

**MINUTES**  
**OF THE**  
**ENVIRONMENTAL PROTECTION COMMISSION**  
**MEETING**  
**FEBRUARY 16, 2010**

**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 Charlotte Hubbell at 10:12 a.m. on Tuesday, February 16, 2010 at DNR Air Quality Building, Windsor Heights, Iowa.

### COMMISSIONERS PRESENT

Gene Ver Steeg  
Charlotte Hubbell, Chair  
David Petty  
Susan Heathcote  
Paul Johnson - teleconference  
Martin Stimson  
Dale Cochran - teleconference  
Lorna Puntillo - teleconference

### ADOPTION OF AGENDA

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

**APPROVED AS PRESENTED**

### APPROVAL OF MINUTES – DECEMBER 2009 AND JANUARY 2010

*Motion was made by Marty Stimson to approve the December 15<sup>th</sup> and January 19<sup>th</sup> EPC minutes as presented. Seconded by David Petty. Motion carried unanimously.*

**APPROVED AS PRESENTED**

### DIRECTORS REMARKS

Deputy Director Pat Boddy highlighted the following items:

- Carrie LaSeur has taken up residency in Montana and therefore has resigned from the Commission.
- The Re-Org bill has passed the House and will be going before some kind of compromise committee.
- There is manure on frozen ground legislation out there that would exempt facilities built before July 2009 from participating in the legislation passed last session. Sharon Tahtinen, DNR legislative liaison is negotiating on this matter.
- The anti-degradation rules passed by this commission will go into effect tomorrow.
- Highlights from Governor's budget:
  - o REAP was at \$18 million but is now at \$12 million (The Director was anticipating worse.)
  - o Lakes Restoration funds were cut from \$8.6 million to \$2 million.

- Low head dams were zeroed out from \$800,000.
- \$1.5 million was added to Parks to help cover Honey Creek State park funds.
- \$250,000 was added to AFO/CAFO efforts.
- Robert Garrison is the new Law Enforcement Bureau Chief. He comes from the State Patrol and more recently the Department of Correction.
- March 10-11 NRC/EPC Commission Workshop
- Progress in Allocating ARRA funds (SRF) – As of February 16, 2010 all of the Drinking Water SRF ARRA funds have been allocated. The remaining Clean Water SRF ARRA loan agreements will be signed today. Iowa will meet the ARRA deadline of having all projects under contract or under construction with a signed loan agreement by February 17, 2010.

Susan Heathcote asked about the Ag drainage well bill and the recent progress on these wells. She did not believe it was appropriate to extend the deadline for compliance for another 10 or 20 years.

Pat Boddy said that she will talk to Sharon Tahtinen to ensure that we are tracking the progress on this bill.

|                           |
|---------------------------|
| <b>INFORMATIONAL ONLY</b> |
|---------------------------|

## **CONTRACT – IJOBS GRANT RECIPIENTS FOR IMPROVED GREEN URBAN STORMWATER BEST MANAGEMENT PRACTICES**

### **Recommendations:**

Commission approval is requested for the following 17 applicants for various implementation of improved urban stormwater best management practices retrofits. The contracts will begin on March 1, 2010 and terminate on various dates not to exceed 20 months. The total amount of the sum of the contracts shall not exceed a total of \$1.425M nor exceed the individual awards listed below per each project. DNR shall have the option to renew these contracts as long as these contracts and any extensions do not exceed a six-year period.

| <b>Applicant</b>          | <b>Location (City, IA)</b> | <b>DNR Award</b> | <b>Proj #</b> |
|---------------------------|----------------------------|------------------|---------------|
| City of Charles City      | Charles City               | \$ 100,000       | 1             |
| City of Ankeny            | Ankeny                     | \$ 100,000       | 2             |
| Parker House Properties   | Mason City                 | \$ 82,500        | 3             |
| City of Belle Plaine      | Belle Plaine               | \$ 100,000       | 4             |
| St. Paul Cathedral Church | Des Moines                 | \$ 100,000       | 5             |
| City of West Union        | West Union                 | \$ 100,000       | 6             |
| City of Johnston          | Johnston                   | \$ 100,000       | 7             |
| City of Carter Lake       | Carter Lake                | \$ 49,759        | 8             |
| City of Davenport         | Davenport                  | \$ 36,600        | 9             |
| Eastern Iowa Regional     | Dyersville                 | \$ 11,099        | 10            |

|                                      |               |            |    |
|--------------------------------------|---------------|------------|----|
| Housing Authority                    |               |            |    |
| City of Clive                        | Clive         | \$ 99,000  | 11 |
| City of Ackley                       | Ackley        | \$ 100,000 | 12 |
| City of Denver                       | Denver        | \$ 100,000 | 13 |
| City of North Liberty                | North Liberty | \$ 82,551  | 14 |
| Indigo Dawn, Inc                     | Des Moines    | \$ 79,500  | 15 |
| Water Tower Place Owners Association | Cedar Rapids  | \$ 98,012  | 16 |
| Luther College                       | Decorah       | \$ 85,979  | 17 |

**Funding Source:**

These contracts will be funded through Governor Chet Culver's I-JOBS initiative bonding money.

