

Summary

Environmental Protection Commission

Tuesday, February 17, 2009
DNR Air Quality Building
7900 Hickman Road
Urbandale, Iowa

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

10:00 AM – Meeting begins

10:30 AM – Public Participation

1:00 PM – Climate Change Advisory Council Report – Dr. Schnoor

1:30 PM – Appeal of Proposed Decision – Anthony Herman dba Mighty Good Used Cars

2:00 PM – CAMR Vacatur and Presentation on Mercury Emissions Monitoring and Testing

Agenda topics

- 1 Approval of Agenda
- 2 Approval of Minutes
- 3 Director's Remarks
- 4 **Contract** – IDALS-DSC – Nonpoint Source Program Basin Coordinator Staffing Assistance Contract Carried (Decision)
- 5 Solid Waste Alternatives Program – Recommendations Carried w/ amendments (Decision)
- 6 **Adopted and Filed** – Water Use & Allocation Permit Fees, Chapter 50: Scope of Division—Definitions—Forms—Rules of Practice; and Chapter 55: Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water Carried w/ amendments (Decision)
- 7 **Adopted and Filed** – Amendments to Wastewater Rules, including Chapters 60, 62, 63, and 64 Carried (Decision)
- 8 **Appeal of Proposed Decision** – Anthony Herman dba Mighty Good Used Cars Postponed till April (Decision)
- 9 **Adopted and Filed** – Chapter 135 – Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks Carries w/ amendments (Decision)
- 10 **Notice of Intended** – Chapter 134 – Certification of Groundwater Professionals and Underground Storage Tank (UST) Compliance Inspectors Carried (Decision)
- 11 **Notice of Intended Action** – Chapter 61 – Water Quality Standards (Stream Reclassifications via Use Assessment and Use Attainability Analyses – Batch #2) Carried (Decision)
- 12 **Amended Notice of Intended Action** – Chapter 61 – Water Quality Standards (Antidegradation Policy and Implementation Procedures) (Information)

13	Final Rule – Chapter 23 – Air Quality Program Rules – Rescission of vacated NESHAP	Carried (Decision)
14	Notice of Intended Action: Chapters 23, 25 and 34: Air Quality Program Rules – Rescission of vacated CAMR regulations and addition of new mercury monitoring provisions	Carried for Option 2 (Decision)
15	Monthly Reports	(Information)
16	General Discussion <ul style="list-style-type: none"> • Water Quality Advocate Bi-Annual Update 	Jessica Montana
17	Items for Next Month’s Meeting <ul style="list-style-type: none"> • March 17th – Cedar Rapids • April 21st – Urbandale 	

For details on the EPC meeting schedule, visit www.iowadnr.com/epc/index.html.

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
FEBRUARY 17, 2009

INGRAM OFFICE BUILDING
7900 HICKMAN ROAD
URBANDALE, IOWA

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Henry Marquard at 10:10 a.m. on February 17, 2009 in the Ingram Office Building, Urbandale, Iowa.

COMMISSIONERS PRESENT

Suzanne Morrow, Secretary
Charlotte Hubbell, Vice-Chair
David Petty
Susan Heathcote
Henry Marquard, Chair
Martin Stimson
Shearon Elderkin

COMMISSIONERS ABSENT

Gene Ver Steeg
Paul Johnson

ADOPTION OF AGENDA

- Add: Update on the lawsuit against the DNR by the solid waste operators/landfills (Closed Session)
Add: Under General Discussion: Creating a CAFO committee to generate a process on hearings

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

APPROVED AS AMENDED

APPROVAL OF MINUTES

December 9, 2008 Minutes

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

APPROVED AS PRESENTED

January 17, 2009 Minutes

Motion was made by David Petty to approve the January minutes as presented. Seconded by Marty Stimson. Motion carried unanimously.

Susan Heathcote submitted a few changes to Neila Seaman’s public comments.

APPROVED AS AMENDED

DIRECTORS REMARKS

Richard Leopold said that the Sustainable Funding bill passed the House this morning. 82-aye /14- nay / 4-non voting. The next step is a Senate vote later this week and then placed on the ballot in 2010.

The Governor’s budget has been released. There will be an impact across the board with budget cuts. The Department will see around an 8.5% cut to our general fund monies.

The hunting and fishing fee increase proposal was pulled. But we are expecting a \$6 million appropriation to come in for parks and to our fish and wildlife trust fund.

The Economic Stimulus bill has passed and we are looking for funds that could be funneled into the Department for various programs. We have formed an internal team to “study” the bill for possible monies. Please feel free to pass on your ideas or concerns to myself, Pat Boddy or Tammie Krausman.

The Marshalltown coal-fired power plant permit went out for public comment yesterday. To date, the Department has probably received over 500 comments.

As far as legislative bills, we pulled back on the engine idle bill. We will work with stakeholder groups and probably come back next year. The residential burn ban continues to move forward.

The Commissioners discussed their role in reviewing a contested permit.

INFORMATIONAL ONLY

PUBLIC PARTICIPATION

JON KALLEN, with MidAmerican Energy submitted the following comments on the rescission of the vacated Clean Air Mercury Rule from the Iowa Administrative Code:

MidAmerican Energy Company continues to encourage the Environmental Protection Commission to rescind the vacated Clean Air Mercury Rule (CAMR) provisions from the Iowa administrative rules by amending 567 IAC Chapters 23, 25, and 34.

Continued compliance with the vacated CAMR is not possible and places both regulated entities and the Iowa DNR at risk of third party enforcement actions.

Imposing these current obligations on MidAmerican facilities would result in the inability to achieve compliance through no fault or negligence on the part of MidAmerican.

MidAmerican believes it is necessary and appropriate to remove from the state rules all of the CAMR regulations for the following reasons:

- The US Court of Appeals for the District of Columbia Circuit has original jurisdiction over appeals from federal agency rules, including those promulgated by the US Environmental Protection Agency. The court's rulings vacating the CAMR are currently on appeal but have not been stayed. Therefore, the CAMR can not be implemented by the EPA, by the state of Iowa or by any other state.
- Mercury monitors are in place for all of MidAmerican's coal units. However, the monitors have not been certified (RATA) to collect valid compliance data. **These monitors can not be certified** because there is no approved standard by which to certify the mercury monitors (NIST traceability). *In addition, via letter dated June 19, 2008, the DNR communicated to regulated entities that as a result of the CAMR vacature, the January 1, 2009 certification requirement is no longer in place. Further, the DNR granted regulated entities an official six month variance on December 28, 2008.*
- The accuracy of the mercury monitoring systems in a utility stack emissions measurement setting has considerable room for improvement. MidAmerican's experience has shown that significant differences exist between the Method 30B measurements (sorbent trap) and the mercury continuous emission monitor (CEMS). **The CEMS results are erratic and do not line up with actual Method 30B test results.** Large unexplained swings in the measured stack mercury concentrations have been observed.
 - The attached Table from mercury optimization testing conducted at the Walter Scott Energy Center Unit 4 highlights the lack of accuracy in mercury monitoring.
 - This Table shows that with increased activated carbon injection rates, there was a larger gap in the values recorded under Method 30B as compared to the average CEMS data values.
 - Also note that this mercury optimization testing registered negative mercury CEMS values with the increased activated carbon injection rates. This demonstrated the difficulty in measuring mercury in extremely low concentrations.
- The DNR has alternatively proposed a Notice of Intended Action to remove the CAMR provisions from the IAC while continuing to require CAMR-affected Electrical Generating Unit (EGUs) to conduct quarterly coal sampling analysis or stack testing.

- MidAmerican is not supportive of these additional mercury monitoring requirements. MidAmerican submits that it is not necessary to prescribe a short-term, costly and extensive monitoring program at the state level when a federal program will likely be developed in the near-term. In fact, on February 6, 2009, the EPA rescinded its writ of certiorari before the Supreme Court regarding CAMR and stated that it will begin a rulemaking under section 112 of the Clean Air Act, to develop a mercury maximum achievable control technology (MACT) standard. (see attached quotes from EPA Administrator Lisa Jackson).
- MidAmerican further submits that we are already required to and continue to record and report mercury emissions under the annual emissions inventory for facilities subject to the Title V Air Operating Permit program.
- In closing, MidAmerican requested that the EPC adopt DNR's proposed Notice of Intended Action to rescind the vacated CAMR provisions as currently reflected in the Iowa regulations at 567 IAC 23.1(2)(z), 23.1(4), 23.1(5)(d), 25.3 and 34.2 through 34.308, including applicable tables, and all other references to requirements originating under CAMR. This notice of intended action does not require mercury emissions monitoring.

WALLY TAYLOR, with the Iowa Chapter of the Sierra Club commented on the wastewater rules – Chapter 64. The current rule states that CAFOs have to have operation permits if they are going to discharge into any water of the state. The proposed rule 64.3 exempts all agricultural activities, even CAFOs, from needing an operational permit. Then proposed rule 64.4(1) says that NPDES permits are required for discharges from a point source to navigable waters. It further states that NPDES permits are not required for discharges from CAFOs. So this leaves CAFOs completely unregulated. Exempting CAFOs from NPDES permits. That violates the Clean Water Act. What this means is that municipalities will have to treat their waste to have a permit but a CAFO which could have more waste than a municipality is not required to do anything. To put this into numbers, a pig produces 4 times more waste than 1 person. So a 2,500 head CAFO could have as much waste as a 10,000 person town or city with no regulation. We ask that you do not approve these rules as written. We need a requirement for operation permits for CAFOs to protect all waters of the state and the rules need to comply with the Clean Water Act.

Susan Heathcote asked for a clarification. Her interpretation of the rule states that it includes agriculture and CAFOs. We'll get it clarified by the staff later on today.

PAM MACKEY-TAYLOR, with the Iowa Chapter of the Sierra Club commented on the Climate Change Advisory Council Report. I was a member of a sub-committee. The final report is a good step forward in addressing climate change but unfortunately the Department is taking a big step backwards in this effort. The recent air permit drafted and issued by the Department does not contain greenhouse gas limits. We believe that the law clearly states that DNR is required to set emission limits for greenhouse gases and regulated pollutants within a permit. It's clear that the Governor supports the greenhouse gas limits. The Director of the DNR now needs

to be bold. Building a massive new coal plant without greenhouse gas emission limits is not a good next step in terms of climate change.

JEFF HOVE, with the Petroleum Marketers and Convenience Stores of Iowa submitted the following comments on Chapters 134 and 135:

Comments for Rule Amendment to 567 IAC Ch. 134/Underground Storage Tank Licensing and Certification Programs

PMCI represents 1000 businesses in the State of Iowa which are indirectly impacted by the proposed rule-making. We sincerely appreciate this opportunity to give public comment during these initial steps in this rule-making.

PMCI believes the new language requiring certified individuals to report “suspected releases” will drive many professionals to notify DNR in times when a release has not actually occurred. Each time a “suspected release” is reported, DNR will require the owner/operator to complete a site check followed by a Tier I/Tier II assessment at costs in and around \$10,000 per assessment.

This ambiguous language should not be used and those certified should not be reporting “suspected releases” simply because they are fearful of DNR taking enforcement actions against them and possibly revoking certifications or leveling other penalties against them. They are not a policing agency.

Please consider removing the “Duty to Report” item number 10 from this rule-making.

Comments for Rule Amendment to 567 IAC Ch. 135 - Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks

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 during these final steps in a rule-making that has been deliberated over for more than 2 years. We believe these rules have the ability to increase the protection of our environment and public health in a manner that does not have a negative impact on small businesses in Iowa.

Revisions to chapter 135 have been completed following extensive stakeholder meetings. The result of those meetings declared that a new risk based model was necessary in order to intelligently assess petroleum releases. All who were present during these meetings (including DNR staff) agreed that the new model would adequately assess leaking underground storage tank sites. All contaminant pathways, with one exception, were deemed to be fully and adequately assessed by the new model.

The DNR expressed concerns over the pumping action of public water supply wells and how the pumping (drawdown) would interact with surficial aquifer plumes. Because data did not exist, nor has there ever been a reported incident of a single LUST site impacting a PWSW, the stakeholder group agreed to create a method and funding source so that the DNR could study the potential impacts of a PWSW on a contaminant plume. This data would then be used to generate new rules if the data supported the need. It is noteworthy that such steps have never previously been taken by any industry in Iowa.

Unfortunately, the rule-making before you today goes well beyond the original plan to create intelligent rules and expands the stakeholders agreed to rules. The new language is unsupported, making the revised assessment model virtually obsolete before ever being put into use.

We urge the EPC to reconsider changes crafted in the rules today and believe that **ITEM 2 - Paragraph E** should read as follows:

“...if it is determined that the conditions for an individual pathway that has been classified as “no action required” no longer exists, or the site presents an reasonable risk to a public water supply well, ~~or~~ and the model used to obtain the pathway clearance underpredicts the actual contaminant plume...”

By making this change to the proposed rule, you will be re-establishing the intent of the risk based revised model to the form in which all parties had previously agreed upon. We believe that Iowa is making enormous strides forward in the protection of water supply wells and that many industries have come together to make sure this happens in a professional and scientific process. To change these rules at this point only demonstrates a lack of desire for the EPC to work with industry in this and in future rule-makings.

JIM KLOSTERBUER, with Interstate Power and Light Company (Alliant Energy) submitted comments on the CAMR rules – NOIA Chapters 23, 25 and 34: Air Quality Program Rules – Rescission of vacated CAMR regulations and addition of new mercury monitoring provisions.

Interstate Power and Light Company (IPL) currently has 8 mercury CEMS monitors installed and it is our intent to continue operating and maintaining these monitors even though the federal CAMR rules have been vacated. In addition, we have 11 units that would have been classified as Low Mass Emitters (LME) under CAMR.

IPL prefers the proposed first Notice of Intended Action which simply removes the federal CAMR provisions from the state’s administrative rules with no additional mercury monitoring requirements.

IPL believes the second potential Notice of Intended Action will results in significant additional costs, but provide no real additional information on mercury emissions. Our concerns include:

Accomplishing quarterly coal sampling for mercury per ASTM D2234-76 would appear to require automatic sampling equipment (which currently is not installed at most units); hence while the sampling analysis costs may be modest, the installation of this new equipment would make this option very expensive and would require a substantial amount of time to design and construct.

The alternative option of quarterly stack testing for mercury is equally expensive; stack tests for a given unit will cost approximately \$10,000 per quarter; \$40,000 per year.

The proposed rule would exempt LME units if the affected source had previously submitted a request to EPA to be designated as LME under CAMR and IDNR concurred with this classification. However, the documentation for classification as an LME under CAMR was not assembled and forwarded to EPA due to the vacatur of CAMR in August 2008; hence no "requests to EPA are available for IDNR review. So this section would need to be rewritten accordingly.

We are requesting that the CAMR provisions in the rulemaking be completely taken out. We already submit a mercury report to the DNR annually. If we adopt CAMR, we will have two inconsistent mercury programs requiring two different things.

SHANNON GARRETSON, on behalf of the Iowa Environmental Council passed out maps on the UAA designations. (Maps of the 2009 UAA designations - Round 2 were distributed) These designations are not finalized. One major concern that we have is that the Department is moving forward with the UAAs and recommendations for round 2, when the first round of UAAs have still not been finalized by EPA. While I understand the Department's desire to move forward with this process, I urge you to slow down and start a water use based for recreation. Thank you for your work on these designations and I look forward to working with the Department to ensure that all of Iowa's waters are protected at the highest levels.

VINCENT WILLEY, an irrigator from Whiting submitted the following comments on the water use permit fees.

In the present economic times, to see this type of an increase is ludicrous. The present 10 year \$25.00 fee to a proposed \$350.00 fee seems extravagant to me. The annual fee of \$140.00 - \$170.00 of which we have never had an annual fee is beyond my belief. The IDNR backed down on hunting license fees, etc. This proposal should be mediated. Mr. Alt of IDNR admits that 2/3 of irrigation wells are in Monona, Harrison and Woodbury counties, thus making it extremely unfair for us to bear the large percentage of the proposed funds they want to raise.

There are 2537 permits (DNR records) of these 1589 are for irrigation. Of these, there are 1378 wells for general farm crops and 211 for specialty crops. Well over 50% of the permitted wells are for irrigation and why should we have to be burdened by our 3 counties providing the biggest share of the \$500,000.00 that DNR wants to raise when we are limited for only 6 months use and the very small amount of water irrigation wells use vs. the large amounts municipalities use on an annual permit. Municipalities and business can pass the fee on to the public. We farmers have no way to set a price on our products. We have to sell what the markets offer.

My county (Monona) needs the \$1.00 acre annual fee for our County roads, bridges, etc. NOT with DNR that admits the proposed rates are excessive in what is needed now, with the balance kept to earn interest when future fees might need to be increased.

At the public hearings in December, our hearing in Onawa (Monona Co.) had 51 at the hearing because of interest in western Iowa. Only 9 were present in Iowa City and 9 in Des Moines. Of these 65 people, 6 were supportive, 59 in opposition. Even with that large % against, the rules were to continue.

Of the 14 stakeholders, western Iowa needed to be involved.

There needs to be a more equitable fee schedule. It appears my 3 irrigation well fees will be much more costly to me than many towns and businesses.

NEILA SEAMAN, Director of the Iowa Chapter of the Sierra Club submitted comments on the UAA designations – Batch 2 of the stream classifications. You will be asked today to approve a notice of intended action to reclassify 138 river and stream segments for recreation and aquatic life uses. Last spring, the EPC approved reclassification for 304 stream segments. The process was extremely time-consuming and required a meeting of its own. The DNR submitted the necessary documents to the Environmental Protection Agency for approval, but EPA has not yet approved all of the reclassifications from the first batch.

The Sierra Club is anxious to bring Iowa close to compliance with the federal Clean Water Act. We believe that Iowa's rivers and streams not previously designated for aquatic life and recreational use should be protected for those uses. We appreciate the extensive work the DNR has done to the use assessment analyses. However, we are concerned that moving forward with a new batch of reclassifications before the EPA signs off on the last batch would not be prudent. Therefore, I encourage you to delay approving the notice of intended action until the DNR receives final approval from the EPA.

Henry Marquard asked what the advantages would be for delaying this rule.

Neila Seaman said that we can hope that EPA approves but we think it would be in the best interest of everyone, like Shannon mentioned we might have to go back and do it all over again. We feel it would be better to wait on this one.

WILLIAM BIERMANN, representing the Southwest Iowa Game Club commented on the water use fees. This is a non-profit organization that has been in existence for 33 years and has a pumping permit for a wetland for recreational and habitat purposes. Our permit is utilized only when additional water is needed to regulate water levels. It's not for commercial endeavors but for recreational purposes. Over the last few years, no pumping was needed. We request that the DNR keep circumstances such as ours in a separate category and keep our fee at a minimum. Our club would require very little monitoring and administrative work, therefore we would request that our club be exempted from the proposed annual fee. That is my request. Thank you.

SHARON GLASGOW, from Johnston stated that she is concerned with the potash in our state. I have recently found out that we store potash in our state as well as bringing in other potash from other states. I ask that you take some proactive steps and strengthen the regulations on potash. Store it with liners. I'm also concerned with our quality of water. Every year it continues to go down. There are some days I don't even want to smell the water coming out of my tap. Why does everyone get to pollute our waters and we as citizens have to bear the brunt? There are too many chemicals in our water already.

ANTHONY COLOSIMO, with Phoenix C & D Recycling commented on the SWAP grant (Waste to Fuels Stud) that was applied by the Metro Waste grant. I feel like we're not getting the bang for the buck. I would like to see this application denied and then asked to go back and work with partners in their region. We are already creating fuel products like coal burners, running education with Pella and working with contractors to educate them about recycling. The project is a good one but they should include the partners that are already doing this. Why duplicate something that is already happening? We could help assist them in producing the use of products.

STEVE VEYSEY, with the Hawkeye Fly Fishing Association commented on the recreational standards for water quality and UAAs. I don't need to remind staff that EPA has 60 days to approve and 90 days to deny UAAs. If they don't meet that timeline, the Director should deal with that. We can't develop water quality standards if every time someone has a non-discretionary duty for the timeline they ignore it. The round 2 batch that are proposed to be downgraded to A2 (82%). Disinfection will never be implemented by a facility with discharges to an A2 designated stream. To discharge and disinfect it has to be put in their permit. They have to have a compliance schedule which usually involves obtaining funding. In Iowa, we have a law that states Iowa can not have any standards more stringent than what EPA requires. At the moment, EPA does not require any numerical values for A2. Missouri is ahead of us in the recreational standards process. I know there are streams on the list that are currently classified as A2 that shouldn't be there. Ballard Creek is one of them. The Director is familiar with it. I gave all of the documents to the DNR indicating ten locales where kids play. There are a lot of streams on this list that we need to look more closely at. A2 streams will never actually be protected.

PATRICK ROUNDS, with PPMC Insurance commented on Chapters 134 and 135. My first comment is regarding the changing of "**and**" to "**or**" at your last meeting. The intent of that paragraph was to make sure that when you have a site that is a no further action site, that site could not get funding for no further action on it. This was directed for that specific one instance. By changing the language from "and" to "or," basically you open the pathways and not just the drinking water path. It's technical but it really does change the intent. When we told the legislature that we had come to an agreement, we had with the word "and" not the word "or." We ask that you change it back to the original wording.

Chapter 134 – as the insurer for underground storage tanks for these sites. We have actually been the enforcer of those rules since 2000. Our comment is that we have added a new provision for mandatory reporting. The problem with it is that the 24/7 hour mandatory reporting for "expected release" on anyone that is licensed individual, whether they are doing any work on the site or not. We had talked to DNR about this and suggested that 1) the duty would be to report to the owner as it is today or 2) that the duty only when you are doing a licensed activity. Neither of those went into the rules and we thought that they would. We ask that you clarify that it is specific to only when you are conducting activities associated with the license. A majority of the state was in agreement with putting this duty on a licensed individual.

