewater treatment facility) shall be properly plugged by July 1, 1990.

Category III - All other wells abandoned prior to the effective date of this rule. All other wells abandoned prior to the effective date of this rule shall be properly plugged by July 1, 1993.

Category IV - Wells abandoned after the effective date of this rule. Wells abandoned after the effective date of this rule shall be properly plugged within 90 days of the date of abandonment.

Approved sealing materials, fill materials and procedures for properly plugging various types of wells are described. Requirements for standby wells are presented, along with provisions for variances from the rules.

The commission will be requested to approve a Notice of Intended Action at the March, 1988 meeting.

WAYNE REED
2-2-88

M033MJT.1

ENVIRONMENTAL PROTECTION COMMISSION [567]
Requirements For Properly Plugging Abandoned Wells
Proposed New Chapter 39

567--39.1(455) Purpose. The purpose of this chapter is to implement 1987 Iowa Code Supplement section 455B.190 by providing a schedule and required procedures for the proper plugging of abandoned wells.

567--39.2(455) Applicability. These rules govern the proper plugging of all abandoned wells. For additional guidance and background information, refer to "Guidelines for Plugging Abandoned Water Wells," Technical Information Series 15, Geological Survey Bureau, Iowa Department of Natural Resources, 1987.

567--39.3(455) 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.

"Agricultural lime" means all calcium and magnesium products sold for agricultural purposes in the oxide, hydrate, or carbonate form; such form being designated as quicklime, hydrated lime, carbonate of lime, and crushed or ground limestone which is used for agricultural purposes as a soil pH buffer. (Section 201.1, IAC)

"Annular space" means the space between the well casing and the well bore or the space between two or more concentric well casings.

"Approved" means accepted or acceptable under an applicable specification stated or cited in these rules.

"Aquifer" means a geological formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield significant quantities of water to wells and springs.

"Artesian well" means a well in an aquifer where the groundwater is confined under pressure and the static water level in the well stands above the top of the confined aquifer it taps.

"Bentonite" means a naturally occurring highly plastic, colloidal clay composed largely of the mineral montmorillonite which expands upon wetting.

"Bentonite grout (or slurry)" means a mixture of ten percent (10%) processed bentonite (by weight) and clean water.

"Bentonite pellets" mean a form of processed bentonite which can be used directly for sealing applications in well plugging operations.

"Bentonite products" mean the forms of bentonite which can be used for sealing materials in wells, including graded bentonite, bentonite pellets and bentonite grout.

"Casing" means a tubular retaining structure which is installed in the excavated hole to maintain the well opening.

"Concrete" means a mixture of one sack (94 pounds) of portland cement, an equal amount by volume of sand and gravel or crushed stone and not more than six (6) gallons of clean water.

"Confined aquifer" means an aquifer in which the groundwater is under pressure greater than atmospheric pressure. The static water level in a well tapping a confined aquifer rises to a level above the top of the aquifer.

"Crushed stone" means Class A or Class B crushed stone as defined in the specifications of the Iowa Department of Transportation.

"Department" means the department of natural resources created under section 455A.2.

"Director" means the director of the department.

"Fill materials" mean soil, sand, gravel, crushed stone, pea gravel and agricultural lime used to occupy space between and below sealing materials in abandoned wells being plugged.

"Graded bentonite" means bentonite which is crushed and sized for pouring and easy handling. Like processed bentonite, it swells when hydrated by fresh water and will form a plastic, essentially impermeable mass.

"Gravel means Class C gravel as defined in the specifications of the Iowa Department of Transportation.

"Groundwater" means any water of the state, as defined in section 455B.171, which occurs beneath the surface of the earth in a saturated geological formation of rock or soil.

"Grout" means a fluid mixture of cement and water (neat cement); sand, cement and water (sand cement grout); or bentonite and water (bentonite grout or slurry) of a consistency that can be forced through a pipe and placed as required.

"Limestone" means rock which contains at least eighty percent (80%) of carbonates of calcium and has strong reaction with hydrochloric acid (HCl).

"Liner pipe" means a protective well casing pipe installed subsequent to initial construction to seal off a zone of bacterial or chemical contamination or a casing pipe installed during or subsequent to the initial well construction to seal off a caving formation.

"Neat cement" means a mixture of one sack (94 pounds) of portland cement to not more than six (6) gallons of clean water. Bentonite up to two percent (2%) by weight of cement may be added to reduce shrinkage.

"Plugging" means the proper closure of an abandoned well by procedures which will permanently seal the well from contamination by surface drainage; and where the well penetrates multiple or confined aquifers, will permanently seal off and prevent flow or contamination out of an aquifer or from one aquifer to another. Plugging involves the application of sealing materials and can include fill materials.

"Processed bentonite" means bentonite which has been kiln dried and processed into pellets for direct use in well sealing applications or into powder or coarse granules for use in bentonite grout for sealing.

"Pump pit" means a sunken area located directly over the well used to house the equipment for discharging water from a well into the water system.

"Quaternary sediments" mean the unconsolidated materials above the bedrock.

"Sandpoint well" means a small diameter water well provided with a screened driving point which is driven or jetted into sand and gravel aquifers.

"Sand cement grout" means a mixture of one sack (94 pounds) of portland cement, an equal amount by volume of clean masonry sand and not more than six (6) gallons of clean water.

"Sealing" means the application of sealing materials (bentonite products, neat cement, sand cement grout or concrete) for plugging an abandoned well to seal off unwanted flow into, out of or between aquifers.

"Standby well" means a water well which is temporarily taken out of service with the expectation of being returned to service when needed.

"Static water level" means the water level in a water well when the well is not flowing or being pumped.

"Tremie pipe" means a device, usually a small diameter pipe, that carries grouting materials to the bottom of the hole and which allows pressure grouting from the bottom up without introduction of air pockets.

"Unconfined aquifer" means an aquifer in which the static water level does not rise above the top of the aquifer.

"Water well" means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted or otherwise constructed for accessing groundwater.

"Well screen" means the intake section of the well that obtains water from an aquifer and serves as a structural retainer to support the bore hole in unconsolidated materials.

567--39.4(455) Abandoned well plugging schedule.

39.4(1) Certification. Within thirty (30) calendar days after completion of plugging, abandoned well owners shall certify on DNR form number 542--1226, Abandoned Water Well Plugging Record, that abandoned wells have been properly plugged in accordance with the requirements and time schedule contained in this chapter.

39.4(2) Category I. Abandoned wells larger than eight (8) inches in diameter abandoned prior to (the effective date of this rule--date to be inserted) shall be properly plugged by (six (6) months after the effective date of this rule--date to be inserted.

39.4(3) Category II. Wells abandoned prior to (the effective date of this rule--date to be inserted) (a) located less than two hundred (200) feet from an active well supplying potable water or (b) located less than one-eighth (1/8) mile (660 feet) from a point source of potential contamination shall be properly plugged by July 1, 1990. Examples of point sources of potential contamination include industrial waste sites, uncontrolled hazardous waste sites, petroleum storage areas, hazardous waste treatment, storage or disposal areas, agricultural chemical storage areas, animal feedlots and wastewater treatment facilities.

39.4(4) Category III. All other wells which were abandoned prior to (the effective date of this rule--date to be inserted) shall be properly plugged by July 1, 1993.

39.4(5) Category IV. Wells which are abandoned on or after (the effective date of this rule--date to be inserted) shall be properly plugged within ninety (90) days of the date of abandonment.

567--39.5(455) Water well plugging materials.

39.5(1) Sealing materials. Approved sealing materials are bentonite products (graded bentonite, bentonite pellets and bentonite grout), neat cement, sand cement grout and concrete.

39.5(2) Fill materials. Approved fill materials include soil, sand, pea gravel, gravel, crushed stone and agricultural lime. Fill materials are not required for well plugging, but may be used to save on quantities and costs of sealing materials as provided in Rule 39.6. The fill materials shall be free of sticks, leaves or other foreign matter and shall be free of any toxic or agricultural chemical residue.

567--39.6(455) Water well plugging procedures.

39.6(1) Freedom from obstructions. Abandoned wells must be checked before they are plugged in order to insure freedom from obstructions that may interfere with plugging operations. Drop pipes, check valves, pumps, and other obstructions shall be removed if practicable.

39.6(2) Wells in Quaternary sediments.

a. Large diameter wells one hundred (100) feet or less in depth. The services of a registered well driller are not required for the plugging of large diameter (eighteen (18) inch diameter or more) wells one hundred (100) feet or less in depth in Quaternary sediments (above bedrock). These wells

may be plugged by pouring fill and sealing materials from the top of the well or by using tremie pipes, except for sand cement grout placed below water, which must be placed by dump boiler.

Fill materials of sand, gravel, crushed stone, pea gravel or agricultural lime shall be placed up to one (1) foot below the static water level. A minimum of one (1) foot of bentonite pellets, graded bentonite or neat cement shall be placed on top of the fill material up to the static water level as a seal. Sand cement grout placed with a dump bailer also may be used on top of the fill material up to the static water level and in standing water above the static water level to act as a seal. Fill material of soil, sand, gravel, crushed stone, pea gravel or agricultural lime shall then be added up to four (4) feet below the ground surface.

The fill materials may be omitted and sealing materials may be used to fill the entire well up to four (4) feet below the ground surface. Bentonite pellets, graded bentonite or neat cement sealing materials shall be used below the static water level. Sand cement grout placed with a dump bailer also may be used below the static water level or in standing water above the static water level. Sealing materials which may be used above the static water level include bentonite pellets, graded bentonite, neat cement, sand cement grout and concrete.

The casing pipe shall be removed down to four (4) feet below the ground surface, and shall be capped by a minimum of one (1) foot of bentonite pellets, graded bentonite, neat cement, sand cement grout or concrete. The cap shall extend six (6) or more inches beyond the outside diameter of the top of the remaining well casing and shall terminate three (3) feet below the ground surface.

If there is any curbing, pump pit or pump house structure located directly over the well, this shall also be removed down to a minimum of four (4) feet below the ground surface. The top four (4) feet (three (3) feet above the cap) shall then be backfilled with soil and graded so that surface water is directed away from the abandoned well location.

b. Wells less than eighteen (18) inches in diameter or greater than one hundred (100) feet in depth, excluding sandpoint wells. Plugging of wells less than eighteen (18) inches in diameter or greater than one hundred (100) feet in depth must be performed by a registered well driller.

Fill material consisting of sand, gravel, crushed stone or pea gravel shall be placed in the bottom portion of the well open to the water-bearing formation up to four (4) feet below the static water level. A minimum of four (4) feet of sealing materials consisting of bentonite products or neat cement shall be added above the fill material up to the static water level. If bentonite grout or neat cement is used, it shall be placed by tremie pipe. If bentonite pellets or graded bentonite are used, they may be added by pouring in place and agitating to avoid bridging. Any of the approved sealing materials shall be added above the static water level up to four (4) feet below the ground surface. If bentonite grout is used, it shall be capped by at least six (6) feet of neat cement terminating four (4) feet below the ground surface.

The fill materials may be omitted and any of the approved sealing materials may be used to fill the entire well up to four (4) feet below the ground surface. Only bentonite products or neat cement sealing materials shall be used below the static water level. If bentonite grout is used from the static water level to the top of the well, it shall be capped by at least six (6) feet of neat cement terminating four (4) feet below the ground surface.

The upper four (4) feet of the casing pipe below the ground surface shall be removed and if there is any curbing, pump pit or pump house structure located directly over the well, this shall also be removed down to a minimum of four (4) feet below the ground surface. The top four (4) feet shall then be backfilled with soil and graded so that surface water is directed away from the abandoned well location.

c. Sandpoint wells. Plugging of sandpoint wells must be performed by a registered well driller. The preferred method of plugging a sandpoint well is to pull the casing and sandpoint out of the ground, allowing the hole to collapse and fill. If the sandpoint and casing cannot be extracted, they shall be tremied full of neat cement or completely sealed with bentonite products.

The upper four (4) feet of the casing pipe below the ground surface shall be removed and if there is any curbing, pump pit or pump house structure located directly over the well, this shall also be removed down to a minimum of four (4) feet below the ground surface. The top four (4) feet shall then be backfilled with soil and graded so that surface water is directed away from the abandoned well location.

