

Summary

Environmental Protection Commission

Tuesday, December 15, 2009
DNR Air Quality Building
7900 Hickman Road
Windsor Heights, Iowa

Minutes for EPC monthly meetings are posted to the website after Commission approval.

9:00 AM – Educational Presentation on Air Quality and Animal Feeding Operations

10:00 AM – Meeting begins

10:30 AM – Public Participation

Agenda topics

- 1 Approval of Agenda
- 2 Approval of Minutes
- 3 Director's Remarks
- 4 **Final Rule** - Chapter 64 --- Wastewater Construction and Operation Permits for Well Construction and Well Service and Well Service Discharges Tabled
- 5 **Contract** – University Hygienic Laboratory for Environmental Laboratory Certification Carried
- 6 **Clean Water and Drinking Water State Revolving Loan Fund** – Third Quarter Updates to the FY 2010 Intended Use Plans Carried
- 7 **Contract Amendment** – University of Iowa for Dam Safety Inspectors Carried
- 8 **State Revolving Fund Loan Agreement** – LiDAR Funding Carried
- 9 **Final Rule – Chapter 61** – Water Quality Standards (Antidegradation Policy and Implementation Procedures) Carried
- 10 **Notice of Intended Action** – Chapter 15 – Cross Media Electronic Reporting Carried
- 11 ~~**Notice of Intended Action** – Chapters 20, 22, and 33: Air Quality Program Rules – Greenhouse Gas Rules~~ Removed from Agenda
- 12 **Notice of Intended Action** – amend Iowa Administrative Code 567 chapter 122 “Cathode Ray Tube Device Recycling” Carried
- 13 **Final Rule** - Chapters 135 and 134, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (Operator Training and Conflict of Interest) Carried
- 14 **Final Rule** - Chapter 133, Rules for Determining Cleanup Actions and Responsible Parties Carried
- 15 Monthly Reports Information
- 16 General Discussion
 - Legislative Updates
 - Plains Justice Letter dated December 7th
- 17 Items for Next Month's Meeting
 - January 19th – Windsor Heights
 - February 16th – Windsor Heights

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
DECEMBER 15, 2009

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URBANDALE, IOWA

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Charlotte Hubbell at 10:05 a.m. on Tuesday, December 15, 2009 at the DNR Air Quality Building in Windsor Heights, Iowa.

COMMISSIONERS PRESENT

Carrie LaSeur, Secretary
Gene Ver Steeg
Charlotte Hubbell, Chair
David Petty
Susan Heathcote
Martin Stimson
Dale Cochran
Lorna Puntillo

COMMISSIONERS ABSENT

Paul Johnson

ADOPTION OF AGENDA

Note that Item 11 has been removed – Notice of Intended Action – Chapters 20, 22 and 33; Air Quality Program Rules Greenhouse Gas Rules.

Motion was made by Marty Stimson to approve the agenda as amended. Seconded by Dale Cochran. Motion carried unanimously.

APPROVED AS AMENDED

APPROVAL OF MINUTES – NOVEMBER 17

Page 24 – amendment to Susan Heathcote comments to read as “Susan Heathcote discussed issues on why phosphorus and nitrogen limits were not included as recommended by the NSA and asked about why nutrient standards for recreational use is applied to all lakes, instead of just lakes with recreational designation.”

Page 19 – Charlotte Hubbell asked to confirm whether her vote was aye or nay during the amendment vote. She believes it should be nay.

Page 20 - During the Coal Combustion Products presentation, there is a slide that should be properly labeled.

Motion was made by Carrie LaSeur to approve the November minutes as amended. Seconded by Marty Stimson. Motion carried unanimously.

APPROVED AS PRESENTED

DIRECTORS REMARKS

Director Leopold invited the commissioners to participate in the legislative breakfast on January 20th at the Capitol.

We have been working and looking at the budget recommendations in the Public Works report. The Governor will be coming out with an executive order within the next two weeks which will affect the Department.

INFORMATIONAL ONLY

PUBLIC PARTICIPATION

CHUCK BECKER, representing Iowa Water Well Drillers? Association said that permit no. 6 is the answer to many issues that have arisen over the years. 3 weeks ago, we received a new draft of the rules with a provision that is of concern to the well drillers. That is the provision that removes the engineers as co-permittees. We would ask that you go back and revisit that question before this becomes a final rule. Excluding engineers would be fundamentally wrong. There is concern about being responsible for other individuals' actions, which is the case if engineers are excluded. Those who are negligent should be responsible for their actions, not someone else. The Department should be able to hold engineers liable if something with the design process went bad and caused a discharge to a water of the state. You should be able to go after the person responsible and currently the rules do not allow that.

TIM WILSON, Director of Water Production for Marshalltown Water Works submitted the following comments:

I'm also the immediate past chair of the Iowa Section of the American Water Works Association, which is comprised of over 700 of Iowa's water professionals. I am also the current chair of the AWWA Water Utility Council comprised of Iowa's water utilities, from the biggest in the state to the smallest.

I would like to commend the Department for their efforts in bringing additional clarity to this important effort to protect Iowa's water sources.

Speaking on behalf of the Iowa Section of AWWA and the Water Utility Council, we do have some concerns about the language before you.

I would bring your attention to the reference of Best Management Practices used within the rule.

In this rule Best Management Practices, or BMP's is not a clearly defined term within the rule and leaves the determination as to what is "best" up to the individuals involved in the well drilling or maintenance process or, at worst, to the lawyers. I understand the BMP's and guidance information is to be developed later, however, in my opinion that is placing the cart ahead of the horse. It is difficult to suppose this rule without that information ahead of time to be able to realize the effects it will have on water utility's operations.

In the comments provided at the public hearings and included in your handouts, an example was brought out that needs to be re-emphasized. In summary, it states that "Typical BMP's that would provide approximately a 90 percent treatment of the waste stream will cost between 10 to 50 dollars per gallon per minute discharged. For example, a 10 gallon per minute residential well will have a BMP cost of 100 to 500 dollars. I believe that a 1000 gallon per minute well will cost somewhere between 10,000 and 50,000 dollars. To achieve the last 10 percent in reduction with this well I believe that it will cost in excesses of 100,000 dollars." We have a single well in Marshalltown that produces over 4,000 gallons per minute. The yet to be defined BMP's may have drastically overshadowed the cost of constructing the well had this regulation been in place at that time.

In some instances, those costs may be justified, but under a "best management practice", it would be required in all instances.

An engineer is hired to design a project under a number of constraints depending on the location, depth, water quality, surrounding environmental challenges – and of course, budgetary constraints. The term "best management practices" may very well be different from site to site – but it is unclear if these rules allow for that kind of variance.

I would also question whether or not requiring best management practices prior to the design and prior to bidding a project, will result in a loss of innovation and proposed alternatives by the professionals involved.

We would ask the EPC delay implementation of these rules and allow us to work with the staff on developing alternative language. It might be as simple as referencing "ordinarily adhered to practices followed by water professionals in similar circumstances." – Or something similar.

We do commend the department for allowing us input on this rule, but I must say we were disappointed in the procedure followed in developing these rules from the onset. It is my understanding that only the well drilling industry was involved in the initial drafting of these rules, while Iowa's water utilities and professional engineers were relegated to responding to what had been drafted.

I would hope in the future, representatives from all stakeholder groups be brought to the table to develop effect solutions to these challenges, rather than the department working with only one segment of the industry leaving the rest of us in a reactionary position.

I thank you for your time and offer the services of the Iowa Section of AWWA and the Water Utility Council.

DALE WATSON, with Fox Engineering Associates in Ames Iowa. We are satisfied with much of the changes made as a result of the public comments. However, since that time a change was made requiring the engineer to certify that best engineering practices have been used in the preparation of that plan. Nowhere is that engineering practice defined. It can really confuse issues in terms of the legal liability that engineers have. I would suggest that you simply require the engineers to apply their seals and certificate of responsibility under Chapter 542B. This is certainly a serious issue and would affect our ability to do projects of these types.

KAREN ERGER, representing the ACEC of Iowa submitted the following comments:

I'm writing in opposition to the proposed amendment to Chapter 64 (Wastewater Construction and Operation Permits for Well Construction and Well Service and Well Service Discharges) requiring that "All well activities that use the services of an engineer shall have the engineer sign the WWPPP with the following certification: "The WWPPP is designed using best engineering practices."

I have been in the business of providing professional liability insurance and risk management services to engineers, architects, and other design professionals for 17 years as a lawyer, insurance broker, and claims adjuster. In my opinion, the requirement that the engineer certify compliance with "best engineering practices" has real potential to impair coverage under the engineer's professional liability policy. Engineers are insured for their failure to meet the applicable standard of care, which, in the State of Iowa, is the "degree of skill, care, and learning ordinarily possessed and exercised by members of the profession in good standing in similar circumstances" at the time of the alleged negligence.

An engineer who agrees to adhere to a higher standard may well find him or herself with a coverage problem. This is sometimes seen when clients insist on contract provisions calling for the engineer to meet "the very highest standard of care" and the like. Here is what one of the major insurers of engineers in the U.S. has to say on this point:

Some clients will attempt to revise the standard of care language in their contracts to require consultants to perform "to the highest standard of practice." ... If you accept such a clause – or a language that seeks to raise the customary standards - you are agreeing to be judged by fare more than the ordinary standard of practice. Not only does this increase your risk, your professional liability insurance will not cover you this increased exposure, since it represents an assumption of additional liability for which you would not otherwise be responsible.

The term "best practices", in my opinion, elevates the standard of care beyond ordinary care. It may be interested to mean that the engineers' services will be performed to the highest standards of the profession. As noted above, such a standard would not have coverage under engineers'

professional liability insurance policies. This benefits neither the client nor the engineer, both of whom desire financial security for losses.

I would suggest modifying the engineer's statement so that it more closely follows the normal standard of care for the performance of engineering services. Such a statement is more reflective of reality – no one will meet “the very highest standards” in every aspect of performance, and, indeed, the law does not require this of the engineer – and, in my opinion, is much more likely to be covered by professional liability insurance.

GARY SHAWVOR, President of the Shawvor Oil Company. I've been involved with the committee that wrote these rules. One of our concerns is about including the engineers. The issue is that there is not a design for water control in the specifications and that it's up to the contractor to determine how to handle the discharge. Therefore, we need to have designs where everyone is on an even playing base. We feel it's very important that engineers be accountable and responsible. We need to know where to go when additional change orders are anticipated. We respectfully ask that you leave the engineers as co-permittees on these rules.

CHRIS GRUENHAGEN, representing the Iowa Farm Bureau commented on the antidegradation rule. Thanks to DNR staff for their work on this rule. Iowa must implement an antidegradation procedure. The question is what procedure should this rule take? There is very little federal guidance on this area. This rule will have an economic impact in Iowa. These rules will increase sewer costs for working families and small businesses. The financial benefit of these rules to the state is speculative; however these costs are real. There are many areas in this rule where it is more stringent than the federal law. One example is Tier 2 ½. BMPs have not been included. I would encourage you to look at this and minimize those costs. As written in the current form, we would ask that you vote to not approve this rulemaking.