Henry Marquard submitted a letter from Douglas Kleiss, President of HMCI INC. in Fredericksburg, Iowa regarding the proposed rules on surface applying manure on frozen or

snow covered ground. They request that the Commission does NOT adopt these new rules restricting surface application of manure to frozen or snow covered ground as they are currently written.

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

CONTRACT – IDALS-DSC – NONPOINT SOURCE PROGRAM BASIN COORDINATOR STAFFING ASSISTANCE CONTRACT

Allen Bonini, Supervisor of the Watershed Improvement Section presented the following item.

Recommendation:

The Department requests Commission approval of a contract in the amount of \$286,205.00 with the Iowa Department of Agriculture – Division of Soil Conservation (DSC) for one (1) year to provide technical assistance staffing in support of existing and future section 319 nonpoint source watershed improvement plans and projects.

Funding Source:

This project will be funded through US EPA Section 319 Nonpoint Source Program grant dollars.

Background:

The Department shares in the funding of three (3) full-time positions and one (1) half-time position in IDALS-DSC to jointly support the development and implementation of Department section 319 and DSC WPF/WSPF watershed improvement plans and projects. Support for these shared positions has been ongoing for several years.

Purpose:

The purpose of this contract is to retain DSC to assist the Department in the implementation of Iowa’s nonpoint source pollution management program through the retention of three (3) full-time positions and one (1) half-time position in the DSC’s Water Resources Bureau for the purpose of providing technical assistance and guidance in the development and implementation of section 319 and WPF/WSPF watershed improvement plans and projects. The cost for these positions shall be shared by both parties.

Consulting Firm Selection Process:

NA

Allen Bonini passed out the “Framework for a Basin Approach to Improving Water Quality” and explained the plan for watershed and basin coordinators.

Susan Heathcote asked if IDALS were unable to produce the funding would the program come to an end.

Richard Leopold said that we are working very closely with IDALS and we would continue on if they were unable to commit funds.

Motion was made by David Petty to approve the contract. Seconded by Sue Morrow. Motion carried unanimously.

APPROVED AS PRESENTED

SOLID WASTE ALTERNATIVES PROGRAM – RECOMMENDATIONS

Tom Anderson, Senior Environmental Specialist presented the following item.

The Department received 18 proposals, requesting \$1,341,695 in financial assistance, for consideration during the January 2009 round of funding. Seven (7) projects were selected for funding or additional consideration. If approved they will receive \$179,658 in a combination of forgivable loans and zero interest loans.

The review committee consisted of five persons representing the Land Quality Bureau (Tom Anderson, Jim Bodensteiner), Iowa Society of Solid Waste Operations (Scott Smith), Iowa Recycling Association (Jeff Rose), and the Iowa Waste Exchange (Julie Plummer).

The table below summarizes recommendations by applicant and project type and by the type of award.

Recommended By Applicant Type	# Awards	Award Amount	Forgivable Loan Portion
Local Government	3	\$65,795	\$65,795
Private For Profit	1	\$56,250	\$20,000
Private Not For Profit	3	\$57,613	\$57,613
Recommended By Project Type	# Awards	Award Amount	Forgivable Loan Portion
Best Practices	6	\$159,658	\$123,408
Market Development	0	\$0	\$0
Education	1	\$20,000	\$20,000
Type of Award	# Awards	Award Amount	Forgivable Loan Portion
Forgivable loan only	5	\$98,208	\$103,408
Forgivable and 0% loan only	2	\$81,450	\$40,000
0% and 3% interest loan only	0	\$0	\$0
0% interest loan only	0	\$0	\$0
3% interest loan only	0	\$0	\$0

At this time, the Department is requesting Commission approval to enter into contracts with selected applicants whose awards will be in excess of \$25,000 subject to satisfactory review of additional requested information as needed.

The Commissioners discussed the public comment made in regards to the Metro Waste grant. Why are we granting monies to a project that doesn't have a feasibility study yet when another entity already has that portion done, it does not get any money? Shouldn't the grant go to the entity that already has some of the work done?

Tom Anderson explained the process and criteria that is looked at when determining who the grant should be given to.

Henry Marquard said that he can not approve this grant with the information that has been presented. I would recommend that we defer.

Charlotte Hubbell asked if the Department could go back and look at a joint application between Metro Waste and Phoenix Recycling C&D.

Motion was made by Shearon Elderkin to exclude the Metro Waste Authority (Waste-to-Fuels Study) grant. Seconded by Sue Morrow. Roll call vote went as follows: Sue Morrow – aye; Charlotte Hubbell – aye; David Petty – aye; Shearon Elderkin – aye; Susan Heathcote – nay; Marty Stimson – aye; Henry Marquard – aye. Motion carried.

Motion was made by Shearon Elderkin to approve the remainder of the SWAP contracts as presented. Seconded by Sue Morrow. Motion carried unanimously.

APPROVED AS AMENDED

Henry Marquard stated that we will remove the 1:30 appointment with Anthony Herman dba Mighty Good Used Cars due to a scheduling conflict with his attorney.

CLIMATE CHANGE ADVISORY COUNCIL REPORT – DR. JERRY SCHNOOR

Dr. Jerry Schnoor, Department of Civil and Environmental Engineering with the University of Iowa presented the Climate Change Advisory Council Report.

Iowa General Assembly S.F. 485 (2007) and H.F. 2571 (2008) and the Iowa Code Section 455B.851 set out the following recommendations:

ICCAC Scenarios for GHG Reductions in Iowa:

-- 50% and 90% reductions by 2050 from baseline (2005)

Interim Years: By 2012, a 1-3% reduction needed

By 2020, a 11-22% reduction needed

Policy Options: 56 Options evaluated based on their potential for GHG reductions and their cost

Website: www.iaclimatechange.us

For the complete PowerPoint presentation and report, please visit our website at: <http://www.iowadnr.gov/epc/09feb17a.html>

INFORMATION

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

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

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

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

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

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

The Commission approved the Notice of Intended Action for this rulemaking on October 14, 2008. A notice of the proposed rulemaking, public comment period, and public hearings was mailed to each of the 2,537 current water withdrawal permit holders on November 14, 2008. Three public hearings were held in December 2008, in Onawa (12/3/08), Iowa City (12/5/08),

and Des Moines (12/11/08), and were attended by 65 people. Comments were received from 56 people, with varying levels of support or opposition. There are no changes to the Notice of Intended Action as a result of public comments.

Charlotte Hubbell expressed her concern that she can not support this proposal as written because it pushes this on to the “little” guy who in turn has to pay for the use of the big guys. I find it incredible that the large users who use trillions of gallons pay the same \$200 fee that the smaller users (farmers, irrigators, etc.) would be charged.

Shearon Elderkin said that she has a problem that we are limiting the environmental benefits of irrigators wanting to create and maintain wetlands. That water also returns to the aquifer.

Chuck Corell said that when there is a lot of water needed for a wetland then there is no need for a water use permit. It’s during the times when the groundwater and aquifer are strained when water would need to be pumped for wetlands.

Susan Heathcote said that the Department has looked at their options and they need this funding in order to operate their programs.

Motion was made by David Petty to amend the rule by setting a \$100 permit fee for all users and the remainder fee would be based on usage with the intent that this rule will be re-issued as a Notice of Intended Action. Seconded by Charlotte Hubbell.

Susan Heathcote said that the fee shouldn’t be based on gallons used but rather create categories of usage. Level A, B, C, in order to establish a user fee.

Roll call vote went as follows: David Petty – aye; Charlotte Hubbell – aye; Sue Morrow – aye; Susan Heathcote – nay; Marty Stimson – aye; Shearon Elderkin – aye; Henry Marquard – aye. Motion carried.

APPROVED AS AMENDED

CAMR VACATUR AND PRESENTATION ON MERCURY EMISSIONS MONITORING AND TESTING

Mark Stone with the Air Quality Bureau presented a PowerPoint Presentation on CAMR Vacatur and a Presentation on Mercury Emissions – Monitoring and Testing

For the complete PowerPoint presentation, please visit our website at: <http://www.iowadnr.gov/epc/09feb17a.html>

INFORMATION

NOTICE OF INTENDED ACTION: CHAPTERS 23, 25 AND 34: AIR QUALITY PROGRAM RULES – RESCISSION OF VACATED CAMR REGULATIONS AND ADDITION OF NEW MERCURY MONITORING PROVISIONS

Christine Paulson, Environmental Specialist Senior of the Program Development Section in the Air Quality Bureau 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 amend Chapter 23 "Emission Standards for Contaminants," Chapter 25 "Measurement of Emissions," and Chapter 34 "Provisions for Air Quality Emissions Trading Programs" of 567 Iowa Administrative Code (IAC).

At the October 2008 Commission meeting, the Department presented an information item proposing rule changes to remove from the state air quality rules EPA's Clean Air Mercury Rule (CAMR) provisions that the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court) vacated. The D.C. Court found CAMR to be unauthorized under the federal Clean Air Act (CAA). Instead of proceeding with the rulemaking process, the Commission requested that the Department provide information regarding state regulatory options for addressing the vacatur of CAMR.

At the January 2009 Commission meeting, the Department presented an information item providing regulatory options for addressing the vacatur of CAMR. The Commission subsequently requested that the Department provide a presentation at the February Commission meeting explaining the mercury emissions monitoring methods that are currently available and the technical problems with the mercury monitoring provisions under the vacated CAMR regulations. The Commission also requested that the Department provide a Notice of Intended Action to remove all of the federal CAMR provisions from the IAC and a Notice of Intended Action to remove the federal CAMR provisions from the IAC but continue to require some type of mercury emissions monitoring.

The first Notice removes the federal CAMR provisions from the state's administrative rules. No mercury monitoring requirements are included in this Notice. The second Notice also removes the federal CAMR provisions from the state's administrative rules but requires CAMR-affected Electrical Generating Units (EGUs) to conduct quarterly coal sampling analysis or stack testing for mercury using approved methods. Affected EGUs would not be required to continue to operate and collect data from the mercury continuous emissions monitors (CEMS) under either Notice, since the continuous mercury monitoring methods under the vacated CAMR rules have never been approved by EPA and have been shown to be inaccurate.

The Notice of Intended Action that is approved by the Commission will be published in the Iowa Administrative Bulletin on March 11, 2009. A public hearing will be held on Monday, April 13, 2009, at 1 p.m. at the Department's Air Quality Bureau offices. The public comment period for the proposed rules will close on Tuesday, April 14, 2009.

Motion was made by Susan Heathcote to approve the NOIA to vacate the CAMR provisions. Seconded by Marty Stimson. Motion carried unanimously.

APPROVED TO VACATE CAMR

FINAL RULE – CHAPTER 23 – AIR QUALITY PROGRAM RULES – RESCISSION OF VACATED NESHAP

Christine Paulson, Environmental Specialist Senior in the Program Development Section of the Air Quality Bureau presented the following item.

The Department is requesting that the Commission adopt amendments to Chapter 23 "Emission Standards for Contaminants" of the 567 Iowa Administrative Code.

The purpose of the rule changes is to remove from the state air quality rules certain federal regulations that the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court) recently vacated. The federal programs vacated by the D.C. Court that are being addressed in this rulemaking are the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Boilers and Process Heaters (the Boiler MACT) and the NESHAP for Brick and Structural Clay Products Manufacturing (Brick-Clay MACT).

Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on December 3, 2008, as ARC 7395B. A public hearing was held on January 5, 2009. The Department did not receive any comments at the public hearing. The Department received two written comments before the public comment period closed on January 6, 2009.

The public comments submitted are described briefly in the rulemaking preamble for the respective items. Additionally, a public participation responsiveness summary is attached to this agenda item. In response to comments, the Department made minor changes to the adopted rules from what was published in the Notice.

Over the last year and a half, the D.C. Court has issued rulings on several significant federal programs promulgated by the U.S. Environmental Protection Agency (EPA). The D.C. Court found the regulations to be unauthorized under the federal Clean Air Act (CAA) or otherwise deficient. The vacatur of these federal programs have elicited uncertainty and confusion for regulated industries and for state and local air agencies.

In response to these vacatur, the Department is removing the now vacated federal regulations that were adopted by reference. The specific rule amendments are explained in the preamble of the attached Notice. A summary of the vacated federal regulations, the D.C. Court decisions, and the impacts of the vacatur on the Department and on stakeholders is included below and in the rulemaking preamble.

MACT Regulations

Section 112 of the Clean Air Act (CAA), as amended in 1990, requires EPA to develop a list of source categories or subcategories that emit, or have the potential to emit, Hazardous Air

Pollutants (HAP), and to issue regulations for these source categories or subcategories. Section 112 also requires certain subject sources to meet Maximum Achievable Control Technology (MACT) for controlling HAP.

EPA issues the MACT standards for listed source categories and subcategories under the National Emissions Standards for Hazardous Air Pollutants (NESHAP) program. EPA promulgated the NESHAP with MACT standards for brick and structural clay products manufacturing (Brick MACT) on May 16, 2003. EPA promulgated the NESHAP with MACT standards for institutional, commercial and industrial boilers and process heaters (Boiler MACT) on September 13, 2004. The Brick MACT and the Boiler MACT are adopted by reference into the state air quality rules.

CAA Sections 112(g) and 112(j)

Section 112 of the CAA includes provisions to require MACT for major sources of HAP emissions in the event that EPA does not issue MACT standards. Under section 112(g), if EPA has not set applicable emission limits for a category of listed HAP sources, construction of a new major source or modification of an existing major source in the source category may not occur unless the Administrator (or delegated state or local agency) determines on a case-by-case basis that the unit will meet standards equivalent to MACT. Under section 112(j), if EPA fails to promulgate a standard for a listed category or subcategory by the dates established in the CAA, states must conduct a case-by-case MACT determination for each subject source category or subcategory and include the MACT requirements in each facility's Title V Permit. EPA has delegated authority to the Department to implement and enforce both 112(g) and 112(j) in Iowa.

MACT Vacaturs

The D.C. Court issued its decision to vacate the Brick MACT on March 13, 2007, and issued the mandate making the decision final and effective on June 18, 2007. EPA did not appeal the decision to the U.S. Supreme Court. The D.C. Court's decision is available on-line at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200703/03-1202a.pdf>

The D.C. Court issued its decision to vacate the Boiler MACT on June 8, 2007, and issued the mandate making the decision final and effective on July 30, 2007. EPA did not appeal the decision to the U.S. Supreme Court. The D.C. Court's decision is available on-line at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200706/04-1385a.pdf>

Because of the D.C. Court vacaturs, it now appears that sections 112(g) and 112(j) apply to sources affected by the vacated Boiler and Brick MACTs. Additionally, EPA entered into a D.C. Court ordered agreement that includes several options, including a schedule requiring EPA to re-propose a Boiler MACT by July 31, 2009, and to repromulgate a final Boiler MACT standard by July 31, 2010. EPA has not provided a schedule for re-promulgating the Brick MACT.

Recent Department Activities

At the Department's Air Quality Client Contact meetings on August 14, 2008, and November 13, 2008, the Department discussed the implications of the Boiler MACT vacaturs with stakeholders. At the meetings, the Department outlined a tentative, section 112(j) timeline for owners and

operators of facilities with boilers and process heaters. The Department sent follow-up letters to affected facilities on September 16, 2008, and on December 31, 2008.

If the Commission approves the final rules, the final rules will be published in the Iowa Administrative Code on March 11, 2009, and will become effective on April 15, 2009.

Motion was made by Shearon Elderkin to approve the final rule as presented. Seconded by Marty Stimson. Motion carried unanimously.

APPROVED AS PRESENTED

CLOSED SESSION

Ed Tormey read the legal reasons and requirements for going into closed session.

Motion was made by Charlotte Hubbell to go into closed session to discuss with counsel the pending landfill rules litigation in Dallas County. Seconded by Susan Heathcote. Roll call vote went as follows: Sue Morrow – aye; Charlotte Hubbell – aye; David Petty – aye; Shearon Elderkin – aye; Marty Stimson – aye; Susan Heathcote – aye; Henry Marquard – aye. Motion carried unanimously.

-----Commissioners went into closed session-----

ADOPTED AND FILED – AMENDMENTS TO WASTEWATER RULES, INCLUDING CHAPTERS 60, 62, 63, AND 64

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

The adopted and filed rule for changes to Chapter 60 “Scope of Title – Definitions – Forms – Rules of Practice”, Chapter 62 “Effluent and Pretreatment Standards: Other Effluent Limits or Prohibitions”, Chapter 63 “Monitoring, Analytical, and Reporting Requirements”, and Chapter 64 “Wastewater Construction and Operation Permits” is being presented to the Environmental Protection Commission for decision. The final amendments to these chapters will update the wastewater rules to meet requirements in the Code of Federal Regulations, reflect changes in technology and water quality standards, and include language from the department’s Policy Implementation Guidance (PIG) documents.

The Notice of Intended Action (NOIA) was published in the Iowa Administrative Bulletin on September 10, 2008 as **ARC 7152B**. Three public hearings were held throughout the state with notice of the hearings sent to various individuals, organizations, and associations, and to statewide news network organizations. Comments were received from one hundred seventy

persons and organizations. A responsiveness summary addressing the comments can be obtained from the Department of Natural Resources.

The ARRC requested that the Department perform an Informal Regulatory Analysis of the final amendments at their October 14, 2008 meeting. The Informal Regulatory Analysis was presented to the ARRC at their December 10, 2008 meeting. The adopted amendments have been modified from those published under the NOIA based on the comments received during the public comment period and additional input received from stakeholders on the Informal Regulatory Analysis. The modifications to the final amendments will add or remove minor phrases for clarification purposes, change the definition and requirements for bypasses, reduce the monitoring requirements, and remove the language on substantial compliance.

The following is a summary of the final amendments to the rules:

Chapter 60

- Add definitions and new permit application forms
- Clarify language concerning permit applications

Chapter 62

- Clarify the procedure for calculating 30-day average percent removal
- Include language allowing the use of TMDLs to derive permit limits
- Add language on effluent reuse

Chapter 63

- Replace the language on bypasses
- Update monitoring requirements for all NPDES permits
- Remove the monitoring table for inorganic waste discharges and replace it with a rule-referenced document

Chapter 64

- Add two classes of facilities that will be exempted from obtaining operation permits
- Clarify the language regarding the issuance and denial of operation and NPDES permits
- Clarify the public notice requirements for NPDES permits
- Add language on public requests to amend, revoke and reissue, or terminate permits

The rules will become effective on April 15, 2009.

Susan Heathcote asked if CAFOS are included in this rulemaking.

Chuck Corell said yes, if they receive a NPDES permit.

Motion was made by Marty Stimson to approve the Wastewater Rules – Chapters 60,62,63 and 64 as presented. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS PRESENTED

ADOPTED AND FILED – CHAPTER 135 – TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

Elaine Douskey presented the following information.

The Department presents these rules for adoption and filing by the Commission. The Notice of Intended Action was published as ARC 7400B in the 12/3/08 issue of the Iowa Administrative Bulletin.

In summary, these rules replace some provisions adopted in June 2008 pertaining to assessment of risk to public water supply wells (PWSWs). An alternative approach to assessing risk to PWSWs was negotiated between the Department, and key stakeholders (UST Fund Board, Petroleum Marketers Management Insurance Company, and Water Supply organizations). The alternative approach is to implement a study on the impact of petroleum UST releases to PWSWs. The study is to be conducted jointly between DNR and UST Fund (via 28E Agreement -attached), and essentially replaces the requirement for owners and operators to complete a special PWSW assessment when the well falls outside the modeled or actual plume area (as adopted by rule in June). The new approach calls for rescinding those parts of rule related special PWSW assessment procedures (as presented herein). Because there may be cases where a LUST site may not be eligible for funding under the 28E agreement (should the study identify an unreasonable risk to a PWSW from a LUST site), a provision was also added to the rule (ITEM 2) that allows the Department to require owners / operators to take necessary assessment and corrective action measures to address risk in accordance with provisions of Chapter 135. To better explain the history behind the many rule changes, background information is provided following this summary (and as written in the November EPC Agenda Brief).

During the November 2008, the Commission approved the Notice of Intended Action with minor modification to Item 2 regarding when pathways need to be reevaluated. The Commission also approved the 28E Agreement that accompanies these rule amendments, with a suggested change in wording that the agreement be jointly administered by the DNR and UST Fund Board. The wording was changed and approved by the UST Fund Board at their December 11, 2008, meeting.

Because of the extensive number of stakeholder meetings held over the past year, only one public hearing was held after publication of the notice. Comments were heard from a representative of the Petroleum Marketers and Convenience Stores of Iowa (PMCI). Two concerns were brought forth: 1) the commenter believes the 28E agreement should have addressed prohibition of any additional PWSW installations (through the DNR's permitting process) when an existing PWSW was determined to be at an unreasonable risk from a UST petroleum release during the study; 2) the commenter is concerned that new paragraph 'e' will 'open the door' for the Department to ask for further assessment of pathways and receptors other than the PWSW receptor which was the sole focus of the rule changes. The Department has responded to these comments in the attached Public Hearing Response Summary.

These comments did not warrant changes to the rules presented for final adoption.

Background

Approximately two years ago, the DNR and other interested stakeholders began a process to review a computer model used to predict the areal extent of plumes from leaking underground storage tanks. The model was 10 years old and in many cases largely overestimated the areal extent of plumes when compared to actual plumes that had been measured in our 10 years of working with the model. The DNR worked with the UST Fund, Dr. LaDon Jones from Iowa State University, groundwater professionals, and the private insurance sector to develop this model. In order to replace the "old" model with the new model which is more reflective of measured plumes, a rulemaking package was proposed.