39.6(3) Bedrock wells. Plugging of all bedrock wells shall be performed by registered well drillers. If the details of well construction are unknown, the well shall be (1) tremied full of neat cement up to four (4) feet below the ground surface or (2) tremied full of bentonite grout up to ten (10) feet below the ground surface, with the bentonite grout capped by at least six (6) feet of neat cement terminating four (4) feet below the ground surface.

a. Bedrock wells completed in a single confined aquifer. Before proceeding to plug the well, a bridge plug or packer shall be placed at or below the bottom of the casing to stop the flow of water if necessary where the pressure in the confined aquifer is great, causing the well to flow at the surface.

Fill material consisting of pea gravel, crushed stone or gravel shall be placed from the bottom of the well to within ten (10) feet below the bottom of the casing. Sealing material consisting of bentonite products or neat cement shall be placed from the top of the fill material to at least ten (10) feet above the bottom of the casing or to the static water level, whichever is higher. If bentonite grout or neat cement is used, it shall be placed by tremie pipe. Bentonite pellets or graded bentonite may be added by pouring in place and agitating to avoid bridging. Any of the approved sealing materials shall be added above the static water level up to four (4) feet below the ground surface. If bentonite grout is used, it shall be capped by at least six (6) feet of neat cement terminating four (4) feet below the ground surface.

The fill materials may be omitted and any of the approved sealing materials may be used to fill the entire well up to four (4) feet below the ground surface. Only bentonite products or neat cement sealing materials shall be used below the static water level. If bentonite grout is used from the static water level to the top of the well, it shall be capped by at least six (6) feet of neat cement terminating four (4) feet below the ground surface.

The upper four (4) feet of the casing pipe below the ground surface shall be removed and if there is any curbing, pump pit or pump house structure located directly over the well, this shall also be removed down to a minimum of four (4) feet below the ground surface. The top four (4) feet shall then be backfilled with soil and graded so that surface water is directed away from the abandoned well location.

b. Bedrock wells completed in a single unconfined aquifer. The plugging procedure for these wells is the same as for bedrock wells completed in a

single confined aquifer except that a bridge plug or packer is not required to stop the flow of water since this problem will not exist in this type of well.

c. Bedrock wells completed in multiple aquifers. For the lowest aquifer, fill material consisting of pea gravel, crushed stone or gravel shall be placed to within ten (10) feet below the bottom of the casing or confining layer. Neat cement tremied in place shall then be used as a sealing material to ten (10) feet above the bottom of the casing or above the bottom of the confining layer, whichever is highest. The minimum thickness of the sealing material above each aquifer shall be ten (10) feet except for the uppermost aquifer. This same procedure and type of fill materials and sealing material shall be used throughout subsequent aquifers including the uppermost aquifer. The seal for the uppermost aquifer shall extend from at least ten (10) feet below the bottom of the casing to at least ten (10) feet above the bottom of the casing. The casing shall be filled above the static water level with any of the approved sealing materials up to four (4) feet below the ground surface. If bentonite grout is used, it shall be capped by at least six (6) feet of neat cement terminating four (4) feet below the ground surface.

The fill materials may be omitted and any of the approved sealing materials may be used to fill the entire well up to four (4) feet below the ground surface. Only bentonite products or neat cement shall be used as the sealing materials below the static water level. If bentonite grout is used from the static water level to the top of the well, it shall be capped by at least six (6) feet of neat cement terminating four (4) feet below the ground surface.

The upper four (4) feet of the casing pipe below the ground surface shall be removed and if there is any curbing, pump pit or pump house structure located directly over the well, this shall also be removed down to a minimum of four (4) feet below the ground surface. The top four (4) feet shall then be backfilled with soil and graded so that surface water is directed away from the abandoned well location.

567--39.7(455) Standby wells. Standby wells do not require the plugging operations for an abandoned well which renders the well permanently unusable as a source of water supply. A standby well must be disinfected when taken out of use and must be disinfected and checked for bacterial safety when placed back in service. Disinfection of standby wells shall be done in accordance with AWWA (American Water Works Association) Standard A100. The well must not be subject to contamination by surface drainage or from other causes, and the well casing must be provided with an air-tight cover when the well is not in use.

567--39.8(455) Variances. In accordance with 455B.181, a variance to these rules may be granted by the department provided sufficient information is submitted in writing to the department to substantiate the need for such action and to assure the protection of all aquifers penetrated by the affected well. When justification satisfactory to the director is provided substantially demonstrating that a variance to these rules will result in equivalent effectiveness or improved effectiveness, a variance to these rules may be granted by the director. A denial of a variance may be appealed to the Environmental Protection Commission pursuant to Chapter 7 (900--7(455B)).

These rules are intended to implement 1987 Iowa Code Supplement section 455B.190.

_____
Date

_____
Larry J. Wilson, Director

(01B.MIN/sc)

IOWA DEPARTMENT OF NATURAL RESOURCES

Abandoned Water Well Plugging Record

INSTRUCTIONS

Submit one completed copy of this form for each abandoned well that is plugged to the Department of Natural Resources, Wallace Building, 900 E. Grand Ave., Des Moines, Iowa 50319-0034 within thirty (30) days of completion of plugging operations.

Provide all of the information requested for Items 1 through 6 so far as it is known or can be obtained. If the date of construction or date of abandonment in Item 6 cannot be determined, provide the best estimate possible, such as "more than 20 years ago" or "prior to 1950."

Certification of plugging by the owner of the abandoned well in Item 7 is required for the plugging of all abandoned water wells.

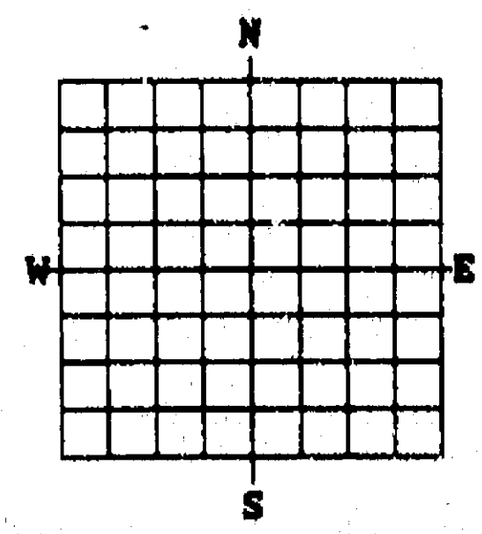
Certification of plugging by a registered well driller in Item 8 is required for all wells except large diameter (18" diameter or more) wells 100' or less in depth which are plugged by the well owner. If a registered well driller plugs this type of well, certification by the well driller is required.

1. Property Owner Name _____

2. Property Owner Address _____
   Number and Street or RR

   _____
   City

   _____
   State Zip Code



LOCATE ABANDONED WELL ON THIS SECTION PLAT-640 ACRES

3. Address of property on which abandoned well is located (if different from above)

   _____
   Number and Street or RR

   _____
   City Zip Code

4. Legal description of property on which abandoned well is located:

   Location ____1/4 ____1/4 ____1/4, Sec.____ T.____N., ____R. _____E.W., _____ ____County

5. Type of Well (*check one*)

   [] Large diameter (18" or more) well 100 feet or less in depth
   [] Well less than 18" diameter or greater than 100 feet in depth
   [] Sandpoint well
   [] Bedrock well in a single confined aquifer
   [] Bedrock well in a single unconfined aquifer
   [] Bedrock well in multiple aquifers
   [] Well of unknown type

6. Detailed Information:

Diameter at Top of Casing _____ inches Date Constructed _____

Depth to Static Water Level _____ feet Date Abandoned _____

Total Depth _____ feet Date Plugged _____

Distance from nearest active well supplying potable water (*check one*):
[] More than 200 feet [] Less than 200 feet

Distance from nearest point source of potential contamination (*check one*):
[] More than 660 feet [] Less than 660 feet

If distance is less than 660 feet, indicate type of nearest point source of potential contamination (*check one*):
[] industrial waste site
[] uncontrolled hazardous waste site
[] petroleum storage area
[] hazardous waste treatment, storage or disposal area
[] agricultural chemical storage area
[] animal feedlot
[] wastewater treatment facility
[] other potential contamination source (describe) _____

7. Certification by owner. I hereby certify that the abandoned well described has been plugged in accordance with the requirements of Chapter 39 of the rules implementing 1987 Iowa Code Supplement section 455B.190:

Signature of Owner Date

8. Certification by a registered well driller. This is required for all wells except large diameter (18" diameter or more) wells 100 feet or less in depth in Quaternary sediments.

Company Name

Address

City State Zip Code

I hereby certify that the abandoned well described was plugged under my supervision in accordance with the requirements of Chapter 39 of the rules implementing 1987 Iowa Code Supplement section 455B.190:

Name of Registered Well Driller Registration No.

Signature Date

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 13 INFORMATION

FLOODPLAINS - WAIVER OF ENGINEERING PLANS

At their January meeting, the commission directed staff to prepare a discussion item addressing when engineering review and plans are needed for determining "after the fact" approval of foodplain projects. The commission is concerned about requiring preparation of plans for projects which may have been constructed many years before preparation of the plans. The commission is also interested in exploring whether some form of intermediate plan review and preparation, short of full scale engineering plans, could be used for determining approvability of such projects.

Staff will present a discussion of these topics.

Allan E. Stokes
Environmental Protection Division
February 2, 1988

88033DNR0016

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 14 DECISION

NOTICE OF INTENDED ACTION: CHAPTER 4 - RULE MAKING PROCEDURES

The Commission is requested to approve the filing of a Notice of Intended Action to adopt uniform rules on "Agency Procedure for Rule Making". The uniform rules were adopted by a task force established by the Governor's Office to develop a series of uniform rules on a variety of agency procedures, for use by state agencies. The governmental authorities overseeing agency activities have strongly urged us and other agencies to adopt these rules.

As with other rules of this type, our intent is to have the Director file the "main" Notice of Intended Action and ultimately the Adopted Rule, as Chapter 4 in Part 561 "Department of Natural Resources", of the Iowa Administrative Code. That rule will adopt the uniform rules (enclosed) by reference, with appropriate references to this agency. In turn, this Commission and the Natural Resource Commission will adopt 561--4 by cross-reference, as their rulemaking rules. In your case this will appear in the Administrative Code as 567(your Part)--4. This rule making action will require you to rescind existing WAWM Chapter 5, on this subject.

Since this rule making action will not result in much, if any, comment, and since we have been urged to expeditiously adopt these rules and delete the WAWM chapter, we will not set a public hearing on this action but will go through the normal public notice and opportunity for comment procedures.

Mike Murphy
Government Liaison Bureau
January 26, 1988

88026DNR0012

CHAPTER X
AGENCY PROCEDURE FOR RULE MAKING

Agency No.—X.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa Administrative Procedure Act, and the provisions of this chapter.

Agency No.—X.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)"*a*," solicit comments from the public on a subject matter of possible rule making by the agency by causing notice to be published in the administrative bulletin of the subject matter and indicating where, when, and how persons may comment.

Agency No.—X.3(17A) Public rule-making docket.

X.3(1) *Docket maintained.* The agency shall maintain a current public rule-making docket.

X.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the agency. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the (commission, board, council, director) for subsequent proposal under the provisions of Iowa Code section 17A.4(1)"*a*," the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

X.3(3) *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)"*a*," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

a. The subject matter of the proposed rule;

b. A citation to all published notices relating to the proceeding;

c. Where written submissions on the proposed rule may be inspected;

d. The time during which written submissions may be made;

e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;

f. Whether a written request for the issuance of a regulatory flexibility analysis, an economic impact statement, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal note has been issued, and where any such written request, analysis, statement, or note may be inspected;

g. The current status of the proposed rule and any agency determinations with respect thereto;

h. Any known timetable for agency decisions or other action in the proceeding;

i. The date of the rule's adoption;

j. The date of the rule's filing, indexing, and publication;

k. The date on which the rule will become effective; and

l. Where the rule-making record may be inspected.

Agency No.—X.4(17A) Notice of proposed rule making.

X.4(1) *Contents.* At least thirty-five (35) days before the adoption of a rule the agency shall cause Notice of its Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule;

b. The specific legal authority for the proposed rule;

c. Except to the extent impracticable, the text of the proposed rule;

d. Where, when, and how persons may present their views on the proposed rule; and

e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

X.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule X.12(2) of this chapter.

X.4(3) *Notices mailed.* Persons desiring to receive mailed copies of future Notices of Intended Action by subscription must file with the agency a written request indicating the name and address to which such notices should be sent. Within seven (7) days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail a copy of that notice to subscribers who have filed such a written request with the agency for mailed Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of (specify time period).

Agency No.—X.5(17A) Public participation.

X.5(1) *Written comments.* For at least twenty (20) days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to (identify office and address) or the person designated in the Notice of Intended Action.