WALLY TAYLOR, with the Iowa Sierra Club. My concern is that this rule is a product of political expediency and not based on scientific or legal grounds. I have been involved with these rules since day one. Public comments should take precedence over pressure from industries. My comments are not in support of this rule but rather in support of what this rule should be. It's clear that the public wants clean water and it's clear that we are not getting it. Comments from the opposing side claim that this costs families and businesses money. There is no right to pollute. Everyone wants clean water but no one wants to pay for it. Please do your job as the environmental protection commission to protect the environment.

PAM MACKEY-TAYLOR, with the Iowa Chapter of the Sierra Club commented on the Iowa Outstanding Waters list and antidegradation rules. We are concerned that the proposed list is the result of arbitrary political decisions. The list has now been modified with additions and deletions several times in response to pressure from interest groups and municipalities. We believe the OIW list should contain all of the waters designated as HQ and also HQR and protected water areas. In DNR's responsiveness summary, they use the most complex arguments I've ever seen. HQ, HQW and protected waters should receive the Tier 2.5 protection because they qualify by definition in OIW. The purpose of OIW waters and Tier 2.5 is to limit pollution so outstanding waters are protected.

TIM WALSH, with Amsco Inc. commented on the Plains Justice letter that will be discussed later today. In the letter it compares what we're doing to the Kingston, Tennessee spill. Our material sets up like concrete and in no way does it compare to the spill in Tennessee. We do have a concern that this would put some commissioners in a conflict of issue position and we would hope that they will consider this when it comes time to vote.

EMILY PIPER, with the Iowa Rural Water Association commented on the antidegradation rule. Because the current version of the rule differs significantly from the NOIA version, we would like to see a delay in the adoption of the final document and allow for more public comment. Specially, we feel there are several areas where major changes were made. Example: elimination of the wording that clarifies that addressing combined sewer overflows is not considered antidegradation. The one that concerns us the most is the elimination of the provision that the permit holder can apply the least degrading, most affordable and practicable option. That leaves an open door for confusion on how that applies. Because of the uncertainty of the costs and these hard economic times, the rate payers will be the ones to bare the burdens of this. I believe there needs to be more discussions. We ask again that you delay this current rulemaking.

JESSICA HARDER, Director of Governmental Affairs with the Iowa League of Cities presented the following comments:

We would like to ask the EPC not to put the antidegradation rule into place, until an additional public comment period is held. In addition to our existing concerns with the NOIA version of the implementation document, what the League feels are major changes to the implementation document have been made after the closing of the initial public comment period, without the opportunity for official public comments from our members about how these changes will affect cities. Re-opening public comment is a reasonable approach that would allow continued full participation by stakeholders that will ultimately be directly affected by the implementation of this rule and new procedures. The implications of this rule need to be weighed carefully. Ensuring that everyone understands the potential effects and costs of the antidegradation rule and implementation procedure is vital.

As an example of some of our concerns, our original understanding was that this rule, like those implemented in surrounding states, would only require *new and expanding facilities* to avoid increasing the discharge of pollutants. Moreover, where new permit limits required treatment of increase peak flows (SSO, CSO reduction) or with new chemicals to reduce pollutants (e.g., chlorine, alum), those activities were not considered degradation as they are all directed at reducing existing pollution. The additional expenditures to avoid pollutant increase for new and expanding facilities were to be *capped at around 15% over the base project cost and never exceed 2% of median income for the community*. The new implementation guidance now imposes requirements on (1) non-expanding facilities, (2) regulates pollutants that are not a significant environmental concern (3) considers additional treatment to be degradation and (4) forces the community to avoid any pollutant increase "if affordable." The "affordability" test would require communities to spend up to 2% of median income simply to avoid "degradation." The 2% of median income is the threshold at which EPA believes a community should be classified as economically distressed.

There is little doubt that these new changes to rule implementation will negatively affect Iowa communities and could dissuade new industries from locating in this state. The changes made to the draft guidance are not required by either state or federal law, and none of our neighboring states have adopted antidegradation programs that operate in this manner. We ask that our members have a change to make comments to address these changes. Thank you for your consideration of our comments.

SHANNON GARRETSON, speaking on behalf of the Iowa Environmental Council submitted the following comments: Today you will be asked for a final ruling on agenda item #9, the Antidegradation Policy and Implementation Procedure. The Iowa Environmental Council has partnered with other environmental organizations including Hawkeye Fly Fishing Association, the Iowa Chapter of the Sierra Club, and Environmental Law and Policy Center to work with Iowa DNR on this rulemaking. In 2004 these organizations collaborated with a letter to the Environmental Protection Agency outlining three priorities for Iowa's water, the third being Antidegradation. The Department then committed to a schedule for rulemaking to begin in July of 2005. Since the beginning of 2008, there have been numerous stakeholder meetings, public meetings, public hearings, and opportunity for public comments. This extensive public process has led to changes in the proposed procedure, thus allowing for the necessary compromises to make these rules fair and flexible. Many of the changes that have been made to the implementation procedure have been for clarification of the language and reducing the stringency on the tier 2.5 requirements.

This rulemaking has already been delayed several times for various reasons in which we understand; however Iowa's water quality continues to be degraded. Recently the Iowa Environmental Council along with several of the aforementioned organizations submitted comments on a proposed new discharge to the Missouri River, which if allowed, would lead to over 10,000 pounds per day of additional ammonia loading to one of the nation's largest river systems. Iowa's water quality cannot afford any further delays in the Antidegradation rule making process.

This being said, I would like to express our general support for this policy, implementation procedure, and proposed list of all waters that will be given a Tier 2.5, or Outstanding Iowa Water designation. We are concerned that the implementation procedure states that the default protection level for all jurisdictional waters under the clean water act is Tier 2; however this does not apply to intermittent waters or waters that support an aquatic life community during periods of low or no flow. We feel it is very important that the department ensure this policy is used to protect downstream waters that do have a water quality better than applicable water quality standards.

Also, the implementation procedure includes a list of activities that are believed not to cause degradation. Two points in this list overlap. One states that degradation is not occurring if the proposed activity occurs within the existing design capacity of the treatment plant and the other states that degradation is not occurring if less stringent permit limits are proposed or no increase in design capacity. We feel that including both of these statements is redundant and potentially

confusing; therefore we request a non-substantive clerical change to remove the first point addressing existing design capacity.

Finally, the current definition of pollutant of concern allows for an argument that an antidegradation review should only be required where there is a reasonable potential for the discharge to violate water quality standards. We understand that Tier 2 reviews will be required in all situations where there is an increased loading of a type of pollutant, even if the increased loading will not violate water quality standards. Furthermore, the Clean Water Act requires Antidegradation to protect existing water quality, and Iowa's policy must do so in order to be approved by the EPA.

Once again I would like to acknowledge the great investment the Department has undertaken in developing the Antidegradation Implementation Procedure. Thank you for this opportunity to discuss these concerns. I look forward to working with the Commission and Department as these issues are further addressed. We recommend that the Commission and Department move forward on this rulemaking.

NEILA SEAMAN, Director of the Iowa Chapter of the Sierra Club submitted the following comments:

In October 2007, the Iowa Environmental Council, the Iowa Chapter of Sierra Club and Hawkeye Fly Fishing Association filed a petition for rulemaking to amend rules relating to Antidegradation. Today, it is more than two years later and we still don't have an Antidegradation Implementation procedure (AIP) that fully protects Iowa's waters.

In April 2009, 209 of our members and supporters wrote to the DNR asking them to ensure Iowa's antidegradation rules are as protective as the law allows. Our respondents want no new or increase pollutants to be permitted that would kill or injure fish or other wildlife, or create a public health risk. When additional pollution is absolutely necessary, the least polluting alternative that is affordable to the community should always be required. Respondents want to preserve Iowa's high quality lakes and streams by listing them as Outstanding Iowa Water, and to make them off-limits to increased pollution. Additionally, respondents ask that DNR require antidegradation reviews for any activity that could potentially degrade water quality.

Petitioners thought we had a reasonable AIP them in August, DNR approached stakeholders and proposed "softer" language be included in the AIP. The new language allows degradation of OIWs under three situations:

- Temporary and limited when degradation would be allowed for a short time and the amount of pollution would be limited;
- Enhancement of a resource when degradation would be allowed for a project that is so worthwhile and necessary degradation cannot be avoided;
- And expanding existing discharge where degradation can occur only if the facility implements the least degrading, affordable alternative.

As if that weren't enough, though, DNR also proposed language that will make it more difficult to nominate future waters as Outstanding Iowa Waters. Although any individual or organization can nominate a surface water as an OIW or an Outstanding National Resource Water (ONRW),

the burden of proving that water is worthy of OIW or ONRW status falls on whoever is the making the nomination. The water will receive by default less protection unless the public proves that it deserves otherwise. We believe that standard is way too high.

In response to this newly proposed language, 198 of our members and supporters sent another message to DNR in September indicating Tier 2.5 protection of Outstanding Iowa Waters is necessary to protect our high-quality waters and the language proposed in the July Notice of Intended Action should remain as it was presented to the Environmental Protection Commission. The burden of justifying additional pollution should fall on the polluters, not Iowans who may want to nominate future waters to the list.

Then the Administrative Rules Review Committee (ARRC) got involved in the rulemaking. In November, 192 of our members and supporters sent messages to ARRC members saying the category of Outstanding Iowa Waters (OIW) in the proposed antidegradation rule should proceed without legislative intervention and that the six Dickinson County lakes and the 32 high-quality streams in the northeast Iowa, nominated in the DNR rules and adopted by you in July, should maintain their designation as OIW waters in the rule-making package.

The rule package that is before you today still contain the softer language, still makes it difficult for the public to prove an Outstanding Iowa Water or an Outstanding National Resource Water deserves protection and even more lakes have been cut from the OIW list after you directed the department to put them back on the list in July.

I encourage you to direct DNR to ensure these rules protect Iowa's waters to the full extent to the law and discourage any pollution to Iowa's high-quality waters to the list you approved last July.

JAY BRADY, speaking on behalf of the Iowa Pollution Control Association. We would like to see a clear antidegradation policy. However, we have concerns over the rule presented. The implementation procedures are very vague and open to interpretation. We feel the scope of procedures goes beyond the federal law. The state and our constituents are all facing budget constraints. We would ask that you table this rule and send out for additional public comments.

MEL BERRYHILL, licensed water supplier in Iowa commented on the northwest lakes on the list. Ninety percent of the water in Dickinson County comes from Spirit Lake and West Okoboji. On behalf of Spirit Lake and West Lake Okoboji, I would ask that you consider a Tier 3 classification because it's the only source of drinking water for the whole county. There are many groups working to clean up the waters and to keep sediment out.