This rulemaking package was proposed to the EPC in November of 2007. At that time, representatives of the public water supply sector expressed concern that the new model may not provide adequate protection of their source water areas. EPC directed staff to go back and work with water supplies and the other stakeholders to make sure their concerns were taken into account. In January of 2008, a revised rule package was proposed to the EPC which was sent out for public comment. At the March meeting of the Administrative Rules Review Committee (ARRC), the regulated community expressed opposition to parts of the rule dealing with special public water supply well assessment procedures, and subsequently the ARRC directed the DNR to undertake a regulatory analysis of the rules and continue conversations with the stakeholders. For the next two months, regular meetings were held and a regulatory analysis of the rules was completed. We met again with ARRC in May where we identified some changes that could be made to the rules, but that these changes needed to go back to the EPC for action.

In June, 2008 the Commission adopted a package of amendments to the "risk based corrective action" (RBCA) rules in chapter 567 IAC 135. These rules were to become effective on August 6, 2008. At its July meeting, the ARRC expressed concern about the rules for some of the same reasons expressed in March and exercised its authority to delay the effective date of the rules for 70 days. The Committee encouraged opposing stakeholders and the DNR to attempt to reach resolution. (See Iowa Code section 17A.4). The delay of the effective date was set to expire on October 16, 2008. At the October 14, 2008 ARRC meeting, after hearing that a consensus among stakeholders had been reached on an alternative approach to the special well assessment procedures, the DNR and stakeholders recommended and the Committee approved a session delay on those parts of the rule that were objectionable.

Alternative Resolution

1. The DNR and stakeholder groups have reached a tentative agreement to resolve the controversial aspects of the rule package.¹ The resolution requires a decision by the EPC to a) initiate further rulemaking to essentially rescind selected parts of the adopted rules, and b)

¹ The non-controversial parts of the rule package related to the substitution of a "recalibrated" groundwater transport model for the existing model which was thought to be unnecessarily over predictive, i.e. it assumed contamination in groundwater moved horizontally much further than it actually does. A technical advisory group had studied the groundwater model that was adopted in 1996 and modified it based on comparison to actual groundwater movement data accumulated over the past 10 years or more. The "recalibrated" model is expected to in some cases significantly reduce or shrink the predicted area of movement and thereby reduce the predicted impact on "receptors". The rule package also had some revisions to implement current practice of conducting "corrective action meetings" with responsible owners and operators, funding sources and other interested parties to jointly develop corrective action plans to address contaminated sites. It had some non-controversial provisions regarding notice to public water supplies when releases occur within 2,500 feet of their wells and also a requirement to sample all wells within 100 feet of an actual groundwater plume. With resolution of the psw risk assessment provisions, all parties appear to support maintenance of these adopted amendments.

approve a funding agreement between the Iowa Comprehensive Petroleum Underground Storage Tank Board (UST Fund) and the DNR.

2. The controversial aspect of the rule package is a provision that establishes a special risk evaluation process for public water supply wells (pws) that are located outside of the predicted area of groundwater contamination as determined by a two-dimensional model. The provision assigns responsibility for the initial pws risk evaluation to owners and operators of LUST sites and their groundwater professional. Under pre-existing rules, UST owners and operators had no responsibility to assess any wells located outside the modeled or predicted area of groundwater migration. The concern from a technical point of view has been that the model does not take into account the pumping influence of wells and vertical movement of groundwater that could extend to wells outside the modeled plume and that the rules are simply ignoring potential risk to these critical resources.

3. Funding agencies and some of the regulated community felt that the rules placed an excessive and uncertain financial burden on them to assess risk to wells over a large area where there could be multiple contributing sources and that the assessment could result in excessive costs without sufficient documentation or justification that there was a need for this new procedure.

4. The DNR negotiated a resolution with representatives from the two primary stakeholder groups. One group is represented by the Petroleum Marketers Management Insurance Company (PMMIC) which insures about 70% of UST sites in Iowa and the UST Fund which is a state agency that provides financial assistance for "old" UST releases that essentially occurred prior to October 1990. Representatives of the Iowa Association of Municipal Utilities, the Iowa Rural Water Association, and the Iowa Association of Water Agencies have represented the other major stakeholder interests.

5. The DNR and these groups have prepared a proposal which would require the Commission to initiate a rulemaking to revise the adopted rules by removing the provisions that allocated responsibility for conducting a pws risk assessment to owners and operators and the DNR. That provision also granted authority to the DNR to require owners and operators to take further corrective action if sufficient proof of risk was established through this process. The negotiated proposal would provide that the DNR and the Iowa UST Fund enter into a 28E agreement in which the DNR and the UST Fund would jointly conduct a "study" of potential risk to pws that are located outside the modeled groundwater plume.

6. Under the basic terms of the 28E agreement (attached), the UST Fund would provide funding for no less than 125 sites to allow the DNR and the UST Fund to jointly study various types of risk assessment techniques, including "desktop" analyses, limited field work to determine the potential pumping influence of wells outside the modeled plume, recalibration of the existing two-dimensional model to more accurately identify risk to pumping wells and generally study the frequency and effects of impacts to wells outside the modeled plume. After the study is completed, and depending on the findings, the DNR would then have the option to initiate further rulemaking to propose a risk assessment procedure for wells located outside the modeled plume.

7. Under the terms of the 28E, if unacceptable risk to a psw is established, the UST Fund will provide funding to undertake further corrective action under two basic scenarios. One is where the DNR has classified the site as "no further action" (NFA) and issued a certificate but risk is subsequently established under this study such that the site must be "reopened". The other situation is where a NFA certificate has not been issued at the time a risk to a psw is established. In this case, the UST Fund would provide financial assistance under their existing remedial benefits program to claimants that are otherwise "fund eligible" (basically any sites with pre-1990 releases). But any site not fund eligible would not be granted funding to take necessary further action.

8. To address the concern that risk to a psw could be established under the study but funding for corrective action under this agreement may not available in some cases, the DNR proposes an amendment to chapter 135 (per this notice) that would need to accompany the 28E agreement. The amendment gives the DNR discretion or "reservation authority" to require owners and operators to undertake further corrective action in the event that unacceptable risk to a psw is established during the study but funding under the 28E is insufficient or unavailable to undertake these actions. Without this provision, the 28E by its terms could identify a legitimate risk to a psw but provide no funding in certain cases. Without a rule amendment, the DNR may not have a legal basis to impose the regulatory obligations on the responsible owner since the well falls outside the modeled plume and under existing rules owners and operators may not have regulatory responsibility for wells outside the modeled plume. The stakeholders and the DNR are in consensus with the reservation language of the proposed rule.

Susan Heathcote asked for a clarification on the comments regarding the language change from "or" back to "and" and what would the impact be.

Elaine Douskey said that the change will not tie the Department's hands if the language is changed back.

Susan Heathcote said that she has no problem with changing the "or" back to "and".

Charlotte Hubbell said that she would vote against that change because this could be a problem years down the road.

Motion was made by Susan Heathcote to amend the "or" back to "and" as originally proposed and agreed upon by stakeholders. Seconded by Sue Morrow. Roll call vote went as follows: Sue Morrow – aye; David Petty – aye; Shearon Elderkin – aye; Susan Heathcote – aye; Marty Stimson – aye; Charlotte Hubbell – nay; Henry Marquard – aye. Motion carried.

Motion was made by Shearon Elderkin to approve Chapter 135 as amended. Seconded by Marty Stimson. Roll call vote went as follows: Susan Heathcote – aye; Sue Morrow – aye; David Petty – aye; Charlotte Hubbell – nay; Marty Stimson – aye; Shearon Elderkin – aye; Henry Marquard – aye. Motion carried.

APPROVED AS AMENDED

NOTICE OF INTENDED ACTION – CHAPTER 134 – CERTIFICATION OF GROUNDWATER PROFESSIONAL AND UNDERGROUND STORAGE TANK (UST) COMPLIANCE INSPECTORS

Elaine Douskey presented the following item.

The department is requesting permission to proceed with the rulemaking process and publish a Notice of Intended Action to amend Chapter 134, Underground Storage Tank (UST) Licensing and Certification Programs. The rules were previously presented for information at the January Commission meeting.

The Commission adopted the UST Fund Board's existing UST installer and installer inspector licensing rules by emergency rule making in July, 2007. These revised rules are required to fully implement a licensing program applicable not only to UST installers and installer inspectors but persons who remove and test USTs.

No substantive changes were made to the rules during the emergency rulemaking adoption. However, Section 6 of the Act authorizes the Commission to expand the UST professional licensing scheme to include adding a licensing program for individuals providing services in the permanent closure of UST systems (“removers”). The new Part C contains the following changes and additions:

- Addition of licensing scheme for UST removers and require that soil and groundwater sampling at UST closure be performed by a Certified Groundwater Professional.
- Required insurance liability coverage for UST professionals is being raised from \$250,000 to \$1,000,000. This coverage amount was required through legislation in 2007 and reflects the industry standard.
- Clarifications on what type of work must be performed by a licensed professional versus service technicians and when an installation inspection is required.
- Requirement for installation inspections using Departmental-authorized checklist with submittal for review.
- An increase of the licensing fee for companies and individuals to \$200 biennially (currently it is \$50/yr).
- Expands the reciprocity criteria (recognizing training and exams from other states or equipment manufacturers – on a Department-approval basis)
- Adds a duty for UST professionals to report suspected and confirmed releases (currently only the UST owner/operator must report).

- Clarification on conflict-of-interest activities.
- Cathodic Protection Tester must be trained and maintain certification with the National Association of Corrosion Engineers (NACE), the Steel Tank Institute (STI) or equivalent certification approved by the department.

The Department has already held two stakeholder meetings in Des Moines to reach the current draft of the rules. Written and oral comments were received. The stakeholders' main concerns were on the duty to report, with secondary focus being on the dynamic between licensed Removers and Certified Groundwater Professionals during the UST system closure process.

Stakeholders expressed concern that imposing a duty to report suspected or confirmed releases to the Department would jeopardize the professional relationship between UST professionals and the regulated public (their clients), especially in regards to payment. Once a suspected release is reported, Department rules require an investigation to determine whether a release has in fact occurred; specifically, where and how. Not wanting to be seen as "responsible" for these financial costs, the stakeholders preferred that the owners and operators make all reports to the Department personally, which is how the rule currently reads. However, the Department believes such reports should be made directly by the professionals trained in the field. This ensures an accurate and timely report is made to the benefit of public health and the environment. Indeed, this position is why a majority of states surveyed on-point have a like-minded rule in place.

Discussions have also focused heavily on the role Removers will play at UST closures compared to Certified Groundwater Professionals (CGWPs). Removers will perform the technical aspects of closure; meaning, required digging, grading, demolition work, the physical removal of the tanks themselves, etc., whereas CGWPs will oversee soil and groundwater sample collection and lab submittal, etc. Certainly one individual can hold both licenses and perform all necessary work, but the Department sees benefit in having these duties divided between two categories.

The other changes to the rule were non-controversial. Stakeholders recognize the legitimacy of raising the licensing fee to reflect inflation since the original \$50/year fee was imposed in 1991. The proposed licensing fee is the same as the fee for becoming a Certified Groundwater Professional. The same economic principle applies to the sought-after increase in insurance. Revisions to the continuing legal education and testing requirements have also been generally supported, especially in light of the Department's willingness to reciprocate with neighboring states so long as the programs are similar enough to justify an Iowa license.

Three public meetings will be held across the state at 1:00 PM.

Motion was made by Shearon Elderkin to approve the NOIA – Chapter 134 as presented. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS PRESENTED

NOTICE OF INTENDED ACTION – CHAPTER 61 – WATER QUALITY STANDARDS

(STREAM RECLASSIFICATIONS VIA USE ASSESSMENT AND USE ATTAINABILITY ANALYSES – BATCH #2)

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

The commission will be asked to approve a Notice of Intended Action regarding proposed rulemaking to amend the recreational and warm water aquatic life use designations for **138** river and stream segments.

Recent rulemaking and 2006 legislative action have brought the DNR's water quality rules towards compliance with federal Clean Water Act requirements and U.S. Environmental Protection Agency (EPA) regulations, establishing new levels of protection for water quality. As an outcome of these efforts, all 26,000 miles of Iowa's perennial (flowing year-round) streams and intermittent streams with perennial pools are initially protected at the highest levels for recreation and warm water aquatic life uses. These actions provide initial protection for many miles of perennial streams that were previously not designated for aquatic life and/or recreational uses before.

Under these new rules, it is presumed that all perennial streams and rivers are attaining the highest level of recreation and aquatic life uses and should be protected for activities such as fishing and swimming. This concept of assigning all perennial streams the highest use designation, unless assessments show that the stream does not deserve that level of protection, is referred to as the "rebuttable presumption". Included in the federal regulations are the provisions that allow for scientific analysis of these "presumed" recreational and aquatic life uses. An integral part of implementing the new rules is verifying that a stream is capable of supporting the presumed uses.

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

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

The proposed stream segment revisions are:

Class A2 Stream Segments

1. Ballard Creek (Story Co.)
2. Big Bear Creek (Poweshiek/Iowa Co.)
3. Black Hawk Creek (Black Hawk/Grundy Co.)
4. Deep Creek (Plymouth Co.)
5. Deep Creek (Plymouth Co.)
6. East Nodaway River

7. Elk Run (Black Hawk Co.)
8. Flint Creek (Des Moines Co.)
9. Granger Creek (Dubuque Co.)
10. Hartgrave Creek (Franklin/Butler Co.)
11. Indian Creek (Sac Co.)
12. Little Bear Creek (Poweshiek Co.)
13. Little Cedar River (Mitchell Co.)
14. Little Maquoketa River (Dubuque Co.)
15. Mosquito Creek (Pottawattamie/Harrison/Shelby Co.)
16. Mud Creek (Benton Co.)
17. Mud Creek (Polk Co.)
18. Otter Creek (Franklin Co.)
19. Otter Creek (Franklin Co.)
20. Plum Creek (Delaware Co.)
21. Shoal Creek (Appanoose Co.)
22. South Timber Creek (Marshall Co.)
23. Spring Creek (Franklin Co.)
24. Spring Creek (Franklin Co.)
25. Squaw Creek (Franklin Co.)
26. Squaw Creek (Linn Co.)
27. Stony Creek (Clay Co.)
28. Thompson River
29. Timber Creek (Marshall Co.)
30. Unnamed Creek (City of Carroll)
31. Waterman Creek (O'Brien Co.)
32. Willow Creek (Cerro Gordo Co.)
33. Willow Creek (Cerro Gordo Co.)

Class A2, B(WW-2) Stream Segments

1. Apple Creek (Linn Co.)
2. Bear Creek (Wapello Co.)
3. Blue Creek (Benton/Linn Co.)
4. Brewers Creek (Hamilton Co.)
5. Brush Creek (Marshall Co.)
6. Bulger Creek (Dallas Co.)
7. Burr Oak Creek (Jefferson Co.)
8. Clear Creek (Cerro Gordo Co.)
9. Crooked Creek (Cedar Co.)
10. Drainage Ditch #13 (Hancock Co.)
11. Drainage Ditch #4 (Wright Co.)
12. Drainage Ditch #81 (Worth Co.)
13. Dry Creek (Benton/Linn Co.)
14. East Branch Blue Creek (Lin Co.)
15. Fourmile Creek (Kossuth Co.)
16. Fourmile Creek (Union Co.)
17. Fudge Creek (Wapello Co.)
18. Hawkeye Creek (Des Moines Co.)
19. Hawkeye-Dolbee Diversion Channel (Des Moines Co.)
20. Honey Creek (Delaware Co.)
21. Indian Creek (Audubon/Shelby/Cass Co.)

22. Indian Creek (Sioux Co.)
23. Indian Creek (Tama Co.)
24. Little Flint Creek (Des Moines Co.)
25. Lutes Creek (Marshall Co.)
26. Marvel Creek (Adair Co.)
27. Mitchell Creek (Jefferson Co.)
28. Mosquito Creek (Shelby Co.)
29. Murray Creek (O'Brien Co.)
30. Neola Creek (Pottawattamie Co.)
31. North Timber Creek (Marshall Co.)
32. Orange City Slough (Sioux Co.)
33. Platte River
34. Plum Creek (Delaware Co.)
35. Sewer Creek (Jasper Co.)
36. Sixmile Creek (Sioux Co.)
37. Snipe Creek (Marshall Co.)
38. Sugar Creek (Keokuk Co.)
39. Twelvemile Creek (Union Co.)
40. Unnamed Creek (#1) (City of Atkins)
41. Unnamed Creek (#1) (City of Brighton)
42. Unnamed Creek (#1) (City of Elkhart)
43. Unnamed Creek (#1) (HWH Company)
44. Unnamed Creek (#1) (Lakewood Estates MHP)
45. Unnamed Creek (#1) (Little Sioux Corn Processing)
46. Unnamed Creek (#1) (Missouri Valley Energy - Exira)
47. Unnamed Creek (#1) (Missouri Valley Energy - Exira)
48. Unnamed Creek (#1) (Siouxland Energy)
49. Unnamed Creek (#2) (City of Atkins)
50. Unnamed Creek (#2) (City of Brighton)
51. Unnamed Creek (#2) (City of Cincinnati)
52. Unnamed Creek (#2) (City of Elkhart)
53. Unnamed Creek (#2) (City of Hedrick)
54. Unnamed Creek (#2) (City of Middletown)
55. Unnamed Creek (#2) (City of Milo)
56. Unnamed Creek (#2) (Oak Hills Subdivision)
57. Unnamed Creek (aka Johnson's Creek)
58. Unnamed Creek (Bulk Petroleum)
59. Unnamed Creek (Chantland-PVS Company)
60. Unnamed Creek (City of Creston WWTP)
61. Unnamed Creek (City of Earlville)
62. Unnamed Creek (City of Hedrick)
63. Unnamed Creek (City of Hills)
64. Unnamed Creek (City of Huxley)
65. Unnamed Creek (City of Malvern)
66. Unnamed Creek (City of Remsen)
67. Unnamed Creek (City of Sioux Center)
68. Unnamed Creek (City of Sully)
69. Unnamed Creek (Corn Belt Power)(AKA Bull Ditch)
70. Unnamed Creek (DNR Viking Lake)
71. Unnamed Creek (Echo Valley MHP #2)

72. Unnamed Creek (Ecosystems Inc.)
73. Unnamed Creek (Heartland Lysine)
74. Unnamed Creek (IAMU)
75. Unnamed Creek (John Deere Engineering Center)
76. Unnamed Creek (McCreary Community Building)
77. Unnamed Creek (Siouxpreme Packing)
78. Unnamed Creek (Stacyville COOP Creamery)
79. Unnamed Creek (Tri-Center Community School)
80. Unnamed Creek (Wells Dairy Mill Plant)
81. Waugh Branch (Keokuk Co.)
82. West Branch Blue Creek (Benton Co.)
83. West Branch Floyd River

Class A2, B(WW-3) Stream Segments

1. Barlene Creek (Des Moines Co.)
2. Little Walnut Creek (Appanoose Co.)
3. Unnamed Creek (#1) (City of Milo)
4. Unnamed Creek (Iowa Army Ammunition Plant)

Class A3, B(WW-2) Stream Segments

1. Brewers Creek (Hamilton Co.)
2. Crow Creek (Jefferson Co.)
3. Dry Creek (Linn Co.)
4. Unnamed Creek (John Deere Davenport Works)
5. Unnamed Creek (Magellan Pipeline - Johnson Co.)
6. Unnamed Creek (Wells Dairy - North Plant)

Class A3 Stream Segments

1. Big Bear Creek (Poweshiek/Iowa Co.)
2. Black Hawk Creek (Black Hawk/Grundy Co.)
3. Elk Run (Black Hawk Co.)
4. Indian Creek (Linn Co.)
5. Mosquito Creek (Pottawattamie Co.)
6. Otter Creek (Franklin Co.)
7. Plum Creek (Delaware Co.)
8. Spring Creek (Franklin Co.)
9. Squaw Creek (Franklin Co.)
10. Willow Creek (Cerro Gordo Co.)
11. Willow Creek (Cerro Gordo Co.)

Class HH Stream Segments

1. Milford Creek (Dickinson Co.)

Six public hearings will be held across the state in April. Public comments can be submitted through April 30, 2009.

(A copy of the fiscal impact statement was distributed.)

Susan Heathcote said that she can see the benefit in waiting to approve this second batch until we hear back from EPA on batch #1.

Chuck Corell advised the Commission not to delay in approving the NOIA – UAA batch #2. This needs to keep moving forward because we are running out of resources.

Motion was made by Sue Morrow to approve the NOIA – Chapter 61 (Stream Reclassifications via Use Assessment and Use Attainability Analyses – Batch #2) as presented. Seconded by Charlotte Hubbell. Motion carried unanimously.

APPROVED AS PRESENTED

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

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

The commission is being informed of an Amended Notice of Intended Action regarding proposed rulemaking to amend the state's antidegradation policy and new implementation procedures.

The Notice of Intended Action published in the November 19, 2008, Iowa Administrative Bulletin as **ARC 7368B** has been extended. Due to weather conditions, two public hearings regarding Notice **ARC 7368B** were cancelled. Notice is hereby given that public hearings will be held on Tuesday, March 3, 2009, at 10 a.m. in the Falcon Civic Center, 1305 5th Avenue NE, Independence, Iowa, and at 6 p.m. at the Northeast Iowa Community College/Waukon Wellness Center, 1220 Third Avenue NW, Suite 102, Waukon, Iowa. Persons are invited to present oral or written comments at the rescheduled public hearings.

INFORMATION

MONTHLY REPORTS

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

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

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

6. Administrative Penalty Report
7. Attorney General Referrals Report
8. Contested Case Status Report
9. Waste Water By-passes Report

Charlotte Hubbell asked for an update on the waste water by-passes. What are the average length? Amount?

Barb Lynch will gather data from all field offices and present within the next two months.

INFORMATION

GENERAL DISCUSSION

Water Quality Advocate Bi-Annual Update – Jessica Montana

The Water Quality Advocate (WQA) provided assistance to entities requiring National Pollutant Discharge Elimination System (NPDES) permits. A focus of the WQA is to assist communities in understanding and complying with its wastewater requirements, including applying for its NPDES permit. Additionally, the WQA focuses efforts towards the unsewered communities initiative. The WQA also serves as an objective source of information and assistance to small businesses, the Iowa Department of Economic Development and the Iowa Department of Natural Resources.