**Background:**

As a part of Governor Chet Culver's IJOBS initiative, the DNR is administering this grant program for retrofitting existing infrastructure and associated grounds with urban stormwater BMPs that will have water quality benefits. An amount of \$1,425,000 was set aside to fund practices. Grants were limited to \$100,000 and required a minimum 50 percent local match. For more information on specific projects, please see the attached brief descriptions.

**Purpose:**

The parties propose to enter into these Contracts for the purpose of retaining the Contractors to provide implementation of urban stormwater best management practices, to create jobs, and to upgrade and improve aging infrastructure.

**Contractor Selection Process:**

An RFA was issued October 15, 2009 and promoted through press releases from the Governor's office and the DNR and by notifying a known network of local, county and state contacts. A total of 35 applications were received requesting a total of \$2,802,194.

A review committee consisted of five members from three state agencies including the DNR, the Department of Agriculture and Land Stewardship and the Department of Economic Development. Seventeen (17) applications were chosen for funding, which exhausted the full grant pool. The award recipient pool will leverage close to \$7,000,000 of local matching dollars.

The contract lengths will range from one to two construction seasons with a maximum length of 20 months. The projects will require an IJOBS sign during construction. Upon completion, permanent signage will be installed, which will describe the process and include the IJOBS and DNR logos. The number of jobs created with each project will be included in a final report submitted to DNR upon successful completion of each project.

At this time, the Department is requesting Commission approval to enter into contracts with those grant recipients whose awards will be in excess of \$25,000.

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

**APPROVED AS PRESENTED**

## **PUBLIC PARTICIPATION**

**STEPHEN PATTERSON**, representing Guthrie County Solid Waste and Recycling read the following comments:

I appreciate the opportunity to address the Commission today. I've been involved in environmental health and solid water issues for Guthrie County since 1975.

Guthrie Co. operated a landfill until 1997 at which time we transitioned to a transfer station. We are happy y that this was done as it serves a small county much better than trying to operate a full-service landfill.

At the time we were closing, the Department was pushing for landfill consolidation and one of the "selling points" was that if we closed such landfills got to stay under the old rules and not be upgraded into new rules as they are developed. So much for the Departments' word on that....but I've learned that, if it isn't in writing, don't believe it.

My concern is with the new testing requirements in Chapter 113. Currently, we test for a profile of chemicals specified in our original permit. That testing costs-\$200 well/year plus consultant costs. Now Ch. 113 has added all sorts of qualifiers that now require much more costly and detailed testing.

Depending upon the route agreed to with the Department, either Appendix I and/or II must be done. Appendix I involves 62 parameters at a cost of \$510/well/year. Or when Appendix II is required then the cost is \$1150/well/year. At some point the rules will require BOTH tests to be conducted on some set frequency. And this doesn't count the consultant costs. Additionally there will be a statistical analysis required at a cost of \$2000 for licensing plus \$1000 set up plus \$500 each analysis. You can see that our costs are increased substantially.

The question then is for what purpose. DNR staff indicate t hey want to collect data. I'd respectfully suggest that is the DNR wants data then the DNR should pay for it. The Department just casually writes rules without any regard to costs to local government. Lip service is given to costs but the "importance" of the testing always trumps costs.

But is the testing important. From information I've collected is appears that this advanced testing really only confirms the data already being collected and virtually notice else is found. You should look at the list of 230+ substances tested for in Appendix II. Even the few found are in such minute amounts as to be insignificant.

In contrast, I was involved with a UST problem at I-80/HWY 71 where there were previously many gas stations. There were major contamination issues and rural water was brought in. But when the clean up came along...it was determined to be too expensive and so it is just monitored with no corrective action. Could that be because the state has to pay for clean up? This contamination is 100s of times worse than some 1 or 2 ppb of some odd-ball chemical in a landfill located far away from any place. If Mother Nature will cure the UST site, what's the reason to cost a County many extra thousands of dollars annually for data collection by curious DNR staff?

In conclusion, all levels of government are going broke. Let's face it. We have to prioritize the important, serious issues. Mandating all this expensive testing is not warranted. Such rules are driven by misguided bureaucrats and consulting firms/testing labs who are recruiting business.

As a Commission, you owe it to all Iowans to be more realistic in what you require and not be so willing to go along with what staff/consultants want without a great deal of input and skepticism. I realize most rules you have to review are extremely complex. Maybe you should be more suspicious of such complexity.

I know we'll be forced to do this testing. But I would hope that as a Commission you will focus on what are truly environmental concerns and not let staff concentrate on such minute situations that even if corrected at huge sums of money will not really advance the cause of environmental protection in any significant way.

Charlotte Hubbell asked if it would be possible for rural communities to ask EPA for assistance during the next 2-3 years or cut back on the number of times monitoring is required.

Wayne Gieselman said this is something we would need to discuss with EPA. He will do some additional research and get back to the Commission.

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

**CONTRACTS – UNIVERSITY OF IOWA HYGIENIC LABORATORY FOR LABORATORY AND ANALYTICAL SERVICES FY2010-11 TMDL MONITORING AND LABORATORY SERVICES**

Eric O'Brien, Section Supervisor of the Watershed Monitoring and Assessment Section presented the following item.

