

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
JUNE 15, 2010

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Vice Chairperson Marty Stimson at 10:05 a.m. on Tuesday, June 15, 2010 at DNR Air Quality Building, Windsor Heights, Iowa.

COMMISSIONERS PRESENT

Gene Ver Steeg
David Petty
Susan Heathcote
Paul Johnson
Martin Stimson, Vice-Chair
Lorna Puntillo, Secretary

COMMISSIONERS ABSENT

Dale Cochran
Charlotte Hubbell, Chair

ADOPTION OF AGENDA

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

APPROVED AS PRESENTED

APPROVAL OF MINUTES

May 18, 2010 minutes

Motion was made by Susan Heathcote to approve the May 18, 2010 minutes as presented. Seconded by David Petty. Motion carried unanimously.

April 20, 2010 minutes

Motion was made by David Petty to approve the April 20, 2010 minutes as presented. Seconded by Gene VerSteeg. Motion carried unanimously.

APPROVED AS PRESENTED

DIRECTOR REMARKS

Pat Boddy, Deputy Director commented on the following topics:

- The Department spending plan for FY11 has been submitted. We are anticipating an additional general fund cut but do not have an exact known percentage but we are planning for the worse case scenario.

- Currently, we have 60 employees of the 180 that are eligible sign up for the State Employee Retirement Incentive Program. The exact amount of savings to the general fund is not yet known.

INFORMATIONAL ONLY

CONTRACT – IOWA STATE UNIVERSITY EXTENSION SERVICE – MANURE APPLICATOR CERTIFICATION TRAINING

Jeff Prier, with the Environmental Services Division presented the following item.

The Department requests Commission approval of a contract in the amount of \$186,060 with Iowa State University Extension Service to provide manure applicator certification training and testing for the time period of July 1, 2010 through June 30, 2011. The training and testing are pursuant to HF 644 and HF 2494.

The purpose of this contract is to support activities to develop manure certification training and testing materials for commercial manure applicators and confinement site manure applicators. Topics covered in the training materials will include: certification and manure management requirements of Iowa law and DNR rules; proper procedures for the storage, handling and land application of manure; the potential impacts of manure on surface and groundwater; the development of safety and emergency action plans; and sources of additional technical and educational assistance.

Funding for this contract is provided by fees collected from the Manure Applicator Certification Program.

<i>Motion was made by David Petty to approve the contract with ISU Extension Service as presented. Seconded by Paul Johnson. Motion carried unanimously.</i>
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APPROVED AS PRESENTED

PUBLIC PARTICIPATION

JIM YUNGCLAS, from Wright County said that he lives within 2 miles of the Cage Free Operation. The site location is on a wet lowland area where water will be released into the county tile and then drained after a large rain. There are serious drainage issues here and we believe it should have a NPDES permit. DNR needs to meet these requirements and make them have permits that improve the water quality.

NATALIE SNYDERS with ICCI passed out the following letter to the Commissioners:

In September 2007, Iowa Citizens for Community Improvement, Environmental Integrity Project, and the Sierra Club appealed to the Iowa Department of Natural Resources (DNR) and the Environmental Protection Agency (EPA) to begin regulating Iowa Concentrated Animal

Feeding Operations (CAFOs) as required under the federal Clean Water Act. Three years later, the agency has yet to act, and factory farms continue to illegally discharge manure and wastewater into Iowa's creeks, streams and rivers without the permits necessary to monitor their actions and hold polluters accountable. This letter will summarize recent developments at the federal level that should finally spur DNR and this Commission to begin regulating Iowa CAFOs.

DNR has continually cited regulatory uncertainty at the federal level as its excuse for inaction. In 2003, environmental and industry organizations challenged EPA's CAFO Rule, which would have required Clean Water Act National Pollutant Discharge Elimination System (NPDES) permits of all CAFOs with the potential to discharge. EPA then revised the rules in the wake of the Second Circuit Waterkeeper decision, in which the Court invalidated EPA's plan to require all potential dischargers to obtain permits. The subsequent 2008 CAFO rule requires all CAFOs that actually discharge or "propose to discharge" to obtain NPDES permits. Environmental organizations challenged this rule, and again, DNR cited uncertainty over the outcome of this challenge as grounds for inaction.

On May 26, 2010, the environmental groups and EPA settled the dispute over the Rule. Pursuant to that settlement, on May 28th EPA issues Guidance on the meaning of "proposing to discharge"¹ and has agreed to conduct a nationwide study of CAFOs to enable the agency to better understand and more effectively regulate the industry. With the 2008 Rule settlement and EPA's guidance on its meaning, DNR has run out of excuses for its failure to regulate the hundreds of Iowa CAFOs that clearly require NPDES permits.

EPA's Guidance for implementing the 2008 Rule lays out important consideration factors and walks through numerous scenarios for CAFO management of waste, feed or other pollutants, which qualify as proposals to discharge. The Guidance provides clear examples of facilities that do require NPDES permits. Of great significance in Iowa, use of shallow pits that require heavy reliance on pump and pipe systems have heightened risks of mechanical problems and illegal spills; their use can constitute a proposal to discharge.²

The Guidance also reaffirms the Rule's requirement that any CAFO with a prior discharge must obtain a permit unless it has made changes to its operation that will prevent a subsequent discharge. DNR must take immediate action to comply with the 2008 Rule and Guidance, which require permits of the hundreds of known dischargers in the state,³ including more than 50 operators responsible for manure spills since Rich Leopold became DNR Director.⁴

Recent examples include:

- Callaway Farms, a 13,200 head hog operation in Hamilton County, spilled thousands of gallons of manure into Tipton Creek in September of 2009. They also have long history of violations and previous manure spills, and were recently referred to the Attorney General.
- NPKK Pork, LLC, a 2,500 head hog operation in Washington County, spilled 4,000-5,000 gallons of manure into a tributary of Indian Creek in December of 2009.

- Rock Bottom Dairy, a 1,550 head dairy confinement and open feedlot, spilled 100,000 gallons of manure into Mud Creek in Lyon County in August of 2009.

Please urge the DNR to stop delaying its rulemaking to regulate Iowa CAFOs under the Clean Water Act. Iowa’s neighboring states of Wisconsin and Illinois have drafted regulations and issued individual and general CAFO permits that DNR can use to bring Iowa into compliance, continued efforts to address factory farm pollution.

NEILA SEAMAN, representing the Sierra Club agrees with Natalie Snyders comments. We are very grateful to see the Greenhouse Gas emissions presentation this afternoon. We need these rules to go through and we are here to help make that happen.

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

CLEAN WATER AND DRINKING WATER STATE REVOLVING LOAN FUND – FY 2011 INTENDED USE PLANS

Patti Cale-Finnegan, DNR State Revolving Fund Coordinator presented the following item.

Commission approval is requested for the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Intended Use Plans (IUPs) for FY 2011 (July 1, 2010 – June 30, 2011). The Iowa SRF continues to grow and expand its role as one of the primary funding sources for water quality and protection of public health. Since 1989, the Iowa SRF has committed almost \$1.5 billion for water and wastewater infrastructure and nonpoint source pollution control.

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

Recent actions at the federal level have initiated major changes in the SRF programs. New requirements have been attached to increases in funding.

