

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
MARCH 16, 2010

INGRAM OFFICE BUILDING
7900 HICKMAN ROAD
WINDSOR HEIGHTS, IOWA

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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, March 16, 2010 at DNR Air Quality Building, Windsor Heights, Iowa.

COMMISSIONERS PRESENT

Gene Ver Steeg
Charlotte Hubbell, Chair
David Petty
Susan Heathcote
Paul Johnson – by phone
Martin Stimson, Vice Chair
Dale Cochran – by phone
Lorna Puntillo

ADOPTION OF AGENDA

Move up Item 12 – Chapter 21, 22 and 24; Air Quality Program Rules – Requirements for emissions inventories and for excess emissions reports up to directly after public comment.

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

APPROVED AS AMENDED

ELECTION OF INTERIM SECRETARY

Motion was made by David Petty to nominate Lorna Puntillo as interim Secretary. Seconded by Gene VerSteeg. Lorna Puntillo accepted. Motion carried unanimously.

LORNA PUNTILLO, SECRETARY

APPROVAL OF MINUTES

Susan Heathcote amended page 16 – Paul Johnson’s comments to read as “we shouldn’t be dumping concrete in lined landfills.”

Motion was made by Gene VerSteeg to approve the February 16th EPC minutes as amended. Seconded by David Petty. Motion carried unanimously.

APPROVED AS AMENDED

DIRECTORS REMARKS

Director Leopold mentioned the following items:

- The Department has been cut an additional \$370,000 dollars from the General Fund.
- Sustainable funding passed unanimously out of both the House and Senate, however, leadership has asked that the bill not be put out on the floor.
- There is proposed legislation to decrease the removal fee of rock from river beds from 0.25 cents to 0.10 cents. The idea behind this legislation is that it would help mitigate flooding.
 - Commissioners asked the Department to draft a letter for their approval and signature that would oppose this legislation. (It was later decided that this letter was no longer needed.)

INFORMATIONAL ONLY

PUBLIC PARTICIPATION

JOHN KALLEN, from MidAmerican Energy Company and Northern Natural Gas submitted the following comments.

- MidAmerican Energy and its sister company Northern Natural Gas recognize that the Title V program is an important part of the DNR's air program and that Title v funding is essential for the maintenance clean air in the state of Iowa.
- MidAmerican and Northern Natural Gas are very appreciative of the Air Quality bureau's transparent budget process which includes the active participation of fee payers.
- MidAmerican and Northern Natural Gas further recognize that t DNR Air Quality Bureau has increased funding requirements as a result of increases in personnel costs.
- However, MidAmerican and Northern Natural Gas have specific concerns about the long-term sustainability of DNR's funding program.
 - Last year the DNR came before the EPC to propose an increase in the Title V fee cap \$39 per ton of emissions to \$56 per ton projected our for at least 3 fiscal years.
 - However, just one year later the DNR is proposing to increase fees from the existing \$52 per ton to reach the limit of the just increased \$56 per ton fee cap.
 - For MidAmerican these fee increase have resulted in our annual costs increasing from \$1.6 million in 2007 to \$2.1 million in 2008 (and potentially \$2.2. million for 2009)
 - For Northern Natural Gas these fee increases have resulted in an increase from \$156,776 in 2007 to \$284,000 in 2008.
 - There appears to be no end in sight to continued and substantial fee increases.
- Presently Title V fees fund over 70% of the DNR's air budget. However, Title V fees were never intended to fund the majority of the air program.

- Additionally, under this current Title V funding formula regulated entities pay higher fees as they reduce their emissions (creating a disincentive for emission reduction projects). MidAmerican alone has spent \$400 million on non-mandated emission control equipment to reduce our emissions. As we reduce our emissions, our fees go up due to the declining emissions base under Title V.
- Many other states assess fees based on the services rendered by the agency such as construction permit fees. We urge the DNR to investigate other funding sources in order to ensure a sustainable air program for the long-term.

BOB HAFFNER, submitted the following comments.

We are asking for any help you may be able to give us, with the issue of wood burning furnaces, (which are the Outside Bryant wood furnace which did not pass EPA testing) We live within 125 feet of two furnaces at this time, at one point there were three.

We removed all wood heat sources in our home.

We covered vent in our home, in the attempt to block the smoke from coming into our home.

We started out by complaining to our neighbor, in which more furnaces were added.

We then went to our City Council, no action was taken, two of the owners of these furnaces are members of the City Council, and personal friends to our mayor. Please understand this was done in the burning season of 2007-08 and has continued.

We then went to the City Attorney.

Local County Attorney's Office – who didn't want to get involved.

Local Fire Department

Page County Sheriff's Department

Our daughter or we has contacted the following State and Federal Offices.

- Public Health – Carol was told just sell your House and move.
- Iowa Department of Natural Resources
- United States Senator Tom Harkin
- Representative/Senator
- Attorney General-Consumer Protection Division
- Environmental Protection Agency

We then hired an attorney have been to court with, the judge stating it is not a nuisance and we cannot recover on any damages.

Our homeowners insurance has paid on claims, but no doubt they will drop us soon.

The amount of damage to our home and our health issues are unbelievable. We are now aware of Section 567 (23.3) of Iowa Administrative Code and are asking you to enforce this.

With the research we have done, we have found most of the Northern State have either band or put strict regulations on these types of furnaces. We have also found parts of Iowa that have also been dealing with this issue.