**Recommendations:**

Commission approval is requested for four contracts with University of Iowa Hygienic Laboratory of Iowa City, Iowa.

| <i>Contract</i>                         | <i>Begin Date</i> | <i>End Date</i>   | <i>Cost</i>  |
|---|-------------------|-------------------|--------------|
| FY2010-11 TMDL Water Quality Monitoring | March 1, 2010     | February 28, 2011 | \$314,352.23 |

DNR shall have the option to renew these contracts as long as this contract and any extensions do not exceed a six-year period.

**Funding Source:**

The source of funding for this Contract is U.S. Environmental Protection Agency Clean Water Act Section 319 Funds; CFDA number 66.460.

Contracting Authority is the Code of Iowa 455B.103.

**Background:**

The Total Maximum Daily Load program is a provision of the Clean Water Act that sets limits on the amount of various pollutants that can be delivered to water bodies and still meet water quality standards. TMDL development relies on water quality monitoring data to calibrate and run models. This monitoring is more intensive (both in terms of spatial coverage and temporal coverage) than is typical with the ambient water monitoring. Intensive data collection is necessary to determine where pollution sources are originating in the watershed and to successfully calibrate TMDL models for accurate prediction of load reductions.

**Purpose:**

The parties propose to enter into this Contract for the purpose of retaining the Contractor to provide sample collection and laboratory analysis services for the Total Maximum Daily Load program.

**Contractor Selection Process:**

University of Iowa Hygienic Laboratory (UHL) was chosen based on the Code of Iowa (455B.103) which directs the DNR to contract with public agencies of the state. UHL was chosen for this project because of UHL's sample collection and analysis expertise.

Lorna Puntillo asked if the contract is for 5 years.

Allen Bonini said the contract is for 5 years of planning but the actual contract is not.

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

**APPROVED AS PRESENTED**

**FINAL RULE – CHAPTERS 90 - 93 – CLEAN WATER STATE REVOLVING FUND**

Patricia Cale-Finnegan, with the DNR Water Quality Bureau presented the following item.

The Commission is requested to approve the Final Rule, Chapters 90-93 “Clean Water State Revolving Fund.” The rule changes are proposed to address several general areas:

- Continuing to remove financial policies and procedures which are now under the management of the Iowa Finance Authority.
- Better defining eligibility for both publicly owned wastewater projects and nonpoint source projects. This includes changing the definitions of eligible projects to conform to new Environmental Protection Agency Clean Watersheds Needs Survey categories.
- Revising the rules to reflect current operations in the program that have proven to be more effective or that have changed due to federal laws or regulations.
- Updating the priority system and integrating eligible point source and nonpoint source projects. The updated system will result in more objective rankings and more effective targeting of funds to high priority projects as needed.

Some of the key specific changes include:

- Eliminating compliance status as a factor in the ranking system. Points for project purpose are proposed instead, with the goal of promoting projects that maintain compliance or go beyond compliance as well as those that are needed to achieve compliance.
- Providing funding for nonpoint source projects on a first-come, first-served basis until 90% of the set-aside funds are allocated. With more than 500 nonpoint source projects per year, administered by counties and soil and water conservation districts, it is impractical to rank each project. However, if available funds are less than demand, the integrated priority system may be used.
- Clarifying rules on new, replacement and expanding animal feeding operations in the Livestock Water Quality Facilities program. The goal of the changes is to target loan funds to water quality improvement and avoid subsidizing other production benefits. The formula proposed for expanding operations also attempts to take into account the need for economies of scale, such as for dry bedded buildings replacing open feedlots.
- Limiting the eligibility of equipment purchase under the Livestock Water Quality Facilities program. A one-time purchase of eligible items could be financed at the time that an open feedlot is replaced with a dry bedded confinement building. Only equipment attachments (such as blades, buckets, spreaders, or choppers,) integral to the new manure management system which provides water quality benefits could be financed. Tractors, skid loaders, and other vehicles or special mobile equipment, that often have multiple uses, would not be eligible.

- Stating which livestock facilities are eligible and reiterating that concentrated animal feeding operations, by federal law, are not eligible.
- Allowing the placement of a restrictive covenant on land where an existing open feedlot has been closed and replacement facility financed elsewhere. The language allows for portions of the existing operation, rather than the entire site, to be closed and replaced. It will be up to the local soil and water conservation district to determine the areas where animals cannot be housed. The restrictions will apply for the life of the loan term, which is up to 10 years.
- Incorporating more detailed information about enforcement actions that could disqualify a livestock producer from receiving a loan.
- Incorporating language about biosecurity precautions needed when the department or department's agent visits site where practices are being financed.
- Clarifying that manure management practices must comply with design standards in 567 Chapter 65 as well as applicable Natural Resource Conservation Service standards.