For more information, please visit www.iowalifechanging.com/business/water_quality.html

Update from Wayne Gieselman, Division Administrator for Environmental Services

It appears that there may be funding with the federal stimulus package for our Brownfields program, Clean water and Drinking water, and others. A DNR team has been established to look at all of the various opportunities within the stimulus package.

Brian Tormey will be working with EPA on coal combustion residue requirements.

We continue to meet with legislators on raising the fee cap for water supplies.

We are continuing to meet on the funding proposal to transfer funds from the the UST Fund to the DNR. We are trying to come up with a long term agreement that extends to the end of the life of the UST fund, which is 2016.

Sub committees continue to meet on the residential burn ban.

There are ongoing discussions with the Cattle industry about deep bedded barns. Currently they are classified as confinements because they are covered buildings, but the issue as discussed by this Commission is that the manure is of a different consistency because of the materials added. It's not liquid like confinements.

Stockpiling of manure continues to be a topic of discussion.

Field office staff has been out and about checking on manure applied to snow covered grounds. Trying to gather data and information. We have been receiving many comments on this rulemaking.

Henry Marquard reminded the commissioners that the Department's Legal Services Bureau had drafted amendments to the CAFO hearing procedure rules.

Henry Marquard announced that he is withdrawing his name for re-appointment to the Commission.

Sue Morrow also indicated that she is withdrawing her name for re-appointment.

NEXT MEETING DATES

March 17, 2009 – Cedar Rapids

April 21, 2009 - Urbandale

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairperson Henry Marquard adjourned the meeting at 5:30p.m., Tuesday, February 17, 2009.

Richard A. Leopold, Director

Henry Marquard, Chair

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Interstate Power and Light Company (an Alliant Energy company) comments on Item 14 on the 17 Feb 2009 Environmental Protection Commission agenda: Notice of Intended Action: Chapters 23, 25 and 34: Air Quality Program Rules – Rescission of vacated CAMR regulations and addition of new mercury monitoring provisions.

1. Interstate Power and Light Company (IPL) currently has 8 mercury CEMS monitors installed and it is our intent to continue operating and maintaining these monitors even though the federal CAMR rules have been vacated. In addition, we have 11 units that would have been classified as Low Mass Emitters (LME) under CAMR.
2. IPL prefers the proposed first Notice of Intended Action which simply removes the federal CAMR provisions from the state's administrative rules with no additional mercury monitoring requirements.
3. IPL believes the second potential Notice of intended Action will result in significant additional costs, but provide no real additional information on mercury emissions. Our concerns include:
 - Accomplishing quarterly coal sampling for mercury per ASTM D2234-76 would appear to require automatic sampling equipment (which currently is not installed at most units); hence while the sampling analysis costs may be modest, the installation of this new equipment would make this option very expensive and would require a substantial amount of time to design and construct.
 - The alternative option of quarterly stack testing for mercury is equally expensive; stack tests for a given unit will cost approximately \$10,000 per quarter; \$40,000 per year.
 - The proposed rule would exempt LME units if the affected source had previously submitted a request to EPA to be designated as LME under CAMR and IDNR concurred with this classification. However, the documentation for classification as an LME under CAMR was not assembled and forwarded to EPA due to the vacatur of CAMR in August 2008; hence no "requests to EPA" are available for IDNR review. So this section would need to be rewritten accordingly.

Testimony of MidAmerican Energy Company

**Before the
Iowa Environmental Protection Commission
February 17, 2009**

Rescission of the vacated Clean Air Mercury Rule from the Iowa Administrative Code

- MidAmerican Energy Company continues to encourage the Environmental Protection Commission to ***rescind*** the vacated Clean Air Mercury Rule (CAMR) provisions from the Iowa administrative rules by amending 567 IAC Chapters 23, 25, and 34.
- Continued compliance with the vacated CAMR is not possible and places both regulated entities and the Iowa DNR at risk of third party enforcement actions.
- Imposing these current obligations on MidAmerican facilities would result in the inability to achieve compliance through no fault or negligence on the part of MidAmerican.
- MidAmerican believes it is necessary and appropriate to remove from the state rules all of the CAMR regulations for the following reasons:
 - The U.S. Court of Appeals for the District of Columbia Circuit has original jurisdiction over appeals from federal agency rules, including those promulgated by the U.S. Environmental Protection Agency. The court's rulings vacating the CAMR are currently on appeal but have not been stayed. Therefore, the CAMR can not be implemented by the EPA, by the state of Iowa, or by any other state.
 - Mercury monitors are in place for all of MidAmerican's coal units. However, the monitors have not been certified (RATA) to collect valid compliance data. **These monitors can not be certified because there is no approved standard by which to certify the mercury monitors (NIST traceability).** *In addition, via letter dated June 19, 2008, the DNR communicated to regulated entities that as a result of the CAMR vacature, the January 1, 2009 certification requirement is no longer in place. Further, the DNR granted regulated entities an official six month variance on December 28, 2008.*

- The accuracy of the mercury monitoring systems in a utility stack emissions measurement setting has considerable room for improvement. MidAmerican's experience has shown that significant differences exist between the Method 30B measurements (sor bent trap) and the mercury continuous emission monitor (CEMS). **The CEMS results are erratic and do not line up with actual Method 30B test results.** Large unexplained swings in the measured stack mercury concentrations have been observed.
- The attached **Table** from mercury optimization testing conducted at the Walter Scott Energy Center Unit 4 highlights the lack of accuracy in mercury monitoring.
 - This **Table** shows that with increased activated carbon injection rates, there was a larger gap in the values recorded under Method 30B as compared to the average CEMS data values.
 - Also note that this mercury optimization testing registered negative mercury CEMS values with the increased activated carbon injection rates. This demonstrates the difficulty in measuring mercury in extremely low concentrations.
- The DNR has alternatively proposed a Notice of Intended Action to remove the CAMR provisions from the IAC *while continuing to require CAMR-affected Electrical Generating Units (EGUs) to conduct quarterly coal sampling analysis or stack testing.*
- MidAmerican is not supportive of these additional mercury monitoring requirements. MidAmerican submits that it is not necessary to prescribe a short-term, costly, and extensive monitoring program at the state level when a federal program will likely be developed in the near-term. In fact, on February 6, 2009, the EPA rescinded its writ of certiorari before the Supreme Court regarding CAMR and stated that it will begin a rulemaking under section 112 of the Clean Air Act, to develop a mercury maximum achievable control technology (MACT) standard. (see attached quotes from EPA Administrator Lisa Jackson).
- MidAmerican further submits that we are already required to and continue to record and report mercury emissions under the annual emissions inventory for facilities subject to the Title V Air Operating Permit program.



- In closing, MidAmerican requests that the EPC adopt DNR's proposed Notice of Intended Action to rescind the vacated CAMR provisions as currently reflected in the Iowa regulations at 567 IAC 23.1(2)(z), 23.1(4), 23.1(5)(d), 25.3, and 34.2 through 34.308, including applicable tables, and all other references to requirements originating under CAMR. This notice of intended action does not require mercury emissions monitoring.

February 16, 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/Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks

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 during these final steps in a rule-making that has been deliberated over for more than 2 years. We believe these rules have the ability to increase the protection of our environment and public health in a manner that does not have a negative impact on small businesses in Iowa.

Revisions to chapter 135 have been completed following extensive stakeholder meetings. The result of those meetings declared that a new risk based model was necessary in order to intelligently assess petroleum releases. All who were present during these meetings (including DNR staff) agreed that the new model would adequately assess leaking underground storage tank sites. All contaminant pathways, with one exception, were deemed to be fully and adequately assessed by the new model.

The DNR expressed concerns over the pumping action of public water supply wells and how the pumping (drawdown) would interact with surficial aquifer plumes. Because data did not exist, nor has there ever been a reported incident of a single LUST site impacting a PWSW, the stakeholder group agreed to create a method and funding source so that the DNR could study the potential impacts of a PWSW on a contaminant plume. This data would then be used to generate new rules if the data supported the need. It is noteworthy that such steps have never previously been taken by any industry in Iowa.

Unfortunately, the rule-making before you today goes well beyond the original plan to create intelligent rules and expands the stakeholders agreed to rules. The new language is unsupported, making the revised assessment model virtually obsolete before ever being put into use.

We urge the EPC to reconsider changes crafted in the rules today and believe that **ITEM 2** should read as follows:

*"...if it is determined that the conditions for an individual pathway that has been classified as "no action required" no longer exists, ~~or~~ **and** the site presents a reasonable risk to a public water supply well,..."*

By making this change to the proposed rule, you will be re-establishing the intent of the risk based revised model to the form in which all parties had previously agreed too. We believe that Iowa is making enormous strides forward in the protection of water supply wells and that many industries have come together to make sure this happens in a professional and scientific process. To change these rules

at this point only demonstrates a lack of desire for the EPC to work with industry in this and in future rule-makings.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Hove', with a stylized, overlapping flourish at the end.

Jeff Hove
Vice President
Petroleum Marketers and Convenience Stores of Iowa



www.epiowa.org

Lisa Nissen
Iowa Department of Natural Resources
Des Moines, IA

RE: Chapter 134, Underground Storage Tank Licensing and Certification Programs.

Dear Ms. Nissen:

I am writing this letter on behalf of the Environmental Professionals of Iowa (EPI). The EPI is a professional organization that represents over 400 Groundwater Professionals throughout Iowa and the surrounding states. As representatives for this group, the board of EPI has voted to post the following comments on the proposed Notice of Intent to Amend the above regulations.

The EPI is deeply concerned with the proposed rule changes that the Iowa Department of Natural Resources (IDNR) is proposing. Primarily, Section 567-134.22(455B) Duty to report. This section states that it shall be the responsibility of the UST Professional to report suspected and confirmed releases to the department.

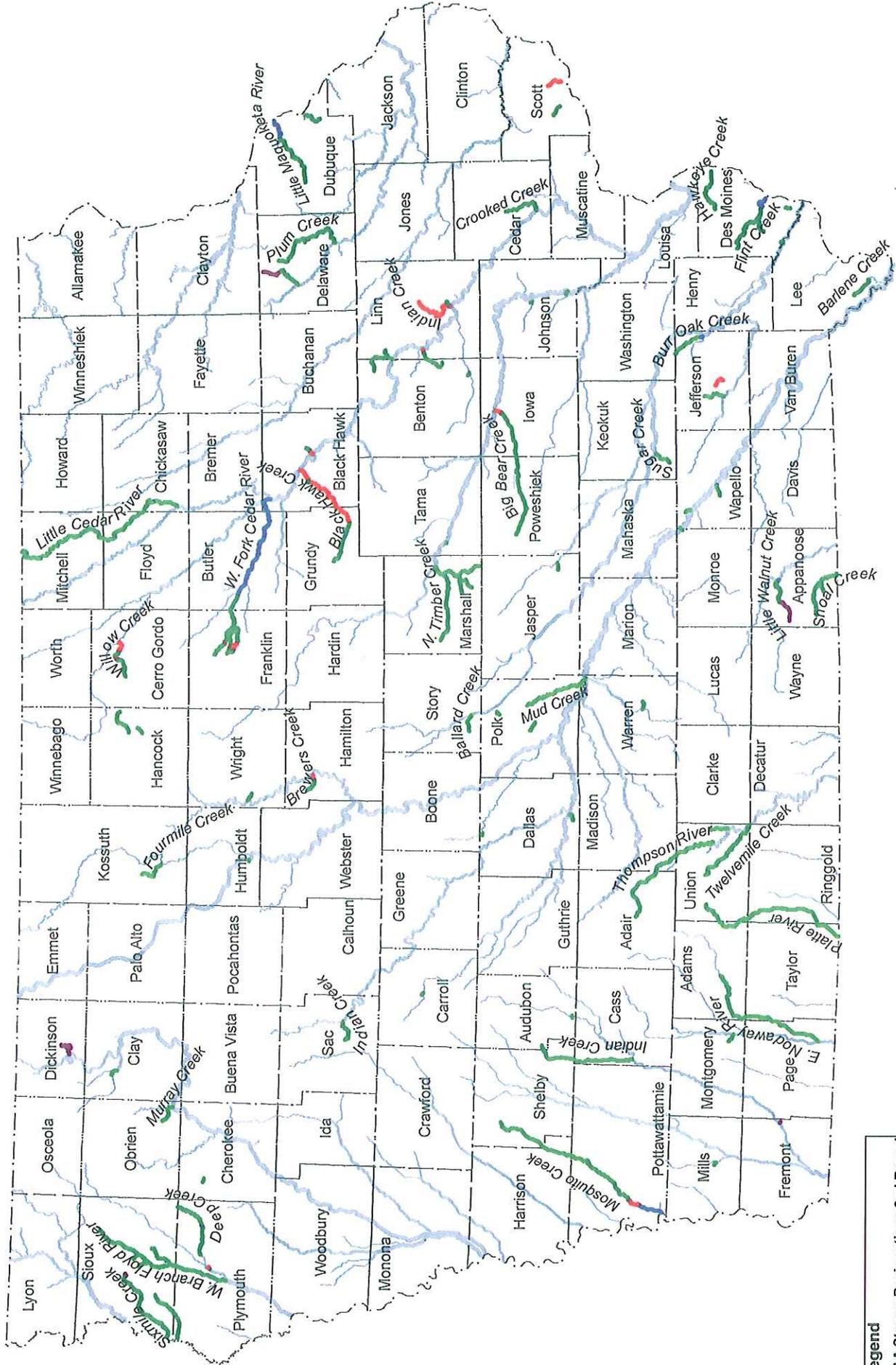
The EPI requests that this portion be stricken from the proposal and that the original requirement of reporting to the department remain the onus of the property owner. Changing this responsibility to the groundwater professional does not provide any additional benefit to the department, property owner, or public. Change of this rule will NOT change the property owners responsibility to report and will only require consultants/contractors to become potentially responsible parties (PRP's) if a dispute arises. We believe that this rule change is wrong and will place our membership's personnel and their companies at additional liability risk that is unwarranted.

Sincerely,

Steve Shipley
President
Environmental Professionals of Iowa

2009 UAA Designations (Round 2), DNR Proposal

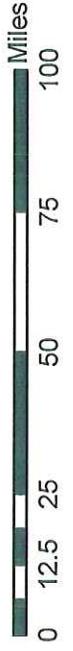
Shannon
Gretson



Legend

UAA Stream Designations 2nd Round

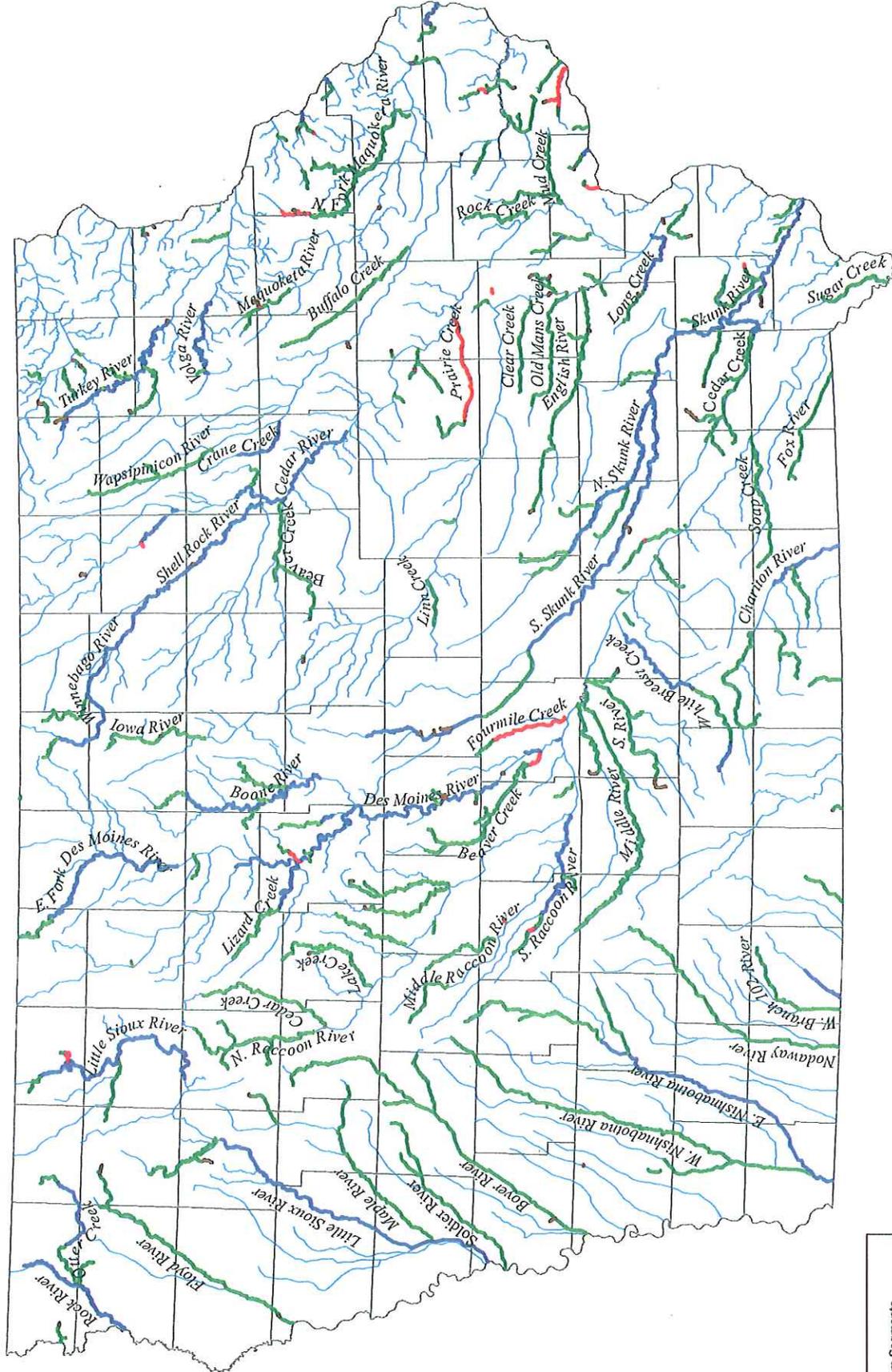
- No Recreational Use Designated
- A1: Fully Protected
- A2: Less Protected
- A3: Fully Protected



Data Courtesy of Iowa Department of Natural Resources

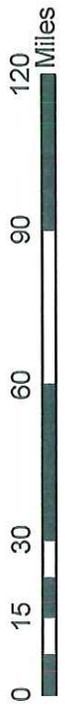


2007 UAA Designations (Round 1), Prior to DNR Changes

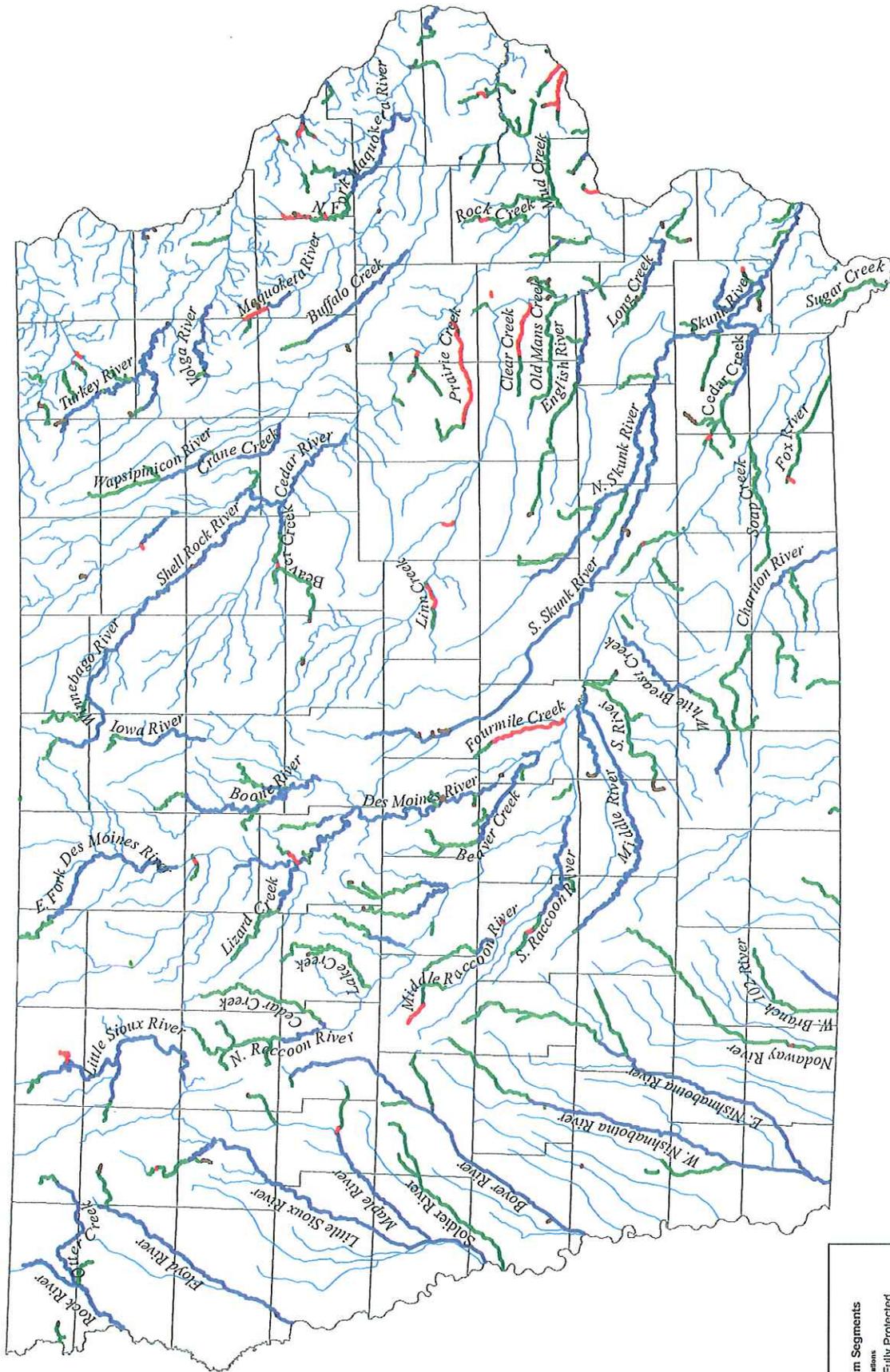


UAA Stream Segments

- A1: Fully Protected
- A2: Less Protected
- A3: Fully Protected
- No Recreation Protection



2007 UAA Designations (Round 1), Following Public Comments



UAA Stream Segments

New UAA Designations

- A1: Fully Protected
- A3: Fully Protected
- DNR Recommended UAA Designations
- A1: Fully Protected
- A2: Less Protected
- A3: Fully Protected
- No Recreation Protection



Neila Seaman
Sierra Club, Iowa Chapter

#11. Batch 2 of the stream reclassifications

You will be asked today to approve a notice of intended action to reclassify 138 river and stream segments for recreation and aquatic life uses. Last spring, the EPC approved reclassification for 304 stream segments. The process was extremely time-consuming and required a meeting of its own. The DNR submitted the necessary documents to the Environmental Protection Agency for approval, but EPA has not yet approved all of the reclassifications from the first batch.