Please understand we just want to be able to enjoy our property and home.

Commissioners asked the DNR Air Quality bureau to present them with their options to act.

KELLY JORGENSEN, with Ag Processing Inc. addressed item 12 – requirements for emissions inventories. The proposed rule changes in electronic submittal for reporting. We do not object to that requirement. We use electronic reporting whenever we can to help stream line our processes. The notice for decision will come at your April meeting and I believe that is a little early. All Title V sources would be required to use SPARS. In the ten years that it has been in existence there is only 50% utilization among the states. This is why it would be a good idea for the DNR to take a look at why this program is not being widely used. SPARS is cumbersome to use, outdated and difficult to import and export. Please work with the stakeholders to develop a solution.

LISA SCHMIDT, with Thompson Environmental Consulting is concerned with SPARS as the electronic system selected to be used. DNR has submitted a letter to EPA requesting approval of SPARS. They are still waiting to hear back. SPARS is a ten year old, out-dated, not user friendly. There are also issues with compatibility with computer operating systems. It makes more sense to wait.

SUE SCHAULS, an Environmental Consultant from Waterloo said that the junkyard in Latimer is not a member of the Iowa Automotive Recyclers. It is not typically of the auto recycling industry. I have developed the Iowa Certified Automotive Recyclers Environmental Program. (I-CARE) which many auto recycler industries in Iowa have implemented. We recycle all fluids and oils from vehicles for recycling.

(Copies of the I-CARE program were distributed to each Commissioner.)

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

PROPOSED RULE – CHAPTERS 21, 22, AND 24: AIR QUALITY PROGRAM RULES – REQUIREMENTS FOR EMISSIONS INVENTORIES AND FOR EXCESS EMISSIONS REPORTS

Christine Paulson, Environmental Program Supervisor for the Program Development Section submitted the following item.

The Notice of Intended Action is to amend Chapter 21 "Compliance," Chapter 22 "Controlling Pollution," and Chapter 24, "Excess Emissions" of 567 Iowa Administrative Code is being presented to the Commission for information. The Department plans to bring this Notice to the Commission for decision at the Commission's April meeting.

The purpose of the proposed rule changes is to phase-in electronic submittal for emissions inventory reporting and also to provide the option to submit initial excess emissions reports by e-mail.

Electronic Submittal of Emissions Inventories (Item 1 and Item 2)

Each year, Title V facilities (major sources) are required to submit documentation of their actual emissions from the previous calendar year to the Department. Every three years, certain minor sources (non-Title V facilities) must also submit documentation of actual emissions from the previous calendar year.

The Department must report emissions information from Title V facilities to the U.S. Environmental Protection Agency (EPA). Under EPA's Air Emissions Reporting Requirement (AERR), the Department annually reports actual emissions for the Title V facilities with the greatest potential to emit (PTE) for specific air pollutants. AERR also requires that the Department report the actual emissions from all Title V facilities to EPA every three years.

For the past ten years, the Department has offered regulated facilities and other customers an electronic permit application and emissions reporting system. The current system, known as the State Permitting and Air Reporting System, or SPARS, is a web-based program designed to allow citizens, industry and the public access to a wide array of air pollution control information. SPARS has several features, including the capability to update and submit Title V and minor source emissions inventories. Since SPARS' inception, the percentage of facilities submitting their emissions inventories electronically has increased, with recent electronic submittals at approximately fifty percent. The Department believes that it is now necessary and appropriate to transition to electronic submittal for all emissions inventories.

Current Challenges with Paper Emissions Inventories

The Department staff expends significant time each year indentifying, investigating and correcting the errors submitted on paper emissions inventories. Additionally, the Department has one full time equivalent (FTE) staff allocated to data entering paper emissions inventories information into SPARS. Although the Department employs thorough quality assurance/quality control (QA/QC) procedures to reduce data entry errors, mistakes are inevitable with human data entry. For instance, the Department submitted approximately 2.5 million data elements from

SPARS to EPA as part of the 2005 National Emissions Inventory. Even if this data was 99% correct, this would still result in 25,000 data fields with incorrect information.

Electronic Submittal - Benefits to Facilities and to the Public

When the Department first introduced SPARS, users needed to download SPARS software, save emissions inventory data onto a hard disk and send the hard disk inventory data to the Department. In response to stakeholders' recommendations, the Department transitioned to a web-based system in February 2006. Electronic submittal is now accessible and convenient, offering many benefits to regulated facilities and other stakeholders, including:

- **Reduced facility submittal errors:** SPARS has built-in checks such as mandatory field completion, drop-down fields and calculation fields to ensure that many of the common errors in paper inventories are reduced or eliminated. This allows the owner or operator to better quality assure their own data.
- **Help Desk:** The Department's staff provides free, one-on-one support to SPARS users during normal business hours.
- **SPARS emissions inventory training:** The Department provides free, hands-on SPARS emissions inventory workshops to customers. Several training sessions are offered each year.
- **Small business assistance:** The Department contracts with the Iowa Air Emissions Assistance Program (IAEAP) at the University of Northern Iowa to provide free assistance to qualifying small businesses with completing their emissions inventories. IAEAP works with each facility to prepare and submit the emissions inventory in SPARS.
- **Pre-built emissions inventory:** As a result of an extensive Department data-entry effort and inventory review, all Title V facilities have a pre-built emissions inventory in SPARS. Many minor sources also have pre-built facility and emissions unit information available in SPARS based on construction permit applications and previous emissions inventories.
- **Re-allocation of Department staff time to assist SPARS users:** Over the transition period to electronic submittal, the FTE staff time currently assigned to data enter paper inventories will be re-allocated to other, customer service priorities such as back-up for the SPARS Help Desk and assisting with SPARS training.
- **Data availability:** Electronic submittal will ensure quicker access to important emissions information. For instance, if a facility is required to prepare comprehensive dispersion modeling for a Prevention of Significant Deterioration (PSD) review, the Department can expeditiously provide the necessary, area-wide emissions data. The Department can also respond faster to requests for emissions information from citizens, the media, and other interested parties.