Chapters 90-93, the environmental rules for the program, are complemented by the Iowa Finance Authority's Chapter 26, which provides the financial rules. Changes to Chapter 26 have been made and include:

- Eliminating minimum loan amounts for drinking water and wastewater projects. This is in response to the demand for loan amounts less than \$50,000, particularly for "green" projects.
- Allowing repayment of planning and design loans to extend beyond the original three-year period.
- Capping assistance per owner for Local Water Protection (LWP) and Livestock Water Quality (LWQ) Facilities program loans at \$500,000 outstanding at any one time. Previously the maximum loan for LWP was \$50,000, which sometimes required owners to take several loans to complete larger projects. The maximum for the LWQ program was 50% of the set-aside.
- Reducing the maximum loan term for the Livestock Water Quality Facilities program from 20 years to 10 years.

The NOIA was presented to the Commission for information at the August 2009 meeting. The draft NOIA was tabled at the September 2009 meeting and was approved with changes at the October 2009 meeting. Three public hearings were originally scheduled in Marengo, Des Moines, and Storm Lake. Due to weather, the Marengo hearing was rescheduled. No one attended that hearing or the Des Moines hearing. The Storm Lake hearing was canceled after

being rescheduled due to lack of attendance at the other two hearings. Written comments are addressed in the attached responsiveness summary.

*Motion was made by Gene VerSteeg to approve the final rule as presented. Seconded by David Petty. 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 #3)**

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

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 **496** 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>

Three new streams have been added to the Notice of Intended Action. (Changing from 493 to 496 stream segments)

1. Mill Race (Iowa County) – Class A2
2. Farmers Garretson Outlet Ditch (Monona/Woodbury County) – Class A1, B(WW-2)
3. West Fork Little Sioux River (Monona/Cherokee County) – Class A2 and A2, B(WW-2) in certain segments

New stream added that do not require rulemaking

1. Unnamed Creek #1(Super 20 MHP) – General Use

*Motion was made by Marty Stimson to approve the NOIA – Chapter 61 – UAA’s Batch #3 as presented. Seconded by Susan Heathcote. Motion carried unanimously.*

**APPROVED AS PRESENTED**

**CONTRACTS – IDALS DIVISION OF SOIL CONSERVATION FOR WATERSHED MANAGEMENT PLANS**

Steve Hopkins, Coordinator of the Nonpoint Source Program in the Watershed Improvement Section presented the following item.

**Recommendations:**

Commission approval is requested for contracts with the Iowa Department of Agriculture and Land Stewardship Division of Soil Conservation (IDALS DSC) to develop watershed management plans (WMPs) that meet EPA planning requirements for restoring impaired waters in the Big Creek Lake and Iowa Great Lakes watersheds. The completed WMPs will follow EPA’s 9 elements of watershed planning, will provide detailed strategies to restore impaired waters, and may be used as the basis for future targeted watershed project grant applications. The total amount of these contracts shall not exceed \$76,178.

**Funding Source:**

These contracts will be funded through EPA Section 319 grant funds.

**Background:**

The following WMP contracts are presented for approval:

|                                  |          |
|----------------------------------|----------|
| Big Creek Lake WMP (IDALS DSC)   | \$48,000 |
| Iowa Great Lakes WMP (IDALS DSC) | \$28,178 |
| Total                            | \$76,178 |

**Purpose:**

The parties propose to enter into these contracts for the purpose of developing watershed management plans for the watersheds selected.

**Contractor Selection Process:**

These projects were chosen using a grant proposal application and committee review process.

*Motion was made by Dale Cochran to approve the contract as presented. Seconded by Paul Johnson. Motion carried unanimously.*

**APPROVED AS PRESENTED**

**CONTRACT AND CONTRACT AMENDMENT – IDALS DIVISION OF SOIL CONSERVATION FOR WATERSHED IMPROVEMENT PROJECTS**

Steve Hopkins, Coordinator of the Nonpoint Source Program in the Watershed Improvement Section presented the following item.

**Recommendations:**

Commission approval is requested for a contract with the Iowa Department of Agriculture and Land Stewardship Division of Soil Conservation (IDALS DSC) to support an agricultural watershed educational program through the Iowa Learning Farm Project and a contract amendment with IDALS DSC to implement watershed improvement practices through the Lake Darling Watershed Project. The total amount of these contracts shall not exceed \$234,640.

**Funding Source:**

These contracts will be funded through EPA Section 319 grant funds.

**Background:**

The following contract and contract amendment are presented for approval:

|  |                  |                           |
|--|------------------|---------------------------|
| Iowa Learning Farm Project (IDALS DSC)     | \$149,640        |                           |
| Lake Darling Watershed Project (IDALS DSC) | \$73,500         | (removed \$12,500 salary) |
| <b>Total</b>                               | <b>\$222,140</b> |                           |

**Purpose:**

The parties propose to enter into these contracts for the purpose of implementing agricultural watershed educational efforts and watershed improvement practices for the projects selected.

**Contractor Selection Process:**

These projects were chosen using a grant proposal application and committee review process.

**Project Summaries****Iowa Learning Farm Project (IDALS DSC) (Contract)**

Amount: \$149,640

Time Frame: March 1, 2010 through January 31, 2011

Purpose: This contract will provide \$149,640 in Section 319 funding for partial support for the 2010 crop year for educational efforts through the Iowa Learning Farm Project. The total 2010 budget for the Iowa Learning Farm Project is \$448,921.