The Sierra Club is anxious to bring Iowa closer to compliance with the federal Clean Water Act. We believe that Iowa's rivers and streams not previously designated for aquatic life and recreational use should be protected for those uses. We appreciate the extensive work the DNR has done to do the use assessment analyses. However, we are concerned that moving forward with a new batch of reclassifications before the EPA signs off on the last batch would not be prudent. Therefore, I encourage you to delay approving the notice of intended action until the DNR receives final approval from the EPA.

02/16/09

SUBJECT: New Fees for Water Use
TO; EPC
FROM' Vincent Willey, Pike Ct. Whiting, Iowa 51063 712-455-2357

Enclosed is material for your review as I am trying to moderate proposed increase

Incl. 1 - original letter each permit holder received stating proposed increase of a permit from presently \$25.00 to \$350.00.

Annual fees (which we have never had) of \$140.00 - \$150.00

Incl. 2 - Shows my latest permit - notice expires in Sept. 23, 2018. Why shouldn't this contract be honored and new annual fees start in 2019.

Incl. 3 - Shows one of my permits (expiring in 2012) with highlighted area showing that I and all irrigation wells can only be used 6 months of each year. Our fees should be reduced for this reason only as municipalities, businesses and counties are not restricted by so many months usage.

Incl. 4 - Paragraph 4 stating that we have, basically an unlimited amount of water. IDNR doesn't have to get involved in water disputes in western Iowa.

Incl. 5 - A statement of facts of irrigation water use.

Incl. 6 - Number of irrigation wells

SUMMATION

In the present economic times, to see this type of an increase is ludicrous. The present 10 year \$25.00 fee to a proposed \$350.00 seems extravagant to me. The annual fee of \$140.00 - \$170.00 of which we have never had an annual fee is beyond my belief. The IDNR backed down on hunting license fees, etc. This proposal should be mediated. Mr. Ault of IDNR admits 2/3/ of irrigation wells are inn Monona, Harrison and Woodbury counties, thus making it extremely unfair for us to bear the large percentage of the proposed funds they want to raise.

There are 2537 permits (DNR records) of these 1589 are for irrigation. Of these, there are 1378 wells for general farm crops and 211 for specialty crops. Well over 50% of the permitted wells are for irrigation and why should we have to be burdened by our 3 counties providing the biggest share of the \$500,000.00 that DNR wants to raise when we are limited for only 6 months use and the very small amount of water irrigation wells use vs. the large amounts municipalities use on an annual permit. Municipalities and business

Enclosure

can pass the fee on to the public. We farmers have no way to set a price on our products. We have sell what the markets offer.

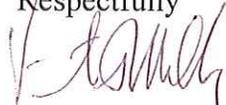
My county (Monona) needs the \$1.00/acre annual fee for our County roads, bridges etc., NOT with DNR that admits the proposed rates are excessive in what is needed now, with the balance kept to earn interest when future fees might need to be increased.

At the public hearings in December, our hearing in Onawa (Monona Co.) had 51 at the hearing because of interest in western Iowa. Only 9 were present in Iowa City and 9 in Des Moines. Of these 65 people, 6 were supportive, 59 in opposition. Even with that large % against, the rules were to continue.

Of the 14 stakeholders, western Iowa needed to be involved.

There needs to be a more equatable fee schedule. It appears my 3 irrigation well fees will be much more costly to me than many towns and businesses.

Respectfully



Vincent R. Willey

351 Pike Ct.

Whiting, Iowa 51063

Ph. 712-455-2357

DNR Seeks Public Comment: New Fees for Water Use & Storage Permits

What is the purpose of the rule revision?

During the last legislative session, the legislature authorized the Iowa Department of Natural Resources (DNR) to collect an annual fee from water use permit holders and fees for processing applications for new or modified water allocations. The total amount of the fees to be collected will be based on the DNR's reasonable cost of reviewing applications, issuing permits, ensuring compliance with the permit terms, and resolving water interference complaints. The complete Notice of Intended Action is in the November 5, 2008, Iowa Administrative Bulletin (pages 1137 – 1139), at this website: <http://www.legis.state.ia.us/asp/BulletinSupplement/bulletinListing.aspx>.

How will the annual fee be determined?

Each permit holder will pay an estimated annual fee of \$140 - \$170. The proposed fee is a flat rate fee, which means every permit holder will pay the same amount each year. However, holders of storage permits and temporary registrations will be exempt from paying the annual fee. Each year, the Environmental Protection Commission will set the amount of the fee, which is expected to vary slightly from year to year since it is based on the number of active permits.

How much are the application fees?

The application fee for a new or modified water use permit will be \$350. The application fee for water storage (permitted for the life of the pond or surface water reservoir) or minor non-recurring use (permitted for up to one year) will be \$75. The application fee for an aquifer storage and recovery permit will be \$700.

When will the fees become effective?

The fees become effective July 1, 2009. The first annual fee payments will be due December 1, 2009.

Public Comment Period

Written comments are being accepted through **December 12, 2008**. Send them via e-mail to diane.moles@dnr.iowa.gov, via fax to (515)725-0348, or via postal mail to the following address:

Diane Moles
IDNR – Water Supply Sections
401 SW 7th Street, Suite M
Des Moines, IA 50309-4611

Three hearings are scheduled to take written or oral comments at the following times and locations:

- December 3rd at 9:00 a.m. in Kelly Hall, Onawa Community Center, 320 Tenth Street, Onawa
- December 5th at 10:00 a.m. in the Iowa City Public Library, 123 S. Linn Street, Iowa City
 - Parking is available in ramp at the corner of Linn and Burlington Streets.
- December 11th at 10:00 a.m. in the Wallace State Office Bldg. Auditorium, 502 E. 9th ST, Des Moines
 - Parking is available in the ramp west of the Wallace Building or in the lot east of the Capitol.

Any comment must include the commenter's name. If the commenter would like to receive the Responsiveness Summary, the commenter's e-mail or mailing address is also required.



WATER SUPPLY ENGINEERING SECTION
HELPING TO ENSURE SAFE AND RELIABLE DRINKING WATER AND
MANAGING WATER RESOURCES FOR THE BENEFIT OF ALL IOWANS

Incl. 1

IOWA DEPARTMENT OF NATURAL RESOURCES

WATER USE PERMIT

Permit issued to: Vincent Willey
351 Pike
Whiting, IA 51063

Permit Number: 9398

Effective: September 24, 2008

Expires: September 23, 2018

The permittee is authorized to:

withdraw water from one existing Missouri River alluvial aquifer well, 16 inches in diameter and about 106 feet deep, on land generally described as the W ½ of the S ½ of the SE ¼ of Section 16, T84N, R46W, Monona County, Iowa, in the maximum quantity of 66.0 acre-feet per year at a maximum rate of 1000.0 gallons per minute, all withdrawals being throughout each year for general farm crop irrigation (corn and soybeans) on said land and property.

This authorization to withdraw water has been granted pursuant to the provisions of Part 4 of Division III of Chapter 455B, Code of Iowa, and Chapters 50, 51, and 52 of Part 567, Iowa Administrative Code, and is further subject to the general permit conditions within this permit.

Conditions of this permit may be appealed as provided in rule 567--50.9, Iowa Administrative Code. Appeal must be in writing and must be received at the Department of Natural Resources; Water Supply Engineering Section; 401 SW 7th St., Suite M; Des Moines, Iowa 50309-4611 within thirty days of the date of the certification of the mailing of the permit.

FOR THE DIRECTOR:

By: Michael X. Anderson, P.E. Date Executed: Sept. 24, 2008
(mka)

c: Field Office No. 4
File CON 3-9, # _____

IOWA DEPARTMENT OF NATURAL RESOURCES

WATER USE PERMIT

Permit issued to: Vincent R. Willey
351 Pike Court
Whiting, IA 51063

Permit Number: 3162-R3

Effective: 6/21/2002

Expires: 6/20/2012

The Permittee is authorized to:

withdraw water from one existing Missouri River alluvial well, approximately 120 feet deep, located near the center of the NE ¼ of Section 21, T84N, R46W, Monona County, Iowa, in the maximum quantity of 240 acre-feet per year at a maximum rate of 1,500 gallons per minute during the period April 1 to September 30 of each year for irrigation of up to 160 acres of general farm crops such as corn and soybeans on land generally described as the NE ¼ of Section 21, T84N, R46W, Monona County, Iowa.

This authorization to withdraw water has been granted pursuant to the provisions of Part 4 of Division III of Chapter 455B, Code of Iowa, and Chapters 50, 51, and 52 of Part 567, Iowa Administrative Code, and is further subject to the general permit conditions within this permit.

Conditions of this permit may be appealed as provided in rule 567--50.9, Iowa Administrative Code. Appeal must be in writing and must be received at the Iowa Department of Natural Resources, EPD/Water Supply Section, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309-4611 within thirty days of the date of the certification of the mailing of the permit.

FOR THE DIRECTOR:

By: Michael M. Anderson, P.E. Date Executed: 6/21/2002

cc: Field Office No. 4 – Atlantic
Permit File #3162

CERTIFICATE OF MAILING

On the date shown below, a copy of the foregoing permit was mailed to the Permittee and to each person entitled to receive a copy as provided by rule 567--50.8(2), Iowa Administrative Code.

June 25, 2002 J. E. L.

**IOWA DEPARTMENT OF NATURAL RESOURCES
WATER USE PERMIT SUMMARY REPORT**

Applicant: Vincent Willey
351 Pike
Whiting, IA 51063

Application Log No.: 24,177

1. Applicant, Vincent Willey, Log Number 24,177, requests one new agricultural-type water use permit authorizing withdrawals of from one existing Missouri River alluvial aquifer well, 16 inches in diameter and about 106 feet deep, on land generally described as the W $\frac{1}{2}$ of the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 16, T84N, R46W, Monona County, Iowa, in the maximum quantity of 66.0 acre-feet per year at a maximum rate of 1000.0 gallons per minute, all withdrawals being throughout each year for general farm crop irrigation (corn and soybeans) on said land and property.
2. Applicant's farm is located in the western portion of Monona County, in Lincoln Township, and about 3.5 miles south and west of the City of Whiting. Applicant will use center-pivot type irrigation equipment to irrigate about 66 acres of general crops on an 80-acre farm.
3. An irrigation of row crops in a field on land which includes soils more erodible than Capability Subclass IIe as defined by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), or slopes greater than 6 percent where a modern NRCS Soil Survey is not available, shall submit a soil conservation plan prepared with the assistance of the NRCS for the field land in which row-crop irrigation is proposed. The plan shall be accompanied by the Applicant's written explanation of how operation of the proposed irrigation system will be compatible with the conservation plan.
4. According to departmental records, there are many downstream private water users and there are many irrigators using the area for agricultural irrigation. These users and any future users of water from the alluvial system fo the Missouri River are amply protected from damage meaning impacts to their withdrawal will be negligible due to the historical productivity of this Missouri River alluvial aquifer. In any case, this type of topography, characterized by significantly productive sands and gravel's, wherein the neighboring user/s are each located at a distance from the Applicant, precludes the possibility of adverse impacts resulting from the Applicant's proposed use of water.

January 20, 2009

The irrigators of Iowa object to being discriminated against. Proposed annual fees for irrigation well permit is in the range of \$140.00 to \$170.00. The fee for municipalities using up to forty million (40,000,000) gallons per day would be the same.

A typical center pivot unit on a quarter section (160 acres) would use four point two (4.2) million gallons for each inch of water applied to growing crop. Last ten (10) year average application has been three point five (3.5) inches of water. This equates to one third (1/3) of Des Moines daily usage for the entire crop season.

It should be realized that all irrigation water (except seven per cent evaporation) returns directly to the aquifer from which it is drawn. In contrast thirty to forty (30-40) per cent of municipal use is consumptive. In other words it is transported out of area supporting aquifer.

Once again agriculture is expected to subsidize urban areas.

From: "Moles, Diane [DNR]" <Diane.Moles@dnr.iowa.gov>
Subject: **Water Use Permit Fee Rulemaking to be presented at February 17th EPC meeting**
Date: February 4, 2009 11:15:30 AM CST
To: "Moles, Diane [DNR]" <Diane.Moles@dnr.iowa.gov>

This e-mail is in regards to the Water Use Permit Fee Rulemaking that was proposed last fall. The Responsiveness Summary for the Water Use Permit Fee Rulemaking, the agenda brief, the adopted & filed rulemaking, and the agenda for the February Environmental Protection Commission's meeting were posted this morning on the DNR's website (<http://www.iowadnr.gov/>).

These are the links to the documents:

Agenda: <http://www.iowadnr.gov/epc/09feb17a.html>

Agenda Item 6 (includes the agenda brief, the adopted & filed rule, and the Responsiveness Summary): <http://www.iowadnr.gov/epc/09feb/6.pdf>

EPC webpage: <http://www.iowadnr.gov/epc/index.html>

After considering all comments received, the department is proceeding with the rulemaking as it was originally proposed and is presenting it at the February EPC meeting.

The EPC meeting is open to the public. The meeting will begin at 10 a.m. on Tuesday, February 17th, at the DNR's Air Quality Building, 7900 Hickman Road, Urbandale, Iowa, and is open to the public to participate. If you plan to attend the meeting and wish to address the EPC, please complete a Public Comment Card upon arrival at the meeting to obtain an opportunity to address the Commission and share your concern. The Chair requests that public comments be limited to 3-5 minutes in length.

Incl. 6

IOWA DEPARTMENT OF NATURAL RESOURCES

WATER USE PERMIT

Permit issued to:	Permit Number:	9128
Vincent Willey	Effective:	12/3/2005
351 Pike Ct	Expires:	12/2/2015
Whiting, IA 51063-1014		

The Permittee is authorized to:

withdraw water from one existing Missouri River alluvial well, approximately 100 feet deep, located in the NW ¼ of the SE ¼ of Section 9, T84N, R46W, Monona County, Iowa, in the maximum quantity of 80 acre-feet per year at a maximum rate of 2,000 gallons per minute during the period April 1 through September 30 of each year for irrigation of up to 80 acres of general farm crops such as corn and soybeans on land generally described as the W ½ of the SE ¼ of Section 9, T84N, R46W, Monona County, Iowa.

This authorization to withdraw water has been granted pursuant to the provisions of Part 4 of Division III of Chapter 455B, Code of Iowa, and Chapters 50, 51, and 52 of Part 567, Iowa Administrative Code, and is further subject to the general permit conditions within this permit.

Conditions of this permit may be appealed as provided in rule 567--50.9, Iowa Administrative Code. Appeal must be in writing and must be received at the Iowa Department of Natural Resources, Water Supply Engineering Section, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309-4611 within thirty days of the date of the certification of the mailing of the permit.

FOR THE DIRECTOR:

By: Michael K. Anderson, P.E. Date Executed: 1/12/2007

cc: Ken Carlson - Onawa
Field Office No. 4 - Atlantic
Permit File

CERTIFICATE OF MAILING

On the date shown below, a copy of the foregoing permit was mailed to the Permittee and to each person entitled to receive a copy as provided by rule 567--50.8(2), Iowa Administrative Code.

01-16-07

Nissen, Lisa [DNR]

From: Darren Binning [dbinning@senecaco.com]
Sent: Monday, February 16, 2009 4:58 PM
To: Nissen, Lisa [DNR]
Subject: Amendments to Ch 134 UST Licensing and Certification Programs

Regarding: Amendments to Ch 134 UST Licensing and Certification Programs.

EPC Commissioners,

As a CGP I do not feel it is our duty to report to the state regulatory agency any "actual or potential release". I do however believe it is our responsibility to inform our clientele of any such case and to discuss their responsibilities as a business owner to report releases (not only to the DNR but to their insurance carrier as well). In many cases we do report, but only per our client's request. This rule would affect CGP's, PE's, Licensed Installers, and possibly other's license status. We are not the regulatory body, we are not inspectors, we are however hired to provide a very specific service for our clientele and give them advice; not to be a watchdog for the regulatory agency.

What determines a release? What determines a potential release? Will every business owner be held to the same standard? I don't see how they could. Businesses hire many different consulting firms of which all will interpret the rules differently. Licensed installers will do the same and so will service technicians. For anyone working in this industry whether a CGP or PE or Licensed Installer one must consider the potential client backlash in the event the station owner pays a co pay (\$10,000) out of pocket for something that was mis-reported and resulted in a required T2 assessment. Please consider these consequences for licensed professionals and their companies.

Regards,

Darren F. Binning
Division Manager - Des Moines
Seneca Environmental Services, Inc.
dbinning@senecaco.com
515-261-7705 **Phone**
515-262-2469 **Fax**
515-778-7066 **Mobile**
vCard 
www.senecaco.com



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Nissen, Lisa [DNR]

From: Tom Draur [tdraur@barkerlemar.com]
Sent: Monday, February 16, 2009 6:13 PM
To: Nissen, Lisa [DNR]
Subject: Comment for Feb 17 EPC meeting

To the Environmental Protection Commission:

I am writing to you regarding Item 10 on your February meeting agenda, Chapter 134, "Underground Storage Tank Licensing and Certification Programs," Iowa Administrative Code. I have been an attendee at several stakeholder meetings regarding the proposed change and have offered comments at those meetings. I have a few comments regarding the proposed rule that I do not believe have been given sufficient evaluation by the Department.

The DNR UST Section appears to be of the opinion that releases are going unreported. When we come across a likely release situation, it is our practice to inform our clients of the situation and the Department's reporting criteria, and advise them to consult their environmental legal counsel. The duty to report lies with the land owner; it is, after all, their land. In the proposed rule, this obligation is shifted to individuals providing services, usually for a fee, to those same land owners, so that the Department can be more assured that potential soil and groundwater contamination issues are being reported to the Department. It is my suspicion that this will not end up to be the case. Even with complete adherence to this rule, what is the standard by which all observers will report? Individual judgements vary widely, and without a standard to reference, reporting is likely to vary widely. Is a single failed continuous statistical leak detection (CSLD – 0.2 gallons per hour threshold) failure a suspected release? Is failing to have a valid CSLD test for 2 months a suspected release? Is having a customer overfill a gas tank over cracked pavement? How about a tanker driver losing a drop of fuel at the edge of a containment sump, between the sump top edge and the manway skirt containing the fill port and sump? An overfill alarm? Fuel released to a contained dispenser sump during a filter change?

There may also be some parties that disregard this duty; as a professional engineer, I cannot.

If the Department is having issues with owners reporting releases, it may more directly benefit the Department to pursue those owners, or remind those owners of their duty to report releases. There may also be a perceived conflict of interest having those of us that derive work from such leaks reporting those leaks.

There is a cost to be borne by the property owners under the proposed rule. Each time the Department requires a site check to be done for a suspected release, the owner must spend a few thousand dollars to either find no proof of a release, or to confirm that a release has occurred. Without a standard to judge by, there may be a significant increase in the number of reports, which appears to be the Department's goal; this translates into an increase in the financial burden to Iowa's businesses. A standard for a suspected release would set a bar by which one may judge the risks and provide a mechanism for these businesses to plan their environmental expenses.

THOMAS E. DRAUR, PE | PRINCIPAL ENGINEER
BARKER LEMAR ENGINEERING CONSULTANTS
515.327.4918 | 515-250-3295 [m] | 515.256.0152 [f] | barkerlemar.com

Nissen, Lisa [DNR]

From: Jeff Hove [jeff@pmcofiowa.com]
Sent: Tuesday, February 17, 2009 8:19 AM
To: Nissen, Lisa [DNR]
Subject: FW: EPC comments Ch. 134

Sorry. I think this was sent to me accidentally.

From: anita maher lewis [mailto:anita.maherlewis@gmail.com]
Sent: Monday, February 16, 2009 3:31 PM
To: Jeff Hove
Subject: EPC comments

I'd like to provide comments on the proposed Ch. 134 rulemaking efforts, specifically on the "duty to report" portion.

We do report verified releases to the agency in the reports we provide to our clients and to them.

I have several professional concerns with this requirement but two main ones:

1) department staff expressed several times in the stakeholder meetings that one of the reasons they were inserting the "duty to report" requirement was because they felt owner/operators were not reporting releases. This is a departmental enforcement issue to resolve, not an issue they transfer to the backs of groundwater professionals. We are not policing agents for the department or our clients.