X.5(2) *Oral proceedings.* The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency shall schedule an oral proceeding on a proposed rule if, within twenty (20) days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rule review committee, a governmental subdivision, an agency, an association having not less than twenty-five (25) members, or at least twenty-five (25) persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least twenty-five (25) members and the address and telephone number of the person signing that request.

3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

X.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* or subrule X.6(6) of this chapter.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than twenty (20) days after notice of its location and time is published in the administrative bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The agency, a member of the agency, or another person designated by the agency who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the agency does not preside, the presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the agency at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the agency decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the agency.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

X.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

Agency No.—X.6(17A) Regulatory flexibility analysis.

X.6(1) *Definition of small business.* For purposes of this rule "small business" shall have the same definition as in Iowa Code section 17A.31(1).

X.6(2) *Notice in Iowa Administrative Bulletin.* If the agency proposes a rule which may have an impact on small business, the Notice of Intended Action published in the Iowa Administrative Bulletin according to the requirements of Iowa Code section 17A.4(1)*"a"* shall expressly recite this possibility and describe the procedure to the followed for making a timely request of the agency for the issuance of a regulatory flexibility analysis.

X.6(3) *Mailing list.* Small businesses or organizations of small businesses may be registered

on the agency's small business impact list by making a written application addressed to (designate office). The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing twenty-five (25) or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of twenty-five (25) or more small businesses. The agency will periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within thirty (30) days after the letter is sent.

X.6(4) *Time of mailing.* Within seven (7) days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the agency shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

X.6(5) *Requests for analysis.* A request for a regulatory flexibility analysis that is calculated to reduce the impact of a rule on small business may be made within twenty (20) days after the publication of the Notice of Intended Action. A request is made when mailed or delivered to the agency and must be in writing and must identify the proposed rule for which the analysis is requested by ARC number and by Iowa Administrative Bulletin citation, if known. The request must also indicate whether the analysis is desired for the entire rule or only for specified portions of the rule. Such a request may be accompanied by a brief or other information relevant to the contents of the requested regulatory flexibility analysis. The agency shall issue a regulatory flexibility analysis that conforms to the requirements of Iowa Code section 17A.31(4) after a proper request from:

a. The governor;

b. The administrative rules review committee;

c. A political subdivision of the state;

d. Twenty-five (25) or more persons who sign the request, provided that each represents a different small business;

e. An organization of at least twenty-five (25) small businesses that is registered on the agency's small business impact list. That organization shall list the name, address, and phone number of not less than twenty-five (25) small businesses it represents.

X.6(6) *Analysis: publication and comments.* When the agency is required to issue a regulatory flexibility analysis for a proposed rule, the agency shall cause to be published in the Iowa Administrative Bulletin a concise summary of the regulatory flexibility analysis at least twenty (20) days prior to the adoption of the proposed rule. In the case of a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2), the agency shall cause the summary to be published within ninety (90) days after publication of the adopted rule. The published summary shall state how interested persons may obtain a copy of the full text of the regulatory flexibility analysis for the cost of its reproduction. The published summary shall also establish a time and place for oral proceedings in which interested persons may make oral presentations on the analysis.

X.6(7) *Agency initiated analysis.* The agency may also prepare a regulatory flexibility

analysis in advance of the publication of the Notice of Intended Action or at any other time. The agency may publish a summary of such an analysis with the Notice of Intended Action and provide the opportunity for oral presentation and submission of comments on the analysis simultaneously with those provided for in the Notice of Intended Action.

Agency No.—X.7(17A) Economic impact statement and fiscal note.

X.7(1) *Issuance of impact statement.* Upon written request of two or more members of the administrative rules review committee or the administrative rules coordinator the agency shall issue a statement indicating its estimate of the economic impact of a proposed rule or a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2) or made effective in reliance upon Iowa Code section 17A.5(2)"*b*," on all persons affected by it and upon the agency itself, or a statement indicating that such an estimate cannot be formulated and the reasons for this conclusion. The agency may also issue an economic impact statement for a proposed or adopted rule on its own motion.

X.7(2) *Impact statement contents.* When an economic impact statement is issued in response to a written request from two or more members of the administrative rules review committee or the administrative rules coordinator, the impact statement shall conform to all lawful and feasible requirements for that impact statement imposed by the requester. An economic impact statement may contain one or more of the following:

a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

b. A description of the probable quantitative and qualitative impact of the proposed rule upon affected classes of persons;

c. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

d. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;

e. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;

f. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

g. An indication of both the short-term and long-term consequences of the proposed rule;

h. An indication of the precise methodology used to reach its estimates and the particular data, if any, used to formulate its estimates and their source; and

i. Quantification of the data relied upon to formulate any estimate contained in that impact statement.

X.7(3) *Publication and notice of impact statement.* The economic impact statement or statement indicating the reasons why such an estimate is impossible shall be published in the Iowa Administrative Bulletin at least fifteen (15) days in advance of the adoption of the rule if it is requested for a proposed rule, or within forty-five (45) days of the time it is requested if it is requested for a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2) or made effective in reliance upon Iowa Code section 17A.5(2)"*b*."

X.7(4) *Fiscal note.* If a proposed rule is likely to necessitate additional expenditures by political subdivisions or agencies and entities that contract with a political subdivision to provide services which are beyond the expenditures explicitly provided by state law, a fiscal note estimating these costs shall be formulated by the agency. In addition to that estimate, the fiscal note shall indicate the precise methodology used to reach that estimate and the data, if any, used to formulate that estimate and their source. The agency shall indicate in its Notice of Intended Action where and how persons may obtain copies of the fiscal note prepared for that proposed rule, which shall, if feasible, be available by the date the Notice of Intended Action is published in the Iowa Administrative Bulletin. If the agency determines at the time it adopts a rule that the fiscal note issued in the proceeding upon which the rule is based contains errors, the agency shall, at the time, issue a corrected fiscal note.

Agency No.—X.8(17A) Time and manner of rule adoption.

X.8(1) *Time of adoption.* The agency shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within one hundred eighty (180) days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

X.8(2) *Consideration of public comment.* Before the adoption of a rule, the agency shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory flexibility analysis, economic impact statement, and fiscal note issued in that rule-making proceeding.

X.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

Agency No.—X.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

X.9(1) The agency shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

X.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question the agency shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

X.9(3) The agency shall commence a rule-making proceeding within sixty (60) days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the agency finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three (3) days of its issuance.

X.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

Agency No.—X.10(17A) Exemptions from public rule-making procedures.

X.10(1) *Omission of notice and comment.* To the extent the agency for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the agency may adopt that rule without publishing advance Notice of its Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

X.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them).

X.10(3) *Public proceedings on rules adopted without them.* The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule X.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than twenty-five (25) members, or at least twenty-five (25) persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule X.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within sixty (60) days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subsection, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule X.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

Agency No.—X.11(17A) Concise statement of reasons.

X.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within thirty (30) days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to (specify the office and address). The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

X.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

X.11(3) *Time of issuance.* After a proper request, the agency shall issue a concise statement of reasons by the later of the time the rule is adopted or forty-five (45) days after receipt of the request. A copy of the concise statement of reasons shall be mailed to the requesting party within two (2) working days of the date it is issued.

Agency No.—X.12(17A) Contents, style, and form of rule.

X.12(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

a. The date the agency adopted the rule;

b. A statement of the purpose of the rule;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule; and

f. The effective date of the rule.

X.12(2) *Incorporation by reference.* The agency may incorporate, by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive,

or otherwise inexpedient. The reference in the agency proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The agency may incorporate such matter by reference in a proposed or adopted rule only if the agency, organization, association or other persons originally issuing that matter makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this agency, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

X.12(3) *References to materials not published in full.* When the Code Editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall prepare and submit to the Code Editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text at actual cost upon request.

At the request of the Code Editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

X.12(4) *Style and form.* In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

Agency No.—X.13(17A) Agency rule-making record.

X.13(1) *Requirement.* The agency shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

X.13(2) *Contents.* The agency rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the agency, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the (agency head), in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory flexibility analysis, economic impact statement, or fiscal note prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for exceptions to, amendments of, or repeal or suspension of, the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to that objection; and

j. A copy of any executive order concerning the rule.

X.13(3) *Effect of record.* Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

X.13(4) *Maintenance of record.* The agency shall maintain the rule-making record for a period of not less than five (5) years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.

Agency No.—X.14(17A) Filing of rules. The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal note and any concise statement of reasons that was issued with respect to that rule. If a fiscal note or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five (5) working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

Agency No.—X.15(17A) Effectiveness of rules prior to publication.

X.15(1) *Grounds.* The agency may make a rule effective after its filing at any stated time prior to thirty-five (35) days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

X.15(2) *Special notice.* When the agency makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"*b*"(3), the agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the agency to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following: radio, newspaper, television, signs, mail, telephone or personal notice.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"*b*"(3), shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule X.15(2).

Agency No.—X.16(17A) General statements of policy.

X.16(1) *Compilation, indexing, public inspection.* The agency shall maintain an official,

current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(7)"*a*," "*c*," "*f*," "*g*," "*h*," "*k*." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)"*f*," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

X.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule X.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

Agency No.—X.17(17A) Review by agency of rules. At least every five (5) years, the agency shall review all of its rules and decisions of particular applicability to determine whether any new rule should be adopted or any existing rule should be amended or repealed. In conducting that review, the agency shall prepare a written report summarizing its findings, its supporting reasons, and any proposed course of action. A copy of the agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 15 DECISION

NOTICE OF INTENDED ACTION: CHAPTER 5 - PETITIONS FOR RULE MAKING

This item is essentially identical to the prior item. The Commission is asked to authorize us to proceed with adoption of uniform rules, this time on "Petitions for Rule Making". A copy of these uniform rules is enclosed.

Mike Murphy
Government Liaison Bureau
January 26, 1988

88026DNR0013

UNIFORM RULES ON AGENCY PROCEDURE

Governor Terry E. Branstad appointed a nine-member task force in the summer of 1985 to draft proposed uniform rules of agency procedure. The members of the task force are as follows: Arthur E. Bonfield, Chair, Barbara B. Burnett, Robert F. Holz, Jr., Kathryn L. Howe, Dennis J. Nagel, Elizabeth M. Osenbaugh, Julie F. Pottorff, Joseph A. Royce, and Ted Yancey. The hope is that the proposed uniform rules will be suitable for adoption by all or most state agencies and that they will reflect the need for fair state agency procedures on the one hand and the need for effective and efficient government on the other hand.

On December 16, 1985, the task force presented a report to the Governor. The Governor has accepted the task force recommendations on petitions for rule making and petitions for declaratory rulings. On December 5, 1986, the Governor accepted the task force recommendation for agency procedure for rule making for adoption by state agencies.

CHAPTER X
PETITIONS FOR RULE MAKING

Agency No.—X.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the agency at (designate office). A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink and must substantially conform to the following form:

(AGENCY NAME)

Petition by (Name of Petitioner)	)	
for the (adoption, amendment, or	)	PETITION FOR
repeal) of rules relating to	)	RULE MAKING
(state subject matter).	)	

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule X.4(17A).

X.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

X.1(2) The agency may deny a petition because it does not substantially conform to the required form.

Agency No.—X.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

Agency No.—X.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to (designate official by full title and address).

Agency No.—X.4(17A) Agency consideration.

X.4(1) Within fourteen days after the filing of a petition, the agency must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

X.4(2) Within sixty days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

X.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 11a INFORMATIONAL

ROADSIDE MANAGEMENT GRANTS TO COUNT CONSERVATION BOARDS

The 1987 session of the Iowa General Assembly passed the Groundwater Protection Act, which established an agriculture management account of the Groundwater Protection Fund, among other things. Of the 13 percent of that fund allocated for financial incentive programs, the law allowed that not more than $50,000 is appropriated for the fiscal year beginning July 1, 1987 and ending June 30, 1988 to the Department of Natural Resources for grants to county conservation boards for the development and implementation of projects regarding alternative practices in the remediation of noxious weed or other vegetation within highway rights-of-way. [455E.11[2]b(2)(d)] This brief identifies the process by which county conservation boards may apply for grants for local roadside vegetation management projects, assuming funds in fact become available.

The department will provide simple application forms to the county conservation boards which are to be completed and signed by the chairperson of the applying board or boards and be accompanied by a copy of the official minutes of the meeting at which the request was approved. Applications must be received by the department and postmarked no later than 12 midnight, April 15, 1988 to be considered for grant money.