MARK COBB, owner of Cobb Oil Co. commented on Chapters 135 and 134 – Requirements for Owners and Operators of Underground Storage Tanks. I have eight underground storage tank sites, three of which have mechanical line leak detection. Those sites have not had any problems. We have had mechanical line leak detection systems fail. When they fail, they become overly sensitive and shut themselves off prematurely without having a failure in the piping system. My sites would cost anywhere from \$16,000 to \$18,000 to implement the proposed rule changes. Under the EPA rules, mechanical line leak detectors are acceptable. Why

would Iowa need to implement something that is costly and above and beyond the EPA recommendations?

ANITA MAHER-LEWIS, with the Petroleum Marketers of Iowa reiterated the concerns outlined in the comments submitted to the Commission by Jeff Hove.

PMCI represents 1000 businesses in the State of Iowa which are directly impacted by the proposed rule-making. We sincerely appreciate this opportunity to give public comment in hopes that the EPC will determine that this rule making is better suited for a time following EPA discussions on this topic and industry has the opportunity to more fully discuss the implications of the this rule with DNR staff.

Prior comments given by PMCI stated that the EPA is currently planning discussions, with stakeholders, on revised rules. DNR staff contends that the EPA is not including leak detection requirements in these upcoming talks. I would like to reference the attached EPA Draft Agenda and ask again that this rule making be suspended until such time that the EPA revise it's rules and require the leak detection described in this proposed rule.

- The Federal Environmental Protection Agency (EPA) does not require Electronic Line Leak Detection (ELLD) system in their rules. Industry should not be forced to comply with costly standards that are stricter than the EPA. Our existing leak detection systems meet all EPA requirements.
- DNR cannot cite one occurrence where an ELLD system would have prevented a release better than a mechanical LLD system.
- DNR does not know how many sites will be impacted by this rule-making
- No other state in the country has implemented rules requiring ELLD use at these sites.

DNR should be pointing out that the system they are specifying in their supporting documentation does not take a site's existing equipment into consideration. DNR's suggested equipment will not provide members with the necessary compliance information unless that same manufacturer were to install additional equipment and software inside the building (if one exists). DNR must inform what leak detection documentation will be required once their suggested equipment is installed.

The costs DNR has provided to the EPC are not complete. Material equipment pieces have been left out and the costs assume one compliance manufacture is universal to the tanks systems across this state. As such, the DNR cost estimates are **LOW**. PMCI industry review indicates the costs are likely \$7,000 to \$16,000 when taking into consideration all costs involved.

Please consider this DNR request carefully. Requiring these unnecessary upgrades may cause loss of rural fueling stations in locations in Iowa, especially in this economy.

Charlotte Hubbell summarized the comments submitted by:

Jane Shuttleworth, Okoboji Protection Association board of directors – Reviewed the list of Outstanding Iowa Waters, and see that of all the Iowa Great Lakes, only West Okoboji and Big Spirit remain on the list from the original nomination of all the lakes in the Iowa Great lakes

watershed. While we still wish the region be considered as one hydrological unit and economic region rather than a collection of separate lakes, I am comfortable with the revised list because it does include West Okoboji and Big Spirit, and the watershed of East Okoboji Lake. Even though removed from the proposed list, East Okoboji Lake and the Lower Chain of Lakes (Upper and Lower Gar and Minnewashta) will still benefit from the designation of Big Spirit and West Okoboji as they represent the upper part of the Iowa Great Lakes watershed. The protection of the East Okoboji watershed will also provide tools to prevent a situation like that occurred with the Bridges Bay Development on East Okoboji. I ask the EPC to approve these designations, along with the designation of the East Lake Okoboji watershed as equivalent to OIW in order to fully protect West Lake Okoboji similar to how feeder streams to OIW stream segments are proposed to be considered.

Jane Lieb with the East Okoboji Lakes Improvement Corporation board of directors wish to comment on the decision of the DNR to not place East Okoboji, Upper Gar, Minnewashta and Lower Gar Lakes on the list of Outstanding Iowa Waters. We realize that these lakes are only of average water quality compared to other lakes in the state. However, it is our belief that these lakes are an integral part of the entire recreational and economic package called the “Iowa Great Lakes.” East Okoboji is every bit as crowded with boaters and water skiers on a summer weekend as it West Okoboji, and the Lower Chain of Lakes experience their own increase in traffic also. For that reason we feel they should all be offered the same protections as West Okoboji and Big Spirit Lake.

Bret Richards, Vice President of Operations of Richard Enterprises, Country Stores and K&S Oil commented on the DNR’s proposed rule making concerning the use of Electronic Line Leak Detection at unattended sites. To get an idea on the costs involved, here’s what it would cost to upgrade a three tank system that has compatible tank monitor: Electrician costs \$1,000 - \$1,500. Concrete replacement \$1,000 -\$1,500. Additional software and phone lines \$800 - \$2,000. If a site does not have a compatible tank monitor then the costs are much higher. There are communities that will lose their only source of gas and fuel if this rule is enacted.

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

FINAL RULE – CHAPTER 64 – WASTEWATER CONSTRUCTION AND OPERATION PERMITS FOR WELL CONSTRUCTION AND WELL SERVICE AND WELL SERVICE DISCHARGES

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

The Commission is asked to approve the final rule to amend Chapter 64, “Wastewater Construction and Operation Permits.”

These proposed rules will amend Chapter 64 to meet the requirements in Iowa Code 455B.198, adopted in 2008. The new rules will allow for the use of a new General Permit to authorize discharge of wastewater generated during well construction and related well service activities. Through the use of best management practices (BMP’s), the new General Permit will require compliance with general water quality criteria and the monitoring of the wastewater effluent to

determine sufficiency of the BMP's. The new General Permit will authorize the Department to take enforcement action against any permittee or co-permittee who fails to establish or maintain the required BMP's to meet the general water quality criteria.

These rule amendments, if approved would:

1. Exempt water well construction and well services related discharge that does not reach the waters of the United States from department operating permits.
2. Require the issuance of a General Permit #6 for any water well construction and well services related discharges that reach Waters of the United States.
3. Exempt water well construction and well services related discharges which are authorized by and meet the standards as found in General Permit #6 from the requirement of submitting a Notice of Intent.
4. Add the ability of the department to suspend or revoke any General Permit #6 if the well construction and well services related wastewater is not managed in a manner consistent with General Permit #6.
5. Establish an effective and expiration dates for the General Permit #6.
6. Exempt General Permit #6 from the collection of permitting fees.
7. Establish a time period of 5 years for the permit to be effective.

The Notice of Intended Action (NOIA) was published in the Iowa Administrative Bulletin on July 15, 2009 as **ARC 7945B**, and can be found on pages 127 and 128. Six public hearings were held across the state in August 2009. Approximately 23 persons or groups provided oral or written comments on the proposed Chapter 64 revisions and proposed general permit. A responsiveness summary has been prepared addressing the comments received in terms of the issues involved and the changes have been made to the proposed rules amendments and general permit based on the comments provided by the stakeholders.

The original NOIA was presented to the commission on June 16, 2009 and since the last time this information was presented to the commission there have been the following changes made:

To proposed Chapter 64 rules the changes include Minor corrections to the code citations due to amendments that Chapter 64 has experienced since this action was initiated.

To General Permit #6 the changes include-

1. The removal of private ponds and subsurface drainage tile from the list of exclusions.
2. The removal of the requirement that the engineer be a co-permittee on well construction sites.

3. Include the requirement that all well activities that use the services of an engineer shall have the engineer sign the WWPPP with the following certification: “The WWPPP is designed using best engineering practices.”
4. Defining “co-permittee” as any individual who performs work on the well construction site involved in installing, managing, and altering BMPs intended to manage and treat well construction wastewater or whose on-site work may alter the effectiveness of the BMPs that have been deployed, increase the amount of discharge wastewater, or the reduce the quality of the discharge wastewater.
5. Placing the requirement for providing qualified inspectors on the permittee.
6. Establishing a notification period from no greater than 5 days before the drilling activity and no greater than 24 hours after activity in initiated.

The Department believes that these rule changes and general permit will meet the requirements as found in Iowa Code 455B.198 and provide adequate protection to the Waters of the United States.

Chuck Corell said that making the engineers a co-permittee really goes too far. In the wastewater construction permit, the design engineer is not a co-permittee. The owner of the facility is the co-permittee. In the storm water permit, the on-site contractor and owner are the co-permittees.

That same kind of concept was incorporated into these rules. Design engineers have never been considered as a co-permittee. Not in the stormwater program, drinking water program or wastewater program. The Department still prefers that the design engineer not be listed as the co-permittee.

Marty Stimson asked if best practices was similar to the term used in air quality programs in most states. He believed that we should raise such practices to a higher standard. We want best available technologies to control a variety of aspects.

Chuck Corell said that the department was planning to write up a guidance document that lays out the best management practices that can be used.

Susan Heathcote said that she would like to see the whole context of these rules including the language on the general permit.

Chuck Corell said that he would email the entire package to the commission.

Charlotte Hubbell recommended tabling this item so the Commission has further time to review the issues brought up today.

Motion was made by Marty Stimson to table this item so the Commission can review further. Seconded by Gene VerSteeg. Motion carried unanimously.

TABLED

CONTRACT – UNIVERSITY HYGIENIC LABORATORY FOR ENVIRONMENTAL LABORATORY CERTIFICATION**Recommendations:**

Commission approval is requested for a two-year-service contract with University Hygienic Laboratory (UHL) of Iowa City, Iowa. The contract will begin on January 1, 2010 and terminate on December 31, 2011. The amount of the agreement is estimated at \$300,000.00.

Funding Source:

This contract will be funded through laboratory certification fees as provided by 567—83.3(455B) Iowa Administrative Code. The fees paid by laboratories support 100% of the cost of this agreement. The agreement amount is an estimate because actual cost will be based on the number of laboratories applying for certification in the calendar year. The agreement amount reflects UHL's best estimate of their actual costs plus the UHL's indirect cost rate. The department pays 86.0% of the collected fees to UHL through this contract.

Background:

Under Iowa Code 455B.103, the department is authorized to contract with the UHL for these services.

Purpose:

This agreement is entered into with the intent of assisting the Director of the IDNR in determining the qualifications of laboratories requesting environmental certification for the analysis of drinking water for compliance with the Safe Drinking Water Act (SDWA) program, water and soil samples for compliance with the Underground Storage Tank (UST) program, treated and untreated wastewater, surface and groundwater, sludge and soils for compliance with the State wastewater program (WW), and, solid waste and contaminated site (SW/CS) samples for compliance with State solid waste and contaminated sites program.