2) the concept of suspected release. what exactly is a suspected release? it will be defined differently by each individual, professional company and client. And this will be for those professionals in the field--I imagine it will also be defined differently by those at the department level also, which will lead to even more complications. Also, a personal concern is how I will get liability coverage for this new provision, with such a broad range to cover. While the department referred to other states using the "suspected" level of reporting, a request was made to find out their success, the request was never honored. Additionally, while other states do have provisions for this in their rules, how do their rules compare to Iowa's? How do their tank program's compare to Iowa's? Are we making real comparison's?

Anita Maher-Lewis
Iowa CGWP
AML Consulting
Ames, IA



2007-2008 OFFICERS

PRESIDENT:

ART WENTWORTH
610 – 29th STREET
BETTENDORF, IOWA 52722
TELEPHONE (563) 344-0700
FAX: (563) 344-8856
EMAIL: ART@PIPECOINC.COM

VICE PRESIDENT:

DICK WILKINSON
F & W Service Company
665-51st Street
Marion, IA 52302
TELEPHONE (319)377-6718
FAX (319)377-4627

TREASURER/SECRETARY:

DAVE BAKER
Yant equipment Inc.
2309 N. 15th St.
Omaha, NE 68110
TELEPHONE (402)345-6045
FAX (402)345-6106

MEMBERSHIP CHAIRMAN:

BRAD SIMMS
UNIFIED CONTRACTING SERVICE
2425 NE. 46th AVE.
Des Moines, IA. 50317
TELEPHONE (515) 266-5700
FAX: (515) 266-5720

MEMBERSHIP BENEFITS

UNIFIED VOICE: Provide a unified voice (lobby group) for Iowa contractors to become more involved in what is happening in the industry. We provide a forum for problem solving and discussion with other members of the tank and piping industry. To act as liaison for Federal, State and Municipal authorities to promote and develop safe and economically feasible regulatory standards for petroleum equipment systems within the State of Iowa.

EDUCATION: To develop continuing education training for the contractor and operator members in the petroleum industry to enhance public awareness of the safe operation and maintenance of a petroleum equipment systems.

ENVIRONMENTAL PRESERVATION:

To monitor and develop acceptable industry standards in relation to safeguarding of the environment from petroleum based contamination.

February 16, 2009

To Whom It May Concern:

RE: Chapter 134 Part 17 revision

IPECA has reviewed the revisions from IDNR that Tom Collins had e-mailed out November 11th 2008. Tom wanted a response back then with a 2 day notice and there was no way I could get enough input from IPECA members at that time. As of now IPECA does not agree with "Duty to Report" IPECA requests that this be discussed in further detail with the IDNR and IPECA members. IPECA is going to have a meeting with its members this spring. We're hoping that IDNR can allot sometime to discuss this and other issues. If we must have a meeting sooner we can try to get this done. Sorry for being vague on this but most members have read the revisions of chapter 134 Part 17 and only have an issue with the "duty to Report"

Regards,

Iowa Petroleum Equipment Contractors Association.

Art Wentworth- President

Feb 10, 2009

To E P C Member,

I would like to comment on the proposed rules concerning surface applying manure on frozen or snow covered ground.

My family and I have a dairy farm that is permitted for 830 head of dairy cattle. Most of the manure can be stored in an earthen storage basin. We also have a manure separator to take the solids out of the liquid manure. We erected a building to store the manure solids in 2007 at a cost of \$83,000. We also have a special needs barn that has a bedding pack that we clean out every 2 weeks. That manure is a very stable product that doesn't run off in snow melt. We are in an area that has an average slope of 2.5% with nothing greater than 7% and that portion never gets manure applied in the winter. We do not winter apply any manure where water might run during the spring thaw.

I do not think that it is fair that the DNR makes rules that put a hardship on my operation when we are very conscientious stewards of the land and water. We have spent hundreds of thousands of dollars to keep the water clean and following all the rules.

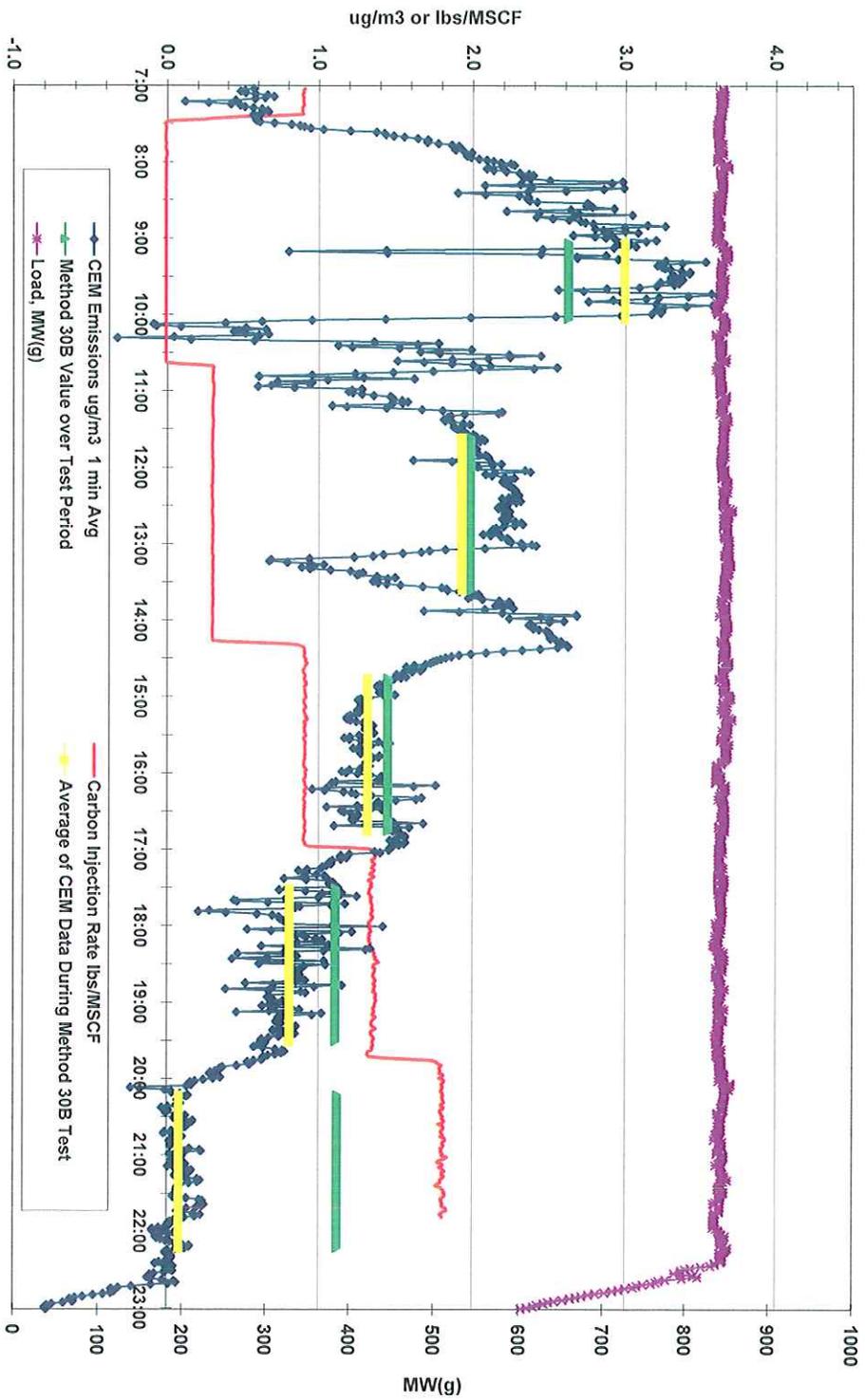
I would ask that you NOT adopt these new rules restricting surface applying manure on frozen or snow covered ground as they are currently written.

Sincerely,

Douglas Kleiss
Pres. HMC Inc.
cellph. 641-330-7174

HMC INC.
2570 QUINLAN AVE.
FREDERICKSBURG, IA.50630

Figure 1 - Mercury Optimization Testing for WSEC Unit 4 on 12/20/2007
 Control Parameters and Results





Source: Daily Environment Report: All Issues > 2009 > February > 02/09/2009 > News > Air Pollution: EPA to Issue Mercury Rules for Power Plants, Moves to Withdraw Supreme Court Petition

24 DEN A-1

Air Pollution

EPA to Issue Mercury Rules for Power Plants, Moves to Withdraw Supreme Court Petition

The Environmental Protection Agency said Feb. 6 it intends to develop technology-based standards to control mercury emissions from power plants, and the government moved to dismiss its petition before the U.S. Supreme Court that sought to reinstate an emissions trading system for those plants (*EPA v. New Jersey*, U.S., No. 08-512, *motion to dismiss filed 2/6/09*).

EPA Administrator Lisa Jackson said in remarks to the Good Jobs, Green Jobs conference in Washington, D.C., "President Obama's EPA does indeed intend to promulgate mercury regulations under Section 112 of the Clean Air Act."

A rule to establish technology-based standards under Section 112 for mercury emissions from power plants would reflect a markedly different approach to power plant pollution compared with the Bush administration.

The Clean Air Mercury Rule, issued in 2005, set up an emissions trading system to reduce mercury emissions after EPA had rejected the idea of using Section 112. Under Section 112, the rules would require that each power plant comply with emissions limits set by EPA, primarily by installing state-of-the-art pollution controls.

Under a trading system, power plants could choose to install controls or purchase emissions allowances if they found the allowances to be more cost-effective. The allowances would come from plants that were able to more easily reduce emissions.

Trading Rule Overturned by Court

The emissions trading rule was unanimously overturned in February 2008 by a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit, which said EPA ignored the "plain text" of the Clean Air Act and must set strict limits on mercury emissions from all coal-fired power plants under Section 112 (*New Jersey v. EPA*, 65 ERC 1993 (D.C. Cir. 2008); 27 DEN A-6, 2/11/08).

The D.C. Circuit held that EPA improperly removed electric generating units from the list of hazardous emissions sources when promulgating the rule. Coal-fired power plants are the largest U.S. source of mercury emissions, with 48 tons per year accounting for 40 percent of all emissions.

Acting on EPA's behalf, the Justice Department in October 2008 petitioned the Supreme Court to review the D.C. Circuit decision (203 DEN A-1, 10/21/08).

But Acting Solicitor General Edwin Kneedler Feb. 6 filed a motion with the Supreme Court to dismiss the petition for review. "EPA has decided, consistent with the court of appeals' ruling, to develop appropriate standards to regulate power plant emissions under [U.S. Code] Section 7412," the motion said.

U.S. Code Section 7412 is the same as Clean Air Act Section 112, under which EPA is required to limit emissions of hazardous air pollutants, including mercury.

Rulemaking Process Begins

Jackson told reporters at the green jobs conference that EPA is now beginning the work of drawing up mercury emissions limits for power plants.

"Now we are going to have to get to work and start a rulemaking process, this time hopefully one that

will stick throughout the legal system," Jackson said. "The court said we have to regulate under Section 112, and we'll begin a rulemaking to do just that."

EPA said in 2005 that the emissions trading rule would reduce mercury emissions from power plants by about 50 percent by 2020. The agency said the rule would allow mercury emissions reductions to occur at the power plants where they would be the easiest and least costly to obtain.

The states that sued EPA resulting in the D.C. Circuit decision are seeking EPA regulations that would apply uniformly to all coal-fired power plants. These regulations could result in mercury emissions limits that reduce emissions by 90 percent from power plants.

The Utility Air Regulatory Group (UARG), representing a group of utilities, joined the government in seeking Supreme Court review.

Utilities to Continue Challenge

UARG indicated it will continue to challenge the ruling.

Lee Zeugin, an attorney with Hunton & Williams representing UARG, told BNA Feb. 6, "We are not withdrawing our petition and will be filing a reply in support of our petition today."

A group of states, led by New Jersey, where Jackson was until recently head of the Department of Environmental Quality, filed a response to EPA with the Supreme Court Jan. 21, saying that EPA and UARG had not made a compelling argument to reconsider the D.C. Circuit decision (13 DEN A-4, 1/23/09).

New Jersey was the lead plaintiff in the case before the D.C. Circuit and the Supreme Court.

Jeffrey Holmstead, the EPA assistant administrator for air and radiation under President Bush who oversaw the creation of the Clean Air Mercury Rule, and now the head of the Environmental Strategies Group at Bracewell & Giuliani, said in a statement, "It is not surprising that the new Administration has decided to develop facility-specific standards to reduce mercury emissions from power plants.

"The unfortunate thing is that this approach will be less effective, and more expensive, than a well-designed trading program. If the facility-specific approach is upheld in court, we'll all be paying much more than necessary to address mercury emissions from power plants."

Clean Air Watch President Frank O'Donnell told BNA, "It's terrific news. It shows the Obama administration—unlike its predecessor—won't be a pawn of the electric power industry."

By Steven D. Cook

Contact customer relations at: customercare@bna.com or 1-800-372-1033

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SURFACE MANURE APPLICATION ON FROZEN OR SNOW-COVERED GROUND

This flow chart will be helpful in determining when and where surface application would be allowable during winter under proposed rules. If approved, the rules would be effective October 2009.

SURFACE APPLICATION ON FROZEN OR SNOW-COVERED GROUND (except from Feb. 15 to April 15)

KEY:

Conditions when surface application is allowed

Surface application is prohibited

- Designated Areas Include:**
- Known Sinkhole
 - Cistern
 - Abandoned Well
 - Unplugged Ag Drainage Well
 - Ag Drainage Well Surface
 - Tile Inlet
 - Drinking Water Well
 - Designated Wetland
 - Lake
 - Water Source (stream)

No melting or significant rainfall predicted

Chance of rainfall over 0.25 inches is >50% within 48 hours of application

Active Melt Event occurring or predicted within 48 hours

≥ 200 feet from tile inlet or tile inlet is plugged or sleeved

< 200 feet from tile inlet that is not plugged or sleeved

≥ 200 feet from **designated areas** and ≥ 800 feet from high quality resource waters

< 200 feet from **designated areas** or < 800 feet from high quality resource waters

Solid
(> 20% solids)

Liquid
(< 20% solids)²

Frozen ground

Snow-covered ground

Frozen ground

Snow-covered ground

0-9% slopes

9-14% slopes with P-Index ≤ 2

9-14% slopes with P-Index > 2

> 14% slopes

0-5% slopes

> 5% slopes

0-2% slopes

2-5% slopes with P-Index ≤ 2

2-5% slopes with P-Index > 2

> 5% slopes

Manure can be surface applied according to management plan. Maps must be provided to applicator.

2. Due to a clerical error, the rule proposal defined liquid as less than 15% for manure from open feedlots.

PROPOSED RULE FOR SURFACE APPLICATION OF MANURE ON FROZEN OR SNOW-COVERED GROUND

BACKGROUND

In winter and early spring there is an increased potential for runoff due to snowmelt or rainfall because water is not able to infiltrate soils that are frozen or snow-covered. Surface application of manure under these conditions can lead to lost nutrients and water quality violations. The risk of runoff is higher for liquid manure. However, runoff from fields where solid manure is applied can also contain dissolved nitrogen and phosphorus.

To reduce the potential impact of runoff on Iowa's water resources, the DNR has drafted rules that would prohibit surface application of manure on frozen or snow-covered ground under certain conditions. Surface application would be prohibited when the risk of runoff is highest such as late winter just prior to snowmelt, on steeply sloping ground and in areas near tile intakes. Current rules prohibit surface application of manure near streams, wells and other designated areas.

Farms subject to the proposed rule may have to modify manure application practices or increase the amount of manure storage to comply with the rule, if adopted. The rule would also require producers to develop maps showing areas where surface application would be restricted when the ground is frozen or snow-covered. Please see other side for a detailed flow chart of conditions and areas where restrictions would apply.

TIMELINE

Iowa's Environmental Protection Commission passed a resolution in June 2008 requesting staff to draft a rule addressing winter manure application. The draft rule is now out for public comment until March 27, 2009. If the commission approves the draft rule for final adoption, the rule would become effective Oct. 1, 2009.

RULE BASICS

- The proposed rules DO NOT APPLY if manure can be injected or incorporated within 24 hours after application.
- The proposed rules limit surface application of manure when the ground is frozen or snow-covered to low risk areas and conditions until Feb. 15.
- From Feb. 15 to April 15 surface application is prohibited if the ground is frozen or snow covered.¹
- The proposed rules apply to all open feedlot and confinement animal feeding operations that are required to have a nutrient or manure management plan (NMP or MMP). Generally, an MMP is required

for larger confinement operations. These have more than 500 animal units or the equivalent of 500 beef cattle, 350 mature dairy cows or 1,250 finishing swine. For open feedlots, NMPs are required for lots that have 1,000 or more animal units or 700 mature dairy cows or 1,000 of all other cattle.

- The proposed rules could apply to small operations that cause water quality violations due to application of manure, if enforcement action is initiated.
- Scraped snow and ice from open feedlots are specifically exempted from the proposed rules.
- Frozen ground is defined as ground made impenetrable due to frozen soil moisture. Ephemeral frost, where the ground is frozen in the first 2 inches or less below the surface, is not considered frozen.
- Snow-covered ground is defined as areas with 1 inch or more of snow covering the ground or any area of continuous ice coverage.

PUBLIC COMMENT INVITED

The rules are available online at <http://www.iowadnr.gov/afo/newrules.html>

People can make oral comments or submit comments in writing at the following public hearings:

- Des Moines, March 16 at 9 a.m. — Wallace State Office Building Auditorium, 502 E. Ninth St.
- Ansonia, March 16, 6 p.m. — Washington County Conservation Education Center, Mar. Park, 2943 Highway 92
- Dedham, March 18, 6 p.m. — Dedham American Legion (Centennial Center), 302 Main St.
- Calmar, March 20, 1 p.m. — Room 115, Dairy Center, 1527 Highway 150 S.
- Orange City, March 23, 6 p.m. — City Hall, 125 Central Ave. S.E.
- Mason City, March 24, 6 p.m. — Lime Creek Nature Center, 3501 Lime Creek Road.

People may also send written comments directly to: Claire Hruby, Iowa DNR, 502 E. Ninth St., Des Moines, IA 50319 or by e-mail to Claire.Hruby@dnr.iowa.gov.

All comments must be submitted by 5 p.m. on March 27.

For more information, call Claire Hruby at (515) 242-6848 or Claire.Hruby@dnr.iowa.gov

1. The DNR proposes an effective date of October 2010 for solid manure from deep-bedded beef operations, allowing surface application from Feb. 15 to April 15 in 2009 if the ground is frozen or snow-covered.

Draft - January 2009, revised February 2009. Final rule will depend upon public comment and approval by the Environmental Protection Commission



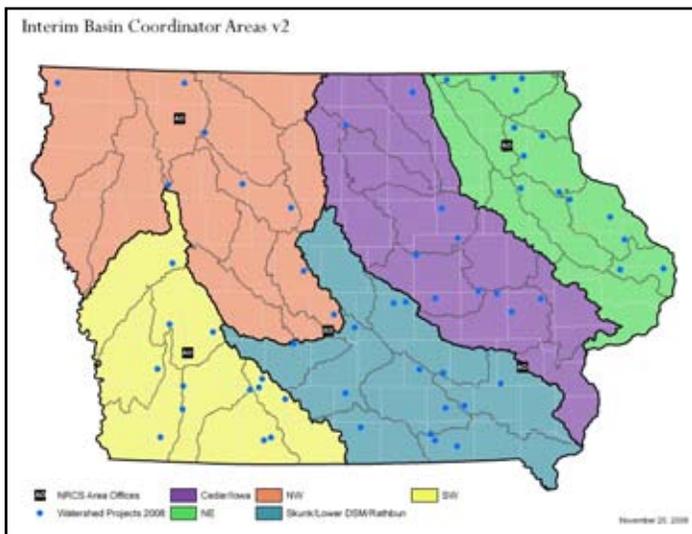
Framework for a Basin Approach to Improving Water Quality

Foundational Premise

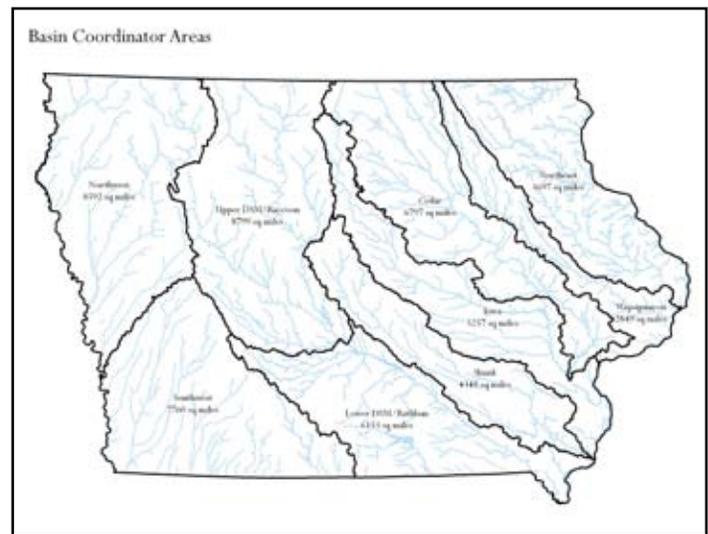
- Watershed and water quality improvement are best achieved using a watershed approach.
- There is a need to target limited resources to the areas of highest water quality priority or concern.
- Measurable improvements in water quality will take years, and even perhaps decades, to achieve.

The Framework

- Initially divide the state into 5 basins/regions, divide into 9 basins when resources allow.
- Assign Basin Coordinators to each basin.
- Subdivide each basin into approximately equivalent sub-basin areas.
- Assign Watershed Coordinators to priority sub-basin areas in each basin.
- Subdivide sub-basin areas into HUC10 and HUC12 watersheds.