Applications will be reviewed by a review and screening committee made up of the following individuals:

1. Chief of the Governmental Liaison Bureau or designee, DNR.

2. Chief of the Surface and Groundwater Protection Bureau or designee, DNR.

3. Chief of the Planning Bureau or designee, DNR.

4. Representative selected by the Secretary of Agriculture.

5. Chairperson of the Iowa Association of County Conservation Boards or designee.

6. Chairperson of the County Conservation Directors Association or designee.

The review committee will screen projects based upon the following criteria:

1. Emphasis on groundwater protection.

2. Project scope including geographical area affected and the number of counties affected.

3. Educational value, whether as a demonstration project or as planning assistance.

4. Acres of land affected.

5. Wildlife habitat benefits.

6. Effects on road use and transportation.

7. Project costs paid for by or in cooperation with the local sponso local costs could include county conservation budget dollars or to the sponsor from private organizations or individuals.

Although this program is established as a grant program, preferenc given to those projects in which local-sponsored dollars or donat provided.

The review and screening committee will make recommendations to the concerning projects to be funded. Projects selected by the directo formalized by a contract between the county board or boards and the de Contracts involving a grant in excess of $25,000 will be brough commission for prior approval.

Following are examples of projects that may be funded by this progra remember that these are only examples and that unique and experimenta of roadside vegetation management will be looked upon favorably. Th are the result of meetings over the last nine months involving repres of the county boards and department staff.

1. Program planning and technical guidance. This can include ex develop a regional or state plan for roadside vegetation manag for expenses associated with advising governmental entities re for roadside vegetation management. This may include salary, tra and administrative cost. The program will not provide reimburs unemployment compensation.

2. Roadside vegetative management technical information. The pr include the cost of the development and production of technical material to be used for promotion of roadside vegetative m techniques. This may include slide/tape programs, educational v programs and brochures.

3. The program may provide dollars for roadside vegetation m demonstration projects. This may include the costs of roadside v inventories, equipment rental or, if no other option exists, purchase, seed bed or seedling bed preparation and planting incl cost of labor and gasoline, seed or seedlings, signing of dem sites.

Products or equipment that is purchased by county conservation bo state assistance under this program shall be used primarily for the p roadside vegetation management. The Department of Natural Resources the authority to reassign or sell equipment funded under this progr associated county conservation board decides that that equipment or p no longer necessary in the local program. Grants will not be avai expenses incurred prior to the grant agreement.

County conservation boards may apply for reimbursement from this pro project completion or, in the case of very large projects, in increme less than $5,000. Boards that receive funds shall keep adequat

relating to the administration of the program, particularly relating to all incurred costs. These records must at least include copies of cancelled warrants and invoices. This information will be provided with the request for reimbursement by the board. This information will also be made available upon request for audit by appropriate personnel of the Department of Natural Resources and the state Auditor's office.

ROBERT WALKER
2-2-88

RW:lb/RW1.LSB

IOWA'S COUNTY CONSERVATION BOARD PROGRAM

Enabling legislation for the formation of county conservation boards was approved by the 1955 session of the Iowa General Assembly. The voters in 16 counties approved the formation of county conservation boards in their counties in the 1956 elections. The purpose of these boards is to acquire, develop, maintain and make available to the county inhabitance public parks, preserves, parkways, playgrounds, recreation centers, county forests, wildlife and other conservation areas, to promote and preserve the health and general welfare of the public, to encourage the orderly development and conservation of natural resources, and to cultivate good citizenship by providing programs of public recreation.

In the early years of the program, county conservation boards oriented their efforts toward local county parks. As time passed, their efforts became more broad and more fully met the county conservation law. The conservation boards now provide 264 county parks as well as a multitude of wildlife areas, river access sites, historical sites, preserves and environmental education facilities.

Iowa is blessed with the most successful county conservation program in the United States with 98 of the 99 counties having operational boards that manage 1,152 areas encompassing 87,367 acres of land.

These county conservation boards operate under their own budgets as a part of county government. The majority of their funds come from county tax dollars with the remainder coming from grant and cost share programs and user fees. The emphasis in the past five years has been programmatic. The counties now have taken the leadership roll in environmental education programming in Iowa. Forty-three counties now employ 45 full-time naturalists and provide 18 nature centers. Seventy-eight of the county conservation boards work with private landowners in acres for wildlife programs in which they assist the private landowner in planting native grasses and seedling trees on portions of the private land to encourage wildlife habitat. Some conservation boards have become involved in roadside vegetation management programs in their counties. Recently, six county conservation boards have taken over the responsibility of noxious weed control in their counties. These county conservation boards have hired trained, professional individuals to establish roadside vegetation management programs. The emphasis of these programs is to eliminate indiscriminate chemical spraying of road ditches and to incorporate nonchemical methods of noxious weed control. These counties, in conjunction with staff of the Department of Natural Resources, recently produced an informational slide/tape program to inform the general public about the values of professional roadside vegetation management. We anticipate that in the near future, many more county conservation boards will become involved in roadside vegetation management at the county level and that we will see more successful alternative practices including a reduced use of herbicides in Iowa's noxious weed control programs.

ROBERT WALKER
2-2-88

RW:lb/RW2.LSB

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 17 INFORMATION

GROUNDWATER PROGRAM EVALUATION CRITERIA

Section 108.7 of HF 631 requires the Director of the Department of Natural Resources to "develop and adopt by administrative rule, criteria for evaluating groundwater protection programs by July 1, 1988." These criteria are to be used to evaluate the effectiveness of the various aspects of Iowa's groundwater protection program at meeting the goals and policies stated in HF 631.

The Department is beginning the process of developing and adopting these evaluation criteria rules. We will be consulting with all of the involved State agencies and with soil district commissioners and local agencies to gain their input on how we should measure the success or failure of all parts of Iowa's groundwater protection program.

We intend to place the initial set of evaluation criteria rules on Notice of Intended Action in March 1988, hold public hearings in April/May, and adopt the rule final by July 1, 1988. As we gain better insight into the program, we may refine and expand the evaluation criteria so that they measure the truly significant aspects of program implementation and effectiveness.

James Combs
Coordination & Information Division
February 2, 1988

88033DNR0011

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 18 DECISION

PROPOSED CONTESTED CASE DECISION -- CITY OF WAPELLO

On July 30, 1987, the Director issued Administrative Order No. 87-WW-48 to the City of Wapello, requiring the City to comply with an implementation schedule for wastewater facility improvements and to pay a $500.00 penalty. The City appealed that order and the matter proceeded to administrative hearing on October 27, 1987. The parties subsequently filed written briefs with the hearing officer, and the hearing officer issued the attached Findings of Fact, Conclusions of Law, and Order on January 13, 1988. The decision affirms the Director's Order.

The City may appeal this order to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the decision. If there is no appeal or review of the decision, it automatically becomes the final decision of the Commission.

Mike Murphy
Government Liaison Bureau
January 21, 1988

88021DNR0019

BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF:	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
City of Wapello	)	AND ORDER
Wastewater Facility No. 58-79-0-01	)	DIA No. NHS 880066

On July 30, 1987, the Iowa Department of Natural Resources (Department) issued Administrative Order No. 87-WW-48 to the City of Wapello. The order required the City of Wapello to comply with the implementation schedule set forth to meet secondary treatment effluent limits and to pay an administrative penalty of $500.00. On August 14, 1987, The city of Wapello appealed from the issuance of Administrative Order 87-WW-48. A Notice of Hearing set the hearing for October 27, 1987. The City of Wapello filed its Petition on September 29, 1987. The Department filed its Answer on October 19, 1987.

The hearing was held on October 27, 1987 in the fourth floor conference room, Wallace State Office Building, 900 E. Grand, Des Moines, Iowa 50319. Representing the parties were Diana Hansen, counsel for the Department and Roger A. Huddle, counsel for the City of Wapello. 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 Exhibit A.	-	Inspection Report and Cover Letter dated 9-20-86.
Department Exhibit B.	-	Letter dated 5-11-87 to the city from department.
Department Exhibit C.	-	Inspection Report and Cover Letter dated 4-17-86.
Department Exhibit D.	-	City of Wapello Plan of Action and Cover Letter dated 6-18-86.
Department Exhibit E.	-	Approval of Wapello Plan of Action dated 10-1-86.
Department Exhibit F.	-	Report of 11-17-86 visit to Wapello Wastewater Treatment Plant (WWTP).
Department Exhibit G.	-	Letter to Department dated 1-20-87 from Ronald R. Meyer.

Department Exhibit H.	-	Inspection Report and Cover Letter dated 6-5-87.
Department Exhibit I.	-	Descriptive information on Wapello WWTP.
Department Exhibit J.	-	Tables for 1986, 1987 shows monthly operating report data for Wapello WWTP.
Department Exhibit K.	-	Table of 1985 monthly report data from WWTP.
Department Exhibit L.	-	Table of 1983, 1984 monthly report data from WWTP.
Department Exhibit M.	-	Computer printout of 1982-1984 data from WWTP.
Department Exhibit N.	-	Letter to Steve Williams and personal computer program.
Department Exhibit O.	-	EPA-Guidance for Permits and Compliance Personnel - Secondary Treatment Redefinition.
Department Exhibit P.	-	Technical Support Document for Proposed Regulation under Section 304(d)(4) of the Clean Water Act, as amended.
Department Exhibit Q.	-	Copy of NPDES permit dated February 19, 1987 for City of Wapello.
Department Exhibit R.	-	Copy of NPDES operation permit issued 11-17-82 to Wapello.
Department Exhibit S.	-	Letter to Roger Huddle dated 6-18-87 from LaVoy Haage.
Department Exhibit T.	-	Secondary Redefinition Calculation Program for City of Wapello.
Appellant Exhibit 1.	-	Table of 1985-1987 data entered into computer program.
Appellant Exhibit 2.	-	Table of calculations used in computer program.
Appellant Exhibit 3.	-	Calculated limits for Wapello based on the Secondary Redefinition Calculation program.

Appellant Exhibit 4. - Computer graph based on data in Exhibit 1.

Appellant Exhibit 5. - Results of 95% computations.

Findings of Fact

1. The Clean Water Act, 33 U.S.Code Section 1251 et. seq, as amended by the Clean Water Act of 1977, P.L. 95-217, and Municipal Waste Water Treatment Construction grant Amendments of 1981, P.L. 97-117 requires all publically owned treatment works (POTW) to meet the established secondary effluent limits no later than July 1, 1988. The Department's Municipal Improvement Program (MIP) (567 Iowa Administrative Code 64.6(6) requires cities operating wastewater treatment facilities which are now out of compliance with permit limitations to prepare a Plan of Action to achieve and maintain compliance with final effluent limitations in its NPDES permit.
(Testimony of Edward Moreno)

2. On September 20, 1984 the City of Wapello (Wapello) was notified by the Department that its final effluent exceeded effluent limitations in July and August, 1983 and January and February, 1984. Wapello was requested to submit a plan of action within six months which demonstrates how existing treatment facilities would be brought into compliance by 1988.
(Testimony of Edward Moreno; Department Exhibit A)

3. On June 18, 1986 Wapello submitted its Plan of Action, which was prepared by Meyer Engineering Service, to the Department. Wapello's existing wastewater treatment facilities consist of a two-cell waste stabilization lagoon constructed and placed in operation in 1968. The existing system consists of combined sewers (storm and waste), separate sewers, and wastewater pumping stations. The lagoon was designed for 2200 Population Equivalent and peak flow of 0.415 mgd. At 0.415 mgd the detention time is 60 days.
(Department Exhibit D; Testimony of Edward Moreno, Ron Meyer)

4. The submitted Plan of Action proposed the renovation of the existing wastewater lagoons to an aerated facultative pond facility. Construction would include installation of five bubble diffused aerators, feeder piping and appurtenant fittings, construction of a control building, and installation of a quiescent cell baffle curtain wall, renovation of existing control piping and structures and construction of new control piping and structures.
(Department Exhibit D)

5. The Plan of Action estimated total construction costs at $306,000 and proposed the following implementation schedule:

A. Complete and submit preliminary Engineering Report March, 1987.

B. Complete and Submit Construction Plans and Specifications November, 1987.

C. Bid Letting and Contract Award February, 1988.

D. Complete Construction July 1, 1988.

6. The Department approved Wapello's Plan of Action on October 1, 1986.
(Department Exhibit E)

7. A Department inspection report dated December 17, 1986 noted that while the lagoons are to be operated on a storage/drawdown method, because of I/I (influent/inflow) they have discharged continuously for most of 1986. An effluent sample was taken and analyzed and concentrations were well within permit limitations.
(Department Exhibit F; Testimony of Edward Moreno)

8. On February 19, 1987 an NPDES permit, no. 58-79-0-01, was issued to the City of Wapello for the discharge from the Wapello Waste Stabilization Lagoon. A Compliance Implementation Schedule was incorporated into the NPDES permit which required Wapello to complete certain phases of the construction under the Plan of Action by March 31 and November 30, 1987 and February 28 and July 1, 1988. The permit also imposed interim effluent limits of 45 CBOD5(30-day average), 70 CBOD5(7 day ave), 80 Suspended solids (30 day ave.) and 120 SS (7 day average).
(Department Exhibit Q)

9. On May 8, 1987 Wapello appealed the implementation schedule to the Department. The Department denied Wapello's request for an evidentiary hearing on the grounds of untimely appeal.
(Department Exhibit S)

10. The Wapello Wastewater Treatment System was inspected by the Department on May 19, 1987. The inspection report noted two violations of the NPDES permit: failure to record all effluent flows and failure to report bypassing on the Monthly operation Reports (MOR). The inspection report also noted that Wapello had requested an administrative hearing to appeal the need to proceed with the approved Plan of Action and that the city's engineer contends that the wastewater treatment facility is eligible for "equivalent to secondary" classification.
(Department Exhibit H)

11. Standard Secondary Effluent Limits are 25 CBOD5 mg/ liter for 30 day average and 80 mg/l Suspend Solids (SS) for the 30 day average. Treatment Equivalent to Secondary Treatment effluent limits for this facility would be 40 CBOD mg/ liter for 30 day average and the same limits as standard for suspended solids.

