

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
JULY 20, 2010

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WINDSOR HEIGHTS, 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, July 20, 2010 at DNR Air Quality Building, Windsor Heights, Iowa.

COMMISSIONERS PRESENT

Gene Ver Steeg
Charlotte Hubbell, Chair
David Petty
Susan Heathcote
Martin Stimson
Dee Bruemmer

COMMISSIONERS ABSENT

Lorna Puntillo, Secretary
Paul Johnson

ADOPTION OF AGENDA

Withdraw: Item 12 – Appeal of Proposed Decision – Phoenix C&D Recycling Inc

Motion was made by Gene VerSteeg to approve the agenda as amended. Seconded by David Petty. Motion carried unanimously.

APPROVED AS AMENDED

APPROVAL OF MINUTES

Charlotte Hubbell requested changes to the following:
Page 3 - Change pogramizations to organizations
Page 3 - Change execute to excuse

Motion was made by Susan Heathcote to approve the June 15th EPC minutes as amended. Seconded by David Petty. Motion carried unanimously.

APPROVED AS AMENDED

DIRECTORS REMARKS

Director Richard Leopold swore in new commissioner Dee Bruemmer.

Current topics of interest within the Department:

- Faced with the challenge of dealing with alcohol on state beaches in the Okoboji area particularly during the Fourth of July weekend.
- Recently attended the annual Midwest Association of Fish and Wildlife Agencies with other DNR Directors from 15 other states. One of the issues addressed was lead ammunition and how to handle animals that feed off of the dead carcasses left from hunters. There is a national effort to look at phasing out lead ammunition.
- Auditor's Report was released today. The Department manages a \$200 Million dollar budget and no financial issues were found. However, there are a dozen findings that state we are not following through on statutory obligations or that our rules are not up to date. We will be creating a background response on each of the audit findings.

INFORMATIONAL ONLY

CONTRACT AMENDMENTS – ARCHEOLOGY SERVICES FOR THE STATE REVOLVING FUND PROGRAMS

Patti Cale-Finnegan, Water Quality Bureau presented the following item.

Recommendations:

Commission approval is requested for second amendments to the not-to-exceed amounts of the following contracts for archeological and architectural history services:

- Wapsi Valley Archaeology, Inc.
- The Louis Berger Group, Inc.

There are no other changes proposed to the contracts.

Background:

These are two of the five master contracts that the DNR has with archeology and/or architectural history firms. When a survey is needed as part of the environmental review for a State Revolving Fund (SRF) project, the five firms are asked to bid. One is then chosen based on price, timing, or special expertise, and a contract addendum is executed for the needed work.

The five contracts were executed in April 2009 with a not-to-exceed amount each of \$60,000 worth of addenda. DNR's goal was to be able to spread the work among all the contractors to ensure that all of our projects could be completed on a timely basis.

However, large amounts of work ended up going to Wapsi Valley, Louis Berger, and Marina Consulting Corp., and those contracts were amended to add \$60,000 to each in November 2009. The extra workload resulted from an unanticipated number of new projects that were added to

the SRF workload due to federal and state stimulus funding and from several unusually large addenda related to projects in culturally sensitive areas or with extensive project areas. The University of Iowa's Office of State Archeologist (OSA) has not bid on any projects. The fifth firm, The 106 Group, only does architectural history and cannot bid on archeological studies.

Since the contracts were amended in November 2009, Wapsi Valley and Louis Berger have won most of the addenda requests. DNR anticipates reaching the \$120,000 limit with these two firms within the next few months. DNR has issued \$244,526 in contract addenda between April 2009 and May 2010.

DNR would like to amend the two contracts to change the not-to-exceed amount in each to \$240,000. This will give the DNR the ability to continue to use the master contracts to get surveys completed in a timely and cost-effective way for our SRF applicants.

Funding Source:

The funding for these contracts comes from the administrative accounts of the Clean Water and Drinking Water State Revolving Fund programs. The costs to date are part of the environmental review and approval process for water and wastewater projects totaling \$116 million. The SRF programs receive funds for administration from federal capitalization grants as well as from the 1% origination fee charged on loans. The \$244,526 cost represents 21% of the origination fees for the projects served.

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

APPROVED AS PRESENTED

CONTRACT AMENDMENT – AMERICAN COMPUTER SERVICES, INC. – ONE STOP PROJECT MANAGER

Gail George, with the Water Quality Bureau presented the following information.

Recommendation:

The Department requests Commission approval of a contract amendment in the amount of \$159,600 with American Computer Services, Inc. to extend the contract one year, until October 31, 2011.

Funding Source:

This project will be funded solely with federal funds through EPA Exchange Network grants.

Background:

DNR has received EPA grants for the past several years for Information Technology (IT) improvements related to One Stop and the Exchange Network. One Stop is a national program to link the databases for various environmental permits, based on a facility site. This allows for a

“One Stop” access via a website to see all the environmental permits/interests for a site. Using data standards for One Stop provides the foundation for automating the exchange of data with EPA and other users through the Exchange Network.

DNR has gradually added more program databases to our own One Stop data warehouse, and currently has automated data exchanges with EPA and other states for data related to: facilities, drinking water, air emissions, emergency response, and Toxic Release Inventory. We are also finalizing data exchanges for water quality monitoring and assessments.

Purpose:

The purpose of this contract is to extend the Project Manager/Database Developer services for another year to implement the following Exchange Network grant projects.

1. **Greenhouse Gas Data Flow** from EPA to DNR: Companies will need to submit greenhouse gas data to EPA to meet a new federal rule. Instead of requiring duplicate submittal to states, Iowa is working with other states to develop a schema to automate the data flow from EPA to Iowa.
2. **DNR Electronic Reporting Portal** that meets EPA standards. Current electronic reports for wastewater and air do not meet these standards. An EPA grant was obtained to upgrade existing components, and develop a portal which will include reusable components for any future electronic reports. It will also save the copy of record to the new Electronic Records Management System (ERMS) which will save a lot of money since these documents will not need to be scanned.
3. **Maintain the One Stop** database system, warehouse processes, and related web applications.

Consulting Firm Selection Process:

This contractor was chosen because they have provided Pat McDermott as the One Stop Project Manager/Database Developer for the past seven years. He has done an outstanding job of integrating the different environmental databases into the Environmental Facilities Database warehouse, and developing data flows for the Exchange Network. In addition, he has extensive experience with other data warehouses, state agencies and project management. While DNR attempted to add internal staff to develop this experience, the last staff person quit in January after a year. Mr. McDermott plays a critical role in implementing the Exchange Network projects and maintaining the current system.

Motion was made by Susan Heathcote to approve the contract as presented. Seconded by Gene Ver Steeg. Motion carried unanimously.

APPROVED AS PRESENTED

PROPOSED RULE – AMENDMENTS TO WASTEWATER RULES TO INCLUDE PESTICIDE DISCHARGES, INCLUDING CHAPTERS 60, 64, AND 66

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

A summary of the draft amendments to Chapter 60, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 64, “Wastewater Construction and Operation Permits,” and Chapter 66, “Pesticide Application to Waters” is being presented to the Commission for information. The new rules will allow for the use of a new General Permit (#7) to authorize discharge of pesticide residue to waters of the United States, as required by U.S. Sixth Circuit Court of Appeals in a decision on January 7, 2009. This decision vacated U.S. EPA’s final rule exempting pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from the Clean Water Act (CWA) permitting requirements. Pesticide residues are not exempt from the CWA, and the states and EPA have until April 9, 2011 to issue final general NPDES permits for pesticide applications.