Electronic Submittal - Benefits to the Department

Transitioning to electronic submittal will assist the Department in fulfilling Governor's Executive Order 20 to generally increase state agency efficiency and productivity, and, more specifically, to increase electronic filings. Efforts that will improve the Department's performance include:

- **Reduction in data entry errors:** As staff data entry is phased out, data entry error and data interpretation will be reduced and eventually eliminated.

- **Meet EPA deadlines and requirements for data submittal:** Recently, EPA reduced the timeline for states to electronically submit to EPA actual emissions data for Title V facilities. Beginning with the 2009 inventory data, the Department will have only nine months from facility inventory submittal to compile, QA/QC and submit the required information to EPA by the reporting deadline. Electronic inventory submittal will better enable the Department to submit timely and accurate emissions data to EPA.
- **Reduction in Title V data entry back-log:** Department staff enters into SPARS facility and emissions information from paper Title V permit initial applications, renewals, and modifications. Currently, the Department has a back-log of over 100 Title V paper submittals that need to be entered into SPARS. The change to electronic inventory submittal will allow the Department to shift resources to reduce or eliminate this backlog.

Iowa citizens and stakeholders will also gain from electronic emissions inventory submittals. Emissions inventories are increasingly being used for national planning efforts such as interstate transportation of air pollution and the National Air Toxics Assessment (NATA). It is essential that air emissions data submitted to the Department can be relied on for state, regional and national air quality planning. Further, as EPA continues to issue more stringent air quality standards to protect public health, it is more important than ever that the Department's receive correct air emissions information as quickly as possible.

Proposed Implementation Schedule

The Department is proposing to phase-in mandatory electronic reporting over a several-year period. Title V facilities with PTEs at EPA annual reporting thresholds will be required to begin mandatory electronic submittal in the first year. All remaining Title V facilities would begin mandatory electronic submittal in the second year. Minor sources would begin mandatory electronic reporting in the third year.

As noted previously, Title V facilities currently have ready access to pre-built electronic emissions inventories in SPARS, and many minor sources have pre-built electronic facility and emissions unit information. The Department also plans to increase the number of hands-on training sessions offered each year during the transition period. These efforts, in conjunction with the Department's free and extensive individual assistance to facilities, should ensure that any initial burden to facilities to submit emissions inventories will be minimal.

The proposed amendments in the attached Notice of Intended Action establish the electronic submittal phase-in, as follows:

- Title V facilities with PTE's that meet EPA's annual reporting thresholds will be required to submit emissions inventories electronically beginning in 2011 (for actual emissions in calendar year 2010). All remaining Title V facility owners and operators will be required to begin submitting emissions inventories electronically in 2012. **(Item 2)**
- Minor sources would begin submitting emissions inventories electronically in 2013. **(Item 1)**. *NOTE:* Because the Department divides annual collection of minor sources inventory information into three regions of the state (eastern, central and western), facility owners and operators in each area submit an inventory once every three years. Electronic submittal would be required to begin for the first region in 2013 followed the other two regions in 2014 and 2015, respectively.

If an owner or operator is not able to comply with the electronic submittal requirements, the Department may, under its enforcement discretion, provide extensions or make other accommodations, as appropriate. An owner or operator may also apply for a variance as specified in Chapter 21 (567—21.2(455B)).

E-mail Option for Initial Report of Excess Emissions (Item 3 and Item 4)

Owners and operators of facilities that experience an incident of excess emissions and do not operate continuous monitoring equipment are required to provide both an oral and a written report of the incident within specified time frames. Currently, an oral report of excess emissions must be provided by phone or in-person to the appropriate Department field office.

The Department is proposing to allow owners and operators to make their initial excess emissions report to the Department by e-mail. In some cases, e-mail will be a more accurate and efficient method for owners and operators to provide these reports. Additionally, Department field staff will be able to receive the report in the field through mobile electronic devices. E-mail reporting will eliminate Department staff time in transcribing the initial report and will enable staff to more efficiently input the information into reports and databases. Since e-mail may not be available or convenient in all cases, owners and operators will still be allowed to make an initial report of excess emissions in-person or by telephone.

Owners and operators must still follow-up their initial excess emissions report with a written, hard-copy report. The Department is not proposing an e-mail option for written excess emissions reporting at this time due to EPA's requirements under the federal Cross-Media Electronic Reporting Rule (CROMERR). CROMERR requires special electronic verification that the Department has not yet established for excess emissions reports. The Department hopes to provide an electronic option for these reports in the future.

INFORMATION

Jason Marcel gave an update on why the department has chosen SPARS for the time being. We will continue to work with stakeholder to ensure that we understand their concerns and listen to their solutions.