During FY 2009, federal stimulus funds through the American Recovery and Reinvestment Act (ARRA) were allocated to Iowa’s SRF programs. Loan agreements in FY 2010 allocated the \$77 million in ARRA funds, leveraging a total of \$155.6 million in SRF assistance and work to protect public health and the environment. ARRA included new requirements such as Davis-Bacon prevailing wages, Buy American, additional subsidization, and green projects.

The federal fiscal year 2010 appropriations for the SRF programs have carried over some of the ARRA requirements. EPA guidance on these requirements was issued in late April 2010. Now that the guidance has been finalized, Iowa’s SRF program can respond and plan for compliance.

Our plans for the implementation of these requirements will be presented in IUP updates this year.

The application of different requirements to different portions of the SRF funding creates some difficulties in program implementation and possible confusion and frustration on the part of borrowers. Our goal is to try to adjust to this new environment and to provide as much stability and clarity as possible to the program users.

The FY 2011 IUPs include plans of action for the base SRF program (the portion not affected by the 2010 appropriations), including goals and objectives, an analysis of current and projected financial capability, financial management strategies, the project priority lists, discussion of set-aside programs and efforts, and planned uses for administrative accounts.

The CWSRF provides low-interest loans for wastewater and storm water infrastructure improvements and nonpoint source water quality projects. Since 1989, the Iowa CWSRF has committed more than \$939 million for wastewater upgrades and \$82 million for non-point source projects. The FY 2011 IUP shows project requests totaling \$712.9 million, plus \$29.5 million for non-point source projects. It is anticipated that approximately \$235 million will be disbursed during FY 2011.

Since 2000, the DWSRF has committed \$484 million in loans to public water supplies to protect public health and improve infrastructure. The FY 2011 IUP shows funding requests and potential uses totaling \$254.7 million. It is anticipated that approximately \$116 million will be disbursed during FY 2011.

The Sources and Uses tables for both CWSRF and DWSRF show that funds are available or obtainable to provide anticipated disbursements. The IUPs will be updated quarterly during FY 2011.

A public meeting was held May 6, 2010 to receive comments on the proposed IUP updates. No oral comments were provided at the hearing. The written comment period closed on May 13, 2010. No written comments were received.

Motion was made by Gene VerSteeg to approve the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Intended Use Plans (IUPs) for FY 2011 (July 1, 2010 – June 30, 2011) as presented. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS PRESENTED

INTERGOVERNMENTAL SERVICES AGREEMENT WITH THE IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP FOR IMPLEMENTATION OF CLEAN WATER STATE REVOLVING FUND NONPOINT SOURCE LOAN PROGRAMS

Patti Cale-Finnegan, DNR State Revolving Fund Coordinator presented the following item.

Recommendations:

Commission approval is requested for a three-year intergovernmental services contract with the Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation (IDALS-DSC). The contract will begin on July 1, 2010 and terminate on June 30, 2013. The total amount of this contract shall not exceed \$504,936. DNR shall have the option to renew this contract as long as this contract and any extensions do not exceed a six-year period.

Funding Source:

This contract will be funded through administrative funds of the Clean Water State Revolving Fund (CWSRF). Iowa Administrative Code 567 Chapter 93 provides the authority for the DNR to establish nonpoint source loan programs and sets out the application process through Soil and Water Conservation Districts (SWCDs).

Background:

The CWSRF has operated low-interest loan programs to address nonpoint source pollution since 2003. IDALS-DSC has worked with DNR on implementation of loans for agricultural best management practices since 2004. In 2007, storm water quality practices were added to the contract, and in 2008, the program for manure management practices was transferred to IDALS-DSC. CWSRF funding provides for a program coordinator, staff time from urban conservationists, support staff, travel, supplies, and indirect costs. All other program costs are covered by IDALS-DSC and the Natural Resources Conservation Service through existing staffing in the SWCDs.

Project applications are initiated, reviewed, and approved at the SWCDs, with oversight and technical assistance from IDALS-DSC. Since 2004, IDALS-DSC has facilitated \$38 million worth of loan assistance to protect water quality throughout the state. We anticipate funding up to \$50 million worth of projects during the term of the proposed contract. The cost of administration will be approximately one percent of the loan amount.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining the Contractor to provide implementation of three targeted areas for CWSRF nonpoint source pollution control practices and loans: local water protection (soil erosion), livestock water quality (manure management), and urban storm water quality.

Contractor Selection Process:

IDALS-DSC was chosen using the single source process through an intergovernmental services agreement. IDALS-DSC was chosen for this project because of its mission to assist soil and water conservation districts to disseminate information throughout the state and to assist in the

development of soil and water conservation district plans to preserve and protect the public interest in the soil and water resources of the state and to preserve water quality in the state.

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

APPROVED AS PRESENTED

CONTRACT – UNIVERSITY HYGIENIC LAB (UHL) – STAFFING CONTRACT

Jerah Sheets, with the Environmental Services Division presented the following item.

Recommendation:

The Department requests Commission approval of a contract in an amount not to exceed \$250,000 with the University of Iowa Hygienic Laboratory for DNR staff support in 2010.

Funding Source:

Funding for this contract comes from the Environment First Infrastructure funds and REAP funds.

Purpose:

The purpose of this contract is to provide professional staff support to two programs Within the Department of Natural Resources. Two positions will be located in the Geographic Information Section to provide on-going support for activities related to watershed planning and assessment required under the legislatively mandated watershed initiative program. One staff position will be located in the Conservation and Recreation Division to assist with REAP assemblies, the HUSH program, and the Nature Store.

Scope of Work:

Geographic Information Section:	Not to exceed \$170,000
Communication Bureau:	Not to exceed \$61,500
Facilities and Administrative costs:	Not to exceed \$18,500
Total	Not to exceed \$250,000

5.1.2 Geographic Information Section. The UHL shall provide two full time staff persons in Iowa City to work with Department staff. These individuals shall be responsible for the development of Geographic Information System (GIS) databases and the analytical assessment of GIS databases under the direction of the Supervisor of the Geographic Information Section. The UHL also shall provide administrative mechanisms to facilitate travel, staff development and training.

5.1.3 Communication Bureau. The UHL shall provide one full time staff position in Des Moines to work with the Department staff on the Resource Enhancement and Protection Program (REAP) (50%), the Help Us Stop Hunger Program (HUSH) (25%), the Nature Store (20%), and related (5%) programs. The individual shall work under the direction of the Department REAP

coordinator and shall be responsible for planning, coordinating, implementing, and evaluating REAP assemblies. The individual also shall assist with communications regarding the HUSH program and assisting with the Nature Store. The UHL also shall provide administrative mechanisms to facilitate travel, staff development and training. The Contractor also shall provide administrative mechanisms to facilitate travel, staff development and training.

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

APPROVED AS PRESENTED

CONTRACT - UNIVERSITY OF IOWA FOR DAM SAFETY INSPECTORS

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

Recommendations:

Commission approval is requested for a contract to continue to retain 2 part time dam inspectors through the University of Iowa of Iowa City, Iowa for 12 months. The original contract began on July 1, 2009 and terminates on June 30, 2010. The contract amount is not to exceed \$49,680 for the period of July 1, 2010 to June 30, 2011.

Funding Source:

This contract is funded through the federal Dam Safety Grant (CFDA 97.041) and Iowa Infrastructure Funds (60/40).