Coverage under the draft NPDES Pesticides General Permit (#7) will be required for pesticide applications that result in residue discharges to Waters of the United States. Applicable pesticide applications include those for control of aquatic nuisance insects, aquatic weeds and algae, aquatic nuisance animals, and forest canopy pests. Discharges of pesticide residue from irrigation return flows and agricultural runoff are not covered under the PGP as they are specifically exempted in the CWA. The draft permit requires all operators to implement Best Management Practices (BMPs) to minimize discharges resulting from pesticide applications. The BMPs include following label instructions, conducting regular equipment maintenance, and visually monitoring application sites when possible. Larger applicators will have additional requirements, including the submittal of annual activity reports to IDNR and the preparation of management plans.

The following is a summary of the proposed amendments to Chapter 60:

Add the new Notice of Intent, Notice of Termination, and Annual Reporting forms for the new General Permit #7.

The following is a summary of the proposed amendments to Chapter 64:

Exempt the requirement for a DNR operating permit for discharges of pesticide residues that do not reach the waters of the United States.

Require the issuance of a General Permit #7 for any pesticide residue discharges that reach waters of the United States.

Exempt pesticide residue discharges which do not meet the thresholds established in General Permit #7 from the requirement of submitting a Notice of Intent.

Establish effective and expiration dates for the General Permit #7.

Exempt General Permit #7 from the collection of permitting fees.

The following is a summary of the proposed amendments to Chapter 66:

Revision of Chapter 66 to comply with the requirements noted in Chapter 64 and in General Permit #7.

Stakeholders participated in the development of these proposed rules. The department also plans to hold ____ public hearings to obtain additional public comment.

INFORMATION

PUBLIC PARTICIPATION

JESSICA BLOOMBERG, representing the Iowa State Dairy Association. Our members are concerned with their ability to comply with the 100 day manure storage requirements as the condition to qualify for emergency manure application. Most dairy farms were constructed 30 years ago and were constructed right at that time. Given the current economics of the dairy industry, it is not possible for producers to get their storage increased by 2011, because any non-producing income farms will be unable to incur these costs. Dairy farmers have not yet recovered from the downhill turn in milk prices in 2008 and 2009. Dairy producers are not opposed to increasing their manure storage but would not be able to have the resources to complete this in the near future. This rule will affect many of Iowa's producers. In NE and NW Iowa this rule is anticipated to impact over 1,200 farms. Dairy farming is important to Iowa in that it employs approximately 26,000 jobs. Dairy farms also contribute \$1.2 billion dollars to Iowa's economy. Please delete the sentence on page 24 of the draft rule that states "CAFOS without alternative manure applications must have sufficient storage capacity to retain the manure generated from December 21 to April 1 under normal circumstances in order to properly account for the volume of manure's feed source." Please allow our dairy farmers to stay in business.

Charlotte Hubbell asked what kind of timeline is needed for dairy producers to come into compliance.

Jessica Bloomberg said it would take at least 3-5 years.

NEILA SEAMAN, with the Iowa Chapter of the Sierra Club read the following comments:

We are very pleased that the PSD and Title V Greenhouse Gas Tailoring rule is on today's agenda. We have been waiting a long time for the department to regulate GHGs. I encourage you to approve this agenda item.

Second, I encourage you to adopt the animal feeding operations rule as presented. Some of the amendments to this chapter were statutorily passed as long ago as 2002 and it's time those laws are integrated into DNR's rules for animal feeding operations.

We agree with the new definition of "residence" and the deletion of section 3 that required a residence be connected to a permanent electricity source, a permanent private water supply or a public water supply system and domestic sewage disposal system. If a person lives on the property and pays taxes on it, that taxpayer should be free from having one of these operations located nearby.

While we understand the rationale of accepting insufficient manure storage as a reason for emergency application during this upcoming winter, we are disappointed that Iowa will be subjected one more season to the application of manure on snow-covered and frozen ground because an operation has insufficient manure storage capacity.

Otherwise, we have no objections to these rules. We do, however, anticipate the department will consider suggestions we have repeatedly brought to their attention about the 2008 EPA rules regarding concentrated animal feeding operations -- including requiring NPDES permits for confinements that discharge or propose to discharge. The rules were to take effect by last December unless legislative action was required. DNR's claim that legislative action is required moved the deadline up to the end of this year. Time is quickly running out. Therefore, we expect the EPC will adopt regulations by the end of this year so Iowa is in compliance with EPA's rule.

CHRIS GRUENHAGEN, with the Iowa Farm Bureau presented the following comments:

Item 16 contains a final draft rule that makes numerous changes to Iowa's livestock regulations. We thank the department for addressing many of the technical problems with the rules. I will not attempt to address all of the remaining issues this morning, but will focus my comments.

Item 11 on page 27 requires confinement farms which submit a manure management plan to use a "certified" commercial manure service. A commercial manure service engaged in the "business of transporting, handling, storing, or applying manure for a fee" is required to be licensed. Iowa law also allows a certified "confinement site applicator," someone who is not a commercial applicator, to apply manure.

By omission, the rule prohibits farmers from applying the manure from their own farm. We believe this wasn't the intended result and ask that the Commission include a "certified confinement site applicator" as an option for manure application.

Both a commercial applicator and a confinement site applicator are required to be certified to apply manure. The proposed rule goes beyond this liability imposed by statute and implies the farmer is liable if he hires someone who doesn't have a current license. As a comparable analogy, homeowners who hire a lawn care company to spray their lawn expect the lawn care company to be certified when they say they are certified. If someone tells you they are a licensed manure applicator, the only guaranteed way to verify licensure is to call the DNR licensing bureau extemporaneously with land application.

Some percentage of the approximately 5600 farms with manure management plans will require DNR verification of a current license. It is unfair to put the responsibility for enforcement on the farmer hiring a service when Iowa law places liability on the applicator to be licensed. We ask the Commission to amend item 11 by only imposing liability on a farmer who knowingly hires an unlicensed commercial applicator and not imposing additional responsibilities on farmer to document the commercial applicator is licensed before each land application.

We continue to be concerned with the proposed amendments to the definition of residence which authorizes someone to claim they live somewhere that doesn't meet state requirements for a plumbing, sewer or electrical service. We share the concerns raised by the Dairy Association about the ability of small and medium sized farms which have older facilities to comply with the 100 day storage requirement. Finally, we oppose the department's recommendation to redefine "totally" roofed in the definition of a confinement feeding operation as something less than

100%. DNR’s construction approval of farms as open feedlots and now redefining them as confinement farms with the definitional change puts these farms in a bad position. We ask the Commission to not apply the definition retroactively to these farms. While we disagree with the department’s interpretation of the term “totally roofed” as something less than total, existing farms should not be penalized for relying on DNR’s previous interpretation and open feedlot permit approvals.

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

CONTRACT – INFINITE COMPUTING SYSTEMS, INC. FOR WEB CONTENT MANAGEMENT SYSTEM

Chris Van Gorp, with the Director’s office presented the following item.

Recommendations:

Commission approval is requested for an eighteen month service contract with Infinite Computing Systems, Inc. of Cedar Rapids, Iowa. The contract will begin on July 23 and terminate on December 23, 2011. The fixed amount of this contract shall not exceed \$87,700. In addition, the DNR received prices for additional content management (\$4,200 per 100 pages) and an hourly rate for custom module development and support (\$55 per hour). The amount allocated to this portion of the contract shall not exceed \$22,300. The total amount of this contract will not exceed \$110,000. DNR shall have the option to renew this contract for two one-year periods.