Brian Hutchins gave an overview of the outdoor burning wood stoves and their air emissions in regards to Mr. and Mrs. Haffner's concern.

Catharine Fitzsimmons recommended that DNR Air Quality Bureau will assist the Haffner's with conducting a stack test, if it's even a possibility.

Charlotte Hubbell encouraged the Haffner's to appeal the judge's decision.

CONTRACT – UNIVERSITY OF HYGIENIC LABORATORY – WATER ASSESSMENT SERVICES STAFF SUPPORT

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

Recommendation:

The Department requests Commission approval of amendment #3 of this contract for an amount not to exceed \$95,230 to provide one full time employee from April 1, 2010 through August 31, 2011.

Funding Source:

The source of funds for the contact is a combination of storm water permit fees and clean water SRF administration funds.

Purpose:

This employee will replace Corey McCoid who was deployed by the Iowa National Guard for 18 to 24 months. The employee will support the Water Quality Bureau and the Iowa Geology and Water Survey Bureau.

Scope of Work:

The employee's duties include managing bureau budgets and inventory, coordinating the development of rules for WQ Bureau, coordinating development of strategic plans and reporting on bureau performance and completing technical projects as assigned by Bureau Chief.

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

APPROVED AS PRESENTED

FINAL RULE – AMEND IAC 567 CHAPTER 122 – CATHODE RAY TUBE DEVICE RECYCLING

Theresa Stiner, Environmental Specialist Senior for the Land Quality Bureau presented the following item.

Commission is asked to approve the Final Rule to amend 567-Chapter 122 “Cathode Ray Tube Device Recycling”. These amendments are being made to promote convenient cathode ray tube (CRT) recycling for consumers without compromising protection of the environment.

The proposed changes will:

- Remove the requirements for short term collection events.
- Replace the permit requirement for facilities that collect CRTs with a registration requirement.

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

No comments were received during the public comment period or at the public hearing.

Changes from what was published under notice have been made to simplify the reporting requirements for CRT recycling facilities. The CRT recycling facilities will only need to report the number or amount of CRT devices received. They will no longer need to track the number of televisions and monitors separately or the ratio of the CRTs that come from households versus businesses.

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

APPROVED AS PRESENTED

NOTICE OF INTENDED ACTION - 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 presented the following item.

The Department proposes 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 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 are scheduled for the last week in April. We anticipate presenting a final rule to the Commission for approval at the June 2010 meeting.

Commissioners expressed their concerns with the fiscal impact statement and the lack of clarity on what the figures actually mean.

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

APPROVED AS PRESENTED

IOWA STATEWIDE RURAL WELL WATER SURVEY PHASE 2 (SWRL2) - PRESENTED BY DR. PETER WEYER

SWRL2 was conducted from May 2006 through December 2008. A total of 473 private drinking water wells were sampled in 89 Iowa counties; 87% of the well owners responded to a well construction and site survey. SWRL2 objectives were to 1) estimate the status of drinking water quality in a samples of Iowa private rural wells, 2) look for trends in water quality since 1988-89 (original SWRL study) and 3) collect data on emerging contaminants in private well water. Water samples were analyzed at the University Hygienic Laboratory.

Statewide results on contaminants of public health interest (% of total 473 wells):

- Bacteria: 43% had total coli form bacteria, 19% had enterococci, 11% had E. coli
- Nitrate: 49% had nitrate; 12% had ≥ 10 mg/L (parts per million) nitrate-N, EPA's drinking water standard for public water supplies
- Arsenic: 48% had arsenic; 8% had arsenic ≥ 0.01 mg/L, EPA's drinking water standard for public water supplies
- Pesticides (parent compounds): 8% had atrazine at very low concentrations; 2% had metolachlor; acetochlor, alachlor and trifluralin were detected in <1% of wells

- Herbicide degradates (breakdown products of the parent compound): 11% had desethyl-atrazine, 11% had acetochlor ESA (ethane sulfonic acid), 27% had alachlor ESA, 33% had metolachlor ESA, and 8% had metolachlor OXA (oxanilic acid)

Statewide results on associations between contaminants and well survey variables:

- Shallower wells (<100 feet deep) had more total coli form bacteria detections and herbicide degradate detections than deeper wells
- Shallower wells (<100 feet deep) had higher nitrate concentrations than deeper wells herbicide degradate detections than newer wells
- Total coli form bacteria, enterococci and E. coli detections were more common in the northwest, southwest and south-central regions of the state
- Higher nitrate concentrations (≥ 10 mg/L nitrate-N) were more common in the northwest and southwest regions of the state

Water quality trends (from 116 well which were sampled in 1988-89 and in 2006):

- Total coli form bacteria detections were comparable (1988-89: 41%, 2006: 44%)
- Nitrate detections were more common in 1988-89 (58%) than in 2006 (47%)
- High nitrate concentrations (≥ 10 mg/L nitrate-N) were more common in 1988-89 (18%) than in 2006 (12%)

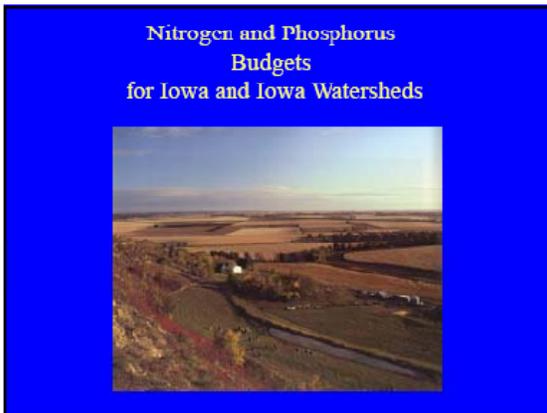
Recommendations:

- Utilize Grants to Counties Program funds to test well water samples for arsenic and herbicide degradates (in addition to testing for bacteria and nitrate)
- Develop a public information program (possible health effects, water treatment options, etc.) on arsenic, herbicide degradates and other drinking water contaminants for use by County Public/Environmental Health Departments

Commissioners asked questions about whether water quality has increased or decreased overall? Where does the arsenic come from? Why was ammonia not tested?