Background:

The Department is responsible for ensuring that high and significant hazard dams are inspected on a 2 or 5 year basis. Approximately 75 dams will need inspection for this 12 month period.

Purpose:

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

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

APPROVED AS PRESENTED

CONTRACT - IOWA STATE UNIVERSITY – 2009 IOWA LAKES MONITORING

Lisa Fascher with the Watershed Monitoring and Assessment Section presented the following item.

Recommendations:

Commission approval is requested for a [one] year-service contract with Iowa State University of Ames, Iowa. The contract will begin on July 1, 2009 and terminate on February 28, 2011. The total amount of this contract shall not exceed \$146,576. DNR shall have the option to renew this contract as long as this contract and any extensions do not exceed a six-year period.

Funding Source:

This contract will be funded through Infrastructure (60%) and Lake Restoration Program (40%).

Background:

This contract encompasses the majority of lake water quality monitoring conducted as part of the state-wide water monitoring program and is the primary basis for assessing the state's lake water quality. The purpose of this program is to define the condition of Iowa's lakes, characterize existing and emerging issues, measure changes or trends in water quality, and provide information to citizens and decision-makers. Specific ways the DNR intends to utilize the information gathered and analyzed in this Contract include: to fulfill Clean Water Act requirements of the department including: biennial reports on the status of lake water quality, impaired waters listing, and total maximum daily load reports; manage and evaluate this natural resource; and allocate lake restoration funds most appropriately.

Purpose:

The parties propose to enter into this Contract for the purpose of contracting with ISU to provide the DNR with lake monitoring data. As part of this contract ISU will provide field and analytical support for monitoring on 131 of Iowa's significantly and publicly owned lakes. The lakes are monitored three times during the field season for basic water chemistry, nutrients, plankton composition, and clarity.

Contractor Selection Process:

ISU was chosen as contractor based on the Code of Iowa (455B.103), which directs the DNR to contract with public agencies of the state.

The data is reported on the Iowa State University website. There is some analysis of the data with charts and graphs as well.

Motion was made by Susan Heathcote to approve the contract with ISU as presented. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT AMENDMENTS – UTILITY MANAGEMENT ORGANIZATION GRANTS FOR WASTEWATER SERVICES TO SMALL AND UNSEWERED COMMUNITIES

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

Recommendations:

Commission approval is requested for a one [1] year service contract extension with the following Utility Management Organizations (UMOs):

- ADLM Facilities Management Systems
- Eastern Iowa Regional Utility Service Systems
- Regional Utility Service Systems
- Rural Utility Solutions
- Wastewater Management Services of Central Iowa

The contract amendments will begin on July 1, 2010 and terminate on June 30, 2011. The total amount of the contract amendments shall not exceed \$25,000 each.

Funding Source:

The funding for these contract amendments comes from \$125,000 to be approved in the FY 2011 Clean Water State Revolving Fund (CWSRF) Intended Use Plan. A portion of the loan fees paid by CWSRF borrowers (non-program income) may be used for general water quality efforts, and the DNR has proposed using it to continue to support regional efforts to address wastewater needs for small communities.

Background:

Many rural communities in Iowa provide little or no wastewater treatment. Discharge of untreated or partially treated waste presents a significant human health risk and potentially degrades ground and surface water quality. Viable waste treatment solutions are difficult and costly, often exceeding the local capacity for planning, financing, and management. Even small rural communities currently served by a wastewater system often lack adequate managerial capability to ensure they are operating in a manner which protects the environment and public health.

Regional utility management organizations (UMOs) assist these communities by providing management services to handle planning, project construction, financial capacity, permitting, operations, and delivery of services. UMOs have been organized to operate on a multi-county and multi-community scale.

DNR has been successful in working with three types of management organizations: rural water associations, multi-county 28E cooperative management programs, and a multi-county environmental health group.

With the influx of federal and state stimulus funds in the last year, the UMOs have been well positioned to assist small and unsewered communities to take advantage of the increased funding opportunities.

The DNR is gradually phasing out the grant funding for the UMOs as they gain users and build their sustainability through user and project administration fees.

Purpose:

These contracts have been created to help build sustainable utility management organizations (UMOs). These groups are to manage the wastewater infrastructure in small communities that are unincorporated and/or too small to effectively manage this infrastructure. These management entities will help establish wastewater infrastructure in unsewered communities and offer to manage the infrastructure in somewhat larger communities that could benefit from this service.

Contractor Selection Process:

The original contractors were chosen through a competitive selection process conducted by DNR in spring 2008. Six contracts for \$40,000 to \$50,000 each were approved by the EPC in June 2008. In the spring of 2009, the duties of handling the UMO contracts were transferred to the Water Quality Advocate contract between DNR and the Iowa Department of Economic Development (IDED). These proposed second contract amendments are for \$25,000 and are being presented to the Commission for approval. The contract with Xenia Rural Water District is not being renewed.

In March 2010, the Water Quality Advocate at IDED was reassigned internally and that contract will not be renewed. Contract management for the UMO efforts was transferred back to DNR and is now being covered by the Water Quality Bureau executive officer and the State Revolving Fund Coordinator. The rationale for renewing these contracts, versus reopening a competitive solicitation, hinges on lack of staff time and the fact that there are a limited number of utility management organizations.

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

APPROVED AS PRESENTED

CONTRACT – UNIVERSITY OF IOWA FOR LABORATORY SERVICES AND CORRECTIVE ACTION SPECIALIST FOR UNDERGROUND STORAGE TANK PROGRAM

Elaine Douskey, Supervisor in the Land Quality Bureau presented the following item.

Recommendations:

Commission approval is requested for a one year-service contract with the University of Iowa, Iowa City, Iowa. The contract will begin on July 1, 2010 and terminate on June 30, 2011. The total amount of this contract shall not exceed \$96,960. DNR shall have the option to renew this contract as long as this contract and any extensions do not exceed a six-year period.

Funding Source:

This contract will be funded through the U.S. Environmental Protection Agency, LUST Trust Prevention Grant, CFDA No. 66.804 and the LUST Trust Corrective Action Grant, CFDA No. 66.805.

Background:

The overall function of this contract is to aid the Director of the Iowa Department of Natural Resources in determining the quality of the environment of the State of Iowa by providing field and laboratory services and the summarizing and reporting of environmental quality data to the DNR. Another function is to provide the services of one Corrective Action Specialist position. All services will be performed in support of the environmental control programs of the Underground Storage Tank (UST) Section. These functions were formerly completed through two separate contracts. This contract will combine all functions into one contract.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining the Contractor to provide:

Assistance to the DNR by providing field and laboratory services in support of the Underground Storage Tank (UST) regulatory program. This support will include analysis of samples from various media (soil, groundwater, vapor, receptors) at UST sites, and summarizing and reporting on the environmental quality data. Samples may be analyzed for a variety of chemistry parameters related to petroleum products. This is referred to as Task 1.

In addition, the parties have entered into this Contract for the purpose of providing a temporary staff position to facilitate corrective action planning meetings for leaking underground storage tank (LUST) sites. The position is a Corrective Action Specialist who assists in facilitating meetings with affected parties, coordinating remediation activities, and providing technical assistance at LUST sites. This is referred to as Task 2.