12. A review of Wapello's monthly operating reports for the

period from January 1986 to March 1987 revealed that the Wastewater Treatment Plant exceeded its average flow limitation of .415MGD in June, July, and October, 1986. The maximum flow limitation of .623 MGD was exceeded in February, April, June, July, August, September, October and December, 1986 and March, 1987. The facility is subject to bypassing in wet weather.
(Testimony of Edward Moreno; Department Exhibit H,J,K)

13. The city's NPDES permit, no 58-79-0-1, which expired 8-31-87, required the treatment facility to draw down its storage lagoon in the spring and/or fall to take advantage of the higher than average stream flows at those times of the year. This requirement is consistent with the Iowa Wastewater Facilities Design Standards (Chapter 18C) for Wastewater Treatment Ponds which requires controlled discharge facilities do have a storage capacity of 180 days, (18C.5.3). The Wapello Wastewater Treatment Facility was constructed prior to the effective date of the Design Standards. However, Wapello did not appeal the twice per year draw down limitation in its NPDES permit.
(Department Exhibit R; Testimony of Edward Moreno)

14. The following table contains the average and maximum days detention time for the Wapello Wastewater Treatment Plant for 1982-1986:

1982	53/26
1983	63.5/42
1984	85/46
1985	92/49
1986	63/24

The city met the average detention time of 60 days for all years shown except 1982.
(Department Exhibit I, Testimony of Edward Moreno)

15. The Department notified the City of Wapello that it was not eligible for "equivalent to secondary" classification because the treatment facility is "hydraulically overloaded."
(Testimony of Edward Moreno; Department Exhibit B)

16. Wapello did not establish that it provides significant biological treatment of municipal wastewater. Under the rules pertaining to "treatment equivalent to secondary treatment" the thirty (30) day average percent removal shall not be less than 65 percent (65%). Special consideration is allowed for combined sewer systems which may not be able to meet the percentage removal requirements during wet weather. For such treatment works, the decision must be made on a case-by-case basis as to whether any attainable percentage removal can be defined, and if so what the level should be.

One of the department's witnesses testified that Wapello is achieving at least 50% removal. The city's engineer testified that in 1985 and 1986 Wapello achieved 81% and 75% average annual

removal respectively. However, the rules require 30 day average removal. The exhibits submitted did not reflect actual percentage removal because they showed a uniform value of 200 BOD influent, not actual influent values.

No standards or guidelines are provided to determine whether 50% removal could be considered adequate removal in this particular case. The accuracy of the 50% figure is questionable since there has been unreported bypassing. Since bypassing was not reported, the frequency and amount of bypassing cannot be determined, nor can its effect on the 30 day average percentage removal be determined. For this reason, the city has not carried its burden of proof of establishing that its treatment works provided significant biological treatment.
(Testimony of Edward Moreno, Ron Meyer, Appellant Exhibit 1, Department Exhibit H; 567 Iowa Administrative Code 62.3(3)(f)(3);62.3(2)(a)

17. At one time the Department recommended that the city separate its sewer systems, but the city has determined that separation of their sewer systems would not be economically feasible.
(Testimony of Ron Meyer)

18. The city's treatment facility is properly maintained and operated. However, the CBOD5 concentrations consistently achievable through proper operation and maintenance of the treatment works exceed the standard secondary effluent limits.
(Testimony of Edward Moreno; Ron Meyer; Appellant;Exhibit 1; Department Exhibit T; Appellant Exhibit 3, Department Exhibit,J,K,L)

19. BOD5 (Biological oxygen demand) and CBOD5 (carbonaceous biological oxygen demand) are different forms of the same test. CBOD5 is a nitrification inhibitive test. The results between the two tests vary by 5mg/l. BOD5 can be converted to CBOD5 by subtracting 5mg/l.
(Testimony of Edward Moreno)

20. Wapello's monthly operating reports have utilized a BOD5 test. Using the conversion formula above, the reports from January 30, 1985 until June 30, 1987 (a thirty month period) show that Wapello exceeded the equivalent to secondary limits of 40 CBOD5 mg/l in three of the thirty months shown. In February, 1987 CBOD5 was 50 mg/l. In January, 1986 CBOD5 was 48 mg/l. In August, 1985 CBOD5 was 43 mg./l.

21. Considerable conflicting testimony was received regarding the proper interpretation of the "95th percentile value of the thirty (30) day average effluent quality achieved by the upgraded or existing treatment works in a period of at least two (2) years, excluding values attributable to upsets, bypasses, operational errors, or other unusual conditions." An EPA designed computer program for use in calculating the 95th percentile for treatment works determined to be eligible for Test Limits,was run by

Department personnel using 30 months of operating data from the Wapello WWTP. The results were a 30 day average for BOD5 of 49 mg/L and for TSS of 79 mg/l. Department personnel used the program as a tool and conceded that they did not fully understand the statistical theories and methods underlying it. When called to explain how the 95% value for TSS could be higher than any individual TSS value entered, Moreno testified that he assumed the program took into consideration the wide variability in TSS values for the period (13-76) and this accounted for the 95% value being higher than the highest TSS value. The same program was run on 62 months of data and the results were 63 mg/l BOD5 for the 30 day average an 77mg/l TSS for the 30 day average.
(App Exhibit 1,2,3; Department Exhibit, N,T; Testimony of Edward Moreno, Steven Williams)

22. The City of Wapello consulted its own expert, Professor Warren Bol, University of Iowa, Business Administration Department. Using his own calculations and the same data as that used by the Department, Boe calculated the 95% to be 47.38 mg/l BOD5 for the 30 day average and 70.89 mg/l TSS for the 30 day average.
(Testimony of Ron Meyer; Appellant Exhibits 4 and 5)

23. The Wapello Wastewater Treatment Plant was designed to handle a maximum organic loading of 3701bs. BOD5 per day. The plant has often exceeded the 3701bs. BOD5 per day maximum and at one time received a loading of 10001bs. For these reasons the Department concluded that Wapello's treatment facility is "organically overloaded."
(Testimony of Edward Moreno; Department Exhibits A,C)

CONCLUSIONS OF LAW

1. 567 Iowa Administrative Code 69.6(6) provides:

64.6(6) POTW compliance-plan of action required. The owner of a publicly owned treatment works (POTW) must prepare and implement a plan of action to achieve and maintain compliance with final effluent limitations in its NPDES permit, as specified below:

a. The director shall notify the owner of a POTW of the plan of action requirement, and of an opportunity to meet with department staff to discuss the plan of action requirements. The POTW owner shall submit a plan of action within six (6) months of such notice, unless a longer time is needed and is authorized in writing by the director.

b. The plan of action will vary in length and complexity depending on the compliance history and physical status of the particular POTW. It must identify the deficiencies and needs of the system, describe the causes of such deficiencies or needs, propose specific measures (including an implementation schedule) that will be taken to correct the deficiencies or meet the needs, and discuss the method of financing the improvements proposed in the plan of action.

The plan may provide for a phased construction approach to meet

interim and final limitations, where financing is such that a long-term project is necessary to meet final limitations, and shorter-term projects may provide incremental benefits to water quality in the interim.
Information on the purpose and preparation of the plan can be found in the departmental document entitled "Guidance on Preparing a Plan of Action", available through the records center of the department.

c. Upon submission of a complete plan of action to the department, the plan should be reviewed and approved or disapproved within sixty (60) days unless a longer time is required and the POTW owner is so notified.

d. The NPDES permit for the facility shall be amended to include the implementation schedule or other actions developed through the plan to achieve and maintain compliance.

This rule is intended to implement Iowa Code chapter 455B, division III, part 1, (455B.171 to 455B.187).

2. The Standard Secondary effluent limits for POTW are set forth 567 Iowa Administrative Code 62.3.

567-62.3(455B) Secondary treatment information: effluent standards for publicly owned treatment works and privately owned domestic sewage treatment works.

62.3(1) General. The following paragraphs describe the minimum level of effluent quality attainable by secondary treatment in terms of the pollutant measurements carbonaceous biochemical oxygen demand (CBOD5), the five (5)-day measure of the pollutant parameter carbonaceous biochemical oxygen demand; suspended solids (SS), the pollutant parameter total suspended solids; and pH, the measure of the relative acidity or alkalinity. All requirements for each pollutant measurement shall be achieved by publicly owned treatment works and privately owned domestic sewage treatment works except as provided for in subrules 62.3(2) and 62.3(3).

Effluent limitations on pollutants other than carbonaceous biochemical oxygen demand (five day), suspended solids and pH may be imposed in the NPDES permit. Such limitations will reflect pretreatment requirements that may be imposed on users of the treatment works.

a. Carbonaceous biochemical oxygen demand (five (5) day) - CBOD5.

(1) The thirty (30)-day average shall not exceed 25 mg./l/

(2) The seven (7)-day average shall not exceed 40 mg./l/

(3) The thirty (30)-day average percent removal shall not be less than 85 percent (85%).

b. Suspended solids - SS.

(1) The thirty (30)-day average shall not exceed 30 mg/l.

(2) The seven (7)-day average shall not exceed 30 mg/l.

(3) The thirty (30)-day average percent removal shall not be less than 85 percent (85%).

c. pH: The effluent values for pH shall be maintained within the limits of 6.0 to 9.0 unless the publicly owned treatment works demonstrates that:

(1) Inorganic chemicals are not added to the waste stream as

part of the treatment process, and
(2) Contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

3. 567 Iowa Administrative Code 62.3(3) provides:
62.3(3) Treatment equivalent to secondary treatment. This subrule describes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment in terms of the pollutant measurements CBOD5, SS and pH. Treatment works shall be eligible at any time for consideration of effluent limitations described for treatment equivalent to secondary treatment if:
a. The CBOD5 and SS effluent concentrations through proper operation and maintenance of the treatment works exceed the minimum level of the effluent quality set forth in 62.3(1) "a" and 62.3(1) "b"; and
b. A trickling filter or waste stabilization pond is used as the principal process; and
c.The treatment works provide significant biological treatment of municipal wastewater; and
d. The facility was not constructed since January 1, 1972, in order to achieve design effluent limits set forth in 62.3(1) "a,""b", and "c" or predecessor rules on secondary treatment.
An eligible trickling filter or waste stabilization pond may have undergone an upgrade to achieve the effluent requirements specified in this subrule. Nothing in this subrule shall be construed to allow a facility to circumvent the design standards of chapter 64 in the replacement or construction of the individual treatment units; and
e. The treatment works is one that does not receive organic or hydraulic loadings which prevent the facilities from consistently complying with 62.3(3)"f,""g," and "h."
All requirements for the specified pollutant measurements in paragraphs "f,""g," and "h" following in this subrule shall be achieved except as provided for above in 62.3(2) or paragraph "i" of this subrule below.
f. CBOD5 limitations:
(1) The thirty (30)-day average shall not exceed 45mg/l.
(2) The seven (7)-day average shall not exceed 60 mg/l.
(3) The thirty (30)-day average percent removal shall not be less than 65 percent (65%).
g. SS limitations. Except where SS values have been adjusted in accordance with subrule
62.3(2), paragraph "c" above:

(1) The thirty (30)-day average shall not exceed 45 mg/l.
(2) The seven (7)-day average shall not exceed 65 mg/l.
(3) The thirty (3)-day average percent removal shall not be less than 65 percent (65%).
h. pH. The requirements of above subrule 62.3(1), paragraph "c," shall be met.
i. Permit adjustments. More stringent limitations are required if the thirty (30)-day average and seven (7)-day average CBOD5 and SS effluent values that could be achievable

through proper operation and maintenance of the upgraded or existing treatment works, based on an analysis of the past performance of the treatment works, would enable the treatment works to achieve more stringent limitations. These more stringent limitations shall be maintained and not relaxed unless as specified in subrule 62.3(2)"b."