INFORMATION

IOWA'S NUTRIENT BUDGET 2010 UPDATE – PRESENTED BY IOWA GEOLOGICAL AND WATER SURVEY



Created in 2003 using available data from 1997-2001.
 –Report and Documentation available at:
<http://www.iowadnr.gov/water/nutrients/files/nbfull.pdf>

Advisory Team/Data:

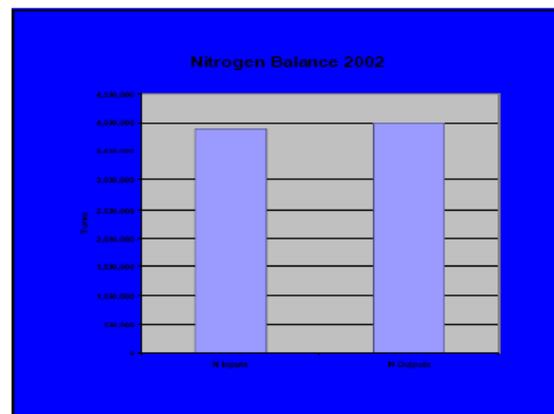
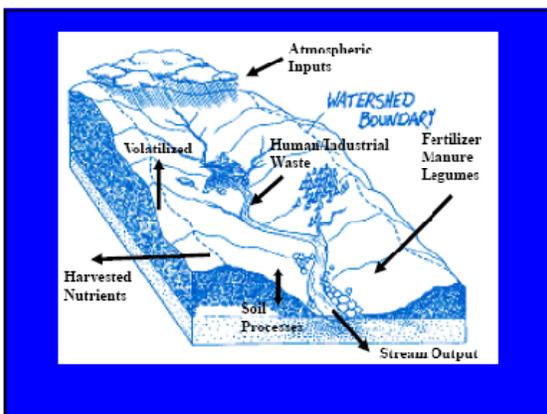
- Iowa Department of Natural Resources
- Iowa State University
- National Soil Tilth Laboratory
- Iowa Department of Agriculture and Land Stewardship
- National Agricultural Statistics Service

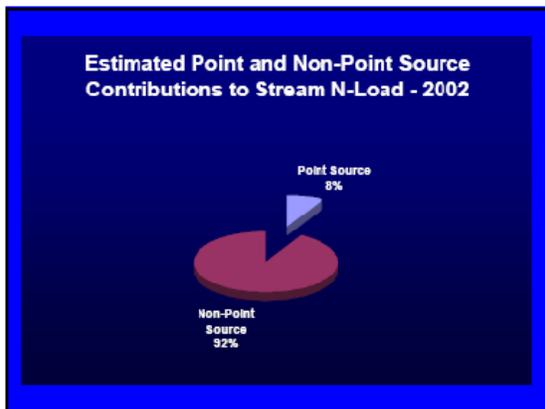
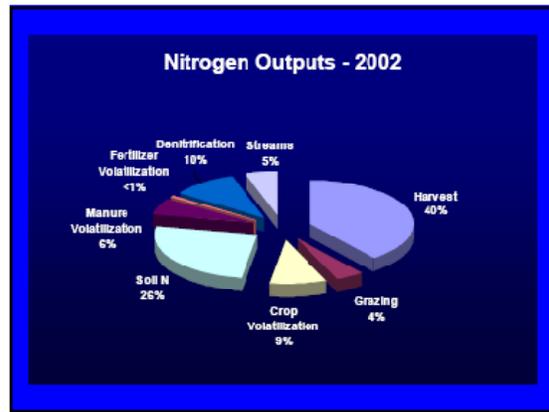
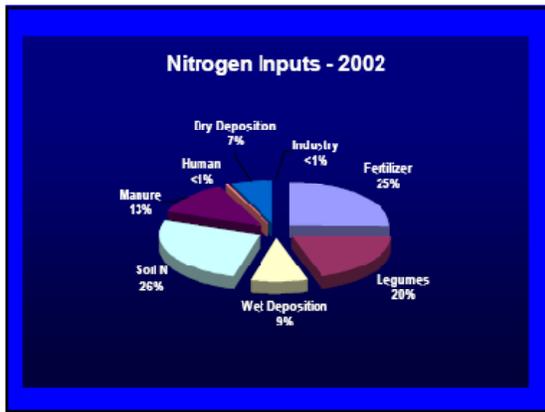
Why Nutrient budgets?