Summary: This funding will combine with funding from the Division of Soil Conservation and the Natural Resources Conservation Service to support an inter-agency, multi-disciplinary program administered by the ISU Leopold Center for Sustainable Agriculture which works directly with farmer-cooperators to demonstrate and promote innovative conservation practices on their farms as a means of providing outreach to the general farm community in Iowa on the role of farmers in minimizing nonpoint source pollution from agriculture. The primary strategy behind this outreach effort is to have farmers communicating with farmers to promote conservation-based farming practices.

The overall goal of the Iowa Learning Farm (ILF) program in 2010 and beyond is to increase farmer-producer understanding of the link between farm-level management decisions and the aggregate impact on sustainability of the environment. To increase farmer adoption of conservation practices that enhance soil and water quality, a targeted educational and demonstration program including a large farmer peer-to-peer network will continue in 2010. This peer-to-peer network will include three levels of farmer-partners:

- detailed data demonstration = 8 sites
- targeted data demonstration = 7-10 sites
- water quality modeling = 8 sites

The “targeted data” demonstration sites, tentatively identified with ILF Cooperators in Delaware, Howard, Muscatine, Pocahontas, Sioux, Washington, and Winneshiek counties, include (but are not limited to) farmers serving as watershed leaders within ILF’s new watershed improvement performance measures project.

The core project partners include the ISU Leopold Center for Sustainable Agriculture, DSC, DNR, ISU Extension, NRCS, Conservation Districts of Iowa, and Iowa Farm Bureau.

**Lake Darling Water Quality Project (IDALS DSC) (Contract Amendment)**

Amount: \$73,500

Time Frame: March 1, 2010 through December 31, 2010

Purpose: This contract amendment will provide additional funding and time for additional practices to be implemented through the existing Lake Darling Water Quality Project.

Summary: Lake Darling is a 267 acre state-owned lake within a 1,400 acre state park in southeast Iowa. Land use within the 12,179-acre watershed is primarily row crop (70%), with another 25% of the acres in pasture and forest. Lake Darling is an important local resource used extensively for fishing and other water-based recreation, in addition to the other recreational opportunities offered by Lake Darling State Park (hiking, camping, etc.). Lake Darling is being severely impacted by agricultural nonpoint source pollutants, specifically sediments and nutrients, and the lake is identified on Iowa’s 1998 Section 303(d) list of impaired waters. Iowa Department of Natural Resources’ Fisheries Biologists report turbidity testing indicates incoming drainage ways are contributing excessive silt and suspended solids to the lake. The upper ends of all lake inlets have filled with sediment, forcing IDNR to relocate campgrounds and boat ramps. The lake ecosystem has been hindered by high turbidity levels, resulting in slow growth rates of the fish population, and therefore impacting the number of annual user days of the lake.

The Lake Darling Water Quality Initiative was originated in 1999 to address water quality concerns raised by landowners, IDNR and the general public. There have been many improvements within the watershed, however there are a few more structures and testing we would like to complete prior to the end of the project. There is currently a contract for this project, set to end 6/30/2010. We would like to extend the ending date and add unspent

funds from a previous unspent grant to extend payment of salary, provide cost-share for additional structures and cost-share on soil grid sampling. This will be an amendment to a current contract with IDALS-DSC, Contract EDS7145RGLAZA100026 for amount of \$24,000, dates 7/1/09-6/30/2010. We intend to amend the contract to add an additional \$85,500 for salary, soil grid testing, terrace structures and pond structures and extend the time frame until 12/31/2010. This will be the final stages of Lake Darling. There is in-lake work that is being finalized and this lake should be protected with numerous conservation practices throughout the watershed to insure reductions of nutrients and sediments reaching the lake.

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

**APPROVED AS PRESENTED**

### **CONTRACT – IT DATABASE CONTRACT FOR FLOOD PLAIN MANAGEMENT**

Lori McDaniel, Supervisor of the Water Resources Section in the Water Quality Bureau presented the following item.

#### **Information:**

At the March EPC meeting, we will be requesting your approval for a contract to develop a Flood Plain Management Database will be requested. The packets that you receive prior to the March meeting will contain all of the required information for this agenda item except for the name of the vendor that will be recommended for your approval. The vendor recommendation will be posted by March 12 and presented at the meeting.

#### **Background:**

The Iowa Department of Natural Resources has authority to regulate construction on all flood plains and floodways in the state for the purpose of establishing and implementing a program to promote the protection of life and property from floods and to promote the orderly development and wise use of the flood plains of the state.

Any person who desires to construct or maintain a structure, dam, obstruction, deposit or excavation, or allow the same in any flood plain or floodway has a responsibility to contact the department to determine whether approval is required from the department or a local government authorized to act for the department.

Legislation was passed in 2009 allocating \$2 million from the Infrastructure Fund for flood plain management and dam safety. Staff has been added to this program area and process enhancements are underway. To ensure that program elements run smoothly and efficiently the current MS Access Databases have undergone an analysis and a new web based database system has been designed.

#### **Funding Source:**

This project will be funded through Infrastructure Fund dollars allocated to the Flood Plain Management and Dam Safety Program through SF822 during the 2009 General Assembly.