Effluent concentrations consistently achievable through proper operation and maintenance are:

(1) The 95th percentile value of the thirty (30)-day average effluent quality achieved by the upgraded or existing treatment works in a period of at least two (2) years, excluding values attributable to upsets, bypasses, operational errors, or other unusual conditions, and

(2) A seven (7)-day average value equal to 1.5 times the value derived for the thirty (30)-day average above.

This subrule shall only be applied when the existing or upgraded facility has achieved its design organic loading as specified in the most recent construction permit or its accompanying documentation. The determination of the effluent concentration consistently achievable through proper operation and maintenance shall only be based on the effluent quality data following the period when the design organic loading has been achieved.

4. 567 Iowa Administrative Code 62.3(2)(a) provides:

62.3(2) Special considerations.

a. Combined sewers. Treatment works subject to this part may not be capable of meeting the percentage removal requirements established under 62.3(1)"a"(3) and 62.3(1)"b"(3), or 62.3(3)"f"(3) and 62.3(3)"g"(3) during wet weather where the treatment works receive flows from combined sewers (i.e., sewers which are designed to transport both storm water and sanitary sewage). For such treatment works, the decision must be made on a case-by-case basis as to whether any attainable percentage removal level can be defined, and if so. what the level should be.

5. The Department concedes that the City of Wapello satisfies the requirements of 567 I.A.C. 62.3(3)(a)(b) and (d).

6. Findings of Fact number 16 is hereby incorporated as though fully set forth .

7. Much of the testimony at the hearing centered on whether the "treatment works is one that does not receive organic or hydraulic loadings which prevent the facilities from consistently complying with 62.3(3)"f,""g" and "h". The evidence is clear that the city failed to comply with the treatment equivalent to secondary treatment (test) effluent limits in three out of thirty months. Is this consistent compliance? The Department argues that "consistent compliance" is compliance 100% of the time. The city argues that a 95% formula should be utilized in evaluating consistent compliance and that some violations of effluent limits are necessarily anticipated.

The rule in question uses two similar, though not identical, phrases. 567 I.A.C 62.3(3)(a) states in pertinent part "The CBOD5 and SS effluent concentrations consistently achievable through proper operation and maintenance of the treatment works..." (emphasis added.) Later in the same rule, effluent concentrations consistently achievable through proper operation and maintenance is defined as: "The 95th percentile value of the thirty (30) day average effluent quality achieved by the upgraded or existing treatment works in a period of at least two (2) years, excluding values attributable to upsets, bypasses, operational errors, or other unusual conditions..."

Generally, rules of statutory construction and interpretation also govern construction and interpretation of rules and regulations of administrative agencies. Messina v. Iowa Department of Job Service, 341 NW2d52 (Iowa 1983). It is a rule of statutory construction that when the same or substantially the same phrases appear in the statute, they will be given consistent meaning absent contrary legislative intent. Kehde v. Iowa Department of Job Service, 318 NW2d 202 (Iowa 1982).

In this case, "consistently achievable" and "Consistently complying" are substantially the same phrases. They should be given consistent meaning, since no contrary intent is expressed in the rule. This result is also supported by the Technical Support Document for Proposed Regulations under section 304(2)(4) of the Clean Water Act, published by the U.S. Environmental Protection Agency, (Exhibit P) which states at page 32:

A commonly accepted level of reliability in wastewater engineering and design of wastewater treatment facilities is a 95th percentile for a 30-day average effluent value. Designing for a higher capital and operating costs that are, in most cases, considered to be less cost-effective in terms of pollutant removal achieved. Given an appropriate long-term average effluent value and an appropriate variability factor, the 95th percentile 30-day average value would reflect a value that the facility would be expected to attain at least 95 percent of the time, or 19 months out of every 20 months. In a typical 5-year period period, design value would predict that the 95th percentile effluent concentration would be exceeded only 3 times on a monthly average basis when design conditions are achieved. Throughout the useful life of the facility, especially when the facility was operated below design conditions, the frequency occurrence of exceedances would of course be less.

If the 95% value as expressed in this document were accepted, then Wapello's figures would represent compliance approximately 90% of the time, since they failed to meet TEST limit in 3 out of 30 months. If 62 months of data are examined, the City failed to achieve TEST limits 9 times, which is significantly less than 90%. (Department Exhibit T)

8. The Permits Division of the Office of Water Enforcement and

Permits, U.S. Environmental Protection Agency, has prepared a document entitled " Guidance for Permits and Compliance Personnel-Secondary Treatment Redifinition." (Department Exhibit O). That document states, "where eligibility is unclear, the burden of proof for performance data or other information on the facility is the responsibility of the municipality." (Exhibit O, at V-2). The same document earlier states, "Obviously a treatment works that is operating beyond its design hydraulic or organic loading limit is not considered an eligible facility. If overloading or structural failure are causing poor performance, the solution to the problem is construction, not effluent limitation adjustment." (Department Exhibit O,p.3) (emphasis original). Wapello's treatment works has exceeded both its design hydraulic and organic loading in the past two years. (See Findings of Fact 11,23.)

9. The Wapello Wastewater Treatment Facility is clearly operating beyond its design hydraulic and organic loading limits. Furthermore, it is not currently capable of consistently complying with 567 Iowa Administrative Code 62.3(3) "f,""g" and "h." It fails to meet treatment equivalent to secondary treatment effluent limits at least twice as often as would be allowed under a 95% test of reliability. Therefore, at this time the City of Wapello is not eligible for treatment equivalent to secondary treatment limits pursuant to 62.3(3). The city argues that it should be allowed to upgrade its facility to meet TEST limits. However, no specific information was presented concerning the nature and expected results of such an upgrade. Therefore, there is insufficient evidence upon which to conclude that Wapello would be eligible for TEST limits if allowed to upgrade.

10. The city further argues that it is unconstitutional for the Department to issue an Administrative Order finding the city in non-compliance when it has eight or nine months in which to meet or fall within the eligibility requirements of Section 567-62.3(3) for treatment equivalent to secondary. Administrative Order 87-WW-48 seeks compliance with the implementation schedule, which the Department is authorized and ordered to require pursuant to 567 Iowa Administrative Code 64.6(6), as well as federal regulations implementing the Clean Water Act, 40 CFR§§123.25, 122.47(a)(i). The city has been accorded sufficient due process. The city was given ample opportunity to submit its own plan of action and its own implementation schedule. After the implementation schedule was established in the NPPES permit in February, 1987, the city had the right to appeal, which it did not do. Iowa Code 455B.174(4). The administrative rules on treatment equivalent to secondary treatment had been in effect for over six months at the time the NPDES permit was issued.

The Department has lawfully sought to enforce the implementation schedule contained in the NPDES permit by its issuance of Administrative Order No. 87-WW-48.

11. Administrative Order No. 87-WW-48 imposes an administrative penalty of $500.00 pursuant to Iowa Code section 455B.109 and Chapter 567--10 of the Iowa Administrative Code. At the time the Order was issued the city had failed to submit its preliminary engineering report, which had been due by March 31, 1987. The city had not notified the department that it did not intend to submit the preliminary engineering report on time, nor did it request an extension.

The Administrative Order assessed a $250.00 penalty due to the gravity of the violation and an additional $250.00 for culpability. Under the rule the city had the legal right to try to establish its eligibility for treatment equivalent to secondary treatment effluent limits at any time, however this right does not vitiate its obligation to comply with its NPDES permit and the implementation schedule. Since no formal written request for TEST eligibility was made by the City, it is difficult to determine the exact date when the subject was first raised by the City. The earliest documented oral request was sometime in May. (Department Exhibit B)
This would not excuse Wapello's failure to meet its March 31st deadline.

It is therefore ORDERED that the issuance of Administrative Order No. 87-WW-48 by the Department is AFFIRMED.

Dated this 13th day of January, 1988.

Margaret LaMarche

Margaret LaMarche
Hearing Officer
Iowa Department of Inspections and Appeals

ML/nlh

cc: Diana Hansen
Roger Huddle

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 19 DECISION

CONTESTED CASE DECISION - DENNIS GREINER (TABLED ITEM)

This matter was tabled by the Commission last month. The Commision may choose to make a final decision on this matter as a result of discussion under the previous agenda item.

Mike Murphy
Government Liaison Bureau
February 2, 1988

88033DNR0009

IOWA DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 20 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).

City of Iowa City - wastewater
Aspro, Inc. - air quality
Kimballton Utilities - penalty collection
City of Donnellson - wastewater

Mike Murphy
February 1, 1988

88032DNR0017

Item # 21
Hand-out

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
SELECTED BILL HISTORY

February 12, 1988

HF 2195

By Schrader.

A bill for an act relating to the sale and use of packaging products, providing sales and use tax incentives for the use of degradable or biodegradable packaging products, subjecting violators to a penalty, and providing an effective date.

Feb. 09 88 Introduced, referred to Energy and Environmental Protection. H.J. 291.

SF 2114

By Agriculture.

A bill for an act relating to the fee and reporting requirements for certain animal health pesticides.

Feb. 02 88 Introduced, placed on calendar under Rule 28. S.J. 244.
Feb. 02 88 Committee report. S.J. 243.
Feb. 02 88 Approved. S.J. 243.
Feb. 04 88 Passed Senate, ayes 46, nays none. S.J. 271.
Feb. 09 88 Message from Senate. H.J. 295.
Feb. 11 88 Read first time, referred to Agriculture. H.J. 306.

SF 2125

By Natural Resources.

A bill for an act restricting the service area of sanitary landfills, providing for the Act's retroactive applicability, and providing an effective date.

Feb. 05 88 Introduced, placed on calendar. S.J. 276.
Feb. 05 88 Committee report. S.J. 287.
Feb. 05 88 Approved. S.J. 287.
Feb. 10 88 Referred to Environment and Energy Utilities. S.J. 301.
Feb. 10 88 Subcommittee, Gronstal, Deluhery and Soorholtz. S.J. 303.
Feb. 10 88 Amendment S. 5059 filed. S.J. 306.

SF 2126

By Natural Resources.

A bill for an act restricting the time period for the initiating of administrative or judicial actions to remove or eliminate certain structures, dams, obstructions, deposits, excavations, or stream straightenings to a floodway.

Feb. 05 88 Introduced, placed on calendar. S.J. 277.
Feb. 05 88 Committee report. S.J. 287.
Feb. 05 88 Approved. S.J. 287.

SF 2133

By Agriculture.

A bill for an act relating to the registration date for agricultural drainage wells and providing an effective date.

Feb. 09 88 Introduced, placed on calendar under Rule 28. S.J. 295.
Feb. 09 88 Committee report. S.J. 294.
Feb. 09 88 Approved. S.J. 294.

SF 2137

By Agriculture.

A bill for an act relating to financial responsibility requirements for the licensing of commercial applicators of pesticides.

Feb. 09 88 Introduced, placed on calendar under Rule 28. S.J. 296.
Feb. 09 88 Committee report. S.J. 295.
Feb. 09 88 Approved. S.J. 295.

SF 2143

By Murphy.

A bill for an act relating to the establishment of rules for conditional permits for disposal projects, including sewer systems.

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
SELECTED BILL HISTORY

February 12, 1988

Feb. 10 88 Introduced, passed on file. S.J. 308.
Feb. 10 88 Referred to Environment and Energy Utilities. S.J. 311.
Feb. 11 88 Subcommittee, Deluhery, Murphy and Hall. S.J. 319.

SF 2148

By Environment and Energy Utilities.

A bill for an act relating to the inspection fee for certain specialty fertilizers.

Feb. 10 88 Introduced, placed on calendar under Rule 28. S.J. 312.
Feb. 10 88 Committee report. S.J. 311.
Feb. 10 88 Approved. S.J. 311.