Contractor Selection Process:

The University of Iowa was chosen for this project because it is the State of Iowa's Environmental and Public Health Laboratory. The Department has several contracts with the laboratory to provide analytical and field services.

Elaine also distributed a Report on Corrective Action Conferences – Underground Storage Tanks.

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

APPROVED AS PRESENTED

FINAL RULE – CHAPTER 135, TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS – RISK-BASED EVALUATION FOR WATER LINES

Elaine Douskey, Supervisor of the Underground Storage Tank Section in the Land Quality Bureau presented the following item.

The Department is requesting adoption of amendments to 1) revise the risk-based evaluation process for plastic water lines, adding in gasketed drinking water lines and different target levels based on material composition and usage, 2) allow consideration of no action required status if the contaminant plumes at low risk leaking underground storage tank (LUST) sites are demonstrated to be stable and when an institutional control is implemented, and 3) give the Department discretion to require confirmation sampling prior to acceptance of a ‘no action required’ classification or to waive ‘exit monitoring’ criteria when a groundwater professional can justify a ‘no action required’ classification for the site. Existing policy regarding confirmation soil sampling has been added to update rule with the current practice.

Iowa State University and the American Water Works Association Research Foundation (AWWARF) released results of their laboratory study titled, “Impact of Hydrocarbons on PE/PVC Pipes and Pipe Gaskets”. The research suggests polyvinyl-chloride (PVC) pipe material is more resistant than previously believed, polyethylene (PE) and polybutylene (PB) pipes are extremely susceptible to petroleum contamination, and gaskets are potentially the weak link for exposure to petroleum in a water distribution system. The Department convened a technical advisory committee to examine the results of this study and other published literature. The group concluded PVC is more resistant than previously believed when the risk-based corrective action (RBCA) rules were initially developed, but that PVC lines are still deemed at risk in gross contamination. Additional research confirmed the findings related to PE/PB pipe and gaskets. Changes are proposed to incorporate these new findings in the evaluation process for drinking water distribution lines near LUST sites.

Changes to the rule have been proposed that would allow a site to be closed if it can be demonstrated the contaminant plume is stable and exposure to the contaminants were controlled through land use restrictions (environmental covenants and institutional controls). The proposed rules also allow the Department to waive ‘exit monitoring criteria’ at low risk sites where the groundwater professional can demonstrate a ‘no action required’ classification is justified.

Public hearings for this rule were held the last week in April 2010. The proposed rule was presented to the Administrative Rules Review Committee May 10, 2010. Comments on the proposed rule received from the public have been addressed in a Responsiveness Summary (attached). The proposed rule is presented to the EPC for approval as a Final Rule.

Motion was made by Paul Johnson to approve the final rule – Chapter 135 as presented. Seconded by David Petty. Motion carried unanimously.

APPROVED AS PRESENTED

Wayne Gieselman mentioned that there will be a presentation at the joint NRC/EPC meeting in July on Fungicide. There has been some mysterious fish kills that would lead us to believe that it’s an oxygen deficiency issue.

CONTRACT – UNIVERSITY OF IOWA HYGIENIC LAB FOR LABORATORY SERVICES FOR CONTAMINATED SITES PROGRAM

Matt Culp, Contaminated Sites Section in the Land Quality Bureau presented the following item.

Recommendations:

Commission approval is requested for a one year-service contract with University of Iowa Hygienic Lab. The contract will begin on July 1, 2010 and terminate on June 30, 2011. The total amount of this contract shall not exceed \$54,000. DNR shall have the option to renew this contract long as this contract and any extensions do not exceed a six-year period.

Funding Source:

This contract will be funded through EPA CERCLA, EPA Brownfields, and state Hazardous Waste Remedial Funds. No general fund monies are used.

Background:

Under various state and federal programs the Contaminated Sites Section of IDNR conducts investigations of environmental contamination. This process involves the collection of samples of unknown chemicals or environmental media potentially contaminated by chemicals. In order to positively identify and quantify the concentration of those chemicals it is necessary to have them analyzed by a qualified laboratory.

Purpose:

The parties propose to enter into this contract for the purpose of retaining the Contractor to provide necessary analytical services.

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

APPROVED AS PRESENTED

**CONTRACT – UNIVERSITY OF IOWA HYGIENIC LABORATORY FOR FY2011
AMBIENT STREAM BIOLOGICAL MONITORING AND LABORATORY SERVICES**

Tom Wilton, Environmental Specialist Senior presented the following item.

Recommendation:

The Department requests Commission approval of a contract in the amount of \$250,596.72 with the University of Iowa Hygienic Laboratory of Iowa City, Iowa covering July 1, 2010 through September 30, 2011.

Funding Source:

This contract will be funded through State of Iowa Environment First Infrastructure Funds and U.S. EPA 604(b) Funds.

Background:

Since 1994, the Department of Natural Resources has conducted monitoring to evaluate the ecological health of Iowa's stream resources and assess the support status of designated aquatic life uses. The protocol consists of integrated sampling of water quality, fish, benthic macroinvertebrates and habitat during base flow (non-runoff) conditions.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining the Contractor to provide field and laboratory analytical services in support of the Department's stream biological monitoring program and for the development of stream nutrient criteria.

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.

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

APPROVED AS PRESENTED

CONTRACT – UNIVERSITY OF IOWA HYGIENIC LABORATORY – AMBIENT STREAMS MONITORING AND LABORATORY SERVICES

Wayne Gieselman, Division Administrator for Environmental Services presented the following item.

Recommendation:

The Department requests Commission approval of a contract in the amount of \$689,103 with the University of Iowa Hygienic Laboratory (UHL) for one year.

<i>Contract</i>	<i>Begin Date</i>	<i>End Date</i>	<i>Cost</i>
2010 Ambient Streams Monitoring and Laboratory Services	July 1, 2010	June 30, 2011	\$689,103

Funding Source:

This project will be funded through State of Iowa Environment First Infrastructure dollars.

Background:

The Clean Water Act requires states to monitor and report on the condition of the waters of the state. This contract is a continuation of DNR's long-standing contract with UHL to collect and analyze samples from Iowa's streams and rivers.

Purpose:

The purpose of this contract is to provide monitoring and analytical services for ambient streams and rivers monitoring to assess the quality of Iowa's waterbodies.

Consulting Firm Selection Process:

The UHL was chosen as contractor based on the Code of Iowa (455B.103), which directs the DNR to contract with public agencies of the state. UHL was also chosen for this project due to their sample collection and analysis expertise.

Marty Stimson asked what the rationale was for removing certain elements from the testing.

Lisa Fascher said that pesticides are expensive to test for and there hasn't been high levels when we did test.

Susan Heathcote suggested that there should be spot testing when pesticides could be suspected.

Barb Lynch said that the contract does not remove the Department Field offices from doing additional tests when a fish kill has occurred.

Wayne Gieselman said that Dr. Wichman will report back to the Commission on the analyses of the monitoring.