Funding Source:

This contract will be funded through the following:

- | | |
|--|----------------------------|
| ❖ Conservation and Recreation Division | not to exceed \$50,000 |
| ❖ Environmental Services Division | not to exceed \$50,000 |
| ❖ Management Services Division | \$5,000 (software license) |
| ❖ Director’s Office | not to exceed \$5,000 |

Background:

The Iowa Department of Natural Resources’ (DNR) current system for publishing and maintaining online web material is restrictive in its functionality and increasingly difficult to manage content. The current website consists of more than 3,500 static html pages, and approximately 16,500 PDF, Word and Excel documents. The site receives in excess of 1.3 million hits and more than 200,000 unique users visit the DNR website each month for forms, permits, information, maps, charts, hunting schedules, etc.

The current Iowa DNR website was launched nine years ago using static HTML pages. The maintenance of old content and development of static web pages has become cumbersome, time consuming and the content publishing process fails to meet current communication workflows. Navigation is also based on DNR program areas, making navigation cumbersome and not intuitive to the user. Many pages and files are difficult to find.

In addition to the difficulty in managing the website, the current DNR website does not allow for many of the technological conveniences that many of today's users expect. Some of these features include Really Simple Syndication (RSS feeds), image galleries, and interactive event calendars.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining the Contractor to develop a Web Content Management System for the DNR website using DotNetNuke software. The project includes usability research, web site design and template development, security module customization, testing and optimization, web site content migration, documentation, training, and technical support.

This project will result in a DNR website that is more user friendly for the visitors to the website and more easily managed by DNR staff. The new content management system will allow program areas to more easily update their webpage information in a timely manner. Visitors to the DNR website will also be able to subscribe to RSS feeds and be notified of updates or news releases automatically, as well as view an event calendar.

Contractor Selection Process:

Infinite Computing Systems, Inc. was chosen using the open competitive RFP process. Five companies submitted proposals; however one was disqualified following the technical scoring due to a failure to achieve half of the technical points. Infinite Computing Systems, Inc. was chosen for this project for several reasons. These reasons include the following; the technical proposal submitted by Infinite clearly outlined how they would meet the needs of the DNR web content management system; the quality of the personnel selected for this project, including a subcontractor that has been hired to complete the usability study and site design; the cost proposal submitted by Infinite was the lowest submittal received.

Bidder	Bid Cost	Cost Points	Technical Points	TOTAL POINTS
Infinite	\$82,700	700	1045	1745
Alliance	\$120,000	482	898	1380
Caveo	\$175,490	330	768	1098
Salem #1*			453	
Salem #2	\$196,428	295	753	1048

*Salem #1 was disqualified because they had less than half of the minimum technical score (453 of 1300 total possible) required per section 5.4.6 of the RFP.

Motion was made by Marty Stimson to approve the contract as presented. Seconded by Dee Bruemmer. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT – CITY OF AMES FOR IMPROVED GREEN URBAN STORMWATER BEST MANAGEMENT PRACTICES

Jeff Berckes, Environmental Specialist Senior in the Watershed Improvement Section presented the following item.

Recommendations:

Commission approval is requested for entering into a contract with the City of Ames for the amount of \$32,820 for implementation of improved urban storm water best management practice retrofits in the form of three bio-retention cells. The contract will commence on August 1, 2010 and terminate on October 31, 2011. DNR shall have the option to renew this contract as long any extensions do not exceed a six-year period.

Funding Source:

This contract 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 storm water 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.

Purpose:

The DNR proposes to enter into this Contract for the purpose of awarding a grant to the City of Ames to implement of urban storm water best management practices and to create jobs.

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.

While finalizing contracts with the original 17 award winners, an amount of \$54,175 was returned to DNR as unobligated funds. During the selection process, the selection committee created a contingency plan if any funds were returned to DNR by holding a pool of worthy applicants aside with the possibility of awarding returned funds at a future date. The City of Ames originally requested \$32,820 from the DNR to complete bio-retention cells adjacent to the

City Hall and the Public Works building. This application was considered to be a top candidate for an award if funds were returned.

The project for the City of Ames 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 the project will be included in a final report submitted to DNR upon successful completion of the project. At this time, the Department is requesting Commission approval to enter into a contract with the City of Ames for the amount of \$32,820.

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

APPROVED AS PRESENTED

CONTRACT – KEEP IOWA BEAUTIFUL – BEAUTIFICATION GRANT ASSISTANCE PROGRAM ADMINISTRATION

Brian Tormey, Chief of the Land Quality Bureau presented the following item.

Recommendation:

The Department requests Commission approval of a contract not to exceed \$200,000 with Keep Iowa Beautiful for Fiscal Year 2011. The contract is to provide administrative services for the Beautification Grant Assistance Program, as required by House File 2525, Section 24, and report back to the Department, outcomes of the various activities undertaken during Fiscal Year 2011.

Funding Source:

This project will be funded with solid waste tonnage fees through the Solid Waste Alternatives Program.

Background:

2010 Iowa Acts, House File 2525, Division VII, Section 24 specifies that for each year beginning July 1, 2001, and ending June 30, 2014, not more than \$200,000 to the Department for purposes of awarding a beautification grant each year to one organization that meets specific criteria.

The Department accepted applications until June 30, 2010. One application was received from Keep Iowa Beautiful (KIB). It was determined that KIB met all legislative specified eligibility criteria and has been awarded the agreement before you today for approval.

Purpose:

The purpose of this contract is to accomplish the following:

- Administration of the Beautification Grant Assistance Program;
- Implement public education and awareness initiatives designed to reduce litter and illegal dumping (not to exceed \$100,000); and

- Administer a small grant program for community beautification projects including the renovation, deconstruction, or removal of derelict buildings in communities with a population of <5,000 or less (not to exceed \$100,000).

Outcomes resulting from successful implementation of Beautification Grant Assistance Program projects include improved aesthetics and living conditions in Iowa communities, improved property values, instilling natural resource stewardship, reduced litter and illegal dumping.

Consulting Firm Selection Process:

KIB was selected as the grantee based on review of their proposal and in their meeting the following eligibility criteria:

- Assists communities and organizations in cleanup and beautification projects;
- Conducts research to assist in the understanding of reasons for littering and illegal dumping;
- Administers antilittering and beautification education programs; and
- Increases public awareness of the cost of littering.

Statement of Work:

The agreement's Statement of Work is attached. It is understood that with prior Department approval, specific opportunities or barriers may arise that necessitate amending this Statement of Work. However, basic program objectives must be maintained.

Beautification Grant Assistance Program – Agreement Excerpt

EXHIBIT A

STATEMENT OF WORK

Objective:

The Department's stated objective is to financially support the administration and delivery of the Beautification Grant Assistance Program to promote public education and awareness for the purpose of reducing illegal dumping and littering. It is also the objective of this Program to provide small grants to selected communities, with a population of 5,000 or less, for the purposes of community beautification projects including the renovation, deconstruction, or removal of derelict buildings.

Deliverables:

KIB deliverables shall be split into two basic activities, Public Education and Awareness and Community Beautification Grants. Grant funds shall be equally divided between these two stated activities. IDNR will allow KIB some flexibility in specific project activities implemented with prior approval. Project concepts for both activity types and estimated cost are provided below.