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

APPROVED AS PRESENTED

CLEAN WATER AND DRINKING WATER STATE REVOLVING LOAN FUND – THIRD QUARTER UPDATES TO THE FY 2010 INTENDED USE PLANS

Patti Cale-Finnegan presented the following item.

Commission approval is requested for the third quarter updates to the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Intended Use Plans (IUPs) for FY 2010.

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

During FY 2009, federal stimulus funds through the American Recovery and Reinvestment Act (ARRA) were allocated to Iowa's SRF programs. These funds were approved separately in the IUP supplement on the May 2009 Commission agenda. During the first half of FY 2010, SRF staff will continue to work with the stimulus project applicants to ready them for funding. All stimulus funds must be committed by February 2010 to shovel-ready projects (under contract or under construction). While several applicants have dropped their requests, this does not affect Iowa's ability to use the ARRA funds as required.

While much of the focus has been on the special ARRA allocations, the base SRF programs are still operating and funding important water, wastewater, and nonpoint source projects. The third quarter updates to the FY 2010 IUPs include new projects and revised information about sources and uses of funding.

The CWSRF provides low-interest loans for wastewater and storm water infrastructure improvements and nonpoint source water quality projects. The third quarter update to the FY 2010 IUP shows project requests totaling \$669.5 million, including \$29.5 million for non-point source projects. It is anticipated that approximately \$264 million will be disbursed during FY 2010, including \$53 million from federal stimulus funds.

The DWSRF provides low-interest loans to public water supplies to protect public health and improve infrastructure. The third quarter update to the FY 2010 IUP shows funding requests totaling \$226 million. It is anticipated that approximately \$125 million will be disbursed during FY 2010, including \$24 million in federal stimulus funds.

The amended Sources and Uses tables as of October 2009 for both CWSRF and DWSRF show that funds are available or obtainable to provide anticipated disbursements. It is anticipated that a bond issue will be completed in December 2009 to provide the state match for current and upcoming federal capitalization grants and to generate additional loan funds to meet demand.

The third quarter update also includes a clarification on the use of DWSRF non-program income. This is income received from a portion of the 0.25% servicing fee on DWSRF loans. The update states that: DWSRF non-program income may be used in SFY 2010 to provide part of the required state match for the State Program Management set-aside. The State Program Management set-aside requires a 1:1 federal/state match.

A public meeting was held November 5, 2009 to receive comments on the proposed IUP updates. No stakeholders attended the hearing. The written comment period closed on November 12, 2009. No written comments were received.

Paul Johnson asked if there could be funds available for the tank leak detection systems.

Patti Cale-Finnegan said that this was a possibility, funds could be used for tank replacement or installment of electronic equipment. She will research further and report back.

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

APPROVED AS PRESENTED

CONTRACT AMENDMENT – UNIVERSITY OF IOWA FOR DAM SAFETY INSPECTORS

Lori McDaniel, in the Water Quality Bureau presented the following item.

Recommendations:

Commission approval is requested for an amendment to a 1 year-service contract with the University of Iowa of Iowa City, Iowa. The original contract began on July 1, 2009 and terminates on June 30, 2010. This contract amendment adds \$24,840 to the original contract amount of \$24,840 for a total not to exceed amount of \$49,680. DNR shall have the option to renew this contract long as this contract and any extensions do not exceed a six-year period.

Funding Source:

This contract is funded through the federal Dam Safety Grant (CFDA 97.041).

Background:

The Iowa Department of Natural Resources receives annual funding through the federal Dam Safety Grant. This year the total grant amount was increased from approximately \$120,000 per federal fiscal year to \$280,000 per federal fiscal year. This increase in funding will allow the IDNR to complete the required dam inspections for calendar year 2010.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining the Contractor to provide: 2 Dam Safety Inspectors on a part time/hourly basis. Work is assigned by IDNR to the 2 part time dam inspectors. The dam inspectors submit completed inspections to IDNR for final review and approval.

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

APPROVED AS PRESENTED

STATE REVOLVING FUND LOAN AGREEMENT – LiDAR FUNDING

Chris Ensminger with the GIS Section presented the following item.

Recommendations:

Commission approval is requested for a State Revolving Fund (SRF) loan agreement between the Department of Natural Resources (DNR) and the Iowa Finance Authority (IFA). The loan agreement would serve as a line of credit for the DNR to cover contract expenses on the LiDAR (Light Detection and Ranging) watershed and flood plain mapping project.

Background:

DNR entered into a contract with the U.S. Geological Survey in July, 2006 to map the state using LiDAR technology. EPC approved the contract, and it was noted in the agenda item at the time that an SRF loan might be used to cover a portion of the DNR's share of the project costs. DNR's share of the \$4.3 contract is \$1.2 million. The remaining costs are being covered by commitments from the Iowa Department of Transportation, the Iowa Department of Agriculture and Land Stewardship, and the federal Natural Resources Conservation Service.

Approximately 70% percent of the project has been completed, and the costs of the project to date have been covered by the other agency commitments. In the meantime, DNR has been identifying and assembling funding to cover its share.

The sources of available funding for LiDAR, and their timing, are:

1. Watershed initiative funds annually directed to the DNR GIS Section for GIS projects supporting watershed data development and analysis.
2. Floodplain mapping funds administered by the Department of Economic Development with the stated purpose of mapping/remapping all Iowa counties with a federal disaster declaration in 2008. The total amount of this fund is \$15 million and it needs to be spent on the generation of floodplain maps (of which LiDAR will serve as the base data) over the next 5 to 7 years.
3. Clean Water SRF non-program income. This is funding from SRF loan fees that can be used for water quality projects. A total of \$600,000 over three years has been identified.

It is now anticipated the timing of contract invoices DNR must cover may not match with the timing of project funding. Loan disbursements could be used to cover short-term expenses, with repayment when project funding is received.

The loan agreement between DNR and IFA would be for a maximum of \$900,000, with a loan repayment period of 10 years. Only the amount needed to pay LiDAR costs not covered by other funding sources would be drawn in loan proceeds.

Funding Source:

The LiDAR loan funds would come out of the Clean Water SRF General Nonpoint Source (GNS) program. Each year, EPC approves a set-aside of funds for this program in anticipation of eligible projects. As projects are approved, loans are made. Funding for the LiDAR project

was included in the GNS set-aside for FY 2010. LiDAR is eligible as a watershed planning project.

Motion was made by Dale Cochran to approve the SRF agreement as presented. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS PRESENTED

FINAL RULE – CHAPTER 61 – WATER QUALITY STANDARDS (ANTIDegradation POLICY AND IMPLEMENTATION PROCEDURES)

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

The Commission is requested to approve a final rule to amend the state's antidegradation policy and new implementation procedures.

Antidegradation policy is one of the three components of water quality standards (i.e. designated uses, water quality criteria to protect those uses, and antidegradation policy). The purpose of the antidegradation policy is to set minimum requirements for the state to follow in order to conserve, maintain, and protect existing uses and water quality. The department is required by 40 CFR 131.12(a) to develop and adopt a statewide antidegradation policy and to identify procedures for implementing the policy.

The department is proposing a four-tiered approach and guidance document establishing procedures for implementing the antidegradation policy. The department has attached the latest version of the rule and implementation procedures. The "tracked changes" version of the implementation procedures, previous draft versions of the antidegradation policy rule and implementation procedures, and other related items can be found at the following web address: <http://www.iowadnr.gov/water/standards/antidegradation.html>.

Thirteen public hearings were held with notice of the hearings sent to various individuals, organizations, associations and interest groups, and to statewide news network organizations. Comments were received from approximately 930 persons and organizations. Changes to the proposed amendments are summarized in the final rule and explained in more detail in the Responsiveness Summary that will be available on the department's website listed above.

Chuck Corell said that the purpose of antidegradation is to keep clean water clean not about making dirty water clean. We've always had an antidegradation policy, though it may not be that clear. There are no implementation procedures either. We believe that this amendment is a meaningful anti-deg policy with implementation procedures with sufficient details. During this hard budget time, we have written procedures for our current permit staff to follow without having to add extra resources. Our policy also has to be consistent with EPA guidelines. Both EPA Region 7 and Headquarters (legal and technical staff) have read this policy and are comfortable with it.

Chuck Corell explained the rationale behind the re-classification of Upper and Lower Gar Lake, Minnewashta and East Lake Okoboji. They do not meet the criteria for Iowa Outstanding Waters list. At this point, we are looking at a tri-annual review of the rule package so that future changes to the Iowa Outstanding Waters list could be made.

Charlotte Hubbell said that it should be noted that after two years of public discussions, we are only talking about 2 lakes and 118 stream miles out of 70,000-72,000 stream miles.

Gene VerSteege asked how much an anti-deg analysis will cost for business or communities?

Chuck Corell said that to get a construction permit for changing a wastewater facility, the department requires a facility plan that contains alternatives to what is being proposed. This ensures a certain level of thought process as to why a facility is proposing its particular option. For this analysis, it costs somewhere between \$4,000-\$16,000 depending on the complexity. For a brand new system in an unsewered community with 120 people, it will cost about \$800,000 - \$1M to build and then about \$16,000 on top of that for the analysis. So the analysis is a fairly small percentage of total costs. Industrial facilities would have to spend about the same, but it depends on how they treat their wastewater.

Commissioners Hubbell, Heathcote, Johnson and LaSeur explained their thoughts on why we need to proceed with the rules and the importance of adopting them today.

Motion was made by David Petty to table this item until next month in order to consider all of the comments received today. Seconded by Gene VerSteege. Roll call vote went as follows: Lorna Puntillo – aye; Susan Heathcote – nay; Dale Cochran – nay; Paul Johnson – nay; David Petty – aye; Carrie LaSeur – nay; Marty Stimson – nay; Gene VerSteege – aye; Charlotte Hubbell – nay. Motion fails to table.

Motion was made by Paul Johnson to approve the final rule for Chapter 61 – Water Quality. Seconded by Carrie LaSeur. Roll call vote went as follows: Dale Cochran – aye; Paul Johnson – aye; Lorna Puntillo – abstain; Susan Heathcote – aye; David Petty – nay; Carrie LaSeur – aye; Marty Stimson – aye; Gene VerSteege – nay; Charlotte Hubbell – aye. Motion carried.

APPROVED AS PRESENTED

NOTICE OF INTENDED ACTION – CHAPTER 15 – CROSS MEDIA ELECTRONIC REPORTING

Jason Marcel, Environmental Program Supervisor of the Emission Inventory and Support Section presented the following item.

The Department is requesting permission from the Commission to proceed with the rulemaking process and publish a Notice of Intended Action to add Chapter 15 “Cross Media Electronic Reporting” of the 567 Iowa Administrative Code.