- Senate File 2293 (2002) directed DNR to develop a comprehensive nutrient budget for the state and its major watersheds, as part of developing a Nutrient Strategy.
- Assess Nutrient Inputs and Outputs to the State and its Watersheds
- Relate Budget Results to Water Quality Data: Nutrient Concentrations and Loads
- Provide a Mechanism for Understanding the Relationships between Nutrient Sources and Water Quality

Budget Approach

- USGS “Hypoxia Report” Budget used as a Template.
- State-Level estimates prepared first to provide overview.
- County-level and localized data added in a GIS-based system, and used to construct watershed-level budgets.
- Data for inputs and outputs are from the period 1997 through 2001; so we are looking at a “typical” one-year snapshot of nutrient fluxes.



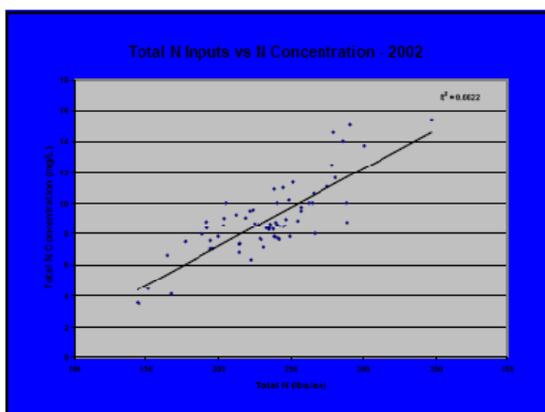


Water Quality – Nutrient Input Relationships

On a watershed basis, there was a statistically significant relationship between stream nitrogen concentrations and:

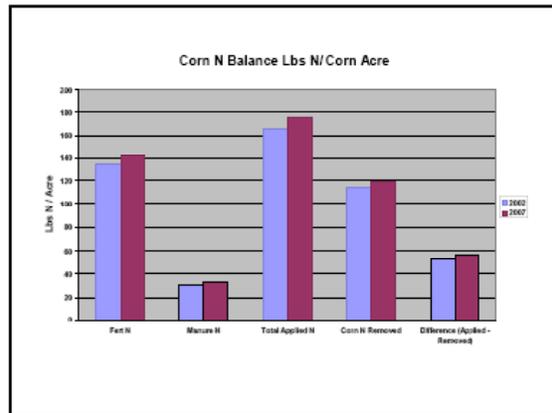
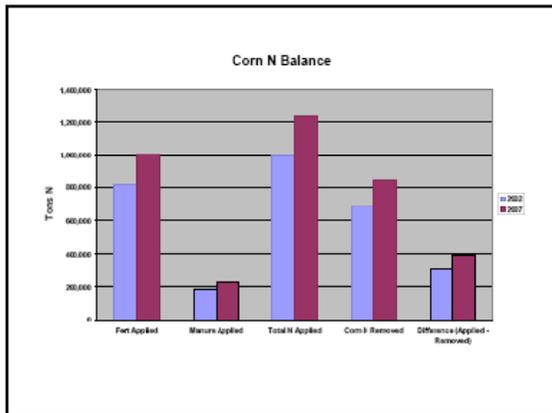
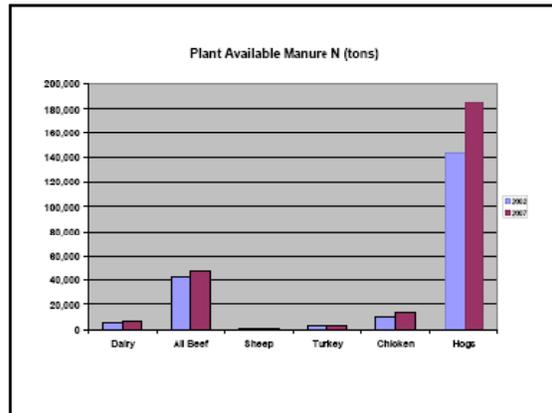
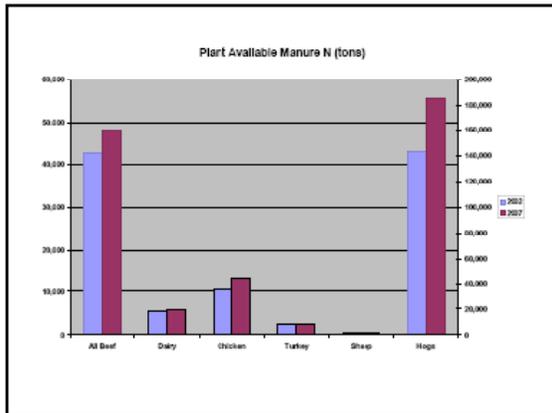
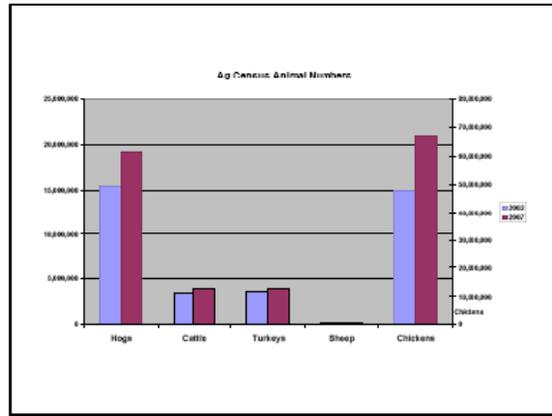
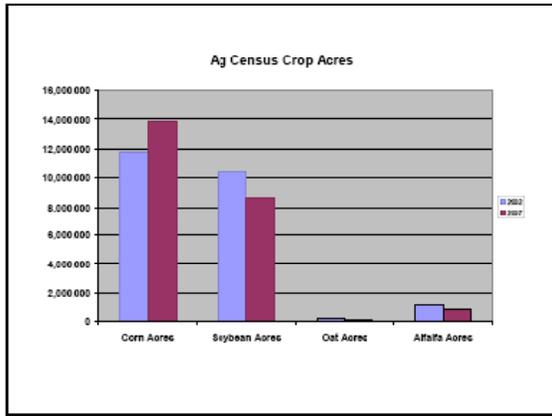
- Fertilizer
- Manure
- Soil (Mineralized)
- Legume
- Total N
- Overall input-output balance

Fertilizer-Manure-Soil-Legume N are mainly row-crop related factors, and are about 85% of total inputs.