Public Education and Awareness

1. K-2 Clean and Green Initiative: Pilot project with the Davenport School System to educate the younger school children on issues related to littering.
2. Partner with the University of Northern Iowa in funding and delivery of the Environmental Issues Instruction program for Iowa teachers with a special focus on service learning and community enhancement.

3. Partner with the University of Northern Iowa's Environmental Issues Instruction program by providing small grants to program alumni for support or initiation service learning projects in Iowa schools.
4. Illegal dumping surveillance program grants to local authorities on a 50% cost share basis.

Community Beautification Grants – communities of 5,000 populations or less

1. Provide small grants (up to \$5,000) to assist with community beautification projects (i.e. landscaping, fix-up and paint-up efforts).
2. Provide grants to communities for deconstruction, renovation or removal of derelict buildings, asbestos abatement and removal.
3. Litter Prevention / Education
4. Litter Clean-up events with a focus on education, public awareness and future prevention.
5. Recycling Promotion / Education.
6. Recycling Implementation (equipment, promotion, and marketing).
7. Public nuisance abatement (i.e. refuse, weeds, unsafe or unsightly structures).
8. Community enhancement (i.e. signage improvements, entryway development, streetscape development).

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

APPROVED AS PRESENTED

CONTRACTS – WATERSHED MANAGEMENT PLANS WITH IOWA LAKES RC AND D AND SAC COUNTY SOIL AND WATER CONSERVATION DISTRICT

Steve Hopkins, Coordinator of the Nonpoint Source Program with the Department presented the following item.

Recommendations:

Commission approval is requested for contracts with Iowa Lakes Resource Conservation & Development (RC & D) and the Sac County Soil and Water Conservation District (SWCD) to develop watershed management plans (WMPs) that meet EPA planning requirements for restoring impaired waters in the Storm Lake and Black Hawk Lake watersheds, respectively. 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 \$86,500.

Funding Source:

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

Background:

The following WMP contracts are presented for approval:

Storm Lake Watershed Management Plan Project (Iowa Lakes RC & D)	\$50,000
Black Hawk Lake Watershed Management Plan (Sac County SWCD)	\$36,500
Total	\$86,500

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 David Petty to approve the contract as presented. Seconded by Gene VerSteeg. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT – PRICE CREEK WATER QUALITY PROJECT

Steve Hopkins, Coordinator of the Nonpoint Source Program 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 implement the Price Creek Water Quality Project, administered through the Iowa County Soil and Water Conservation District (SWCD). The Iowa County SWCD recently developed a watershed management plan for the Price Creek watershed that incorporates EPA’s nine elements of watershed planning, and this project will begin implementation of the plan. The total amount of this contract shall not exceed \$172,000.

Funding Source:

This contract will be funded through EPA Section 319 grant funds.

Background:

The following water quality contract is presented for approval:

Price Creek Water Quality Project (IDALS DSC)	\$ 172,000
Total	\$ 172,000

Purpose:

The parties propose to enter into these contracts for the purpose of implementing a watershed management plan to reduce pollutants to Price Creek.

Contractor Selection Process:

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

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

APPROVED AS PRESENTED

**PROPOSED RULE – CHAPTER 61 – WATER QUALITY STANDARDS, SECTION 401
CERTIFICATION OF SECTION 404 REGIONAL PERMITS 27, 33 & 34**

Chris Schwake, with the Water Quality Bureau presented the following item.

In August the department plans to bring a Notice of Intended Action to amend Chapter 61: Water Quality Standards to provide Section 401 water quality certification for Corps of Engineers (Corps) Regional Permit 27 and re-issued Regional Permits 33 and 34. Section 401 water quality certification is a state water quality agency's certification that a proposed activity will not violate state water quality standards.

The Rock Island District is proposing to re-establish Regional Permit 27 (RP 27), Emergency Reconstruction and Repair Activities for Flood Damaged Areas in counties declared flood disaster areas by the State of Iowa. In the past, this regional permit was not prepared until the emergency was imminent. It is the intent to have this regional permit coordinated so that it is ready to activate once the emergency has been declared. Like the other regional permits, it will be in effect for a period of 5 years, at which time it will be re-evaluated.

The Rock Island District is also proposing to re-issue Regional Permits 33 and 34 (RP 33 and RP34). Regional Permit 33, Small Ponds, Dams, and Grade Stabilization Structures, authorizes the placement of fill materials in waters of the U.S. in Iowa for the construction of small U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) ponds, dams and grade stabilization structures. Regional Permit 34, Conservation Reserve Enhancement Program Structures (CREP) in the State of Iowa, authorized the placement of fill materials in waters of the U.S. to create wetlands and ponded water through the construction of earthen embankments and/or dams when funding or technical assistance is being provided through CREP and when FSA is the lead agency.

The Corps issued the public notices for these regional permits on June 23, 2010 and they will expire on July 22, 2010. Copies of the June 23, 2010 public notices can be obtained from the Department of Natural Resources (DNR).

Susan Heathcote suggested that the Department should make sure that the antidegradation implementation procedure is followed by these types of permits.

Charlotte Hubbell asked why drainage districts are exempt from violations.

Chris Schwake said that this may not be the recent version, so I will check on whether or not drainage districts are really exempt.

INFORMATION

**NOTICE OF INTENDED ACTION - CHAPTERS 22 AND 33:
AIR QUALITY PROGRAM RULES – PSD AND TITLE V GREENHOUSE GAS
TAILORING RULE**

Christine Paulson, Environmental Specialist Senior 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 22, “Controlling Pollution,” and Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” of the Iowa Administrative Code.

The purpose of this rulemaking is to assure that sources of greenhouse gas emissions in Iowa are regulated in the same manner and at the same levels as specified in recently finalized federal regulations, known as the PSD and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). The Department provided a brief and a presentation for information to the Commission on June 15, 2010.

History of Federal Greenhouse Gas Regulations

On April 2, 2007, the U.S. Supreme Court found that greenhouse gases, including carbon dioxide, are air pollutants covered by the Clean Air Act (*Massachusetts v. EPA*, 549 U.S. 497).

The Court found that the U.S. Environmental Protection Agency (EPA) was required to determine whether emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.

In April 2009, EPA responded to the Court by proposing a finding that greenhouse gases contribute to air pollution that may endanger public health or welfare. On December 7, 2009, EPA issued two distinct findings regarding greenhouse gases:

- **Endangerment Finding:** EPA found that the current and projected atmospheric concentrations of the six, key, well-mixed greenhouse gases - carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆) - threaten the public health and welfare of current and future generations.
- **Cause or Contribute Finding:** EPA found that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution, which threatens public health and welfare.

These findings, which were published December 15, 2009, did not impose any requirements on industry or other entities. However, they were a prerequisite to finalizing the greenhouse gas standards for light-duty vehicles and for setting a schedule to regulate greenhouse gases from stationary sources.

On March 29, 2010, EPA completed its reconsideration of the December 18, 2008, memorandum entitled “EPA’s Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program” – the so-called Johnson memo. The final action confirmed that any new pollutant that EPA may regulate becomes covered under the PSD program on the date when the EPA rule regulating that new pollutant takes effect. This action clarified that for greenhouse gases that date will be January 2, 2011, when the light duty vehicle rule was expected to take effect.

On April 1, 2010, EPA finalized the light duty vehicle rule controlling greenhouse gas emissions. This rule confirmed that January 2, 2011 is the earliest date that a 2012 model year vehicle meeting these rule requirements may be sold in the United States. On that date, Clean Air Act permitting program requirements will apply to stationary sources of greenhouse gases.