This rulemaking was presented to the Commission for information in August. The purpose of the rule changes is to adopt the U.S. Environmental Protection Agency’s (EPA) electronic reporting requirements for programs under Title 40 of the Code of Federal Regulations (CFR). EPA’s Cross Media Electronic Reporting Rule (CROMERR), which is found in 40 CFR Part 3, establishes electronic reporting as an acceptable regulatory alternative across a broad spectrum of EPA programs and institutes standards for e-reporting systems to ensure that electronic documents are as legally dependable as their paper counterparts. CROMERR impacts electronic data currently received or planned to be received in federally mandated programs in the Environmental Services Division.

CROMERR does not require regulated entities to submit electronic data or require programs to accept electronic data. CROMERR establishes the performance standards for accepting electronic documents if the option is or will be available. Programs already receiving electronic information must modify the system(s) or create new systems to be compliant with CROMERR.

Adoption of this rule is required for the Department’s CROMERR application(s) to EPA. States are required to submit CROMERR applications to EPA for existing electronic document receiving systems by January 13, 2010.

If the Commission approves this Notice of Intended Action, a public hearing will be held on February 15, 2010 at 10:00 AM at the Department’s Air Quality Bureau office. The public comment period for the proposed rules will close on February 16, 2010.

Motion was made by Marty Stimson to approve NOIA – Chapter 15 as presented. Seconded by Dale Cochran. Motion carried unanimously.

APPROVED AS PRESENTED

NOTICE OF INTENDED ACTION - CHAPTERS 20, 22, AND 33: AIR QUALITY PROGRAM RULES – GREENHOUSE GAS RULES

Catharine Fitzsimmons, Bureau Chief of Air Quality presented the following information.

Last month we informed you that EPA is proposing to change the PSD and federal Title V operating permit thresholds for greenhouse gases. Greenhouse gases will soon be regulated. EPA’s draft rule has recently been released and they are proposing that upon these rules becoming final that these rules will immediately apply in the state. This is an unusual measure by EPA to unilaterally incorporate them into the state implementation plan. Our State Implementation Plan (SIP) is a written agreement that lays out how we will adhere to the

requirements in the federal Clean Air Act. We will do a rulemaking here to adopt our own rules or adopt EPA rules by reference. We'll then request adjustments in our SIP to EPA. Given the number of additional sources that would become subject to these requirements, we would need more time to prepare for that. About 170 new sources will become subject to PSD and Title V permitting. The department held a two hour meeting with our stakeholders last week to listen to concerns about proceeding with a rulemaking at this time. Folks were concerned that we were going to adopt a rule without knowing what the final federal rule would contain. That is why we have decided to delay this rulemaking until the federal rulemaking is complete. We anticipate that we will be able to proceed with a rulemaking in February or March.

INFORMATION

**PROPOSED RULE – AMEND IOWA ADMINISTRATIVE CODE 567 CHAPTER 122
“CATHODE RAY TUBE DEVICE RECYCLING”**

Theresa Stiner, Environmental Specialist Senior presented the following item.

The Commission is asked to approve the Notice of Intended Action to amend 567-Chapter 122 “Cathode Ray Tube Device Recycling”. These amendments are being made to promote convenient cathode ray tube (CRT) recycling for consumers without compromising protection of the environment. CRTs would include but not limited to the larger thick TVs, computers with deep, thick monitors.

Although CRTs contain hazardous material, as long as the CRT is intact, as is the case at short term collection events and CRT collection facilities, the hazardous material cannot escape. These proposed rules have been revised from what was presented at the September EPC meeting to address concerns raised by the EPC.

The proposed changes will:

- Remove the requirements for short term collection events.
- Replace the permit requirement for facilities that collect CRTs with a registration requirement.
- Provides collection and storage requirements for registered collection points including limiting the number of CRTs on site to 2,000, limiting storage time to one year, and requiring a training program for collection site employees.
- Increase the length of the CRT Recycling permit from 3 years to 5 years.
- Remove the requirement for DNR approved training for staff of CRT recycling facilities.

After the computers and TVs are collected, they are demanufactured and parts are recycled. (glass, lead, cooper, etc.)

<i>Motion was made by Dale Cochran to approve the Proposed Rule – Chapter 122 as presented. Seconded by Susan Heathcote. Motion carried unanimously.</i>
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APPROVED AS PRESENTED

FINAL RULE - CHAPTERS 135 AND 134, TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (OPERATOR TRAINING AND CONFLICT OF INTEREST)

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

The Department is requesting adoption of the proposed rule on piping in-line leak detection at unstaffed facilities.

This rule was tabled for further consideration by the Environmental Protection Commission at their meeting on August 18, 2009. The Notice of Intended Action containing this rule change was published in the Iowa Administrative Bulletin on June 17, 2009 as ARC 7854B. All the other proposed rules in ARC 7854B were adopted and published in the September 9, 2009 Iowa Administrative Bulletin as ARC 8124B

The rule change requires either in-line leak detection on pressurized piping to be capable of shutting off the submersible pump to stop product flow to the dispenser; or equipping the system with a device that immediately alerts an operator of a leak. In-line leak detection finds leaks of 3 gallons per hour or greater in pressurized product lines. They are designed to alert the on-site operator of a release by slowing down product flow or activating an alarm. The operator then shuts down the submersible pump and investigates the problem. At un-staffed facilities, the tank system continues to operate and leak.

The comments received concerned the cost of the upgrades, the potential effect on reducing availability of fueling stations in rural areas and whether the rule was "more restrictive" than federal regulations and whether the state law prohibited such a rule.

The petroleum marketers association felt there would be an economic impact on small agricultural communities with 24-hour unstaffed facilities with low product throughput. The cost for upgrading to positive shutdown would be prohibitive. Mr. Hove estimated at least 160 unstaffed facilities and noted the hardship to the small agricultural communities if the unstaffed facilities decided to stop operating but was unsure how many used pressurized fuel delivery. He gave the estimated cost for upgrade per facility (with three tanks) to be \$8,000 to \$10,000. The request was to drop the requirement.

It is hard to estimate the number of 24-hour unstaffed facilities in operation since it is not a requirement to report that type of operation. The department did look in their database for the number of farm cooperatives and farm service facilities which were expected to own or operate most unstaffed facilities. The department identified 217 sites.

Over half (62%) of the facilities identified provide a suction delivery system, which requires no leak detection monitoring. Twenty six percent or 56 sites have pressure delivery with mechanical line leak detection (MLLD). Sites with MLLDs would have to upgrade their leak detection system. Twelve percent (27) of the sites already have ATG systems which may require only an inexpensive upgrade.

DNR staff contacted several business firms for quotes. A wireless electronic line leak detector (WELLD) replacing a MLLD that meets the rule change requirements has an estimated cost of \$3,900 to \$4,500 for a typical 3 tank system. It is estimated WELLDs recover their cost after 3 or 4 years when compared to MLLDs which need annual tightness testing and have a short operating life of 6 months to 3 years. WELLDs have an expected life of 8 plus years.

When facilities are not staffed, there is no one available to respond to an alarm and shut off the submersible pump. The preamble to the federal UST regulations includes: "The Agency (EPA) believes the operators must be alerted immediately to the presence of leaks in pressurized lines." 'Immediately alerting the operator' indicates the need for quick action to stop the leak. At an unstaffed facility, shutting down the submersible pump to stop the large leak may not occur for several hours to days. Stakeholders suggested an alternative of equipping the system with a telemetry type of device that immediately alerts the operator so they can respond in a timely manner. The department agreed that this would be acceptable alternative. The option was added to the final rule.

The final rule provides until January, 2013, to change the in-line leak detector or equip the system with a device that alerts the operator of a line leak, and does allow for the request for an extension if no alternative fueling source or fueling is needed for emergency or public safety considerations. The request for temporary extension must occur prior to the January 1, 2013, deadline and include documentation and a plan for upgrading. In order to address concerns expressed by stakeholders regarding the 1) cost of upgrading, and 2) other new regulations facility owners will concurrently be required to meet, the Department believed that extending the deadline would allow for businesses to budget and plan for the change. The original deadline in the noticed rule was December 2010.

State law [455B.474(3)"d"] requires the commission to adopt rules that specify adequate monitoring systems to detect the presence of a leak and provide protection of groundwater resources. These rules are consistent with federal rules and provide monitoring of pressurized piping needed to adequately detect and stop a leak to protect Iowa's groundwater resources.

The reason for immediately shutting down a large ongoing release is for public safety and to prevent further environmental contamination. Unstaffed facilities with pressurized piping should not be operating without positive shut down from the piping in-line leak detection system. This is consistent with the federal regulations. Based on the estimated cost of upgrading and the time given to upgrade, the cost does not seem prohibitive.

The Department recognizes and understands the concerns expressed by industry representatives. It is not the intention of this rule to cause facilities to go out of business; the goal of this rule is to detect leaks and quickly prevent releases that not only are groundwater and public safety

hazards, but can be more costly and detrimental to a business in the long run should a release go undetected.

Paul Nelson with the Department explained that we are not specifying what type of equipment has to be in place as long as they meet the standard of notification and leak detection. We want to be sure that when the system is leaking that it will immediately shut down.

Paul Johnson asked if there was funding available with the Underground Storage Tank Board?

Wayne Gieselman said no.

Charlotte Hubbell asked the department to explore the use of SRF funds.

Motion was made by Dale Cochran to approve the final rule as presented. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS PRESENTED

FINAL RULE - CHAPTER 133, RULES FOR DETERMINING CLEANUP ACTIONS AND RESPONSIBLE PARTIES

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

In part, Chapter 133 provides for compensation to the state and public for damages to natural resources and wildlife resulting from a hazardous condition. For fish loss specifically, the rule authorizes the use of the American Fisheries Society's special publication on fish counting methods and restitution valuation.

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

The following changes have been made: (1) update the definition of "AFS" in the rule to state the American Fisheries Society's Special Publication 30 shall be used and (2) revise the fish species to be valued at \$15 a fish unless the AFS publication requires a higher value, in which case the higher value shall be applied.

The Department published a NOIA in the Administrative Bulletin in September 9, 2009 as ARC 8122B and had a public comment meeting on October 23, 2009. Only one comment was received and it was in favor of the change.

Motion was made by David Petty to approve the final rule – Chapter 133 as presented. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS PRESENTED

MONTHLY REPORTS

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

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

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

INFORMATION

GENERAL DISCUSSION

Listed below are the public hearing dates for the Animal Feeding Operations rule:

- Jan. 12 4:30 Orange City gymnasium, 125 Central Ave SE, Orange City 51041
- Jan. 13 1:30 NICC Dairy Center, Room 115, Highway 150 south of Calmar
- Jan. 15 11:00 Wallace bldg auditorium, 502 E. 9th Street , Des Moines 50319
- Jan. 15 4:30 Cass Co. Comm. Ctr, 805 W. 10th Street, Atlantic 50022
- Jan. 20 1:30 Marr Park Conservation Ctr, 2943 Highway 92, Ainsworth, IA 52201
- Feb. 1 1:30 NIACC Muse Norris Conference Ctr, 500 College Drive, Mason City 50401

Gene VerSteege asked about the times of these hearings being held right at feeding and chore time.