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

APPROVED AS PRESENTED

CONTRACT – IDALS-DSC FOR NONPOINT SOURCE PROGRAM ADMINISTRATIVE STAFFING ASSISTANCE

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

Recommendations:

Commission approval is requested for a 12 month amendment (amendment No. 2) to an existing service contract with the Iowa Department of Agriculture – Division of Soil Conservation (IDALS-DSC). The contract amendment will extend the expiration date of the contract to June 30, 2011. The total amount of this contract amendment shall not exceed \$52,135. DNR shall have the option to renew this contract long as this contract and any extensions do not exceed a six-year period. The original contract term (including amendment No. 1) was February 1, 2009 through June 30, 2010.

Funding Source:

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

Background:

The Department shares in the funding of one (1) full-time position in IDALS-DSC to jointly support the administration of Department section 319 and DSC WPF/WSPF watershed improvement projects with local Soil and Water Conservation Districts. Support for this shared position has been ongoing for several years.

Purpose:

The purpose of this contract is to retain DSC to assist the Department in the implementation of Iowa's nonpoint source pollution management program through the retention of one (1) full-time position in the DSC's Field Services Bureau for the purpose of providing administrative assistance and guidance in the development and implementation of section 319 and WPF/WSPF watershed improvement plans and projects. The cost for this position shall be shared equally by both parties.

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

APPROVED AS PRESENTED

SOLID WASTE ALTERNATIVES PROGRAM – RECOMMENDATIONS

Tom Anderson, in the Land Quality Bureau presented the following item.

The Department received 16 proposals, requesting \$768,373 in financial assistance, for consideration during the April 2010 round of funding. Six (6) projects were selected for funding

or additional consideration. If approved they will receive \$255,563 in a combination of forgivable loans and zero-interest loans.

The review committee consisted of five persons representing the Land Quality Bureau (2), Iowa Society of Solid Waste Operations (1), Iowa Recycling Association (1), and the Iowa Waste Exchange (1).

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

Recommended By Applicant Type	# Awards	Award Amount	Forgivable Loan Portion	
Local Government	3	\$56,679	\$56,679	
Private For Profit	3	\$198,884	\$25,750	
Private Not For Profit	0	\$0	\$0	
Recommended By Project Type	# Awards	Award Amount	Forgivable Loan Portion	
Best Practices	5	\$237,887	\$64,753	
Market Development	0	\$0	\$0	
Education	1	\$17,676	\$17,676	
Type of Award	# Awards	Award Amount	Forgivable Portion	Loan
Forgivable loan only	4	\$62,429	\$62,429	
Forgivable and 0% loan only	1	\$45,000	\$20,000	
0% and 3% interest loan only	0	\$0	\$0	
0% interest loan only	1			\$0
3% interest loan only	0	\$0	\$0	

At this time, the Department is requesting Commission approval to enter into contracts with selected applicants whose awards will be in excess of \$25,000 subject to satisfactory review of additional requested information, review of business plans, negotiation of budget, match, deliverables, and other requested information.

Motion was made by Susan Heathcote to approve the SWAP recommendations as presented. Seconded by Lorna Puntillo. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT WITH UNIVERSITY OF NORTHERN IOWA FOR SMALL BUSINESS ASSISTANCE PROGRAM: IOWA AIR EMISSIONS ASSISTANCE PROGRAM (IAEAP)

Christina Iiams, in the Air Quality Bureau presented the following item.

Recommendations:

Commission approval is requested for a one year contract with the University of Northern Iowa of Cedar Falls, IA. The contract will begin on July 1, 2010 and terminate on June 30, 2011. This contract is an Iowa Code Chapter 28E agreement. Services are to be provided by the Iowa Air Emission Assistance Program (IAEAP) of UNI's Iowa Waste Reduction Center (IWRC).

Funding Source:

This contract will be funded through cost reimbursable payments funded solely by Title V program fees. The statutory authority for the DNR to enter into this contract is under Section 507 of the Clean Air Act and 455B.133(8)(a).

Background:

The Small Business Assistance Program, which is mandated by Section 507 of the Clean Air Act, provides technical and non-technical assistance to small businesses. Section 507 requires the Small Business Assistance Program to be funded by Title V fees but does not specify what technical services have to be provided or the extent of the services to be provided.

Significant decreases in emissions from Iowa's major sources of air pollutants had an unanticipated impact on the Air Quality Bureau's Title V funding. Every effort has been made to maintain funding for air program activities that are required to be performed at a specific level by federal or state laws. Program areas where federal or state laws allow some degree of flexibility in how the program is administered were scrutinized for funding reductions. IAEAP services are valued and beneficial to hundreds of small businesses. However, the current budget environment necessitates that the level of IAEAP services be decreased to ensure adequate funding for other air program activities that require an on-going mandatory level of effort.

Funding provided to IAEAP through 28E contracts has typically averaged about six percent of the total Title V budget; with services and associated staffing levels expanding to accommodate increased air regulatory requirements on many small businesses. From 1997 through 2005, UNI contracts generally specified education and outreach efforts aimed at helping small businesses determine and understand their regulatory obligations and receive air construction permits. From 2006 to the present, the contracts expanded the scope of work related to permitting activities to include permits by rule, completing exemption justification documents for the small unit exemption, and determining applicability and assisting with the implementation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). The IAEAP was also tasked with completing emissions inventories for small businesses during this time period and provided detailed assistance to many country grain elevators in understanding and complying with new permitting requirements.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining UNI to sustain a small business assistance program pursuant to Section 507 of the Clean Air Act Amendments of 1990 and to outline the activities and projects related to providing various aspects of technical assistance to Iowa's small businesses that the DNR will fund.

IAEAP duties related to the scope of work will include a shift in focus back to primarily providing general education and outreach efforts aimed at helping small businesses determine and understand their regulatory obligations. IAEAP will also assist with implementing NESHAP and providing training to small businesses on how to complete and submit emissions inventories. The following table provides a comparison of the current and revised IAEAP scope of work.

Current Scope of Work (SFY 2010)	Revised Scope of Work (SFY2011)
Review and comment on DNR rulemakings regarding the impact of proposed rules on small businesses	Same
Develop and roll-out compliance assistance tools and provide education and outreach to small businesses regarding regulatory requirements	Same
Assist the DNR in the implementation of National Emission Standards for Hazardous Air Pollutants (NESHAP)	Same
Complete site visits to assist small businesses in determining applicability to state and federal regulations and in completing permit applications and emissions inventories	Site visits will only be made to assist in determining applicability to regulations and to provide training or outreach. Training and outreach will not include how to complete permit applications.
Complete and submit construction permit applications small unit exemption justifications, and emissions inventory questionnaires as requested by small businesses	No longer complete and submit permit applications and small unit exemptions, or perform training related to these activities. No longer complete and submit emissions inventory questionnaires.

The revised scope of work and associated FTEs and funding level are in line with small business assistance technical and compliance services provided in surrounding states (see table on following page).

Contractor Selection Process:

The DNR is allowed to contract with the University of Northern Iowa without using a competitive selection process pursuant to state law.

The IAEAP was formally designated as the technical and compliance small business assistance provider in a State Implementation Plan revision that was submitted to and approved by the EPA in the early 1990s. The University of Northern Iowa's IAEAP has demonstrated itself to be an effective assistance provider to Iowa's small businesses.

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

Lorna Puntillo stated her disappointment in seeing this program's efforts reduced due to budget cuts. The Department and Commission have received so many good comments from businesses about this program. Many small businesses who are receiving services are very opposed to having this program be reduced.