EPA’s Greenhouse Gas “Tailoring Rule”

On May 13, 2010, EPA issued the final Tailoring Rule that establishes the approach to addressing greenhouse gas (GHG) emissions from stationary sources under the Clean Air Act permitting programs. EPA published the final Tailoring Rule in the Federal Register on June 3, 2010.

The Tailoring Rule sets thresholds for GHG emissions that specify when permits under the PSD and Title V programs are required for new and existing facilities. This final rule “tailors” the requirements of these permitting programs to limit which facilities will be required to obtain

PSD and Title V permits. The Tailoring Rule establishes a schedule that will initially focus air permitting programs on the largest sources that are already subject to PSD and Title V requirements. The Tailoring Rule then expands to cover the largest sources of GHG that may not have been previously covered by the PSD or Title V permitting program for other pollutants.

EPA estimates that facilities responsible for nearly 70 percent of the national GHG emissions from stationary sources will be subject to PSD and Title V permitting requirements under the Tailoring Rule. This includes the nation's largest GHG emitters, such as power plants, refineries, and cement production facilities, as well as other large industrial or commercial emitters. GHG emissions from smaller industrial or commercial facilities will not be covered by the PSD or Title V programs at this time.

The PSD and Title V emissions thresholds for criteria pollutants such as fine particulate, sulfur dioxide and nitrogen dioxide are 100 and 250 tons per year (tpy). EPA has determined that while these thresholds are appropriate for criteria pollutants, they are not feasible for GHGs because GHGs are emitted at much higher levels.

Federal Tailoring Rule: Phased-In Implementation

Through the Tailoring Rule, EPA will phase in the GHG permitting requirements in two initial steps outlined below, followed by assessment and rulemaking to phase in appropriate, additional requirements for controlling GHG emissions from stationary sources.

Step 1 (January 2, 2011 – June 30, 2011)

Effective January 2, 2011, only sources currently subject to the PSD permitting program (i.e., sources that are newly-constructed or modified in a way that significantly increases emissions of a pollutant other than GHGs) would be subject to permitting requirements for their GHG emissions under PSD. For these projects, only GHG increases of 75,000 tpy or more of total GHG (based on potential to emit (PTE) and using a specific formula to calculate "tpy CO₂ equivalent emissions (CO₂e)") would be subject to PSD for their GHG emissions.

Similarly, for the Title V program, only sources currently subject to the program (i.e., newly constructed or existing major sources for a pollutant other than GHGs) would be subject to Title V requirements for GHG.

During this time, no sources would be subject to PSD or Title V permitting requirements due solely to GHG emissions.

Step 2 (July 1, 2011 to June 30, 2013)

In this phase, PSD permitting requirements will, for the first time, cover new construction projects with a GHG PTE of at least 100,000 tpy (CO₂e), even if they do not exceed the permitting thresholds for any other pollutant. Modifications at existing facilities that increase their GHG PTE by at least 75,000 tpy (CO₂e) will be subject to permitting requirements, even if they do not significantly increase emissions of any other pollutant.

In Step 2, Title V operating permit requirements will, for the first time, apply to sources based on their GHG emissions even if they would not apply based on emissions of any other pollutant.

Facilities with a GHG PTE at least 100,000 tpy CO₂e will be subject to Title V permitting requirements.

Additional EPA Activities

In the Tailoring Rule, EPA commits to undertake another rulemaking to begin in 2011 and conclude no later than July 1, 2012. The federal rulemaking will take comment on an additional step for phasing in GHG permitting, and may discuss whether certain smaller sources can be permanently excluded from permitting. EPA states that it will not require permitting for smaller sources (those with a GHG PTE below 50,000 tpy) until at least April 30, 2016.

EPA indicates in the Tailoring Rule that EPA will complete a study by the end of April 2015 on remaining GHG permitting burdens that would exist if EPA applied permitting requirements to smaller sources. EPA states that it will complete a rule by April 30, 2016, further addressing permitting for these facilities. EPA may decide that successful streamlining will allow the phase-in of more sources. EPA may also decide that certain smaller sources need to be permanently excluded from GHG permitting.

Proposed Department Rulemaking and Implementation

The Department is proposing a rulemaking to amend the state's Title V and PSD air quality rules for GHG emission regulation such that the state rules match the federal Tailoring Rule.

The attached Notice of Intended Action includes four proposed amendments, two for the Title V Program and two for the PSD program. The amendments to the Title V rules amend the definition of "major stationary source" (Item 1) and add a new definition, "subject to regulation" (Item 2). The amendments to the PSD rules amend the definition of "regulated NSR pollutant" (Item 3) and add a new definition, "subject to regulation" (Item 4). These amendments codify under what limited conditions greenhouse gases are subject to regulation under the Title V and PSD programs and when affected facilities will become subject to these programs.

Phase 1

The first stage of this rulemaking, proposed to become effective on January 2, 2011, the same date as the federal Tailoring Rule, will affect power plants, industrial facilities, ethanol plants, state universities, municipal utilities, and other facilities that are already considered major sources under the current state PSD and Title V programs.

Title V

The Title V program requires that an affected facility obtain an operating permit. The Title V operating permit, which is renewed every 5 years, contains all air emission control requirements that apply to the facility, including the requirements established through construction permitting.

The approximately 280 facilities that are currently subject to the Title V program have already been required to report GHG emissions under current state statute and state rules. As these facilities apply for, renew or modify their Title V permits, they must address GHG requirements, such as calculating and reporting GHG emissions using the CO₂e methodology, and any other applicable requirements.

PSD

New Source Review (NSR) is a federal term for review and preconstruction permitting of new or modified stationary sources of air pollution. The Prevention of Significant Deterioration (PSD) program is a component of NSR that includes procedures to ensure that air quality standards are maintained. In general, the PSD program requires that an affected facility obtain a PSD permit specifying how the facility will control emissions. The permit requires the facility to apply Best Available Control Technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost and effectiveness of the control.

Starting January 2, 2011, facilities already subject to PSD and that also meet the threshold levels for GHG emissions will be impacted. In any given year, the Department receives between 5-20 PSD projects. The specific nature of the project will determine if it is subject PSD requirements for GHGs. The Department expects very few projects to be affected by the new threshold levels for GHG emissions during this first phase.

Phase 2

In the second phase of the proposed rulemaking, beginning on July 1, 2011, additional sources of GHG emissions, such as ethanol plants, municipal utilities, some hospitals, and some larger landfills, will be classified as major sources under both the PSD and Title V permitting programs.

Title V

Starting July 1, 2011, the Department estimates that 65 additional facilities will be subject to Title V. These facilities will need to apply for a Title V permit by July 1, 2012. However, it is expected that approximately one third or more of these 65 newly-affected facilities (over 20 facilities) may already have, or may be able to take, enforceable limits in construction permits, such as limits on hours of operation or limits on production throughput, that would potentially reduce GHG emissions below the applicable Title V thresholds.

PSD

Also starting, July 1, 2011, additional facilities that meet the proposed GHG threshold criteria for PSD will become affected. As noted above, the Department receives between 5-20 PSD projects each year. The specific nature of the project will determine if it is subject PSD requirements for GHGs. Additionally, the Department expects that many new or existing facilities may already have, or may be able to take, enforceable limits in construction permits, such as limits on hours of operation or limits on production throughput, that would potentially reduce GHG emissions below the applicable PSD thresholds.