Update to Nutrient Budget 2002 to 2007

- USDA Ag Census 2007
- IDALS Fertilizer Distribution CY 2007
- DNR AFO Database

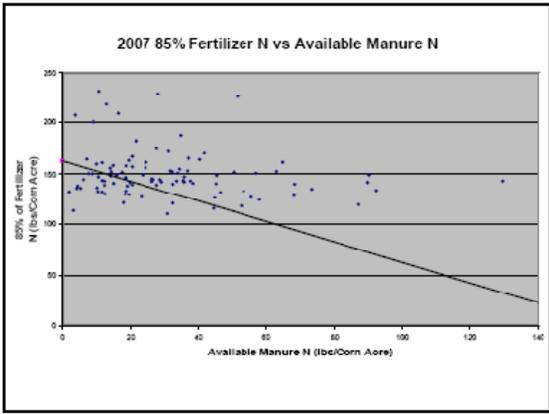
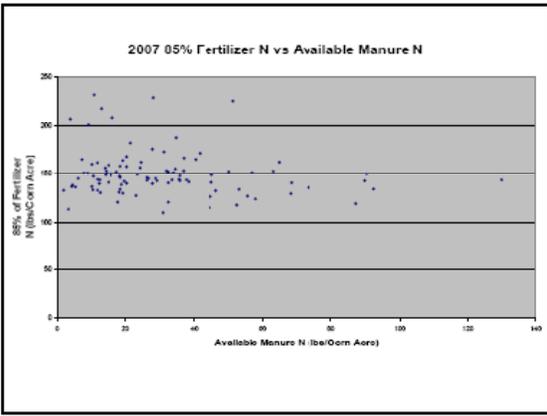


Corn Fertilization Rates

- 2002 Corn/Bean Rate – 130.4 lbs/ac
- 2002 Corn/Corn Rate – 180.4 lbs/ac (10% of acres)
- 2002 Average Rate/corn ac – 135 lbs

- 2007 Corn/Bean Rate – 129.7 lbs/ac
- 2007 Corn/Corn Rate – 179.7 lbs/ac (27% of acres)
- 2007 Average Rate/corn ac – 143 lbs

- ISU Recommendations
- Corn/Bean – 100-150 lbs/ac
- Corn/Corn – 150-200 lbs/ac
- For 2007 corn/corn and corn/bean rotations, maximum recommendation averages 163 lbs/acre statewide
- Corn on manured soils 0-90 lbs/ac



Preliminary observations comparing 2002 and 2007

- Corn acres have increased while soybean acres have decreased
- Fertilizer amounts have increased proportionately to corn acre increase
- Amount of manure is also increasing
- The data show no decline in nitrogen fertilizer applications in response to increased manure-N inputs
- Over-application of nitrogen increases stream nitrogen concentrations

Lorna Puntillo said that this information will be key for presentation in meetings and collaborative efforts with AG industries.

Richard Leopold said that this is an incredible tool to be able to drive our state management of agriculture.

INFORMATION

APPEAL OF PROPOSED CONTESTED CASE DECISION – DWAYNE CHRISTIANSEN

Kelli Book, Attorney for the Department presented the following comments:

Clay Swanson, Environmental Specialist Senior from DNR Field Office 2 in Mason City and Jeff VanSteenberg from the DNR Field office were also present.

Today I am here to request that the Commission affirm a proposed decision in the Dwayne Christiansen case. In June 2009, the Department issued an Administrative Order to Dwayne Christiansen for failing to timely submit a complete 2009 Manure Management Plan update with compliance fees and a Phosphorus Index. Mr. Christiansen appealed the order and on December 14, 2009, an administrative hearing was held. On December 16, 2009, the administrative law judge issued a Proposed Decision. In the Proposed Decision, the administrative law judge affirmed the violations and the \$3,000 administrative penalty. Mr. Christiansen appealed the Proposed Decision. Your packets include a copy of the Proposed Decision, Mr. Christiansen's Appeal of the Decision, and the Department's Appeal Brief, along with exhibits. The case file was also given to the Commission in advance of this meeting. The Proposed Decision and the Department's Appeal Brief presents an in-depth discussion of the Department's position, but I would like to take this time to summarize the Department's position and to allow for any questions that you may have for me, Clay, or Phyllis.

As you are aware animal feeding operations with manure management plans are required to submit yearly updates along with compliance fees. Every four years, the facilities are also required to submit a Phosphorus Index. For facilities that submitted the first original MMP prior to April 1, 2002, the first Phosphorus Index was due with the first MMP update after August 25, 2008.