Wayne Gieselman said that he will look into it. The CAFO hearing procedures rules will be back in January.

Wayne Gieselman gave an update on the budget for the Environmental Services Division:

- Iowa is the only state that has asked to reduce its level of effort with EPA.
- EPA Attorneys in D.C. are reviewing and will have an answer for us within 60 days.

We may be receiving an e-mail or letter from Warren Christy regarding Chamness Technology's application of land sludge. However, IDALS is the lead agency on this issue and they have the legal authority to regulate.

Charlotte Hubbell asked that we add an item for the January meeting to discuss drafting a letter to EPA on recommending the proper disposal of coal ash.

**2010 Department of Natural Resources Proposed Legislation
Environmental Services Division**

Code Change Proposals(3):

Petition for Rulemaking Change (Item 1 in Iowa Code 17A)

- a. Amend 17A.7(1) to change the due date to respond to a petition for rulemaking from 60-120 days. A recommendation to 17A.7 was made by the members of the both the Natural Resources Commission and the Environmental Protection Commission. The Department has received several petitions for rulemaking in the past 2 years and 60 days is not enough time to respond to these petitions. While the Department can negotiate with a petitioner to grant an extension, that decision is solely within the discretion of the petitioner to grant. The change in the length of time to initiate rulemaking will allow more time for the public and agencies (including commissions) to review and comment upon petitions for rulemaking prior to making decision under 17A.7. The proposed amendment only lengthens the time to respond to a petition; it does not change the duty to respond to it.
- b. Amend 455B.152 and 455B.851 to require the Department to coordinate with the U.S. EPA on data collection related to the greenhouse gas inventory and registry requirements. Also, extend the date the Department is required to submit its report to the governor and general assembly regarding greenhouse gas emissions from September 1 to December 31 each year. EPA has a mandatory greenhouse gas reporting rule in place that requires reporting to start in 2011. The proposed change will allow the DNR to coordinate the data collection with EPA; eliminate duplication and reduce the reporting requirements on the regulated community.
- c. Amend 456A.17 to extend the authority of the Department to apply for SRF loans for the supply and distribution of drinking water projects in addition to its current capacity to use these funds for wastewater treatment projects.

The Department will continue to support the following existing initiatives:

Department Emergency Powers (HSB 288)

The bill (HSB 288) is intended to clarify a legal framework for implementing emergency and temporary policy decisions that are made in times of a Governor's Disaster Proclamation. The effect would be to grant authority in some cases to temporarily suspend specific statutory provisions that might conflict with an emergency response policy or to suspend Department rules that conflict with the need to take temporary and emergency action. The Department recommends amending the existing bill to accommodate changes that have been recommended by the Department of Public Safety and the Government Oversight Committee. HSB 288 is in the Government Oversight Committee.

Residential Burning Ban in Cities (HF 627)

Amend 455B.133 to specify that the Department shall adopt rules to implement a phased-in ban on the burning of residential waste (household trash and landscape waste) in municipalities (cities). The phase-in will begin in calendar year 2011 for cities with a population of 2500 or greater and will apply to all cities beginning in calendar year 2014. HF 627 passed the Environmental Protection Committee in the '09 session and the Department seeks to support the movement of this bill. The Department will work with other stakeholders to gather additional support. Currently there is no known opposition to the bill from the lobby.

Contact:

**Sharon Tahtinen, Legislative Liaison
Environmental Protection Division
515-238-4187 (cell); 515-281-7066 (office)
Sharon.Tahtinen@dnr.iowa.gov**

NEXT MEETING DATES

January 19, 2009 – DNR Air Quality Building

January 19, 2009 – Joint NRC and EPC dinner

January 20, 2009 – DNR/EPC/NRC Legislative Breakfast – State Capitol

ADJOURNMENT

Motion was made by David Petty to adjourn the November EPC meeting. Seconded by Susan Heathcote. Motion carried unanimously.

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

Richard A. Leopold, Director

Charlotte Hubbell, Chair

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**2010 Department of Natural Resources Proposed Legislation
Environmental Services Division**

Code Change Proposals(3):

Petition for Rulemaking Change (Item 1 in Iowa Code 17A)

- a. Amend 17A.7(1) to change the due date to respond to a petition for rulemaking from 60-120 days. A recommendation to 17A.7 was made by the members of the both the Natural Resources Commission and the Environmental Protection Commission. The Department has received several petitions for rulemaking in the past 2 years and 60 days is not enough time to respond to these petitions. While the Department can negotiate with a petitioner to grant an extension, that decision is solely within the discretion of the petitioner to grant. The change in the length of time to initiate rulemaking will allow more time for the public and agencies (including commissions) to review and comment upon petitions for rulemaking prior to making decision under 17A.7. The proposed amendment only lengthens the time to respond to a petition; it does not change the duty to respond to it.
- b. Amend 455B.152 and 455B.851 to require the Department to coordinate with the U.S. EPA on data collection related to the greenhouse gas inventory and registry requirements. Also, extend the date the Department is required to submit its report to the governor and general assembly regarding greenhouse gas emissions from September 1 to December 31 each year. EPA has a mandatory greenhouse gas reporting rule in place that requires reporting to start in 2011. The proposed change will allow the DNR to coordinate the data collection with EPA; eliminate duplication and reduce the reporting requirements on the regulated community.
- c. Amend 456A.17 to extend the authority of the Department to apply for SRF loans for the supply and distribution of drinking water projects in addition to its current capacity to use these funds for wastewater treatment projects.

The Department will continue to support the following existing initiatives:

Department Emergency Powers (HSB 288)

The bill (HSB 288) is intended to clarify a legal framework for implementing emergency and temporary policy decisions that are made in times of a Governor's Disaster Proclamation. The effect would be to grant authority in some cases to temporarily suspend specific statutory provisions that might conflict with an emergency response policy or to suspend Department rules that conflict with the need to take temporary and emergency action. The Department recommends amending the existing bill to accommodate changes that have been recommended by the Department of Public Safety and the Government Oversight Committee. HSB 288 is in the Government Oversight Committee.

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Amend 455B.133 to specify that the Department shall adopt rules to implement a phased-in ban on the burning of residential waste (household trash and landscape waste) in municipalities (cities). The phase-in will begin in calendar year 2011 for cities with a population of 2500 or greater and will apply to all cities beginning in calendar year 2014. HF 627 passed the Environmental Protection Committee in the '09 session and the Department seeks to support the movement of this bill. The Department will work with other stakeholders to gather additional support. Currently there is no known opposition to the bill from the lobby.

Contact:

**Sharon Tahtinen, Legislative Liaison
Environmental Protection Division
515-238-4187 (cell); 515-281-7066 (office)
Sharon.Tahtinen@dnr.iowa.gov**



CEDAR RAPIDS, IOWA
VERMILLION, SOUTH DAKOTA
BILLINGS, MONTANA

Charlotte Hubbell, Chair
Iowa Environmental Protection Commission
DNR Air Quality Building
7900 Hickman Road
Windsor Heights, IA 50324

December 7, 2009

Dear Chairwoman Hubbell and EPC members:

On behalf of the staff and board of Plains Justice and the many Iowans who have spoken out in recent months about the need for more protective coal combustion waste regulation, I urge you to take the following immediate steps to protect Iowans' surface and groundwater and our health:

1. Pass a motion supporting federal regulation of coal combustion waste as hazardous waste;
2. Urge EPA to draft a final rule that fully addresses the public health risks associated with current disposal practices; and
3. Draft a letter to EPA, to be sent as soon as possible, detailing the actions taken by EPC and outlining some of the specific ways in which public health could be better safeguarded.

As we approach the first anniversary of the Tennessee Valley Authority Kingston Fossil plant coal ash spill, we must not forget the devastating and lasting effects of this catastrophe. Although the risks to human health may not be fully known for decades, the cleanup costs alone already approach a billion dollars. Sadly, the spill could have been prevented. Nationwide, EPA has identified case after case of proven groundwater contamination from leachate escaping from dry CCW fill sites. This damage too is preventable through proper federal regulation.

After decades of inaction, EPA is expected to release a draft rule before the end of 2009. It is crucial that the voices of concerned individuals, organizations, and government boards and commissions such as EPC be heard during the final days before this action. EPC has the power to communicate directly to EPA how important this rulemaking is to the health and safety of Iowans.

Plains Justice, Environmental Integrity Project, and Earthjustice have outlined proposed regulations that would reduce both the risk of a catastrophic spill and of undetected contamination of aquifers and drinking water supplies. Some of these proposed rules, which you may consider appropriate to include in a letter to EPA, are enclosed.

Thank you very much for your thoughtful consideration over the last several months of many viewpoints on this urgent issue. It is our hope that, having heard extensive testimony about various aspects of coal combustion waste disposal, EPC now feels prepared to make a statement on its own behalf to EPA. Iowans, and the governor, rely on EPC to exercise its judgment and authority as an

100 FIRST STREET SW, SUITE 201 CEDAR RAPIDS, IA 52404
T: 319 362 2120 F: 866 484 2372 E: info@plainsjustice.org W: <http://plainjustice.org>

Printed on recycled paper

independent commission to weigh in on the critical regulatory issues of the day. We believe that the time has come for EPC to take a public position on this issue, and we hereby request that a motion be voted on at the December meeting.

Sincerely,

Donna Wong-Gibbons, Ph.D.
Public Health Specialist
Plains Justice

Dianne Dillon-Ridgley
Chair, Board of Directors
Plains Justice

Jeff Stant
Director, Coal Combustion Waste Initiative
Environmental Integrity Project

Lisa Evans
Senior Administrative Counsel
Earthjustice

Recommendations for Reducing Human Health Risks Associated with Coal Ash Disposal

- 1. Stricter regulations regarding sites that are used for coal ash disposal.** “Beneficial use sites” that allow disposal of coal ash without the use of liners and without monitoring pose particularly high risks for contamination or pollution of surrounding areas, including aquifers when groundwater levels are not appropriately considered.
- 2. Improved monitoring of disposal sites both while coal ash is being actively disposed and following closure of a site.** Scientists estimate that the potential for contamination from a coal ash disposal site may continue for decades, yet monitoring for many sites (including several sites in Iowa) is still not required.
- 3. Clean up and abatement of existing unlined and clay-lined sites and requirements for impermeable liners at new or proposed disposal sites.** The TVA spill highlighted the potential dangers of “wet” coal ash storage ponds, but data from the EPA also shows that unlined and clay-lined sites pose a risk of contamination.
- 4. Reclassification of coal ash as a hazardous waste, reflective of its potential risks to human health.** Heavy metals such as arsenic, cadmium, lead and mercury found in coal ash all pose serious risks both to children and adults in terms of increased risk of cancer. Additionally, these toxins can be particularly dangerous for children, contributing to delayed or impaired behavioral and mental development.
- 5. Characterization and analysis of coal ash prior to disposal so that waste that poses particularly high risks to human health (as indicated by existing standards for compounds such as arsenic and mercury) is not sited near drinking water supplies or residential areas.** Since toxin levels can vary depending on the type of coal combusted, continuing to treat coal ash as a homogenous waste stream does not adequately consider the variations in risk. As testing of coal ash sources from Iowa and other states has shown, levels of compounds such as arsenic can exceed recommended safe standards in some sources of coal ash.