APPROVED AS PRESENTED

CONTRACT – FILTER AND SAMPLER DATA COLLECTION & TRANSMITTAL

Christina Iiams, in the Air Quality Bureau presented the following item.

Recommendations:

Commission approval is requested for a six (6) year-service contract with the following four (4) selected contractors. The contracts will begin on July 1, 2010 and terminate on June 30, 2016. If approved by the Commission, a total of \$199,560 (\$33,260 per year) in funds will be awarded.

Funding Source:

Each contract will be funded with money available from the following funding sources: Title V program fees (cc 7230), 105 federal grant dollars with matching state general funds (cc 7220), and from 103 federal grant dollars (cc 7240).

The statutory authority for the DNR to enter into this sub-grant award is 455B.103.

Background:

Ambient air monitoring filters and samplers are in various locations throughout the state. The data collected in these filters/samplers is used by the DNR in determining the levels of air pollutants in the specific locations where the samples are collected. The DNR contracts with the University of Iowa Hygienic Laboratory (UHL) to collect a majority of the filter/sampler data and to then analyze the collected data. The DNR also employs local contractors to collect filters and sampler data in areas of the state where it would be cost prohibitive to include the area as part of a routine route for filter/sampler pickup to be conducted by UHL.

In order to complete the collection and transmittal of filter/sampler data and to transmit it to UHL, the DNR requires selected Contractors to:

- Reside in Iowa within a 20 mile radius of the ambient air monitoring location;
- Be dependable and reliable in all weather conditions;
- Have own transportation to reach the monitoring site;
- Be available at least every 3 days for sample collection at the site;
- Climb ladders, as necessary;
- Participate in field training, provided by UHL, of collection procedures to become proficient and knowledgeable in order to operate and maintain air monitoring samplers and to retrieve data using a computer, personal digital assistant (PDA), or similar device as provided by DNR/UHL;

- Read, comprehend and follow standard operating procedures (SOP) and quality assurance procedures (QAP) and adhere to the procedures specified by UHL for timely performance of tasks; and
- Respond to requests and other communications with UHL/DNR within the timeframe requested.

Purpose:

The parties propose to enter into each Contract for the purpose of retaining contractors to collect filter and sampler data from ambient air monitoring samplers for transmittal to the University of Iowa Hygienic

Laboratory (UHL). Data collection will take place from an ambient air monitoring site in/near one of the following locations:

- Lake Sugema; Keosauqua, IA
- Viking Lake State Park; Stanton, IA
- Emmetsburg, IA
- Mason City, IA

Contractor Selection Process:

The Department used a formal competitive RFP process. The notice was placed on the Targeted Small Business website April 26, 2010 and was then issued and placed on the DAS bid opportunities website on April 28, 2010. Bid submittals were due to the DNR – Air Quality Bureau on May 13, 2010.

A three person team of Air Quality staff met on May 17, 2010 to evaluate the submitted proposals. The following contractors were selected to enter into an individual contract with the Department.

Viking Lake State Park – entering into 6 year contract \$41,520 (6,920/year)

The DNR received two proposals in response to this RFP. One of the proposals was deemed incomplete due to missing required documents. The one remaining proposal was reviewed by the evaluation team and deemed the applicant qualified due to previous experience (6+ years) with handling air monitoring filter/sampler data and transmittal of data to UHL.

Sherry Carrick
2236 210th Street
Stanton, IA 51573

Mason City - entering into 6 year contract \$84,360 (\$14,060/year)

Only one proposal in response to this RFP was received by the DNR. The proposal was reviewed by the evaluation team and deemed the applicant qualified due to previous experience (12 years) with handling air monitoring filter/sampler data and transmittal of data to UHL.

Kathy Nuddleman
615 N. Washington Ave
Mason City, IA 50401

Emmetsburg - entering into 6 year contract \$32,160 (\$5,360/year)

Only one proposal in response to this RFP was received by the DNR. The proposal was reviewed by the evaluation team and deemed the applicant qualified due to previous experience (5 years) with handling air monitoring filter/sampler data and transmittal of data to UHL.

Paul Osterman
707 Harrison Street
Emmetsburg, IA 50536

Lake Sugema - entering into 6 year contract \$41,520 (6,920/year)

The DNR did not receive any submittals by the May 13th deadline. The RFP was re-posted with a new deadline of 12:00 PM CST May 24, 2010. Only one proposal in response to this RFP was received by the DNR. The proposal was reviewed by the evaluation team and deemed the applicant qualified due to previous experience (12 years) with handling air monitoring filter/sampler data and transmittal of data to UHL.

Mike Mitchell
440 E Cedar Street
Birmingham, IA 52535

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

APPROVED AS PRESENTED

CONTRACT – LINN COUNTY FOR EXECUTION OF THE STATE OF IOWA AIR POLLUTION CONTROL IMPLEMENTATION PLAN: LINN COUNTY

Christina Iiams, Program Planner in the Air Quality Bureau presented the following item.

Recommendations:

Commission approval is requested for a one year-service contract with the county government of Linn County; Cedar Rapids, IA. The contract will begin on July 1, 2010 and terminate on June 30, 2011. The total amount of this contract shall not exceed \$802,021. This contract is an Iowa Code Chapter 28E agreement.

Funding Source:

The statutory authority for the DNR to enter into this contract is 455B.145.

This contract will be funded through cost reimbursable payments funded by Title V program fees (not to exceed \$657,869), 105 federal grant dollars (not to exceed \$126,652), and 103 federal grant dollars (not to exceed \$17,500). Linn County has a funding commitment of \$214,185.00.

There is a state contribution decrease of \$31,513 from SFY 2010 mainly due to the removal of a one-time expense for a monitoring storage building.

Background:

The Linn County Air Quality Division will be responsible for the ongoing implementation of an air program within Linn County, as established under the requirements of this contract. The Linn County Air Quality Division has a certificate of acceptance pursuant to Iowa Code Section 455B.145, as implemented in 567 IAC Chapter 27.

Purpose:

The parties propose to enter into this Contract to ensure that Linn County meets the conditions necessary to retain a Local Program as specified in Iowa Code § 455B.145 and 567 Iowa Administrative Code (IAC) Chapter 27 and to specify the extent and manner of cooperation between the two agencies in conducting programs for the abatement, control, and prevention of air pollution within Linn County. Particular emphasis is placed on the collection and assessment of information regarding air quality, the permitting of sources of air emissions, the enforcement of emission limits, and the attainment and maintenance of ambient air quality standards.

Contractor Selection Process:

The DNR is allowed to contract with Linn County without using a competitive selection process pursuant to state law.

The DNR has chosen to continue to contract with Linn County for this project because 1) Successful implementation of an air program has been demonstrated by the continued attainment of air quality standards in Linn County, 2) Sources appreciate the local access they have

available to them, and 3) Linn County had a local program (including ordinances and enforcement in place) prior to the DNR's delegation from EPA for an air program.

Lorna Puntillo asked how permit fee money collected in Linn County is spent.

Jim McGraw said that it's put towards the matching fee.

Motion was made by Gene VerSteege to approve the contract with Linn County as presented. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT – POLK COUNTY FOR EXECUTION OF THE STATE OF IOWA AIR POLLUTION CONTROL IMPLEMENTATION PLAN: POLK COUNTY

Christina Iiams, in the Air Quality Bureau presented the following item.