**Purpose:**

The Flood Plain Management/Dam Safety program currently uses several different MS Access databases to track permits and technical assistance actions. These databases were created internally and are updated internally by a flood plain engineer. In looking toward the future, the program needs an updated flood plain database which will retain its current functionality and add some new functionality in regard to data storage and retrieval.

Flood plain management data should be easily retrievable through the database rather than reliance solely on paper records. This information can be used by other applicants when designing their projects and can be used during flood emergencies.

**Consulting Firm Selection Process for the Flood Plain Management Database:**

|               |  |
|---------------|--|
| February 18:  | Technology Governance Board Full Approval                              |
| February 19:  | Issue RFP to Targeted Small Businesses                                 |
| February 23:  | Email RFP to list of ITQ contractors and post on DAS and DNR web sites |
| February 26:  | Intent to Bid Form and Questions due                                   |
| March 1:      | Questions & answers provided   |
| March 8:      | Proposals due  |
| March 12:     | Evaluation & Selection   |
| March 16:     | Environmental Protection Commission Contract Request for Approval      |
| March 22:     | Contractor start   |
| September 30: | Implementation   |

|                    |
|--------------------|
| <b>INFORMATION</b> |
|--------------------|

**NOTICE OF INTENDED ACTION – CHAPTER 16 - REVOCATION, SUSPENSION, AND NON-RENEWAL OF LICENSE FOR FAILURE TO PAY STATE LIABILITIES**

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

The Commission is requested to approve a Notice of Intended Action to create a new Chapter 16, “Revocation, Suspension, and Non-Renewal of License for Failure to Pay State Liabilities,” Iowa Administrative Code.

The Legislature adopted a law last year allowing the Department of Revenue to require license-issuing state agencies to suspend, revoke and not renew licenses for failure to pay state liabilities. The Iowa College Student Aid Commission gained similar authority prior to that session. The proposed amendment will provide a mechanism through which the department is able to comply with the requirement to suspend, revoke or deny issuance or renewal of licenses of persons who owe the state money, in compliance with the requirements in Iowa Code chapter 272D and section 261.126.

Ed Tormey said that this rule will only apply to individuals not businesses. These unpaid state liabilities will be linked to a social security number, therefore it is individuals that would be subject to the sanctions of this rule.

*Motion was made by Marty Stimson to approve the NOIA as presented. Seconded by Gene VerSteege. Motion carried unanimously.*

**APPROVED AS PRESENTED**

## **MONTHLY REPORTS**

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

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

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

Wayne Gieselman said that the SWIRL II report will be out for the March EPC meeting.

**INFORMATION**

## **REFERRALS TO THE ATTORNEY GENERAL – K&L LANDSCAPE & CONSTRUCTION, INC.**

Jon Tack, Attorney with the Department's Legal Services Bureau presented the following.

K&L Landscape & Construction Inc. is a company involved in trucking, construction, and other business activities.

On September 14, 2009, the Department received a complaint alleging that K&L Landscape & Construction, Inc. had buried 52 truck loads of concrete, conduit, logs, etc. in the Federal Borrow pit north of the MidAmerican Energy power plant in Council Bluffs. The dumped material was alleged to have come from the HWY 271/L Street Bridge Project. A map from the complainant was included that outlines the locations of the alleged illegal burial activities.

All of the complaints were very specific as to what was being buried and their exact locations. DNR went out to investigate and meet with the Iowa DOT and NDOR (Nebraska Department of Roads). Everything noted in the complaint was found. Under the NDOR, K&L Landscape & Construction, Inc. pulled out and removed the debris however, what makes this case unique is what happened next. After they loaded everything back up in the truck, they hauled it to another illegal site and buried it. This is why the DNR is seeking referral.

The Department is seeking referral of K&L Landscape & Construction, Inc. for the purpose of obtaining injunctive relief and civil penalties related to the illegal disposal of solid waste and the failure to report a hazardous condition.

K&L Landscape & Construction, Inc. is a legally adopted fictitious name filed with the Iowa Secretary of State for K&L Custom Farms, Inc.

Kevin Alexander, President and Owner for K&L Landscape & Construction, Inc. appeared on behalf of the corporation. Mr. Alexander asserted that the facts of the referral are inaccurate. Mr. Alexander further stated that K & L Landscape & Construction was acting with the approval of the NDOR.

Charlotte Hubbell asked why they disposed off items on the 1<sup>st</sup> site if it was not a legal site.

Kevin Alexander said that I wasn't on the jobsite at every moment. The idea was to leave it there until we finished the project and then remove the items. We didn't ask if the Harris site was legal.

Keith Wilken with the Atlantic DNR Field Office said that Mr. Alexander was specifically instructed from the very start of the project to take everything to the DNR approved sanitary disposal landfill.

Paul Johnson said that we shouldn't be dumping concrete and using it as liner in our landfills.

Pat Boddy said that the Department will look into and report back.