SF 2149

By Environment and Energy Utilities.

A bill for an act relating to the interest or earnings of moneys within the groundwater protection fund and the accounts within the fund.

Feb. 10 88 Introduced, placed on calendar under Rule 28. S.J. 312.
Feb. 10 88 Committee report. S.J. 311.
Feb. 10 88 Approved. S.J. 311.

HF 2001

By Rosenberg.

A bill for an act relating to environmental quality by creating an environmental action fund, by authorizing grants for environmental education and cleanup programs, and by increasing fines and civil penalties.

Jan. 11 88 Introduced, referred to Energy and Environmental Protection. H.J. 2.
Jan. 27 88 Subcommittee, Adams, Dvorsky, Holveck, Petersen of Muscatine and Van Camp. H.J. 175.

HF 2018

By Mullins and Daggett.

A bill for an act relating to the inspection fee for certain specialty fertilizers.

Jan. 12 88 Introduced, referred to Agriculture. H.J. 21.

HF 2035

By Hammond.

A bill for an act amending the definition of a governmental body as it relates to official meetings open to the public.

Jan. 14 88 Introduced, referred to State Government. H.J. 45.
Jan. 20 88 Subcommittee, Blanshan, Buhr and Lundby. H.J. 130.

HF 2037

By Mullins and Daggett.

A bill for an act relating to the inspection fee for certain specialty fertilizer.

Jan. 14 88 Introduced, referred to Energy and Environmental Protection. H.J. 45.
Jan. 27 88 Subcommittee, Johnson, McKean, Mullins, Osterberg, Paulin, Schrader and Svoboda. H.J.
Feb. 04 88 Fiscal note. HCS.

HF 2039

By Hatch, Halvorson of Webster and Shoultz.

A bill for an act relating to the duties of persons appointed to certain state boards or commissions.

Jan. 14 88 Introduced, referred to State Government. H.J. 46.

HF 2041

By Chapman.

A bill for an act relating to the filing of federal liens on real estate to recover costs and damages resulting from the treatment or disposal of hazardous substances.

Jan. 18 88 Introduced, referred to Energy and Environmental Protection. H.J. 91.
Jan. 27 88 Subcommittee, Holveck, May and McKean. H.J. 175.

HF 2043

By Rosenberg.

A bill for an act relating to radon testing, mitigation, and safeguarding, and providing a penalty.

Jan. 18 88 Introduced, referred to Energy and Environmental Protection. H.J. 91.
Jan. 27 88 Subcommittee, Norrgard, Harper, Lundby, Svoboda and Swearingen. H.J. 175.

HF 2083

By Hanson of Delaware, Mullins and Osterberg.

A bill for an act to increase the maximum civil penalty which may be administratively assessed for violations of environmental protection standards.

Jan. 21 88 Introduced, referred to Energy and Environmental Protection. H.J. 135.
Jan. 27 88 Subcommittee, Adams, Dvorsky, Holveck, Petersen of Muscatine and Van Camp. H.J. 176.

HF 2133

By Black.

A bill for an act to prohibit the use of public funds for lobbying and to provide a penalty.

Jan. 28 88 Introduced, referred to State Government. H.J. 179.
Jan. 28 88 Subcommittee, Halvorson of Webster, Buhr, Hanson of Delaware, Running and Van

SF 2034

By Jensen.

A bill for an act relating to the testing of new incineration facilities installed by a public agency.

Jan. 13 88 Introduced, passed on file. S.J. 68.
Jan. 14 88 Referred to Environment and Energy Utilities. S.J. 81.
Jan. 20 88 Subcommittee, Varn, Sturgeon and Schwengels. S.J. 134.

SF 2068

By Peterson.

A bill for an act to require a public hearing before the issuance of a permit to construct and operate a sanitary disposal project.

Jan. 21 88 Introduced, passed on file. S.J. 139.
Jan. 21 88 Referred to Natural Resources. S.J. 149.
Jan. 26 88 Subcommittee, Peterson, Miller of Cerro Gordo and Rensink. S.J. 177.
Feb. 04 88 Committee report. S.J. 264.
Feb. 04 88 Recommended amendment, passage. S.J. 264.
Feb. 04 88 Committee amendment S. 5035 filed. S.J. 264.
Feb. 09 88 Amendment S. 5055 filed. S.J. 299.
Feb. 10 88 Referred to Environment and Energy Utilities. S.J. 301.
Feb. 10 88 Subcommittee, Gronstal, Deluhery and Soorholtz. S.J. 303.

SF 2086

By Agriculture.

A bill for an act relating to the procurement of starch-based plastics and soybean-based inks by the department of general services, the state board of regents, the commission for the blind, and the state department of transportation.

Jan. 26 88 Introduced, placed on calendar. S.J. 181.
Jan. 26 88 Committee report. S.J. 179.
Jan. 26 88 Approved. S.J. 179.
Feb. 01 88 Passed Senate, ayes 43, nays 1. S.J. 222.
Feb. 03 88 Message from Senate. H.J. 215.
Feb. 04 88 Read first time, referred to Agriculture. H.J. 229.

SF 2092

By Small Business and Economic Development.

A bill for an act establishing a community and rural development loan program to assist communities in financing traditional and new infrastructure and housing for needy and elderly and providing for a revolving fund to be used for the program.

Jan. 27 88 Introduced, placed on calendar. S.J. 195.
Jan. 27 88 Committee report. S.J. 187.
Jan. 27 88 Approved. S.J. 187.
Feb. 01 88 Referred to Appropriations. S.J. 226.
Feb. 05 88 Subcommittee, Riordan, Welsh, Sturgeon, Tieden and Lind. S.J. 288.

SF 2106

By Varn.

A bill for an act relating to the prohibition of the sale, offering for sale, purchase, application, or use of chlordane in this state, and making a penalty applicable.

Feb. 01 88 Introduced, passed on file. S.J. 227.
Feb. 01 88 Referred to Environment and Energy Utilities. S.J. 235.
Feb. 03 88 Subcommittee, Murphy, Varn and Hall. S.J. 251.

SF 2114

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
SELECTED BILL HISTORY

February 12, 1988

By Agriculture.

A bill for an act relating to the fee and reporting requirements for certain animal health pesticides.

Feb. 02 88 Introduced, placed on calendar under Rule 28. S.J. 244.
Feb. 02 88 Committee report. S.J. 243.
Feb. 02 88 Approved. S.J. 243.
Feb. 04 88 Passed Senate, ayes 46, nays none. S.J. 271.
Feb. 09 88 Message from Senate. H.J. 295.
Feb. 11 88 Read first time, referred to Agriculture. H.J. 306.

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
SELECTED STUDY BILL HISTORY

February 12, 1988

HSB 0509 ENERGY AND ENVIRONMENTAL PROTECTION

A study bill relating to underground storage tanks, establishing certain fees, and providing penalties. 2-1-88 Subcommittee, Hatch, Lundby, Osterberg, Paulin, and Shoultz. H.J. 199.

HSB 0571 AGRICULTURE

A study bill relating to carrying out sustainable soil and water conservation reserve projects, and providing an appropriation. 1-27-88 Subcommittee, Johnson, McKinney, Cooper, Kremer and Petersen of Muscatine. H.J. 176.

HSB 0612 ENERGY AND ENVIRONMENTAL PROTECTION

A study bill relating to the interest or earnings of moneys within the groundwater protection fund and the accounts within the fund. 1-28-88 Subcommittee, Johnson, McKean, Mullins, Osterberg, Paulin, Schrader and Svoboda. H.J. 185.

HSB 0613 ENERGY AND ENVIRONMENTAL PROTECTION

A study bill relating to the inspection fee for certain specialty fertilizers. 1-28-88 Subcommittee, Johnson, McKean, Mullins, Osterberg, Paulin, Schrader and Svoboda. H.J. 185.

HSB 0662 ENERGY AND ENVIRONMENTAL PROTECTION

A study bill relating to the certification of laboratories which perform analyses of specimens for the department of natural resources. 2-2-88 Subcommittee, Harper, Fuller and McKean. H.J. 210.

HSB 0670 ENERGY AND ENVIRONMENTAL PROTECTION

A study bill relating to residential water treatment systems, incorporating a penalty, and providing an effective date.

HSB 0674 ECONOMIC DEVELOPMENT

A study bill establishing a community and rural development loan program to assist communities in financing traditional and new infrastructure and housing for needy and elderly, authorizing the Iowa finance authority to issue bonds and notes for the program, and providing an appropriation from a revolving fund to be used for the program. 2-4-88 Subcommittee, Parker, Bennett, Dvorsky, Halvorson of Webster, Hanson of Delaware, Hummel and Wise. H.J. 237.

HSB 0675 ENERGY AND ENVIRONMENTAL PROTECTION

A study bill relating to and making appropriations of the petroleum overcharge funds.

HSB 0695 ENERGY AND ENVIRONMENTAL PROTECTION

A study bill to establish the Iowa emergency response commission within the department of public defense and to provide for the enforcement of certain statutory provisions relating to the release or escape of extremely hazardous substances.

HSB 0705 ENERGY AND ENVIRONMENTAL PROTECTION

A study bill relating to the groundwater protection Act and providing for the use of certain fees.

SSB 2059 JUDICIARY

A study bill for an act relating to statutory corrections which adjust language to reflect current practices, insert earlier omissions, delete redundancies and inaccuracies, delete temporary language, resolve inconsistencies and conflicts, update ongoing provisions, and remove ambiguities. 1-19-88, Subcommittee: Doyle, Mann and Holt. S.J. 117.

SSB 2060 JUDICIARY

A study bill for an act making nonsubstantive, noncontroversial statutory corrections to comply with reorganization changes, improve clarity, remove conflicts and inconsistencies, correct ref-

erences, and correct grammar and syntax. 1-19-88, Subcommittee: Doyle, Mann and Holt. S.J. 117.

SSB 2066 NATURAL RESOURCES AND OUTDOOR RECREATION

A study bill for an act restricting the service area of sanitary landfills, providing for the Act's retroactive applicability, and providing an effective date. 1-26-88, Subcommittee: Peterson, Miller of Cerro Gordo and Rensink. S.J. 178. (SF 2125).

SSB 2084 ENVRIONMENT AND ENERGY UTILITIES

A study bill for an act relating to the groundwater protection Act. 1-27-88, Subcommittee: Deluhery, Miller of Cerro Gordo and Schwengels. S.J. 193.

SSB 2085 ENVRIONMENT AND ENERGY UTILITIES

A study bill for an act relating to the interest or earnings of moneys within the groundwater protection fund and the accounts within the fund. 1-27-88, Subcommittee: Gronstal, Murphy and Schwengels. S.J. 193. (SF 2149).

SSB 2086 ENVRIONMENT AND ENERGY UTILITIES

A study bill for an act relating to the inspection fee for certain specialty fertilizers. 1-27-88, Subcommittee: Varn, Miller of Cerro Gordo and Soorholtz. S.J. 193. (SF 2148).

SSB 2107 AGRICULTURE

A study bill for an act relating to the fee and reporting requirements for certain animal health pesticides. 2-3-88, Subcommittee: Peterson, Boswell and Rensink. S.J. 252. (SF 2114).

SSB 2137 NATURAL RESOURCES AND OUTDOOR RECREATION

A study bill for an act restricting the time period for the initiating of administrative or judicial actions to remove or eliminate certain structures, dams, obstructions, deposits,

excavations, or stream straightenings to a floodway. 2-3-88, Subcommittee: Scott, Priebe and Tieden. S.J. 253. (SF 2126).

A BILL FOR

An Act relating to the establishment of the Iowa Sewage Works Financing Program and providing procedures for the administration and financing of such program.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA;

DOCUMENT: 88025DNR0015
DATE: January 25, 1988
VERSION: 140933

Section 1. Chapter 455B, Code of Iowa, 1987 is amended by adding the following new Sections as a new part 5 of division III:

PART 5

IOWA SEWAGE WORKS FINANCING PROGRAM

1. The General Assembly finds that the proper construction, rehabilitation, operation, and maintenance of modern and efficient sewer systems and wastewater treatment works are essential to protecting and improving the state's water quality; that protecting water quality is an issue of concern to the citizens of the state; that in addition to protecting and improving the state's water quality, adequate wastewater treatment works are essential to economic growth and development; that during the last several years the amount of federal grant money available to states and local governments for assistance in constructing and improving wastewater treatment works has sharply diminished and will likely continue to diminish; and that it is proper for the state to encourage local governments to undertake wastewater treatment projects through the establishment of a state mechanism to provide loans at the lowest reasonable rates.