Outreach Activities

The Department is engaging stakeholders on the proposed rulemaking through several initiatives, including:

- Presentation at EPC meeting – June 15, 2010
- Webinar (presentation and Q&A) – June 28, 2010 (additional webinars possible)
- Air Quality list serve article – week of June 28 and ongoing
- Air Quality webpage – ongoing
- Letters to Title V facilities – late 2010-early 2011

Title V Fees

The proposed rulemaking does not make any changes to the rules for Title V fees. At this time, owners or operators of Title V facilities are not required to include GHG emissions in calculating their Title V fee payments.

Implications of Not Proceeding with the Proposed Rulemaking

Without the proposed amendments to state air quality rules, the current Title V and PSD applicability thresholds of 100 tpy and 250 tpy would apply to GHG emissions. Under these circumstances, the Department estimates that 61,000 facilities in Iowa would be subject to Title V permitting and 410 facilities would be subject to PSD permitting.

As with other federal air quality regulations, EPA may exercise its federal authority over states that do not implement federal air quality regulations. EPA indicates that it plans to take immediate action in states that fail to apply the GHG thresholds in the Tailoring Rule to the states' Title V and PSD programs by January 2, 2011. To avoid these consequences, the Department recommends proceeding with the proposed rulemaking so that final state rules will be in effect prior to January 2, 2011, and so that Iowa may continue to manage the PSD and Title V programs under state authority.

If the Commission approves the proposed rulemaking, the Notice of Intended Action will be published in the Iowa Administrative Bulletin on August 11, 2010. A public hearing will be held on Monday, September 13, 2010, at 1:00 p.m. at the Department's Air Quality Bureau offices. The Department will accept written public comments until Tuesday, September 14, 2010.

Charlotte Hubbell said if these are federal requirements, why are we not just adopting these rules as an emergency rule at our meeting next month?

Christine Paulson said that we wouldn't need to send these rules through as emergency rules.

Catherine Fitzsimmons said that the federal law has specific time lines. EPA has gone through their rulemaking and comments were received. We are adopting verbatim their rule package.

Charlotte Hubbell asked to see the public comments from the EPA rules and if there will be any grandfathering with these rules.

Christine Paulson said that a major source for PSD would be grandfathered unless it is a new facility or is an existing major source that undertakes a major modification. There is no grandfathering for the Title V program. Those with a Title V permit meet the threshold for the new standards. There will be additional facilities that will now exceed the new standards, therefore making them a Title V major source.

Catharine Fitzsimmons further noted that other new, federal standards, such as NESHAP and NAAQS, impact existing source that were previously grandfathered from some air quality regulations.

Motion was made by Susan Heathcote to approve the NOIA – Chapters 22 and 33 as presented. Seconded by Marty Stimson. Motion carried unanimously.

APPROVED AS PRESENTED

FINAL RULE – AMENDMENTS TO CHAPTER 65 – ANIMAL FEEDING OPERATIONS

Gene Tinker, Coordinator of the Animal Feeding Operations presented the following item.

The Commission is requested to adopt amendments to 567 Iowa Administrative Code Chapter 65 – Animal Feeding Operations. The purpose of the amendments is to update the Department’s rules to conform with statutory amendments in 2002 (SF 2293), in 2006 pertaining to open feedlot stockpiles (SF 2369), and in 2009 pertaining to dry manure stockpiling (HF 735), application of manure on snow covered and frozen ground (SF 432, Division I) and dry bedded confinement feeding operations (SF 432, Division II). In addition the proposed amendments include revisions to reflect current procedures and numerous “housekeeping” type corrections and updates.

Five public hearings were held across the state in early 2010 and oral comments were heard. Additionally, the department received written comments on the proposed revisions. A responsiveness summary addressing the comments received is attached. As a result of the written and oral comments, the following changes have been made to the amendments as published in the Notice of Intended Action:

- In Item 2, the definition of “common management” is changed to conform to the definition of that term in the open feedlot statute, Iowa Code chapter 459A, and the definition of “confinement feeding operation” is modified to implement the new definition of “partially roofed animal feeding operation” in item 32, rule 65.100 .
- In item 9, 65.3(4)“c”(1), language has been added providing that insufficient manure storage capacity will be accepted as a reason for emergency manure application during the winter of 2010-2011; the listing of information required to be submitted when notifying the department of emergency manure application in 65.3(4)“d”(1) is altered to identify application fields as listed in the Manure Management Plan; and the language in 65.3(4)“d”(4) indicating that removal of drain tile intake protection prior to completion of snowmelt must be reported as a release has been deleted.
- In item 11, the requirement to use a “certified manure applicator” has been changed to a “certified commercial manure service”.
- In item 16, 65.9(1)“f,” the terms “NRCS qualified staff” and “professional engineer” are added to the individuals that can submit a hydrogeological report on soil corings.
- In item 19, the term “stockpile structure,” in 65.11, introductory paragraph, 65.11(7), and 65.11(8), is changed to “qualified stockpile structure” to conform to the statutory , terminology and the separation distances to various types of designated areas in 65.11(8) are corrected to conform to statutory requirements for dry manure stockpiles (this is also corrected in item 37, Table 7).

- In item 21, 65.15(14)“d,” the references for cold and hot weather concreting recommendations are changed from NRCS references to American Concrete Institute references; and for secondary containment barriers in 65.15(17)“b,” accumulated liquids are not required to be tested for nitrogen components but must be land applied in compliance with rule 567—65.3.
- In item 23, 65.17(1)“e,” the requirement that the phosphorus index be recalculated assuming frozen ground conditions for emergency manure application has been removed; and in 65.17(17)“b,” language has been added providing a delayed implementation for the change in soil type used in the phosphorus index determination.
- In item 31, the definition of “open feedlot operation” is modified to implement the new definition of “partially roofed animal feeding operation” in item 32, rule 65.100.
- Finally, throughout the amendments all references to “NRCS engineers and other staff” have been changed to “NRCS qualified staff.”

Gene Tinker said that there is a lot of confusion on who will be impacted by these rules. Gene went on to explain each of the changes made to the amendments as published.

Charlotte Hubbell asked if the Department has sent out letters to operators who are trying to circumvent the laws (confinement vs. open feedlot) and that it won't be tolerated.

Gene Tinker said no because we don't have any rules in place to allow us to do that.

Charlotte Hubbell said that it's a matter of interpretation. We should look at the factors in deciding whether or not an operation is a CAFO. How are the animals counted? Feed? Manure collected? And not just the single issue of how a facility is roofed.

Wayne Gieselman said that we are allowing another year for winter application and after that we will strictly interpret the emergency manure application rule. The Department's position is that we will literally interpret these rules. We would not retroactively allow other facilities in.

Marty Stimson said that he is concerned with how individuals will classify themselves when determining whether or not they are a confinement based on the partial roof. Randy Clark said that the amended definition of “open feedlot operation” may require a producer to prepare an MMP because of operational changes but we can not go back and ask someone to reconstruct to meet the new standards.

Charlotte Hubbell was absent for the remainder of the meeting.

Marty Stimson said that his concern is about the partially roofed language. I'm unclear on how the 90% roofed definition eliminates loopholes. Gene Tinker said that 90% is a much more practical definition. It does eliminate roof vents as a basis to be exempt from the definition of “confinement feeding operation.”