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

March 19, 2009

MR MATT HALE, DIRECTOR
OFFICE OF RESOURCE CONSERVATION AND RECOVERY
US ENVIRONMENTAL PROTECTION AGENCY
1200 PENNSYLVANNIA AVE NW
WASHINGTON DC 20460

RE: EPA Regulation of Coal Combustion Waste

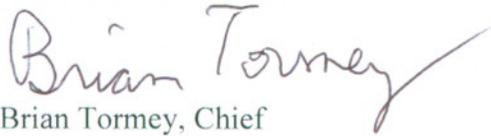
Dear Mr. Hale:

On behalf of the Iowa Department of Natural Resources (IDNR) and our director we want to express our thanks for the opportunity to provide comments to EPA while you are still vetting options. Since 90% of the electricity in Iowa is generated by coal-burning facilities, the issue of regulating the beneficial use and disposal of coal combustion waste (CCW) has serious implications to our state. We have looked at EPA's proposed regulatory scenarios and it is IDNR's position that the EPA should approach CCW regulations similar to the approach that is taken with municipal solid waste under 40 CFR Part 258, commonly referred to as RCRA Subtitle D. Using the lessons learned by states since the adoption of 40 CFR Part 258 and historical CCW data collected by states, RCRA Subtitle D could be modified to specifically address CCW waste disposal facility requirements and is the framework that the EPA should build upon.

The Department understands that the EPA is considering options to regulate CCW as a hazardous waste under RCRA Subtitle C. This option is not supported by the historic data that has been collected from generators of CCW in Iowa which shows that CCW does not exceed RCRA Subtitle C hazardous waste characteristics. Regulation under RCRA Subtitle C also has the potential to put an end to many beneficial uses for CCW. In most states, a primary requirement for a beneficial use determination is that the waste not be hazardous. Most importantly, declaring CCW a hazardous waste creates an even greater hardship in Iowa because of the amount that is generated and the fact that there is no RCRA C permitted disposal facilities in the state. The likelihood of siting such a facility borders on the impossible. The implications of this action are that CCW generators would be forced to ship materials to surrounding states for disposal. That could become very costly for Iowans and extremely difficult to justify when there is little scientific data supporting such drastic measures.

IDNR looks forward to continued conversations and involvement with EPA on CCW regulation through ASTSWMO. Again, we want to express our appreciation for the opportunity to provide input. Should you have any questions specific to our comments or need relevant data pertaining to CCW generated in Iowa, please do not hesitate to contact me at (515) 281-8927 or Alex Moon at (515) 281-6807 or alex.moon@dnr.iowa.gov.

Sincerely,

A handwritten signature in dark ink that reads "Brian Tormey". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

Brian Tormey, Chief
Land Quality Bureau
Environmental Services Division

Cc: Richard Leopold, Director, IDNR
Wayne Gieselman, Administrator, Environmental Services Div., IDNR
Alex Moon, Land Quality Bureau, IDNR
Mary Zdanowicz, Executive Director, ASTSWMO
Don Toensing, US EPA, Region VII



Randy Meyer
Chair

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Vice-Chair

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Secretary/Treasurer

Jennifer Likes
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Dawn Carlson
President

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Ottumwa

December 14, 2009

Petroleum Marketers and Convenience Stores of Iowa
Jeff Hove, Vice President
10430 New York Ave, Ste F
Urbandale, Iowa 50322

Re: Comments for Rule Amendment to 567 IAC Ch. 135/Electronic Line Leak Detection Requirements/Agenda Item 13

To: Environmental Protection Commission

PMCI represents 1000 businesses in the State of Iowa which are directly impacted by the proposed rule-making. We sincerely appreciate this opportunity to give public comment in hopes that the EPC will determine that this rule making is better suited for a time following EPA discussions on this topic and industry has the opportunity to more fully discuss the implications of the this rule with DNR staff.

Prior comments given by PMCI stated that the EPA is currently planning discussions, with stakeholders, on revised rules. DNR staff contends that the EPA is not including leak detection requirements in these upcoming talks. I would like to reference the attached EPA Draft Agenda and ask again that this rule making be suspended until such time that the EPA revise it's rules and require the leak detection described in this proposed rule.

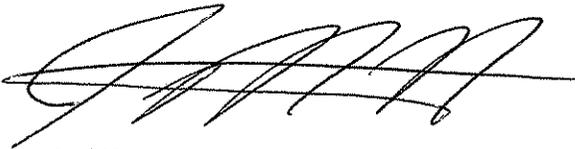
- The Federal Environmental Protection Agency (EPA) does not require Electronic Line Leak Detection (ELLD) system in their rules. Industry should not be forced to comply with costly standards that are stricter than the EPA. Our existing leak detection systems meet all EPA requirements.
- DNR cannot cite one occurrence where an ELLD system would have prevented a release better than a mechanical LLD system.
- DNR does not know how many sites will be impacted by this rule-making
- No other state in the country has implemented rules requiring ELLD use at these sites.

DNR should be pointing out that the system they are specifying in their supporting documentation does not take a site's existing equipment into consideration. DNR's suggested equipment will not provide members with the necessary compliance information unless that same manufacturer were to install additional equipment and software inside the building (if one exists). DNR must inform what leak detection documentation will be required once their suggested equipment is installed.

The costs DNR has provided to the EPC are not complete. Material equipment pieces have been left out and the costs assume one compliance manufacture is universal to the tanks systems across this state. As such, the DNR cost estimates are **LOW**. PMCI industry review indicates the costs are likely \$7,000 to \$16,000 when taking into consideration all costs involved.

Please consider this DNR request carefully. Requiring these unnecessary upgrades may cause loss of rural fueling stations in locations in Iowa, especially in this economy.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Hove', written in a cursive style with a horizontal line crossing through the middle of the signature.

Jeff Hove
Vice President
Petroleum Marketers and Convenience Stores of Iowa

Incl: Draft EPA

Costs estimates provided upon request

As drafted by Region 7 EPA

(Draft) Potential Changes to UST Regulations

June 2009

For the past year EPA has been working on identifying possible targeted changes to the UST regulations to better protect the environment and to improve implementation of the program. We solicited ideas from a variety of stakeholders and carefully considered many possible changes to the regulations. This document includes issues we plan to evaluate further this summer. We are interested in hearing your ideas about the issues on this list as well as any information you have that may support either going forward or not on an issue.

RELEASE PREVENTION

- Operation and Maintenance (O&M) – could include overfill functionality testing, walk through inspections, etc. Will likely include spill bucket testing and integrity testing for interstitial areas
- Ball Floats - Consider ban on new and restrictions on existing flow restrictors
- Address Repairs
 - Repairs and secondary containment - If fix primary or secondary wall, must verify structural integrity of the interstitial space before returning tank/piping to service
 - Explore tightening Repairs Section - Consider revising repairs section to include non-release repairs and include requirements/testing. This will also require re-evaluating repair definition and disassociating repair from release.
- Explore possible Incentives for encouraging secondary containment and better leak detection – examples include:
 - Less record keeping if better technology
 - Reduced cathodic protection monitoring requirement for certain types of interstitial monitoring
 - Additional or more frequent leak detection testing or O&M for single walled systems
 - No line leak detector requirement for double wall piping with certain types of interstitial monitoring

RELEASE DETECTION

- O&M – could include periodic operational checks and periodic testing (automatic tank gauge, probes, sensors, line leak detectors, and alarms) that goes beyond manufacturer's instructions
- High Throughput Facilities – consider whether additional/different requirements are appropriate
- Incorporate new technologies (such as Statistical Inventory Reconciliation (SIR) and Continuous In Tank Leak Detection System (CITLDS))
- Consider whether clarification is needed concerning catastrophic and monthly release detection.
- Explore how to address interstitial alarms with regard to section 280.50 “Reporting of Suspected Releases”
- Leak Rates - Explore adjusting leak rates and/or probabilities and other performance criteria by method of release detection.

OTHER

- Consider adding alternative fuels to definition of motor fuels or regulated substance
- Update Regulations - Remove references to 1998 deadline. Including removing upgrade options and/or internal lining from regulations (but keep inspection requirements for existing systems.)
- Update tank, piping sections for new technologies – include clad and jacketed tanks, flexpiping
- Notification of ownership changes - Explore requiring submitting revised notification forms when ownership changes at the facility
- Technical Corrections – such as update standards and correct typos

DEFERRALS

- Explore whether to regulate, exclude or continue to defer
 - Release detection for Emergency Generator USTs
 - USTs containing Radioactive Substances
 - Emergency Generator USTs at Nuclear Facilities
 - Airport Hydrant Systems
 - Field-Constructed USTs
 - Wastewater Treatment Tanks



Iowa Section
American Water Works Association

1000 Walnut Street, Suite #102
Des Moines, Iowa 50309-3433
515/283-2169
FAX 515/284-7301

December 15, 2009

Reply To:

Iowa Department of Natural Resources
Environmental Protection Commission

Tim Wilson
Marshalltown Water Works
205 E. State Street
Marshalltown, IA 50158
641/753-7913
tim@marshalltownwater.com

RE: **Final Rule** - Chapter 64

Good Morning,

My name is Tim Wilson.

I am the Director of Water Production for the Marshalltown Water Works.

I am also the immediate past chair of the Iowa Section of the American Water Works Association, which is comprised of over 700 of Iowa's water professionals. I am also the current chair of the AWWA Water Utility Council comprised of Iowa's water utilities, from the biggest in the state to the smallest.

I would like to commend the Department for their efforts in bringing additional clarity to this important effort to protect Iowa's water sources.

Speaking on behalf of the Iowa Section of AWWA and the Water Utility Council, we do have some concerns about the language before you.

I would bring your attention to the reference of Best Management Practices used within the rule.

In this rule Best Management Practices, or BMP's is not a clearly defined term within the rule and leaves the determination as to what is "best" up to the individuals involved in the well drilling or maintenance process or, at worst, to the lawyers. I understand the BMP's and guidance information is to be developed later, however, in my opinion that is placing the cart ahead of the horse. It is difficult to support this rule without that information ahead of time to be able to realize the effects it will have on a water utility's operations.