Recommendations:

Commission approval is requested for a one year-service contract with the county government of Polk County; Des Moines, IA. The contract will begin on July 1, 2010 and terminate on June 30, 2011. The total amount of this contract shall not exceed \$809,560. This contract is an Iowa Code Chapter 28E agreement.

Funding Source:

The statutory authority for the DNR to enter into this contract is 455B.145.

This contract will be funded through cost reimbursable payments funded by Title V program fees (not to exceed \$618,522), 105 federal grant dollars (not to exceed \$171,038), and 103 federal grant dollars (not to exceed \$20,000). Polk County has a funding commitment of \$271,944.00.

There is a state contribution increase of \$26,079 and a Polk County funding commitment increase of \$35,599 from SFY 2010 mainly due to personnel/benefit costs and a one-time expense for a monitoring storage building.

Background:

The Polk County Air Quality Division will be responsible for the ongoing implementation of an air program within Polk County, as established under the requirements of this contract. The Polk County Air Quality Division has a certificate of acceptance pursuant to Iowa Code Section 455B.145, as implemented in 567 IAC Chapter 27.

Purpose:

The parties propose to enter into this Contract to ensure that Polk County meets the conditions necessary to retain a Local Program as specified in Iowa Code § 455B.145 and 567 Iowa Administrative Code (IAC) Chapter 27 and to specify the extent and manner of cooperation between the two agencies in conducting programs for the abatement, control, and prevention of air pollution within Polk County. Particular emphasis is placed on the collection and assessment

of information regarding air quality, the permitting of sources of air emissions, the enforcement of emission limits, and the attainment and maintenance of ambient air quality standards.

Contractor Selection Process:

The DNR is allowed to contract with Polk County without using a competitive selection process pursuant to state law.

The DNR has chosen to continue to contract with Polk County for this project because 1) Successful implementation of an air program has been demonstrated by the continued attainment of air quality standards in Polk County, 2) Sources appreciate the local access they have available to them, and 3) Polk County had a local program (including ordinances and enforcement in place) prior to the DNR's delegation from EPA for an air program

Motion was made by Lorna Puntillo to approve the contract with Polk County as presented. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT – UNIVERSITY OF IOWA FOR 2011 UHL SERVICES IN SUPPORT OF THE DNR AIR QUALITY BUREAU

Sean Fitzsimmons, Environmental Specialist Senior in the Air Quality Bureau presented the following item.

Recommendation:

The department requests Commission approval for a one year-service contract in the amount of \$2,079,078 with the University of Iowa Hygienic Laboratory (UHL) of Iowa City, Iowa. The contract begins on July 1, 2010 and ends on June 30, 2011.

Funding Sources:

Funding for this contract consists of federal 105 grant funds (\$121,137), federal 103 grant funds (\$379,084), air contaminant funds (\$1,253,857), and State "Environment First" Infrastructure funds (\$325,000).

Background:

Under Iowa Code 455B.133, the department has responsibility for conducting ambient air monitoring in the State of Iowa. For over thirty years, the department has contracted with UHL to perform this essential service. UHL currently operates most of the ambient air monitoring sites in Iowa. It also provides analytical and technical support for ambient air monitoring activities throughout the State. It weighs and determines the ionic composition of particulate samples and performs analysis of air samples for many toxic compounds found in urban air. UHL also provides analysis of asbestos samples gathered by DNR inspectors. The UHL quality assurance group conducts annual audits of UHL ambient air monitoring activities as well as those of the Local Programs. This contract provides for a continuation of these essential services.

Purpose:

The parties propose to enter into this contract for the purpose of retaining UHL to perform ambient monitoring and related services in support of the department's Air Quality Bureau.

Consulting Firm Selection Process:

Competitive bidding was not required for this contract in accordance with Iowa Code 455B.103, which directs the department to contract with other State agencies for services, if possible. Iowa Code 263.7 establishes environmental investigations as an essential duty of UHL, and UHL has considerable experience and expertise in this area.

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

APPROVED AS PRESENTED

DIRECTOR'S REMARKS

Director Leopold commented on the following:

- The Department has recently hired 3 new Law Enforcement Supervisors and 14 new Law Enforcement Conservation Officers. This is a great and exciting time for us. They have a lot of energy and passion for our natural resources.
- The USFWS is in the process of developing National Climate Change Centers across the U.S. The states will be divided into ecological features. I believe there will be eight different regions grouped with the same ecological features. They will be coordinating species inventory, mapping and predicting. This will cover all aspects affecting the environment. Some organizations involved include: Parks Service, Bureau of Land Management, USGS, USDA, EPA, Forest Service, USDOJ - Bureau of Reclamation and will be tied in closely with NGOs.
- Commissioner Dale Cochran has resigned from the Commission due to health reasons.
- Dee Bruemmer is our new Commissioner from Scott County and she will join us next month.

INFORMATION

BRUSH & WEED CONTROL SPECIALISTS, INC., NEW FARMERS DRAINAGE DISTRICT - ORAL ARGUMENT ON APPEAL OF ALJ'S PROPOSED DECISION

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

The Department issued an Administrative Order against New Farmers Drainage District (NFDD) and Brush & Weed Control Specialists, Inc. (BWCS) directing BWCS to pay fish restitution costs arising from a fish kill within the NFDD's drainage stream. The order also assessed administrative penalties against both the NFDD and BWCS. Both parties appealed the order. After an evidentiary hearing, Administrative Law Judge Margaret LaMarche issued a proposed decision dated May 27, 2009 affirming the Department's First Amended Administrative Order in part and modifying it in part. BWCS and NFDD filed timely appeals of the proposed decision and the Department filed a timely cross-appeal. All parties have submitted written briefs and requested oral argument before this Commission.

All Commission members at their May meeting were provided hard copies of the (1) Department's First Amended Administrative Order; (2) Judge LaMarche's Proposed Decision; and (3) the parties' written briefs. Prior to the May meeting, all Commission members were also provided by email an electronic copy of the hearing transcript and all exhibits entered into evidence at the hearing. Prior to the May meeting, Commission members were also provided an internet link to an electronic copy of the hearing transcript and exhibits so it can be viewed online.

Craig Levien, Attorney from Davenport representing Brush & Weed Control Specialists, Inc. made the following comments:

Brush & Weed Control Specialists has been in business for more than 35 years. There has never been a citation for a violation by the DNR or Department of Ag. They are a very reputable company. They have a deep understanding of what these chemicals do. They take this matter very seriously. AquaNeet was the chemical used. It only works on aquatic plants. The chemicals they use are also certified by EPA for areas near waterways.

Chuck Ackerman, the pesticide specialist in the Department of Ag admitted that after treatment of glyphosate there are no time limits as to when humans can drink, eat fish or swim from a sprayed waterway. Lannie Miller, a DNR Fisheries biologist said that he was not aware of one single fish killed from glyphosate in the state of Iowa. This is a very safe product.

There is no evidence or scientific proof that AquaNeet was the reason for the fish kill, even if over application. AquaNeet once it's sprayed, sticks to the plant. Also, there were no tests on the fish. The evidence did not include that. No scientific expert came in and investigated. This case is based solely on circumstantial evidence, which doesn't even hold up.