Interim 5 Basin Boundaries



9 Basin Plan

Basin Coordinators

- Function as resource managers
- Ensure that WS projects and watershed (project) coordinators have needed resources and support
- Assist with watershed planning
- Coordinate with DNR, IDALS, SWCD, NRCS, and other agencies and groups

Watershed Coordinators

- Coordinate assessments of priority HUC10s
- Develop comprehensive watershed management plans
- Serve as the watershed advocate
- Coordinate marketing and promoting the local watershed plan
- Develop and implement projects at the HUC12 scale

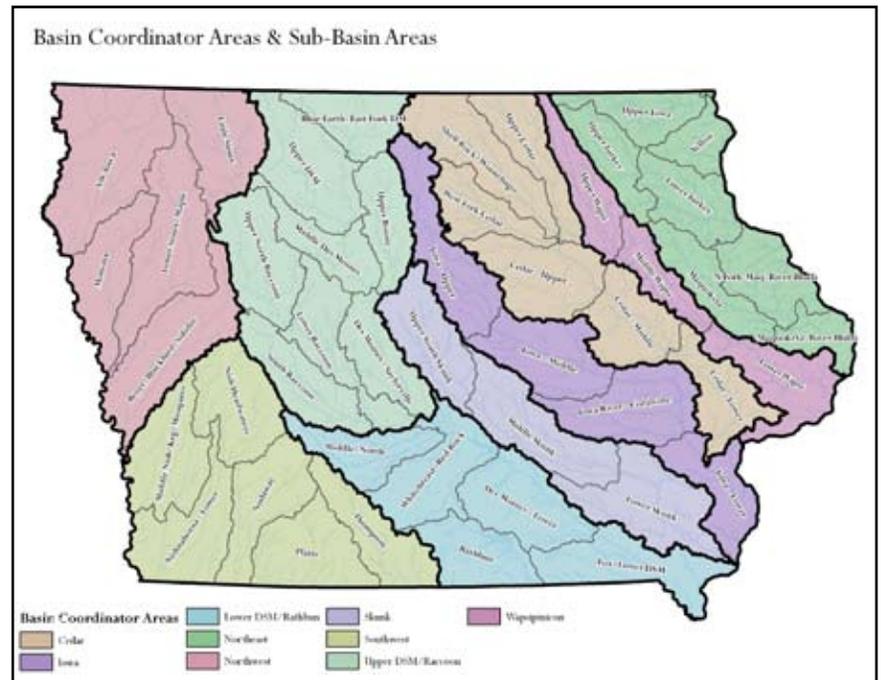
Benefits

- Reinforces the importance of aligning WQ improvement efforts with watershed boundaries.
- Recognizes the value of regional watershed planning and implementation to achieve measurable WQ improvement goals.
- Allows resources to be focused and targeted to areas of greatest priority or concern.
- Creates an organizational structure that assigns clear responsibility and authority to develop and implement the watershed approach.
- Replicates the Rathbun Lake model for successful watershed planning and implementation.
- Actively engages local and regional stakeholders in developing watershed management plans that reflect the collective values and needs of these groups.

- Retains the need to implement WQ improvement at the local (HUC-12) scale.
- Creates an opportunity for long-term career placement and advancement for watershed and water quality professionals.
- Develops local and regional expertise and professional/technical credibility with local stakeholders.
- Supports the goals and objectives of the Water Resources Coordinating Council legislation (HF2400).

Challenges

- Securing adequate resources (\$ and staff) to implement this strategy.
- Addressing the logistics of coordinating activities in basins that cover thousands of square miles.
- Identifying and determining appropriate WQ improvement priorities – where to target.
- Changing the current geo-political framework.



Expanded 9 Basin Boundaries with Sub-Basin Areas

Estimated Resource Needs

- Basin Staff
 - 4 additional Basin Coordinators (\$500k)
- Watershed Staff
 - 45 WS (project) coordinators (already funded)
 - 7 year cycle = 2 year planning + 5 year project implementation (approx.)
 - Need to fund planning phase between projects (\$1.3M)

Potential Funding Sources

- CWA 319 / WSPF / WPF — primary funding sources now
- WIRB — Would require changes to legislation
- NRCS — In kind (currently)
- New Appropriation
- Other?

Current DNR Contributions

- Funding 2.5 FTEs for Basin Coordinators (CWA 319)
- Partial funding for watershed coordinators
- Water quality data collection and analysis by the water monitoring section
- Each basin will have representation from field staff (Biologists, ESD, Parks, etc.) and central office staff (GIS, NPDES, Floodplains, Realty Services, etc.)

Next Steps

- Secure support for framework
- Finalize strategy
- Implement interim plan
- Secure additional funds
- Expand plan
- Others?

Overview of Mercury Emissions Monitoring

Environmental Protection Commission
Meeting
February 17, 2009

Presentation Overview

- Measurement Terminology
- Measurement Methods
- Hg Continuous Emissions Monitors (CEMS)
- Issues with Hg CEMS
- Proposed Hg Monitoring Requirements
- Possible Data Uses/Concerns
- Questions and Contact Info

Measurement Terminology

- **NIST (National Institute of Standards and Technology) Traceable:** A standard that has an unbreakable chain of comparisons to a NIST reference standard.
- **CEMS (Continuous Emissions Monitoring System):** The entire system used to collect emissions data on a continuous basis. Includes the data acquisition and handling system (DAHS)

Measurement Terminology

- **RATA (Relative Accuracy Test Audit):** Annual CEMS check to ensure it is reading correctly. Monitor outputs are compared to reference method test results. They must agree within 20%.
- **Span:** The maximum upper limit of the monitor's measurement range. This is required to be twice the applicable limit.
- **Drift:** The difference in the CEMS response to a reference gas.

Measurement Terminology

- **Calibrations:** Daily checks to ensure the monitor is still reading within the required specifications. Monitors are challenged with a zero gas (no pollutant) and a mid level gas (40%-60% of the span).
- **Sorbent Trap:** a cartridge or sleeve containing a sorbent media (typically activated carbon treated with iodine or some other halogen) with multiple sections separated by an inert material such as glass wool.

Measurement Terminology

- **Atomic Absorption Spectrophotometry (AAS):** Analytical method used to determine the concentration of mercury in a sample. The atoms in the ground state absorb the light of a distinctive wavelength passing through an atomic vapor layer of the element.

Measurement Methods

- **Method 101:** Particulate and gaseous Hg emissions are withdrawn from the source and collected in acidic iodine monochloride (ICI) solution. The Hg collected is then aerated from the solution into an optical cell and measured by atomic absorption spectrophotometry .

Measurement Methods

- **Method 29:** Particulate and gaseous Hg emissions are withdrawn from the source and collected in acidic hydrogen peroxide and potassium permanganate solutions. The samples are digested and the Hg is measured by cold vapor AAS.

Measurement Methods

- **Method 30B:** Known volumes of flue gas are drawn through paired, in stack sorbent traps at an appropriate flow rate. The sorbent traps are recovered from the sampling system and analyzed by any suitable technique that meets the performance criteria.
- **ASTM Method D6784-02 (Ontario Hydro Method):** Much the same as Method 29 with an additional potassium chloride impinger for oxidized species.

Hg CEMS

- Most common analysis is AAS or small variations of it
- Generally a CEMS system must analyze a sample one every 15 minutes. Most sample much more than this
- Raw CEMS data is sent to the DAHS where it is reduced to the units of the standard and stored
- Upscale Drift < 5% of span
- Zero Drift <5% of span
- Relative Accuracy of $\leq 20\%$ of reference method or 10% of limit whichever is greater

Issues with Hg CEMS

- Inconsistent readings
- EPA's Environmental Technology Verification (ETV) program shows high long term variability
- Bi weekly RATAs show a difference of 10 to 50% in RA values. Some of this may be due to low levels monitored. 100 ug/dscm elemental Hg = 0.01 ppm
- Currently have some monitors that would meet the proposed certification requirements, but no long term performance data are available

Proposed Hg Monitoring Requirements

- Affected EGUs with no Hg specific controls:
 - Quarterly coal sampling for Hg
 - ASTM D2234-76 or any future ASTM amendment approved by Department
 - OR
 - Quarterly stack testing for Hg using one of the following federal reference methods:
 - 40 CFR 60 Appendix A Methods 29, 30A, 30B
 - 40 CFR 61 Appendix B Method 101
 - ASTM Method D6784-02 (Ontario Hydro method)

Proposed Hg Monitoring Requirements

- Affected EGUs with Hg specific controls:
 - Complete at least one coal sample analysis using approved methods concurrently with at least one quarterly stack test using acceptable federal reference methods
- Affected EGUs would not be required to continue to operate and collect data from the Hg CEMS

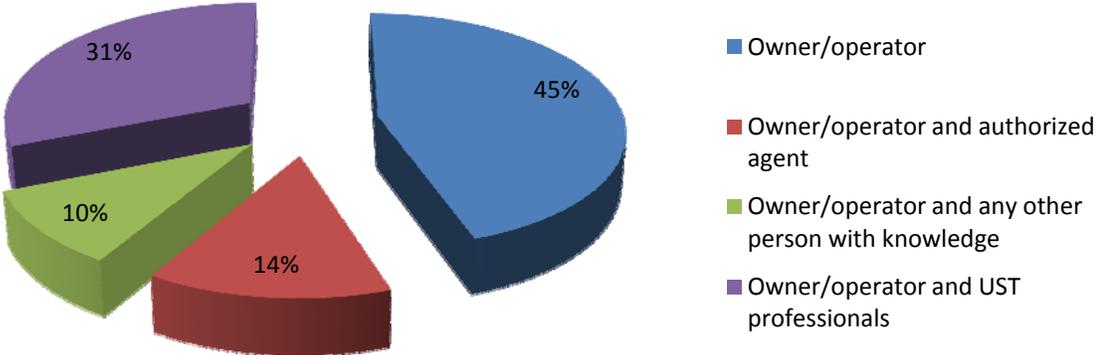
Possible Data Uses/Concerns

- Uses:
 - 112(g) determinations for new units
 - Support for Hg inventory and modeling activities
 - Data for use in development of new Hg monitoring regulations at the federal level
- Concerns
 - Data quality
 - Data representativeness
 - Data validity

Questions and Contact Info

- Questions?
- Contact Info
 - Mark Stone
 - 515-242-6001
 - mark.stone@dnr.iowa.gov

Reporting Petroleum Releases A Survey of 29 States



Fiscal Impact Statement

Associated with the

Notice of Intended Action

Stream Use Designation Revisions
Rule 567 IAC 61.3(5)

Prepared by the

Department of Natural Resources

January 15, 2009

Fiscal Impact Statement

Introduction: This Fiscal Impact Statement (FIS) provides the projected costs and potential benefits associated with the proposed adoption of the stream use designation revisions by reference at rule 567 IAC 61.3(5). The Department has been performing aquatic life and recreational use assessments on Iowa's rivers and streams since September of 2005 in order to determine the highest attainable use for an identified stream segment.

The need to perform use assessment and use attainability analyses (UA/UAA) arises from changes to Iowa's water quality standards which became effective on March 22, 2006. One of these changes was the amendment of rule 61.3(1) which designated all of Iowa's perennial rivers and streams and intermittent streams with perennial pools as Class A1 Primary Contact Recreational Use and Class B(WW-1) – Type 1 aquatic life use. The rule further provides that designated uses of segments may change based on a use assessment and use attainability analysis.

Pursuant to section 455B.176A, the redesignation of streams through the amendment of rule 61.3(1)“b” cannot be implemented through new or revised NPDES permit limits until a UA/UAA has been performed for an affected stream.

The department has previously provided a FIS for the March 22, 2006 rules addressing the likely costs of the expected ammonia-nitrogen removal and disinfection requirements. The assumptions and evaluations made in the August 16, 2005 FIS remain relatively unchanged as the recommendations from the UA/UAA's support the assumptions made at that time. Therefore, this FIS for the proposed stream designation revisions will defer to the August 16, 2005 FIS which is available at the department's web site at <http://www.iowadnr.com/water/standards/rulemaking.html>

It is important to note that department staff did not evaluate the specific individual impacts or treatment needs for each wastewater treatment facility noted in the August 16, 2005 FIS. Basic assumptions and evaluations were made on the general impacts on all facilities predicted to be affected. The specific individual impacts and needs will be best evaluated by the facility's staff or retained consultant. Innovative or unique treatment methods may be available to some facilities thereby reducing specific costs.

Rebuttable Presumption

Rule 567-61.3(1)“b”, effective March 22, 2006, designated all perennial rivers and streams or intermittent streams with perennial pools in Iowa as Class A1 and all of the same streams not specifically listed in the Surface Water Classification as Class B(WW-1) waters, to protect these waters for recreational and aquatic life uses. The adoption of this provision added approximately 10,000 to 14,000 miles of newly designated streams, including stream segments downstream of all continuously discharging wastewater treatment facilities. The numerical criteria associated with both of these designations applied at all specified stream flow regimes, including the critical stream low flows ($1Q_{10}$, $7Q_{10}$, and $30Q_{10}$). Since most of these stream segments will have critical low flows of zero cfs, this implies that the allowed amount or concentration of key materials that could be assimilated in the designated stream reach would be very near or equal to the numerical criteria. Thus, for wastewater treatment facilities, this would reduce the amount of treated pollutants that would be allowed in their discharge and result in the need to provide additional treatment of key parameters, particularly ammonia nitrogen and bacteria.

Pursuant to section 455B.176A, the redesignation of streams through the amendment of rule 61.3(1)“b” cannot be implemented through new or revised permit limits until a use attainability analysis has been performed for an effected stream.

It should be noted that the fiscal impact estimates are not solely based on designating all perennial rivers and streams or intermittent streams with perennial pools in Iowa as Class A1 and all of the same streams not specifically listed in the Surface Water Classification as Class B(WW-1) waters. The estimates also consider the results of the Use Assessments/Use Attainability Analyses (UA/UAA) that were conducted on these waters to determine the most appropriate use designation. However, the Department anticipated that some form of Class B aquatic life use designation and Class A recreational use would remain for most of these streams after these UA/UAs were complete which is holding true. The impact of this proposed rule is realized through establishing the appropriate aquatic life and recreational use designations for Iowa's perennial rivers and streams or intermittent streams with perennial pools based on guidance from EPA, not necessarily the establishment of a rebuttable presumption of uses for Iowa's waters.

A. Impacted Facilities: Statewide, originally 334 wastewater treatment facilities (210 municipal, 114 semi-public, 10 industrial) were anticipated to be impacted through the implementation of more stringent effluent ammonia-nitrogen and bacteria limits. The number of impacted facilities has increased to some extent due to new facilities, facilities missed in the original screening of impacted facilities, and a refined interpretation of what facilities may be impacted. While the number of impacted facilities has grown it is not expected to dramatically change the previously calculated fiscal impact from August 16, 2005.

The treated effluent from these continuously discharging facilities currently enter General Use (non-designated) watercourses ranging from channelized ditches to meandering waterways. All of these watercourses were found not to meet the current definitions for designated uses. Under the 3/22/2006 rule change, these watercourses became designated as Class A1 and Class B(WW-1) waters.

It should be noted that some facilities do not possess significant ammonia-nitrogen concentrations in their wastewater and may not be affected by this new rule. However, there could be other parameters that may be water quality-limited. These non-traditional water quality-limited parameters could include toxics, toxic metals, or dissolved solids for which facility specific treatment techniques may be required. No economic projections are made of the non-traditional water quality-limited parameters.

B. Projected Costs: With the proposed designation of stream segments under the rebuttable presumption provision, it is anticipated that these designated streams will possess critical stream low flows (1Q₁₀, 7Q₁₀, and 30Q₁₀) of 0.0 cfs. Therefore, little assimilative capacity will be available in the stream for mixing that would provide for more relaxed ammonia-nitrogen effluent limitations.

Nitrification Costs: Achieving compliance for the original 334 facilities would require a nitrification treatment process similar to an extended aeration activated sludge wastewater treatment facility because conventional secondary wastewater treatment units will not be able to meet end-of-pipe ammonia-nitrogen water quality-based effluent limits. The nitrification units may include oxidation ditch-type and other various designs of extended aeration activated sludge wastewater treatment processes that are costly to build and operate. It is assumed that aerated lagoon and trickling filter facilities will upgrade to these types of nitrification facilities to comply with anticipated ammonia limits. In addition, it is assumed that any activated sludge facility may need to upgrade or possibly change its current operation to provide for extended aeration to remove ammonia-nitrogen, resulting in higher operation and maintenance costs and possibly reduced design capacity.

The fiscal impact assessment has attempted to establish a range of costs that considers both higher cost and lower cost scenarios. The established range incorporates conservative approaches to estimating the potential fiscal impact. It is understood that a multitude of factors or variables may result in estimates that are either below the lower cost estimates or exceed the higher cost estimates and were not considered due to the difficulty of predicting which variables could apply to any facility.

Disinfection Costs: For each of the 334 facilities, the proposed rule change would require each facility to meet effluent bacteria levels equal to the Water Quality Standard's numerical bacteria criteria. As specified in existing rule, all bacteria criteria are end-of pipe limits with no provision for mixing with critical low stream flows. It is assumed that the existing wastewater treatment or even after operation of nitrification unit processes would not comply with the stringent bacteria criteria without additional treatment. Thus, each facility would need to install effluent disinfection equipment. Since the most widely used treatment technique for disinfection is chlorination, the economic estimates are based on the construction and O&M costs for chlorination equipment. While chlorine is a very effective disinfection agent, it is also a very toxic residual to the receiving stream's aquatic life. Therefore, dechlorination equipment costs were included in the cost estimates. The overall disinfection costs have been generalized to uniformly cost \$150,000 per facility.

Other alternative disinfection treatment options are available to wastewater treatment facilities. However, their costs are traditionally greater than chlorination and dechlorination. Each facility's managing authority will need to select the type of unit process, with cost being one of the factors. There are no higher cost or lower cost options for disinfection equipment. However, disinfection costs may not be applicable for some types of implementation alternatives (such as land application) that do not discharge to a receiving stream. The appropriateness and applicability of these alternative options are best left to the facility's managing authority and are not integrated into any of the economic estimates.

C. Anticipated Benefits:

The anticipated benefits from the adoption of the stream designation revisions are also associated with the potential improvements to: instream conditions for aquatic and semiaquatic life, wildlife, and livestock watering needs, and aesthetic conditions. These potential benefits do not have readily identifiable monetary value and are not estimated in this impact statement.

Summary

The projected fiscal impact to municipal, industrial and semipublic wastewater treatment facilities from the 2006 rule-making in regard to the application of recreational use and aquatic life protections was projected to be approximately between \$790 million to \$956 million. **This fiscal impact estimate is relatively unaffected by the current proposed adoption of the stream use designation revisions as the assumptions and generalization used in the August 16, 2005 FIS are holding true.**

The following table summarizes the total impact of the March 22, 2006 rule. It's important to note that none of these costs will be realized until the stream designation revisions are effective and each affected facility receives a renewed NPDES permit detailing the new discharge requirements.

Table 1
Fiscal Impact Summary

Rule-making Topic	Number of Affected Facilities	Projected Fiscal Impact		
		Nitrification	Disinfection/Dechlorination	Total
<i>Higher Cost Scenario</i>				
1) General Use Definition Changes*	*	*	*	*
2) Class B(WW-1, 2, & 3) Modification	N/A	N/A	N/A	N/A
3) Protected Flow	63**	\$177,946,000	N/A	\$177,946,000
4) Rebuttable Presumption*	334	\$716,583,000	\$50,100,000	\$766,683,000
5) Add Class A-1 to all Class B(LR)	14 + 63**	N/A	\$11,550,000	\$11,550,000
Totals	411	\$894,529,000	\$61,650,000	\$955,879,000
<i>Lower Cost Scenario</i>				
1) General Use Definition Changes*	*	*	*	*
2) Class B(WW-1, 2, & 3) Modification	N/A	N/A	N/A	N/A
3) Protected Flow	36***	\$134,011,000	N/A	\$134,011,000
4) Rebuttable Presumption*	246	\$594,605,000	\$50,100,000	\$644,705,000
5) Add Class A-1 to all Class B(LR)	14 + 63***	N/A	\$11,550,000	\$11,550,000
Totals	323	\$728,616,000	\$61,650,000	\$790,266,000
	Range	\$790,266,000 to \$955,879,000		

* Impacts of Topic 1 are included in Topic 4.

** Same facilities, but having separate costs due to different topics.

***36 facilities are part of the 63. Less facilities are affected by nitrification in the lower cost scenario. However, all 63 are still impacted by disinfection in the lower cost scenario.

Anticipated Implementation Approach: The Department clearly recognizes that the implementation of these proposed rules and rule changes will have far-reaching economic impacts. Historically, compliance with the provisions of the federal Clean Water Act has carried a significant price tag and will continue to be costly as requirements and guidelines are reaffirmed. It is the goal of the Department to implement these proposed rules in a reasonable, practicable, and responsible manner. Thus, the implementation will be linked to the reissuance of each facility's NPDES permit. All available NPDES provisions and considerations will be made to allow adequate time for each facility to comply with the adopted rules according to their time constraints, economic abilities, and

source of financial aid. The State Revolving Fund (state administered low-interest loan program) will be available to assist in the eligible construction of the required facilities. If needed, additional fund monies will be sought to assure adequate loan funding.