2. The General Assembly determines that it is in the public interest to establish a sewage works financing program and a

revolving loan fund to make loans available from the state to municipalities to acquire, construct, reconstruct, extend, equip and improve works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner.

NEW SECTION. 455B.291 DEFINITIONS

When used in this part, and unless the context requires otherwise:

1. "Authority" means the Iowa Finance Authority established in section 220.2.

2. "Cost" means all costs, charges, expenses or other indebtedness incurred by a municipality and determined by the director as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project.

3. "Municipality" means the city, county, sanitary district, or other governmental body or corporation empowered to provide sewage collection and treatment services, or any combination of two or more of such governmental bodies or corporations acting jointly, in connection with a project.

4. "Project" means the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment and disposal of sewage and industrial waste in a sanitary manner including treatment works (as defined in section 212 of the Clean Water Act) or the implementation and development of management programs established under sections 319 and 320 of the Clean Water Act.

5. "Clean Water Act" means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as amended by the Water Quality Act of 1987, Pub. L. No. 100-4, as published in 33 U.S.C. SS1251-1376.

6. "Sewage works revolving loan fund" means the sewage works revolving loan fund established in section 455B.293.

7. "Sewage works administration fund" means sewage works administration fund established in section 455B.293.

8. "Program" means the Iowa Sewage Works Financing Program created pursuant to section 455B.292.

9. "Executive Director" means the executive director of the Iowa Finance Authority.

NEW SECTION. 455B.292 ESTABLISHMENT OF THE IOWA SEWAGE WORKS FINANCING PROGRAM. 1 3

The Iowa Sewage Works Financing Program is established for the purpose of making loans available to municipalities to finance all or part of the costs of projects. The program shall be a joint and cooperative undertaking of the department and the authority. The department and the authority may enter into and provide any agreements, documents, instruments, certificates, data or information as may be necessary in connection with the operation, administration, and financing of the program consistent with the provisions of this Act, the rules of the department, and the authority, and state law. 7 9 11 13 15 17 19 21 23 25 27

NEW SECTION. 455B.293 FUNDS AND ACCOUNTS. 31

1. There are established two separate funds in the state treasury to be known as the "sewage works revolving loan fund", and the "sewage works administration fund". 35 37 39

2. The sewage works revolving loan fund shall include sums appropriated to the sewage works revolving loan fund by the General Assembly, sums allocated to the state expressly for the purposes of establishing a revolving loan fund under the 43 45 47 49

Clean Water Act, all receipts by the sewage works revolving 1
loan fund, and any other sums designated for deposit to the 3
sewage works revolving loan fund from any source public or 5
private. All monies appropriated to and deposited in the 7
sewage works revolving loan fund are hereby appropriated for 9
and shall be used solely for the purpose of making loans to 11
municipalities to finance all or part of the cost of 13
projects. None of the monies appropriated to and deposited 15
in the sewage works revolving loan fund shall be used to pay 17
the non-federal share of the cost of projects receiving 19
grants under the Clean Water Act. The funds in the sewage 21
works revolving loan fund shall not be considered as a part 23
of the general fund of the state, shall not be subject to 25
appropriation for any other purpose by the general assembly, 27
and in determining a general fund balance shall not be in- 29
cluded in the general fund of the state but shall remain in 31
the sewage works revolving loan fund to be used for the pur- 33
poses set forth herein. The sewage works revolving loan fund 35
shall be a dedicated fund under the administration and con- 37
trol of the authority and subject to the provisions of sec- 39
tion 220.31. Amounts on deposit in the sewage works 41
revolving loan fund may be invested at the direction of the 43
authority. The income from such investment shall be cred- 45
ited to and deposited in the sewage works revolving loan 47
fund. 49

3. The sewage works administration fund shall include sums appropriated to the sewage works administration fund by the general assembly, sums allocated to the state expressly for the purposes of administering the program authorized by the Clean Water Act, all receipts by the sewage works administration fund from any source, public or private. All monies appropriated to and deposited in the sewage works administration fund are appropriated for and shall be used and administered by the department to pay the costs and expenses of administering the program and otherwise associated with the program as may be determined by the department.

4. The department and the authority may establish and maintain such other funds or accounts as either or both determine to be necessary to carry out the purposes hereof and of the program and shall provide for the funding, administration, investment, restrictions and disposition of such funds and accounts.

<u>NEW SECTION.</u> 455B.294 CAPITALIZATION GRANTS AND ACCOUNTING.

1. In each fiscal year beginning on or after July 1, 1988, the department may prepare and deliver intended use plans and enter into capitalization grant agreements with the administrator of the United States Environmental Protection

Agency under the terms and conditions set forth in Title VI of the Clean Water Act and federal regulations promulgated pursuant to the Act and may accept capitalization grants for the sewage works revolving loan fund in accordance with payment schedules established by the administrator. All such payments from the administrator shall be deposited in the sewage works revolving loan fund.

2. The department and the authority shall establish fiscal controls and accounting procedures during appropriate accounting periods for payments and disbursements received and made by the sewage works revolving loan fund, the sewage works administration fund, and other funds established pursuant to section 455B.293 subsection 4 and to fund balances at the beginning and end of the accounting periods.

NEW SECTION. 455B.295 LOANS TO MUNICIPALITIES.

Amounts on deposit in the sewage works revolving loan fund may be used solely for the purpose of making loans to municipalities to finance the cost of projects in accordance with the intended use plans developed by the department under section 455B.294. The municipalities to which loans are to be made, the purposes of the loan, the amount of each such loan, the interest rate thereon and the repayment terms

thereof, which may vary between municipalities, shall be determined by the director, in accordance with rules adopted by the commission, in compliance with and subject to the terms and conditions of Title VI of the Clean Water Act and any resolution, agreement, indenture or other document of the authority relating to any bonds, notes or other obligations issued for the program which may be applicable thereto.

NEW SECTION. 455B.296 POWERS AND DUTIES OF THE DIRECTOR.

The director is empowered to:

1. Process and review loan applications to determine if they meet the eligibility requirements set by the rules of the department.

2. Approve loan applications of municipalities which satisfy the rules adopted by the commission, and the intended use plan developed by the department under section 455B.294.

3. Process and review all documents relating to projects and the making of loans.

4. Coordinate with the authority in the preparation and 1
processing of documents relating to the making of loans to 3
municipalities, the sale and issuance of bonds, notes or 5
other obligations of the authority relating to the program, 7
and the administration of the program. 9

5. Include an annual budget for the administration of the 13
program and the use and disposition of amounts on deposit in 15
the sewage works administration fund in the budget prepared 17
pursuant to section 455A.4, subsection 1, paragraph c. 19

6. Charge each municipality receiving a loan from the sewage 23
works revolving loan fund a loan origination fee and an an- 25
nual loan servicing fee. The loan origination fee and the 27
loan servicing fee shall be related to the amount of the 29
loan made from the sewage works revolving loan fund. The 31
director shall deposit the receipts from the loan origi- 33
nation fee and the loan servicing fee to the sewage works 35
administration fund. 37

7. Perform such other acts and assume such other duties and 41
responsibilities as may be necessary for the successful and 43
efficient operation of the program. 45

NEW SECTION. 455B.297 ADOPTION OF RULES. 49

The commission shall adopt such rules pursuant to chapter 17A as are necessary for the effective administration of this part 5 of division III.

Section 2. Chapter 220, Code of Iowa, 1987 is amended by adding the following new Sections as a new part:

IOWA SEWAGE WORKS FINANCING PROGRAM

NEW SECTION. 220.121 IOWA SEWAGE WORKS FINANCING PROGRAM; DEFINITIONS; FUNDING OF SEWAGE WORKS REVOLVING LOAN FUND; BONDS AND NOTES.

1. The authority shall cooperate with the department of natural resources in the creation, administration and financing of the Iowa Sewage Works Financing Program established in part 5 of division III of Chapter 455B.

2. Terms used in this part shall have the meaning given them in sections 455B.101 and 455B.291 unless the context requires otherwise.

3. The authority is authorized to issue its bonds and notes for the purpose of funding the sewage works revolving loan

fund created by Section 455B.293 and defraying the costs of projects.

4. Subject to the provisions of section 455B.295, the authority may enter into one or more loan agreements with one or more municipalities to finance in whole or in part the costs of one or more projects upon terms and conditions as the authority deems advisable.

5. The authority may issue its bonds and notes for the purposes set forth above and may enter into one or more lending agreements or purchase agreements with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. The authority and the bondholders or noteholders or a trustee agent designated by the authority may enter into agreements to provide for any of the following:

a. That the proceeds of the bonds and notes and the investments of the proceeds may be received, held, and disbursed by the authority, by one or more municipalities or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority may collect, invest, and apply

the amount payable under the loan agreements or any other instruments securing the debt obligations under the loan agreements.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreements or other instruments on their own behalf without the appointment or designation of a trustee. If there is a default in the principal of or interest on the bonds or notes or in the performance of any agreement contained in the loan agreements or other instruments, the payment or performance may be enforced in accordance with the loan agreement or other instrument.

d. Other terms and conditions as deemed necessary or appropriate by the authority.

6. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 220.28, subsection 4, apply to bonds or notes issued and powers granted to the authority under this section except to the extent they are inconsistent with this section.

7. All bonds or notes issued by the authority in connection with the program shall be exempt from taxation by the State

of Iowa and the interest thereon shall be exempt from state income tax.

NEW SECTION. 220.122 SECURITY FOR BONDS OR NOTES; RESERVE FUNDS; VALIDITY OF PLEDGE; NONLIABILITY; IRREVOCABLE CONTRACTS.

1. The authority may provide in the resolution, trust agreement, or other instrument authorizing the issuance of its bonds or notes pursuant to Section 220.121 that the principal of, premium, if any, and interest on the bonds or notes are payable from any of the following and may pledge the same to its bonds and notes:

a. The income and receipts or other money derived from the projects financed with the proceeds of the bonds or notes.

b. The income and receipts or other money derived from designated projects whether or not the projects are financed in whole or in part with the proceeds of the bonds or notes.

c. The amounts on deposit from time to time in the sewage works revolving loan fund.

d. The amounts payable to the authority by municipalities pursuant to loan agreements with such municipalities.

e. Any other funds or accounts established by the authority in connection with the program or the sale and issuance of its bonds or notes.

2. The authority may establish reserve funds, to secure one or more issues of its bonds or notes. The authority may deposit in a reserve fund established under this subsection the proceeds of the sale of its bonds or notes and other money which is made available from any other source.

3. It is the intention of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property is so pledged and received after the pledge by the authority shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority whether or not the parties have notice of the lien. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to

be recorded or filed under the Iowa uniform commercial code 1
to be valid, binding, or effective against the parties. 3

4. Neither the members of the authority nor a person execut- 7
ing the bonds or notes are liable personally on the bonds or 9
notes or are subject to personal liability or accountability 11
by reason of the issuance of the bonds or notes. 13

5. The bonds or notes issued by the authority are not an 17
indebtedness or other liability of the state or of a poli- 19
tical subdivision of the state, except the authority, within 21
the meaning of any constitutional or statutory debt limita- 23
tions but are special obligations of the authority, and are 25
payable solely from the income and receipts or other funds 27
or property of the authority and the amounts on deposit in 29
the sewage works revolving loan fund and the amounts payable 31
to the authority under its loan agreements with the munici- 33
palities to the extent designated in the resolution, trust 35
agreement or other instrument of the authority authorizing 37
the issuance of the bonds or notes as being available as se- 39
curity for such bonds or notes. The authority shall not 41
pledge the faith or credit of the state or of a political 43
subdivision of the state, except the authority, to the pay- 45
ment of any bonds or notes. The issuance of any bonds or 47
notes by the authority does not directly, indirectly, or 49

contingently obligate the state or a political subdivision of the state to apply money from, or levy or pledge any form of taxation whatever to the payment of the bonds or notes.

6. The state pledges to and agrees with the holders of bonds or notes issued under the Iowa sewage works financing program, that the state will not limit or alter the rights and powers vested in the authority to fulfill the terms of a contract made by the authority with respect to the bonds or notes, or in any way impair the rights and remedies of the holders until the bonds or notes, together with the interest on them including interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state, as it refers to holders of bonds or notes of the authority, in a contract with the holders.

NEW SECTION. 220.123 ADOPTION OF RULES.

The authority shall adopt rules pursuant to chapter 17A to implement sections 220.121 to 220.123.