Gene Tinker said that we will be coming back with a rulemaking package to address the NPDES provisions. Marty Stimson asked for an update on the status of these rules at next month's

meeting. Wayne Gieselman said that September is the deadline to bring these rules to the Commission.

Susan Heathcote said that we need to think about how this rule will financially affect farmers. They are already going through tough economic times. I think at least a year would be adequate time for phase in of the strict interpretation on emergency manure application during the winter. David Petty suggested that 5 years would be adequate to address all of the concerns.

Motion was made by Susan Heathcote to approve the final rule – Chapter 65. Seconded by David Petty.

Motion was made by Gene VerSteeg to delete the proposed amendment on the definition of residence (page 12) and to keep the current definition of a residence. Seconded by David Petty.

Gene VerSteeg said that this change would address the homes that move near a site that don't have sewer or electricity. Commissioner VerSteeg went on to read a paragraph from a letter from nine legislators requesting the Commission to remove this language from the rules, if we want to see this rule passed.

Susan Heathcote said that this was intended to cover the residences that do not have compliant sewers or choose to have a lifestyle with no electricity. This is the case for many rural homes and I don't believe they should be excluded.

Roll call vote went as follows: David Petty – aye; Susan Heathcote – nay; Marty Stimson – aye; Gene VerSteeg – aye; Dee Bruemmer – aye. Motion failed.

Motion was made by David Petty to delete the last two sentences of the 1st paragraph on page 24 –“Confinement feeding operations without alternatives to manure application must have sufficient storage capacity to retain manure generated from December 21 to April 1 under normal circumstances in order to properly account for the volume of manure to be stored. For the winter of 2010-2011 only, the Department will accept insufficient manure storage capacity as a reason for emergency application in the notification required in 65.3(4)“d”(1).” Seconded by Gene Ver Steeg.

This would allow field offices to go back and work one on one with the producers on a case by case basis.

Richard Leopold said that the 100 day requirement and specified dates don't have a significant meaning. I don't believe the DNR's proposed rule amendment will affect many producers. Everything under 500 animal units are exempt from this rulemaking. Most of the larger

operations already have the capacity to accommodate the manure storage requirements and the new ones are building these storage units to meet the requirements.

Susan Heathcote said this is why I believe 5 years would be adequate.

Marty Stimson said that there are requirements in place and we should just leave it up to the producer on how they “get there”.

Wayne Gieselman said that 2010-2011 are the current dates in the rulemaking and you are requesting that we go beyond what the law is requiring us to do. We need to have a date in place so DNR staff has some guidance.

Dee Bruemmer suggested that we should delete only the 1st sentence - *Confinement feeding operations without alternatives to manure application must have sufficient storage capacity to retain manure generated from December 21 to April 1 under normal circumstances in order to properly account for the volume of manure to be stored.*

Roll call vote went as follows for David Petty’s motion: Dee Bruemmer – nay; Gene VerSteeg – aye; David Petty – aye; Marty Stimson – aye; Susan Heathcote – nay. Motion failed.

David Petty suggested changing the dates in paragraph 1 – page 24 from 2010-2011 to 2014-2015.

*Motion was made by Susan Heathcote to change the dates in paragraph 1 – page 24 from 2010-2011 to **2014-2015**. Seconded by David Petty. Motion carried unanimously.*

Gene Ver Steeg asked about Item 11 on page 27 which requires a “certified manure applicator”. If you hire a certified manure service and they have an employee applying manure that’s not certified, who’s responsible?

Gene Tinker said that the certified manure service should make sure that their manure applicators that they hire are certified. It’s important that they carry their certification cards with them when they are applying. The producer needs to make sure that the service they hire is certified. The manure applicator service is responsible for their employees.

Randy Clark said that we can work with the code editor to ensure that the Commission’s intent is included regarding who is responsible and who can apply.

*Motion was made by Susan Heathcote to add the following bolded language to item 11 – page 27 “A confinement feeding operation that is required to submit a manure management plan to the department pursuant to rule 567—65.16(459,459B) must use a certified commercial manure service **or the owner/employee who is a certified confinement site applicator for land application.**” Seconded by Dee Bruemmer. Motion carried unanimously.*

Randy Clark, DNR Attorney went to Item 31 – Page 99 and Item 32 – Page 100 and suggested to add the following language for the definition of partially roofed animal feeding operations:

This definition does not apply to open feedlot operations constructed prior to <insert effective date of rule package> and not expanded.

This would not only cover structures but the operation itself.

Susan Heathcote asked what the impact would be?

Gene Tinker said that every animal needs to have the ability to get outside when it's appropriate. We want to avoid allowing facilities to have 499 head in the covered building with no access to the outside and then another 99 head directly outside in order to avoid the confinement feeding operation regulations. There would be approximately 20-30 facilities that this would apply to.

Motion was made by David Petty to adopt the changes to Item 31 and Item 32 as stated by Randy Clark. Seconded by Gene VerSteeg. Roll call vote went as follows: Gene VerSteeg – aye; Marty Stimson – aye; Dee Bruemmer – aye; Susan Heathcote – nay; David Petty – aye. Motion failed.

Gene Ver Steeg and David Petty said that they can not support this rule package in its current state. There needs to be some compromise.

Motion was made by Susan Heathcote to reconsider the failed motion regarding the definition of a residence. Seconded by Dee Bruemmer. Motion carried unanimously.

Motion was made by Gene Ver Steeg to delete the proposed definition of a residence and to refer to the original definition (page 12). Seconded by David Petty. Motion carried unanimously.

Motion was made by Susan Heathcote to adopt the Final Rule – Chapter 65 as amended. Seconded by Gene Ver Steeg. Motion carried unanimously.

Rich Leopold thanked the Commission for their work and deliberation on a very difficult issue. This a multi-year rule package, so it's very important that we are moving forward and identifying what will and will not work. Thanks again for your commitment.

APPROVED AS AMENDED

REFERRAL TO THE ATTORNEY GENERAL – MONROE BRANSTAD – ANIMAL FEEDING OPERATIONS

Kelli Book, DNR attorney with the Department's Legal Services Bureau presented the following information. Carl Berg with DNR Field Office 2 in Mason City is also present.

The Department is requesting that the Commission refer Monroe Branstad to the Attorney General's Office.

Mr. Branstad owns and operates a cattle operation in rural Hancock County, near Forest City. The operation has 999 head of cattle in open lots and 500 head of cattle in confinement buildings. Manure from the confinement buildings is stored in below building pits. In the fall of 2009, Mr. Branstad constructed a settled open feedlot effluent basin to store the open lot manure runoff and the sweet corn silage bunker runoff. The facility was issued an NPDES permit in September 2009.

On April 16, 2010, DNR Field Office 2 received a complaint about manure application from a hose to a field from the new basin at Mr. Branstad's facility. Upon receipt of the complaint, Mr. Berg visited the facility. Mr. Berg spoke with Mr. Branstad who stated that his son had been pumping water out of the basin and that only rainwater and snowmelt were in the basin. Mr. Berg was later informed by the facility's engineer that the basin had been receiving manure runoff and silage runoff drainage since the fall of 2009. Additionally later in the investigation Mr. Berg observed a concrete drain in the berm of the basin and open lot runoff was running into the basin. So contrary to what Mr. Branstad told Mr. Berg, there was more than just rainwater and storm water in the basin. If Mr. Branstad was not aware of this, he should have been. Mr. Branstad also told Mr. Berg that the basin was tested in March, but he did not know where the results were and he did not know the name of the lab. Mr. Branstad gave Mr. Berg permission to inspect the basin.