In the comments provided at the public hearings and included in your handouts, an example was brought out that needs to be re-emphasized. In summary, it states that, "Typical BMP's that would provide approximately a 90 percent treatment of the waste stream will cost between 10 to 50 dollars per gallon per minute discharged. For example, a 10 gallon per minute residential well will have a BMP cost of 100 to 500 dollars. I believe that a 1000 gallon per minute well will cost somewhere between 10,000 and 50,000 dollars. To achieve the last 10 percent in reduction with this well I believe that it will cost in excesses of 100,000 dollars." We have a single well in Marshalltown that produces over 4,000 gallon per minute. The yet to be defined BMP's may have drastically overshadowed the cost of constructing the well had this regulation been in place at that time.

In some instances, those costs may be justified, but under a "best management practice", it would be required in all instances.

An engineer is hired to design a project under a number of constraints depending on the location, depth, water quality, surrounding environmental challenges – and of course, budgetary constraints. The term "best management practices" may very well be different from site to site – but it is unclear if these rules allow for that kind of variance.

I would also question, whether or not requiring best management practices prior to the design and prior to bidding a project, will result in a loss of innovation and proposed alternatives by the professionals involved.

We would ask the EPC delay implementation of these rules and allow us to work with the staff on developing alternative language. It might be as simple as referencing "ordinarily adhered to practices followed by water professionals in similar circumstances." – or something similar.

We do commend the department for allowing us input on this rule, but I must say we were disappointed in the procedure followed in developing these rules from the onset. It is my understanding that only the well drilling industry was involved in the initial drafting of these rules, while Iowa's water utilities and professional engineers were relegated to responding to what had been drafted.

I would hope in the future, representatives from all the stakeholder groups be brought to the table to develop effective solutions to these challenges, rather than the department working with only one segment of the industry leaving the rest of us in a reactionary position.

I thank you for your time and offer the services of the Iowa Section of AWWA and the Water Utility Council.

Respectfully,

A handwritten signature in black ink, appearing to read "Tim Wilson", with a long horizontal flourish extending to the right.

Tim Wilson
Chair Iowa Section-AWWA Water Utility Council
Immediate Past Chair Iowa Section-AWWA

Tim Walsh





From: Jane Shuttleworth [lakesidejane@yahoo.com]
Sent: Monday, December 14, 2009 1:09 PM
To: Dale.Chochran@dnr.iowa.gov; Heathcote, Susan [DNR]; Johnson, Paul [DNR];
LaSeur, Carrie [DNR]; Petty, David [DNR]; Puntillo, Lorna [DNR]; Stimson, Marty
[DNR]; VerSteeg, Eugene [DNR]; Hubbell, Charlotte [DNR]
Cc: Phil Petersen; Jane and Bill Lieb
Subject: Designation of West Okoboji and Spirit Lake as OIW

Dear EPC Commissioners,

I have reviewed the DNR's revised list of Outstanding Iowa Waters, and see that of all the Iowa Great Lakes, only West Okoboji and Big Spirit remain on the list from the original nomination of all the lakes in the Iowa Great lakes watershed. While we still wish the region be considered as one hydrological unit and economic region rather than a collection of separate lakes, I am comfortable with the revised list because it does include West Okoboji and Big Spirit, and the watershed of East Okoboji Lake. Even though removed from the proposed list, East Okoboji Lake and the Lower Chain of Lakes (Upper and Lower Gar and Minnewashta) will still benefit from the designation of Big Spirit and West Okoboji as they represent the upper part of the Iowa Great Lakes watershed. The protection of the East Okoboji watershed will also provide tools to prevent a situation like that occurred with the Bridges Bay Development on East Okoboji.

I thank the DNR for considering other sources of data mentioned in the September OPA comment letter than document that water does flow occasionally from East Okoboji into West. I ask the Commissioners approve these designations, along with the designation of the East Lake Okoboji watershed as equivalent to OIW in order to fully protect West Lake Okoboji similar to how feeder streams to OIW stream segments are proposed to be considered.

I write this letter as citizen and member of the Okoboji Protective Association board of directors. (We do not meet in winter, or you would receive a letter from the board - unless of course President Phil Petersen can get their consensus on short notice.) I have also had the chance to discuss this with the East Okoboji Lake spokesperson, Jane Leib. We are all in agreement that these designations will offer protections and a process for preventing the degradation of all of the Iowa Great Lakes.

Sincerely,

Jane Shuttleworth

From: Jane Lieb [jane.lieb.657@gmail.com]
Sent: Monday, December 14, 2009 8:51 PM
To: LaSeur, Carrie [DNR]; Hubbell, Charlotte [DNR]; Cochran, Dale [DNR]; Petty, David [DNR]; VerSteeg, Eugene [DNR]; Stimson, Marty [DNR]; Johnson, Paul [DNR]; Leopold, Richard [DNR]; Heathcote, Susan [DNR]; McDaniel, Lori [DNR]; Shannan Garretson
Subject: comments for EPC meeting 12-15-2009

To members of the Iowa Environmental Protection Commission:

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

The Board of Directors wishes to comment on the decision of the Department of Natural Resources to not place East Okoboji, Upper Gar, Minnewashta, and Lower Gar Lakes on the list of Outstanding Iowa Waters. We realize that these lakes are only of average water quality compared to other lakes in the state. However, it is our belief that these lakes are an integral part of the entire recreational and economic package called the "Iowa Great Lakes". East Okoboji is every bit as crowded with boaters and water-skiers on a summer weekend as is West Okoboji, and the Lower Chain of Lakes experience their own increase in traffic also. For that reason we feel they should all be offered the same protections as West Okoboji and Big Spirit Lake.

We greatly appreciate that the DNR, in recognition of the flow of water between East and West Okoboji, intends to recommend that the "East Lake Okoboji watershed receive protection equivalent to OIW for the protection of West Lake Okoboji". The EOLIC Board of Directors feels this is the very minimum amount of protection that is acceptable for our lakes.

Sincerely,
Jane Lieb
Spokesman, Board of Directors
East Okoboji Lakes Improvement Corporation
712 336-4410
jane.lieb.657@gmail.com<mailto:jane.lieb.657@gmail.com>



December 15, 2009

Lorna Puntillo
301 South Davidson St
Sioux City, IA 51103

Dear Lorna:

The Iowa League of Cities would like to ask the EPC not to put the antidegradation rule into place, until an additional public comment period is held. In addition to our existing concerns with the NOIA version of the implementation document, what the League feels are major changes to the implementation document have been made after the closing of the initial public comment period, without the opportunity for official public comments from our members about how these changes will affect cities. Re-opening public comment is a reasonable approach that would allow continued full participation by the stakeholders that will ultimately be directly affected by the implementation of this rule and new procedures. The implications of this rule need to be weighed carefully. Ensuring that everyone understands the potential effects and costs of the antidegradation rule and implementation procedure is vital.

As an example of some of our concerns, our original understanding was that this rule, like those implemented in surrounding states, would only require *new and expanding facilities* to avoid increasing the discharge of pollutants. Moreover, where new permit limits required treatment of increased peak flows (SSO, CSO reduction) or with new chemicals to reduce pollutants (e.g., chlorine, alum), those activities were not considered degradation as they are all directed at reducing existing pollution. The additional expenditures to avoid pollutant increases for new and expanding facilities were to be *capped at around 15% over the base project cost and never exceed 2% of median income for the community*. The new implementation guidance now imposes requirements on (1) non-expanding facilities, (2) regulates pollutants that are not a significant environmental concern (3) considers additional treatment to be degradation and (4) forces the community to avoid any pollutant increase "if affordable." The "affordability" test would require communities to spend up to 2% of median income simply to avoid "degradation." The 2% of median income is the threshold at which EPA believes a community should be classified as economically distressed.

There is little doubt that these new changes to rule implementation will negatively affect Iowa communities and could dissuade new industries from locating in this state. The changes made to the draft guidance are not required by either state or federal law, and none of our neighboring states have adopted antidegradation programs that operate in this manner. We ask that our members have a chance to make comments to address these changes. Thank you for considering our request for an additional public comment period.

Sincerely,

Jessica Harder
Director of Governmental Affairs

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December 15, 2009

Air Quality Bureau of the Environmental Protection Division
Department of Natural Resources
7900 Hickman Rd., Suite 1
Windsor Heights, IA 50324

Re: Chapter 64, "Wastewater Construction and Operation Permits"
(Requirement that engineer certify that "The WWPPP is designed using best engineering practices.")

Ladies and Gentlemen:

I am writing in opposition to the proposed amendment to Chapter 64 (Wastewater Construction and Operation Permits for Well Construction and Well Service and Well Service Discharges) requiring that "All well activities that use the services of an engineer shall have the engineer sign the WWPPP with the following certification: 'The WWPPP is designed using best engineering practices.'"

I have been in the business of providing professional liability insurance and risk management services to engineers, architects, and other design professionals for 17 years as a lawyer, insurance broker, and claims adjuster. In my opinion, the requirement that the engineer certify compliance with "best engineering practices" has real potential to impair coverage under the engineer's professional liability policy. Engineers are insured for their failure to meet the applicable standard of care, which, in the State of Iowa, is the "degree of skill, care, and learning ordinarily possessed and exercised by members of the profession in good standing in similar circumstances" at the time of the alleged negligence.¹

An engineer who agrees to adhere to a higher standard may well find him- or herself with a coverage problem. This is sometimes seen when clients insist on contract provisions calling for the engineer to meet "the very highest standard of care" and the like. Here is what one of the major insurers of engineers in the U.S. has to say on this point:

¹ Stone, *Architect's and Engineer's Liability under Iowa Construction Law*, 50 Drake L. Rev 33, at 38 (2001).

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December 15, 2009

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Some clients will attempt to revise the standard of care language in their contracts to require consultants to perform "to the highest standard of practice."... If you accept such a clause – or any language that seeks to raise the customary standard – you are agreeing to be judged by far more than the ordinary standard of practice. Not only does this increase your risk, your professional liability insurance will not cover you for this increased exposure, since it represents an assumption of additional liability for which you would not otherwise be responsible.²

The term "best practices," in my opinion, elevates the standard of care beyond ordinary care. It may be interpreted to mean that the engineers' services will be performed to the highest standards of the profession. As noted above, such a standard would **not** have coverage under engineers' professional liability insurance policies. This benefits neither the client nor the engineer, both of whom desire financial security for losses.

I would suggest modifying the engineer's statement so that it more closely follows the normal standard of care for the performance of engineering services. Such a statement is more reflective of reality – no one will meet "the very highest standards" in every aspect of performance, and, indeed, the law does not require this of the engineer – and, in my opinion, is much more likely to be covered by professional liability insurance.

I would be pleased to answer any questions or to discuss this topic further, at your convenience.

With best regards,

A handwritten signature in black ink that reads "Karen Erger".

Karen Erger
Vice President
Design Professional

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² The XL Contract Guide for Design Professionals 429 (2007).