*Motion was made by Susan Heathcote to refer K&L Landscape & Construction, Inc. as recommended by the Department. Seconded by Lorna Puntillo. Roll call vote went as follows: David Petty – nay; Susan Heathcote – aye; Marty Stimson – aye; Gene VerSteeg – aye; Lorna Puntillo – aye; Paul Johnson – aye; Charlotte Hubbell – aye. Motion carried.*

**REFERRED**

**REFERRALS TO ATTORNEY GENERAL - EDWARD DALE KLYN**

Kelli Book, Attorney with the Department's Legal Services Bureau presented the following. Also present: Bill Gross with DNR Field Office 5 in Des Moines.

The Department is requesting that the Commission refer Edward Dale Klyn to the Attorney General's Office because Mr. Klyn has failed to comply with the provisions of Administrative Order No. 2008-AFO-14. The order is attached to the litigation report.

Mr. Klyn owns and operates a small open cattle feedlot near Allerton, Iowa. In May 2008, DNR issued Administrative Order No. 2008-AFO-14 to Mr. Klyn. The order was issued as a result of repeated complaints and visits by DNR Field Office 5 concerning the manure stockpiling at Mr. Klyn's facility. Prior to the issuance of the order, the field office had received at least five complaints since 2002 regarding the manure at Mr. Klyn's facility and the field office had visited the facility at least 6 times. Beginning in 2003, the field office had required Mr. Klyn to remove the manure from the facility. This requirement was also included in the order. The order also required Mr. Klyn to remove all manure from the lots by May 1 and November 1 of each year, maintaining records of the manure removal and land application; to pay a penalty of \$5000.00; and to pay a stipulated penalty up to \$5000 if the manure was not removed from the facility 60 days from the issuance of the order, which was July 28, 2008. Mr. Klyn did not appeal the order and did not pay the penalty.

On September 19, 2008, Bill Gross visited the facility to investigate a complaint. At this time, the feedlot had not been cleaned up. Mr. Klyn stated he was going to run a tile line from the roof gutters to keep the feedlots drier. Mr. Gross told Mr. Klyn to get the feedlots cleaned up immediately and to contact him when the cleanup was completed.

On November 4, 2008, Mr. Gross visited the facility again. He noted that some of the manure had been pushed into piles but that most of it had not been moved. Mr. Gross estimated that the manure was about one foot deep over the entire area, with the stock pile areas increasing the overall amount of manure. Mr. Klyn was issued a Notice of Violation letter requiring him to comply with the order.

On May 19, 2009, Mr. Gross visited the facility. He noted little to no progress in the removal of the manure. There was a large accumulation of manure in the feedlots and water was pooled in the feedlots and in the ditches around the feedlots.

On December 4, 2009, Mr. Gross visited the facility for a fourth time since the issuance of the order. The feedlot appeared to be in a similar condition as on his previous visits and there was a considerable amount of manure buildup. He noted areas outside of the feedlot where manure runoff had pooled. Photographs from the May 2009 and December 2009 visits are attached to the litigation report.

Based on the information presented today as well as the information provided in the litigation report, the Department requests that the Commission refer Mr. Klyn to the Attorney General's Office for appropriate enforcement action. The Department requests that Mr. Klyn be referred

because he has failed to comply with any of the provisions of Administrative Order No. 2008-AFO-14 and his failure to comply poses a serious threat to the water quality in the area. With the stockpiles remaining at his facility he also continues to violate the stockpiling requirements.

Mr. Klyn (on the phone) said that it was almost impossible to address this issue promptly because of the 2008 and 2009 rains, which caused flooding and prevented operations. We have been at the mercy of the weather and we are asking for time to comply with this.

Marty Stimson asked Mr. Klyn how often he contacted the DNR.

Mr. Klyn said that he did not contact the DNR. I'm 67 years old with no to help assist. I love to work. I have a couple of neighbors that don't like my feedlot.

*Motion was made by Gene VerSteeg to refer Mr. Dale Klyn to the Attorney General as recommended by the Department. Seconded by Paul Johnson. Motion carried unanimously.*

**REFERRED**

### **REFERRAL TO THE ATTORNEY GENERAL – GRIFFIN PIPE PRODUCTS CO, INC.**

Anne Preziosi, Attorney for the DNR Legal Services Bureau presented the following.

Brian Hutchins with the DNR Air Quality staff is also present today.

DNR seeks referral of Griffin Pipe Products to the Attorney General for the failure to comply with two emission limits established in the Air Quality Construction Permit for Emission Point 2 at the facility. Additionally, on two separate occasions, sources at Griffin Pipe were observed emitting visible air contaminants in excess of 40% opacity. Griffin Pipe is also in noncompliance with the requirements it agreed to in Administrative Consent Order 2003-AQ-32.

Griffin Pipe produces ductile iron pipe for the water and wastewater industry. The facility is located in Council Bluffs. Residential areas are located north and west of the facility. Griffin Pipe was built in the 1920's and manufactured railroad wheels until the 1950's. In 1960, Griffin Pipe began operation as an iron pipe manufacturer. In 1998 the plant expanded to allow various diameters in pipe. Following the 1998 plant changes, the company failed to meet permitted emission limits at four different locations at the Council Bluffs plant. Among these violations was Griffin Pipe's failure to comply with lead and particulate matter permit limits in its Emission Point 2 permit. Stack tests occurring on three separate dates showed exceedences of the particulate matter limit in its Emission Point 2 permit. Stack tests on two separate dates showed that they were exceeding the lead standard in the Emission Point 2 permit. Over the next few years following the 1998 plant changes, there were at least seven incidents of excess emissions.