When Mr. Berg looked at the basin he noted a hose stretched out into the field. He noted that the basin level had dropped about 18 inches and noted this was a recent even because of the wetted area around the basin. The photograph on page 4 of the litigation report shows the basin as well as the wetted area indicating a recent drop in levels. Mr. Berg dropped Nessler's reagent into the basin and the reagent turned orange which indicates that the ammonia was in excess of 3 mg/L. Mr. Berg observes the liquid flowing through the field to a tile intake that was about 375 feet from the basin. A photograph on page 3 of the litigation report shows the liquid in the field as it flowed to the intake. Mr. Berg dropped Nessler's reagent into the liquid flowing into the intake and the reagent turned orange, indicating ammonia in excess of 3 mg/L. The laboratory samples along with a map of the collection sites is attached to the litigation report and as you can see the laboratory samples from the basin and from the tile intake indicate elevated levels of pollutants. Mr. Berg then spoke to Mr. Branstad's son, Andrew and informed him that manure was being discharged to the tile intake and instructed him to construct a dike around the tile intake. Mr. Berg asked Andrew about the March laboratory sample, but Andrew stated his dad had that information.

Mr. Berg proceeded downstream to determine the impact of the discharge. The map shows the areas where Mr. Berg sampled and the specific results are in the litigation report. The tile outfall discharged to Drainage Ditch lateral 28 and at this location Mr. Berg noted discolored waters and a manure odor. The samples indicated elevated levels of ammonia, nitrogen, nitrates, and chemical oxygen demand at various locations downstream of the discharge.

Mr. Berg returned the following day and checked the same samples locations as he had the previous day and the water appeared to be clear and at the facility it was noted that the berm around the tile intake was still in place.

On April 19, Mr. Berg spoke to Larry Erdman, Mr. Branstad's neighbor. Mr. Erdman stated that the manure was being pumped from the basin at least all day on April 16. On April 27, Mr. Branstad contacted Mr. Berg and told him to call Mr. Erdman who would confirm that the manure had only been pumped for an hour on April 16. Mr. Berg followed up with a call to Mr. Erdman who stated he had not spoken to Mr. Branstad in six months and that the hills were covered with white foam all day on April 16.

The exact amount of manure discharged through the tile intake is unknown, but the DNR believes that a significant amount of manure was removed from the basin as evidenced from Mr. Berg's observations and the laboratory sample documentation. It is estimated that if the entire 18 inches of wetted area was pumped out of the basin then approximately 900,000 gallons of manure were removed from the basin. It should be noted that regardless if there was 900,000 gallons or 900 gallons of manure discharged from the basin that the same violations cited in the litigation occurred. The discharge was not an authorized discharge pursuant to the facility's NPDES permit, there were general water quality violations including manure odor, turbid water, and elevated pollutants, and the feedlot effluent caused pollution of the water.

The DNR believes that the violations discovered by Mr. Berg alone would warrant referral to the Attorney General's Office. However, the current violations are not the only recent environmental violations that occurred at a Branstad facility. Mr. Branstad was referred to the Attorney General's Office in December 2008 as a result of sweet corn silage runoff from the facility that was discharged through a tile intake to a water of the state. In May of this year, Mr. Branstad and the State of Iowa entered into a consent decree in which Mr. Branstad admitted that on August 28-29, 2008, sweet corn silage leachate, a pollutant, was discharged from a containment basin on his farm operation into the Winnebago River in violation of Iowa Code section 455B.186(1). In addition to the recent attorney general referral two previous administrative actions were taken against Mr. Branstad for environmental violations that occurred at his property. In 1989, an administrative order was issued for open burning and improper solid waste disposal, and in 2007, an administrative consent order was entered into between Mr. Branstad and the DNR for open burning and improper solid waste disposal.

Based on the information presented today as well as the information provided in the litigation report, the Department requests that the Commission refer Monroe Branstad to the Attorney General's Office for appropriate enforcement action. In addition to the violations noted today, Mr. Branstad has previously been referred to the attorney general's office less than two years ago for a discharge from his facility and has been involved in two other administrative actions from environmental violation.

James Pray, Attorney representing Monroe Branstad stated the following:

Three things to keep in mind:

- 1) No fish were killed.

- 2) The visuals are deceiving.
- 3) Tractor shaft was on repair. It may have appeared to be pumping however the tractor was not working properly and the parts were on order.

There are some errors in the report. The report states that there was a pipe from an open feedlot to the basin. This was in place in March of 2010 but built in 2009. The pump could not have pumped 900,000 gallons. The pump was too small and wasn't running long enough to generate that kind of volume.

If 900,000 gallons of manure went into the stream, then why wasn't there a massive fish kill?

Susan Heathcote said that there was a significant amount of ammonia found in the stream.

James Pray said that if this case is referred today it will get published in papers as it is currently written and the facts are not accurate. I would like to defer this until next month so we can get the facts straight before referral, if that's the option chosen.

Kelli Book said that this report and information is already public information.

Susan Heathcote said that Mr. Pray stated that no fish were killed however, the level of ammonia found was very high. Why didn't we see a fish kill?

Kelli Book said that there was a very large fish kill about 3 years ago so there probably wasn't a lot of fish present.

Motion was made by Marty Stimson to move into closed session to discuss with counsel from the Attorney General's Office specific information related to the Monroe Branstad case. (Iowa Code section 21.5(1)(c)). Seconded David Petty. Roll call vote went as follows: David Petty – aye; Susan Heathcote – aye; Dee Bruemmer – aye; Gene VerSteeg – aye; Marty Stimson – aye. Motion carried.

Commissioners went into closed session.

-----Commissioners reconvened-----

Motion was made by Susan Heathcote to refer Monroe Branstad to the Attorney General. Seconded by David Petty. Motion carried unanimously.

REFERRED

MONTHLY REPORTS

Wayne Gieselman, Division Administrator of the Environmental Services Division presented the following items.

The following monthly reports are posted on the DNR website under the appropriate meeting month: <http://www.iowadnr.gov/epc/index.html>

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

INFORMATION

GENERAL DISCUSSION

Wayne commented on the following items:

- The Water Resources Council has been holding flood anatomy meetings around the state.
- We have an abandoned manure lagoon near Creston from a animal feeding operation that is about 6 inches from going over the top. The owner is in prison and his wife has fled the country. So we will be dealing with this in the near future

<p><i>Motion was made by Marty Stimson to move into closed session to discuss strategy with counsel from the Attorney General’s Office on the pending litigation with Brush & Weed Control Specialists and New Farmers Drainage District. (Iowa Code section 21.5(1)(c)). Seconded by David Petty. Roll call vote went as follows: Marty Stimson – aye; Gene Ver Steeg – aye; Dee Bruemmer – aye;; Susan Heathcote – aye; David Petty – aye. Motion carried unanimously.</i></p>
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Commissioners went into closed session.

-----Commissioners reconvened-----

NEXT MEETING DATES

Monday, September 20 - 2:00 Tour of Power Plant in Council Bluffs
Tuesday, September 21 - EPC meeting in Council Bluffs

ADJOURNMENT

Motion was made by Gene Ver Steeg to adjourn. Seconded by Dee Bruemmer. Motion carried unanimously.

With no further business to come before the Environmental Protection Commission, Vice - Chairperson Marty Stimson adjourned the meeting at 4:35 p.m., Tuesday, July 20, 2010.

Richard A. Leopold, Director

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