Matt Rhodes, former DNR employee, said that there are a lot of factors that can result in dissolved oxygen in the water. The chain of circumstantial evidence is not supportive. There is not a direct cause and effect.

Matt Rhodes contacted Bob Kessler, ISU scientists and quotes him as saying, "Glyphosate would not have affected the algae." That information was not revealed to us during the course of discovery. I've contacted Bob Kessler and he informed me that what the DNR is claiming just is not the case. It can not happen.

If over application is the argument that is being used for the fish kill then why is it that they found large amounts of algae still living even after application?

Brush & Weed Control are good company owners. They know the chemicals. They did not kill the fish in this case, there is no significant scientific data to prove this, therefore we ask that you reverse the ALJ's decision.

Dave Wornson, Attorney with the Department of Natural Resources made the following comments:

This is about the misapplication and over application of pesticides. We have no reason to believe that Brush & Weed Control has a good application history, however, it's undisputable that Brush & Weed Control applied glyphosate to this portion of stream in 2003, 2004, 2005 without any apparent fish kill. I would say that the reason was that when they applied the pesticide they applied it in stages, allowing for multiple applications along the stream. This allowed the stream to recover and for the fish to migrate to a different location. In this case, they applied the pesticide over a 7.2 mile stretch of stream continuously on Tuesday, Wednesday, Thursday and Friday until they were stopped by our fisheries biologists. The application was very different this time around. The ALJ took four months to review this case before making a decision. Judge LaMarche said that the circumstantial evidence in this case was very persuasive. The DNR found dead and dying fish all within the application area and within the time frame of application. In the areas outside of the 7.2 miles of affected stream the fish were fine.

Judge LaMarche noted that the fish died from oxygen depletion not from chemicals. Only the fish in the sprayed area were affected. The areas upstream of the sprayed area were normal. Based on those findings, Judge LaMarche concluded that this was not a natural fish kill. The next question was then what caused this kill. There was undisputed evidence that Brush & Weed Control violated the label instructions and applied larger amounts of glyphosate. The broadcast application applies over a solid area of land rather than just applying to spots. By looking at the photos, you can see that there are large areas of affected waterways indicating that broadcast application was the method used. Dr. Skopec with the DNR studied all of the scientific effects of glyphosate. There were a lot of studies that showed a negative effect on oxygen producing organism in the stream. The product label states in bold print that it can cause oxygen depletion and kill fish.

Craig Levien said that there was only one test done within the 7.2 mile stretch of application. One test. There were no dissolved oxygen readings on the test or temperature checks. You can not say with any certainty that glyphosate was the cause for the fish kills on the 7 mile stretch. There were no tests conducted for other contributors like fecal count or e-coli.

Motion was made by Lorna Puntillo to move into closed session pursuant to Iowa Code section 21.5(1)(f) to discuss the decision to be rendered in a contested case. Seconded by Susan Heathcote. Roll call vote went as follows: Paul Johnson – aye; Lorna Puntillo – aye; Susan Heathcote – aye; David Petty – aye; Gene VerSteege – aye; Marty Stimson – aye. Motion carried unanimously.

-----*The commission proceeded into closed session.*-----

Once back into open session Gene VerSteeg made a motion to affirm the Administrative Law Judge's decision based on the facts reviewed. Seconded by Susan Heathcote. Motion carried unanimously.

LAND APPLICATION SUMMARY PRESENTATION

Mike Wade with our DNR Field Office gave a presentation on land application of sludge/wastewater. Topics outlined included: the regulations of land application, goals, benefits, classification of sludge, separation distances from waterways and regulations. For the complete presentation, please visit <http://www.iowadnr.gov/epc/10jun15a.html>

INFORMATION ONLY

PSD & TITLE V GREENHOUSE GAS TAILORING RULE

Christine Paulson with DNR Air Quality gave a presentation on the PSD and Title V Greenhouse gas tailoring rule. Topics outlined included: the history of regulations, the need for tailoring, threshold permit limits, those who will be impacted by the rules and the rulemaking schedule. For the complete presentation, please visit <http://www.iowadnr.gov/epc/10jun15a.html>

The Department is providing to the Commission a presentation describing the recently finalized federal regulations for Greenhouse Gases, the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule (GHG Tailoring Rule). The presentation serves as the information item for the Department's proposed rulemaking to adopt the federal regulations.

Because the U.S. Environmental Protection Agency (EPA) did not finalize the GHG Tailoring Rule until May 13, 2010, the Department did not have sufficient time to review the final, federal rules and to prepare a Notice of Intended Action for information for this Commission meeting. However, in order have final, state rules in place prior to the January 2, 2011, effective date for the first phase of the federal GHG Tailoring Rule, the Department needs to begin the rulemaking process with a Notice of Intended Action at the July Commission meeting.

The Department initially proposed a rulemaking in late 2009 concurrent with the proposed, federal GHG Tailoring Rule to assure that the current thresholds for the Title V and the PSD program would not inadvertently trigger permitting requirements in Iowa. The Department held an informational meeting on December 8, 2009, and discussed the proposed federal and state rulemakings with stakeholders. In response to stakeholder comments and concerns, the Department withdrew the proposed rulemaking from consideration at the Commission's December 2009 meeting. At that time, the Department informed the Commission and stakeholders that the Department would wait until the federal GHG Tailoring was finalized

before initiating the rulemaking. Now that the federal GHG Tailoring Rule is finalized, the Department is re-starting the rulemaking process.

The presentation explains the federal GHG Tailoring Rule, the Department's proposed rulemaking schedule, and the Department's implementation plans. The Department plans to bring a Notice of Intended Action for decision to the Commission's July meeting.

INFORMATION ONLY

MONTHLY REPORTS

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

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

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

INFORMATION

GENERAL DISCUSSION

A map of the Shallow Lakes Restoration projects was distributed to the Commissioners.

Rich Leopold said that they we are not planning to dredge the shallow lakes. These lakes haven't been much more than just a marsh and never should or could be more than that because of their ecological makeup.

Wayne Gieselman discussed the following:

- This year is the 25th anniversary of the Groundwater Protection Act. We will be pulling together an internal group to put together a 5-year plan on re-evaluating the contents.

- The President's Cancer Report will be added to the August agenda with a presentation by Iowa Department of Public Health and DNR.

Legislative update – Sharon Tahtinen

- Bureau Chiefs are currently working on the proposed legislation for next year. The final draft needs to be submitted by September 3rd. The Governor's office will respond by October 1st on what legislative proposals will and will not go forward to the next session in January.
- July 21st is the joint NRC-EPC meeting. This will be an opportunity for Commissioners to give comments on proposed legislation and department policies.
- August 3rd is the stakeholders meeting to discuss proposed legislation.
- January 19th – Legislative breakfast at the Capitol

Commissioners requested that they discuss the EPC's role in contested cases. Commissioners would like to know why this role was originally "assigned" to them and how often the commission handles contested cases.

Gene VerSteege requested a summary of the public comments on the AFO rule as soon as they become available.

NEXT MEETING DATES

July 20, 2010 – DNR Air Quality building

July 21, 2010 – NRC/EPC Joint Meeting at the DNR Air Quality building

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Vice-Chairperson Marty Stimson adjourned the meeting at 4:10 p.m., Tuesday, June 15, 2010.

Richard A. Leopold, Director

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