In November 2008, DNR requested that Griffin Pipe perform stack testing on Emission Point 2 to verify current lead emission because EPA revised the lead National Ambient Air Quality

standard to be more stringent. In 2009, Griffin Pipe performed the requested stack testing on Emission Point 2. Stack tests for lead occurred on three separate dates in 2009, each showing the Griffin Pipe was exceeding its lead limit contained in the permit for Emission Point 2. Stack tests for particulate matter also were conducted, and on two separate dates the stack tests showed that Griffin Pipe was out of compliance with the particulate matter limit contained in the permit for Emission Point 2. During the August 26, 2009, stack testing, Griffin Pipe tested both lead and particulate matter emissions using four different scenarios. Griffin Pipe was out of compliance with its permitted emission limits for lead in all four scenarios; and Griffin Pipe was out of compliance with its permitted emission limits for particulate matter in two of the four scenarios.

In July 2009, Griffin Pipe and DNR met to discuss the recent violations and Griffin Pipe's compliance plans. Following that meeting, Griffin Pipe submitted two letters to DNR containing a "Long Term Compliance Plan" and "Short Term Action Items for Cupola Emissions."

In December 2009, Griffin Pipe asked DNR to grant a variance to allow the off-take system to be modified and operated prior to obtaining the construction permits. A planned new baghouse system was not included in the variance request, although it was mentioned in the proposed compliance plans.

Also in December, DNR granted the variance request for the off-take system. Griffin Pipe was required to apply for permits for the take-off system as well as the new baghouse system within 45 days of the variance letter, or by January 25, 2010. Griffin Pipe applied for the construction permits on January 22, 2010. Pursuant to the variance, Griffin Pipe has been operating the take-off systems since January 12<sup>th</sup> of this year.

At this point, DNR has no demonstration that Griffin Pipe is operating within its currently permitted limits for lead or particulate matter. The DNR does have evidence that Griffin Pipe has operated in exceedence of its permitted limits for lead on three separate dates in 2009, and in exceedence of its permitted limits for PM on two separate dates in 2009. We ask that you refer this case to the Attorney General.

Lawrence P. McLellan, Attorney for Griffin Pipe Products Co, Inc. distributed a handout to the Commissioners.

Griffin Pipe is actually surprised that they are here today. They recognized that when they requested to move the scrubber system in the fall of 2008, they would have to stack test for that. And they did in July and the stack tests didn't pass as Ms. Preziosi indicated. This was a million dollar project that they entered into. They then met with the Department and outlined what they planned to do to get into compliance. (Note the two letters to the Department in the handout) Gregg Luchie, works manager at Griffin Pipe and he presented the timeline for compliance along with the anticipated financial costs. Griffin Pipe stated that there was no response from the Department on whether or not this was or was not acceptable. In August, we did additional stack testing. In December, the company sent a letter to Mr. Hutchins asking for a variance for a construction permit. The Department granted them the variance with certain things that needed to be done. Griffin Pipe applied for the construction permit within the timeframe outside of a week

delay. Mr. Stone with the DNR indicated in a letter that since Griffin Pipe has a variance request in house to make improvements to the copula, no compliance plan will be required at this time. Griffin Pipe continued on with the plans that they had submitted to the Department since they had not heard back since July 2009, up until we received the notice of referral. Griffin Pipe is attempting to get into compliance. We ask that you do not refer Griffin Pipe to the Attorney General for that reason.

Gregg Luchie, Works Manager of Griffin Pipe gave his history and background on what Griffin Pipe has done for improvements and to come into compliance.

Anne Preziosi agrees that Griffin Pipe is working towards compliance; however they have been out of compliance for a long time. They have continued to operate at all times even when emissions were in violation. They have received economic benefit from continuing their operation.

Commissioners asked questions and discussed compliance timelines, operation and fees.

*Motion was made by Susan Heathcote to refer Griffin Pipe to the Attorney General as recommend by the Department. Seconded by Paul Johnson. Roll call vote went as follows: Gene VerSteeg – nay; Marty Stimson – nay; David Petty – nay; Dale Cochran – aye; Paul Johnson – aye; Susan Heathcote – aye; Charlotte Hubbell – nay. Motion failed.*

**NO REFERRAL**

## **GENERAL DISCUSSION**

Deputy Director mentioned that the Department strategic plan will be discussed during the commissioner training next month.

## **NEXT MEETING DATES**

March 10-11, 2010    EPC/NRC Commissioner Training at Air Quality  
 March 16, 2010        EPC Commission Meeting

## **ADJOURNMENT**

*Motion was made by Marty Stimson to adjourn. Seconded by Susan Heathcote. Motion carried unanimously.*

With no further business to come before the Environmental Protection Commission, Chairperson Charlotte Hubbell adjourned the meeting at 2:55 p.m., Tuesday, February 16, 2010.

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Richard A. Leopold, Director

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Charlotte Hubbell, Chair

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