Responding to Climate Change: The ICCAC Report

Jerry Schnoor

Dept of Civil & Environmental Engineering
Center Global & Regional Environ Research

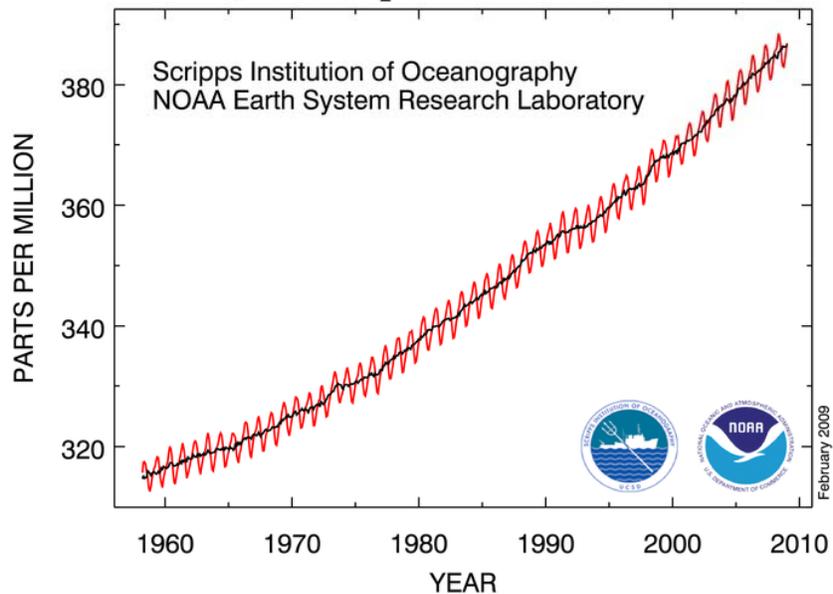
THE UNIVERSITY OF IOWA

*IA Environmental Protection Commission
IDNR Air Quality Building*

February 17, 2009



Atmospheric CO₂ at Mauna Loa Observatory





*Iowa General Assembly S.F. 485 (2007) and H.F. 2571 (2008)
and the Iowa Code Section 455B.851*

ICCAC Scenarios for GHG Reductions in Iowa:

-- 50% and 90% reductions by 2050 from baseline (2005)

Interim Years: By 2012, a 1-3% reduction needed

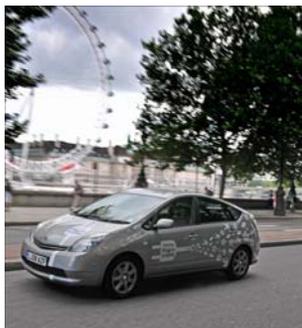
By 2020, a 11-22% reduction needed

Policy Options: 56 Options evaluated based on their potential for GHG reductions and their cost

Website: www.iaclimatechange.us



GHG Reduction Strategies: An enormous economic opportunity



- Low Hanging Fruit:
 - Buildings (40% of GHGs)
 - Energy Efficiency/Conserve
- Transportation (25% GHGs):
 - Gas mileages >100 mi/gal
 - Fuel efficient, low carbon emitting vehicles
 - Gas-electric hybrids
 - Plug-in hybrids
 - Flex-fuel plug-in hybrids
 - Fuel cell cars (?)



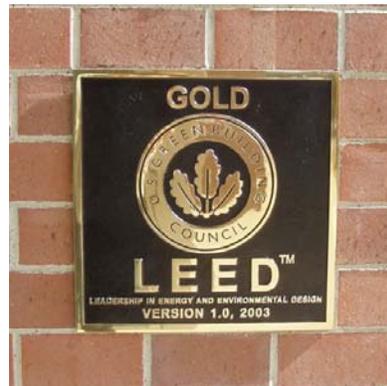
Plug-in Electric Hybrid Vehicles

- Advantages
 - Use wind power at night to recharge the battery at a cost of < \$1/gal (thus making wind storable in 200 million car batteries)
 - 50-100 mpg depending on your ratio of commuting to long-haul; See GM Volt
- Disadvantages
 - More expensive cars
 - Recharging stations; time-to-recharge; range; lithium ion batteries



Leadership in Energy Efficiency Buildings

- GHG emissions associated with our buildings is 40% of total
- Change out our capital stocks
 - Cars (8-10 yrs)
 - Wind Power (2-5 yrs)
 - Power plants (50 yrs +)
 - Buildings (50-75 yrs)
- LEED certification is run by the U.S. Green Building Council, and there are other alternatives



Renewable Energy: Solar PV Homes

- Solar homes can be fitted with racks of PV cells on the roof
- SUNSLATES roofing tiles by Atlantis Energy with AstroPower PV modules (a 5 kW system with battery backup and linked to the local utility)
- 1,000,000 homes in California and Japan are doing it!



Solar PV Home and Electric Car in California



Iowa Wind Power

- Iowa is now 2nd in the U.S. in nameplate capacity wind
 - It's cost competitive
\$0.05 cents/Kwh
 - Iowa has 2790 MW so far, (10-15% of total)
 - Green collar jobs (1000s) at wind turbine mfgs.
- Enjoys federal production tax credit
- Wind power is clean and renewable, but we need to find a method to store it



Carbon Capture at power plants and Storage is required if coal is to be used for electricity

- Coal-fired power plants emit almost twice the GHGs as other forms of electrical generation
- Integrated Gasification and Combined Cycle (IGCC)
 - Gasification of the coal to make a gaseous fuel stream that burns cleaner than the coal itself
- Combined cycle is more efficient than normal coal-fired power plant (32% thermal efficiency)
- IGCC plants are considered to be "carbon capture ready"

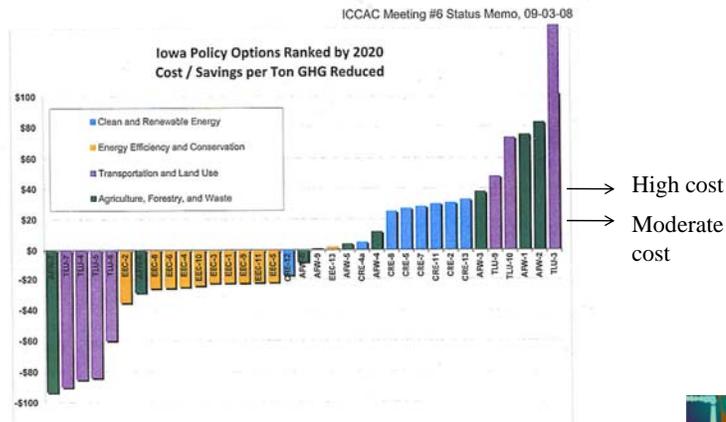


Carbon Sequestration/Storage in deep geologic formations is commonly practiced for secondary recovery in oil fields

- Oil companies have been practicing carbon sequestration for decades
- Rich CO₂ streams from petroleum fields are pumped back into the formation to recover more oil and gas
- Pipelines are used to transport the gas and to sequester it below 3500 ft as supercritical CO₂ (like a liquid at gas/liquid density)
- Illinois has deep coal beds that could be used for this purpose



Iowa Climate Change Advisory Council Policy Options -- Cost per ton (CO₂eq) reduction



Some energy efficiency/conservation policy options

Options	Cost per ton CO ₂ saved or avoided	GHG Reduction by 2020 (MMtCO ₂ eq)*
EEC-2 and 12 Demand side programs for gas and electricity	- \$28 (avg)	5.6
EEC-3 and 5 Financial incentives to efficiency	- \$21	9.4
EEC-9 MWGA Energy Security and Climate Stewardship Platform	- \$22	4.1

*GHG reductions not adjusted for overlapping policies; total for the EEC sector is 8.6 MMtCO₂e



Some promising policy options that create jobs and/or improve agricultural profitability

Options	Cost per ton CO ₂ saved or avoided	GHG Reduction by 2020 (MMtCO ₂ eq)*
CRE-2 Technology 60% wind, 20% biomass, 20% fuel cell	+ \$29	33
AFW-3 Ag Biomass (1 MM acres) for heat, elect., steam (chp)	+ \$38	20
CRE-5 Performance stds. 40% wind, 20% bio, 20% solar, 20% nuclear	+ \$7	11
AFW-5 No-till and soil carbon sequestration	~ \$0	9



Some other promising policy options

Options	Cost per ton CO ₂ saved or avoided	GHG Reduction by 2020 (MMtCO ₂ eq)*
CRE-4 Decarbonization fund from carbon tax (e.g., wind)	+ \$4	11
AFW-6 Cellulosic biofuels (perennials)	- \$29*	9.8

*Costs/savings of AFW-6 include a \$1.01/gal federal subsidy for cellulosic ethanol



Some really cost-effective policy options

Options	Cost per ton CO ₂ saved or avoided	GHG Reduction by 2020 (MMtCO ₂ eq)*
AFW-7 On-farm efficiency	- \$90 (approx.)	1
TLU-7 Fuel efficient operations for cars	- \$90	0.65
TLU-1 Smart growth bundle w/ transit	-\$245	0.242

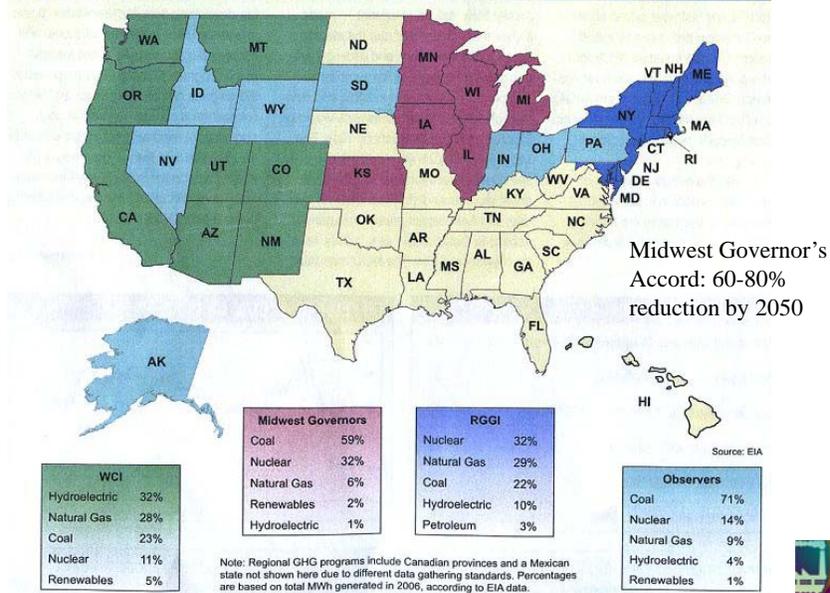


Some controversial policy options

Options	Cost per ton CO ₂ saved or avoided	GHG Reduction by 2020 (MMtCO ₂ eq)*
CRE-7 Nuclear Power (maintain + 1 new plant by 2020)	+ \$27.6	9.7
TLU-10 Low Carbon Fuel Standard (like CA)	-\$62	5.1
TLU-4 Support Iowa passenger rail service	+\$597	0.008



Regional Cap-and-trade Programs, Observer States and Generating Fleets



Summary

- There exists an enormous economic opportunity to respond to climate change by relying on energy conservation and efficiency, renewable energy sources, and smart policy options
- ICCAC suggests options for state government to consider between now and 2020 which could provide:
 - An economic engine for growth and job creation over the next decade
 - Greater energy independence and security
 - A cleaner, healthier environment
 - Iowa's contribution to a more stable global atmosphere and climate future
- Iowa is already a leader and could be so much more

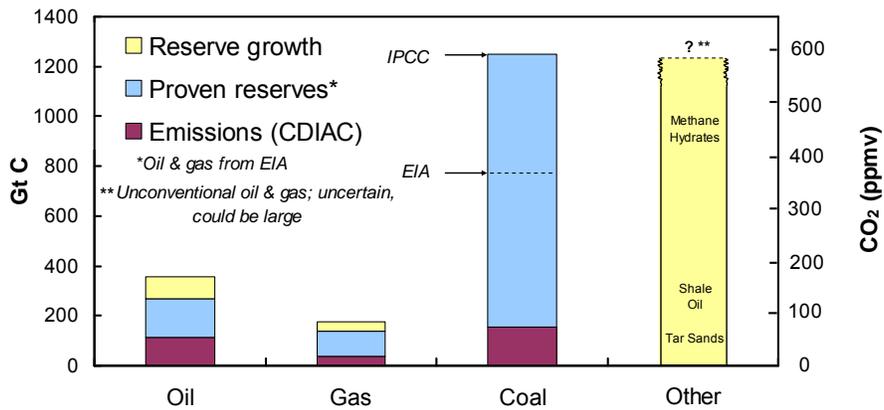


S U S T _ _ N _ B _ E
F U T U _ E



The Fossil Fuel Age: burning millions of years of stored carbon

Fossil Fuel Reservoirs and 1750–2004 Emissions

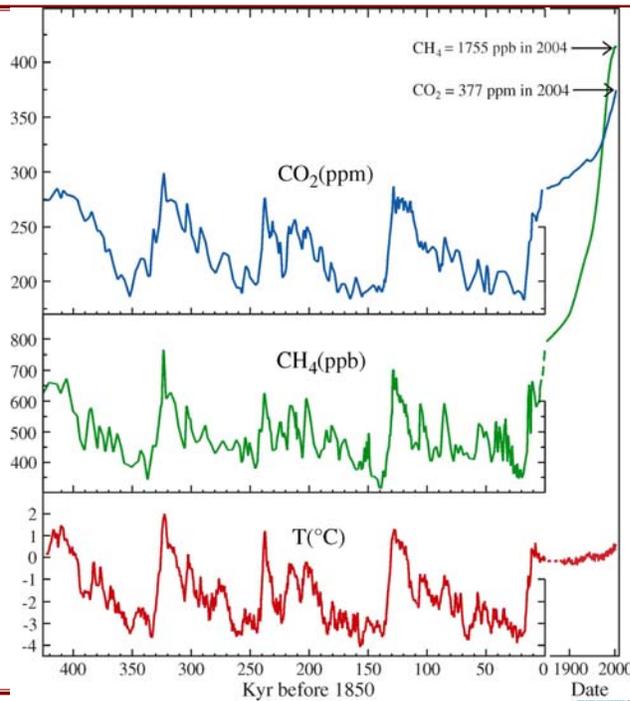


Slide courtesy of James Hansen, NASA GISS



Current GHGs are unprecedented for over 600 K years

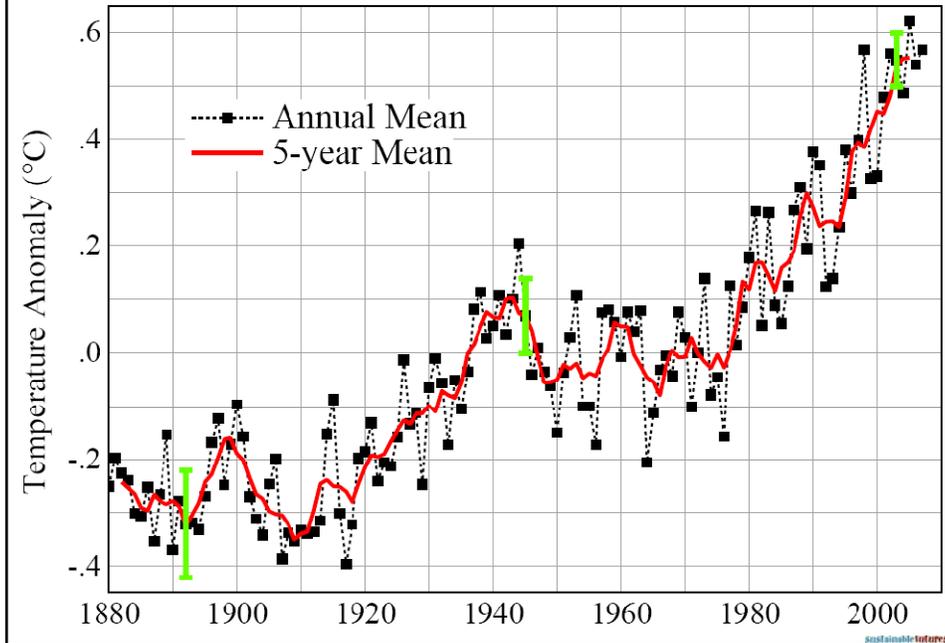
CO₂, CH₄ and estimated global temperature (Antarctic ΔT/2 in ice core era)
 0 = 1880-1899 mean.



Source: Hansen, *Clim. Change*, 68, 269, 2005.

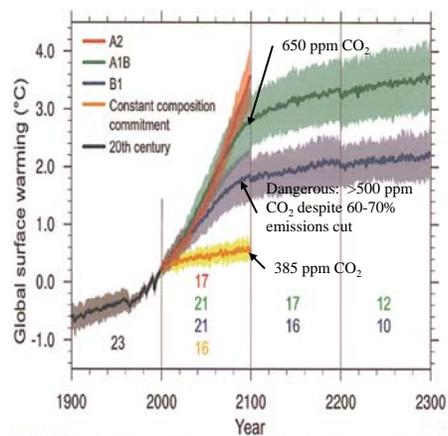


Climate Change – 0.8 C warmer in the past 130 yrs



GCM models agree on future warming (IPCC)

- Models agree on + (2.0-4.5) °C (3.6-8.1 °F) w/in 100 yrs in IPCC 4th Assessment (2007)
- Best estimate is 3 °C warmer (5.4 °F) by 2100
- 0.6 °C (1.1 °F) more warming is inevitable, but if we act within 10 years or so, we can stop dangerous climate interference (Hansen et al., 2006)



Tipping Points



- One of the reasons that we must act now is to avoid nonlinearities, tipping points into a new climate domain
 - Storm severity
 - Loss of ice-sheets
 - Sea level rise
 - Species extinctions
 - Reversal of North Atlantic thermohaline circulation
 - Release of clathrate methane, CO₂ from deep ocean



GHG Policy Options Reduction Potentials

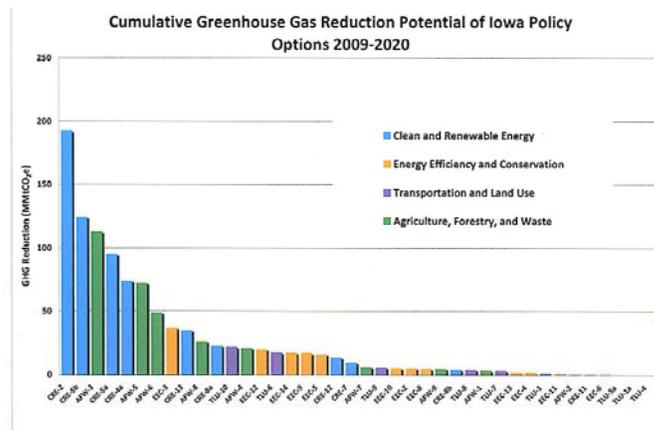
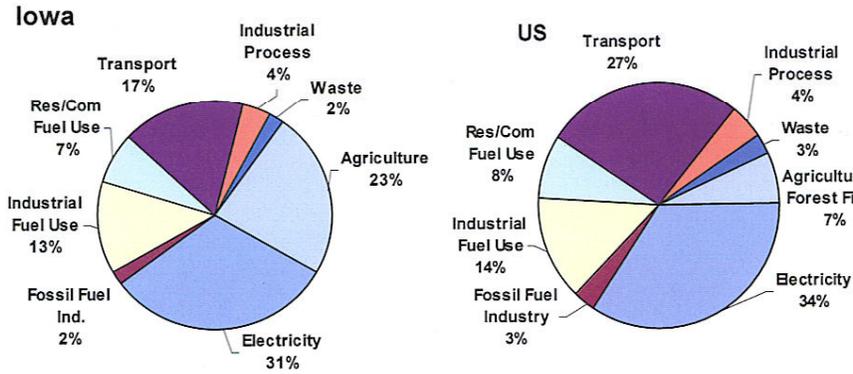


Figure ES-2. Gross GHG emissions by sector, 2005: Iowa and U.S.



Iowa GHG Emissions Trends and Forecast

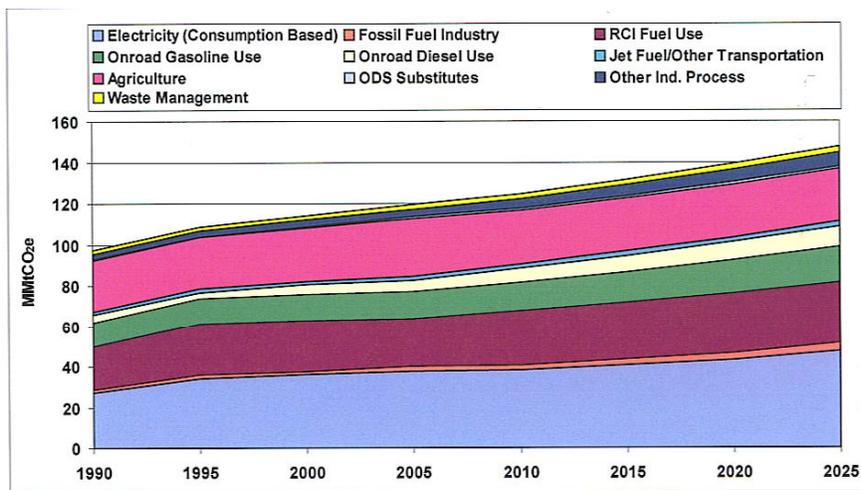
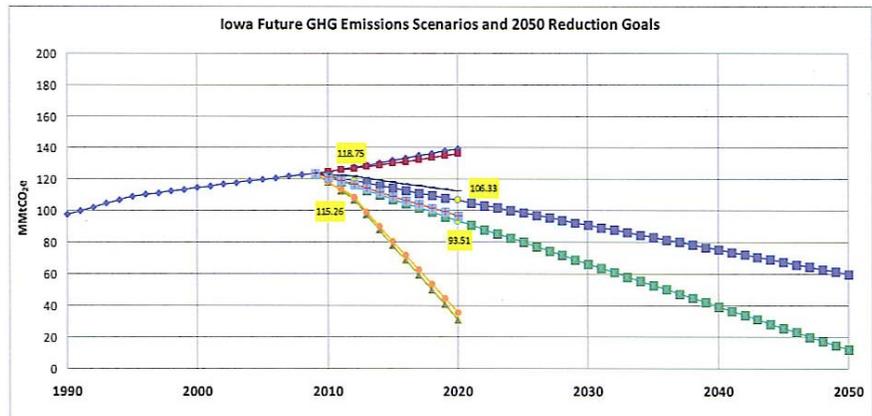


Figure ES-7. Iowa Future GHG Emissions Scenarios and 2050 Reduction Goals



89 CONFIRMED RELEASES: OCTOBER 2006 TO OCTOBER 2008