Mr. Christiansen operates an animal feeding operation in Worth County, Iowa and the facility has approximately 1,200 nursery pigs and 3,600 grow-finish pigs for a total animal unit number of 1,560. Mr. Christiansen submitted his original MMP in July 2001, making his first Phosphorus Index due with his 2008 MMP update. His MMP update was established to be December 1 of each year.

On June 19, 2008, DNR Field Office 2 sent Mr. Christiansen a letter reminding him of the December 1, 2008 due date for his annual MMP update. The letter also explained that the Phosphorus Index, with soil samples would be due at that time as well. On October 14, 2008, DNR Field Office 2 sent Mr. Christiansen another letter reminding him that his complete MMP update with Phosphorus Index was due December 1, 2008.

On November 26, 2008, Mr. Christiansen contacted the field office and stated he would not be able to collect the soil samples for the Phosphorus Index because of the weather and he would not be able to submit the MMP update by December 1, 2008. Mr. Christiansen spoke to Ms. Maskarina and at no point during the conversation was an extension granted.

On December 12, 2008, DNR issued a Notice of Violation letter to Mr. Christiansen for failing to timely submit the MMP update with Phosphorus Index by December 1, 2008. The letter clearly stated that the information was to be submitted by December 31, 2008 to avoid a

compliance action and a monetary penalty. On January 16, 2009, DNR issued a Notice of Referral letter to Mr. Christiansen indicating the matter would be referred for further enforcement.

On February 5, 2009, Mr. Christiansen submitted the MMP update, compliance fees and Phosphorus Index to DNR Field Office.

Mr. Christiansen's MMP update and compliance fees were due December 1 of each year and in accordance with the rules, the first phosphorus index was due December 1, 2008. The field office sent two letter reminding Mr. Christiansen of the deadline. Also the field office sent a Notice of Violation letter to Mr. Christiansen indicating he had until December 31, 2008 to submit the required information. The MMP update, compliance fees, and Phosphorus Index were not submitted until February 5, 2009. It is clear that Mr. Christiansen failed to comply with the regulations to submit a timely MMP update, compliance fees and the Phosphorus Index.

During the hearing, Mr. Christiansen stated that he obtained soil samples in 2006 and 2007 but chose not to submit them because he did not believe the sample would provide an accurate accounting of the phosphorus use due to heavy rains in 2008. However, Mr. Swanson testified that the samples from 2006 and 2007 could have been submitted for the 2008 MMP update with Phosphorus Index.

In Mr. Christiansen's appeals he states that his understanding was that the DNR had granted him an extension. At no time did anyone from the field office grant Mr. Christiansen an extension. Ms. Maskarina testified that extensions are not generally granted and that there was no extension given in Mr. Christiansen's case. At no point did Mr. Christiansen provide any evidence showing that there had been an extension.

The administrative law judge held that Mr. Christiansen did not submit a timely annual MMP update with a Phosphorus Index as required by the Department's rules.

Mr. Christiansen was given several reminder letters about the deadline. He could have submitted the older soil samples to satisfy the requirements and then update the information with the newer samples. Mr. Christiansen failed to submit a timely 2008 MMP update with a Phosphorus Index and compliance fees. The violations stated in Administrative Order 2009-AFO-25 should be affirmed.

The penalty assessed in the order is justified under the factors listed in 567 IAC 10. The administrative law judge stated that based on the analysis of the three factors (economic benefit, gravity, and culpability) that she could not conclude the Department erred in the assessment of the penalty. In looking at the economic benefit the soil sampling costly and a time consuming process. Mr. Christiansen was notified of the requirements in June 2008. He gained an economic benefit over those producers who timely collected the samples as well as those who timely submitted the update and compliance fee.

Several factors went into the determination of the gravity assessment. The MMP update and Phosphorus Index are crucial aspects to the animal feeding operation program. They ensure that

the animal; feeding operation had adequate production land available so that manure can be properly land applied in order to prevent over application of manure. The MMP update and Phosphorus Index are important tools to the producer and to the DNR to ensure proper land application. If proper monitoring is not occurring, nutrients can go to a waterway.

The DNR also took into consideration the culpability associated with the violations. All producers are responsible for knowing and complying with the rules. Agriculture is a rapidly changing environment and a producer must be aware of the regulations his facility is subject to. As with any business in the state of Iowa, producers must be aware of the regulations and must comply with the regulations. Mr. Christiansen admitted during his testimony that he was very aware of the requirements. The field office also sent the reminder letter at least six months before the due date.

The penalty assessment was made in accordance with 567 IAC 10 and was affirmed by the administrative law judge. The full penalty of \$3,000.00 should be affirmed.

Based on the factors discussed as well as those in the Proposed Decision and the Department's Appeal Brief, the Department requests that the Commission affirm the Proposed Decision issued on December 16, 2009. If you have any questions, we will be happy to answer them.

Dwayne Christiansen submitted and read his comments to the Commission.

Today I would like to request that my fine be dismissed. I feel it is excessive. I've had a MMP in place since July 2001 and I was late in submitting my new plan because of the flooding and having to wait to take soil samples. I didn't want to create a MMP that doesn't have the proper soil levels, it wouldn't give me the correct data. I thought I did what was correct due to the circumstances caused by record flooding. I feel the DNR needs to become more flexible when dealing with conditions caused by delayed harvest due to unusual weather events. Again, I would ask that you reconsider the penalties that are before me.

Motion was made by Susan Heathcote to reduce the penalty from \$3,000 to \$1,500 because of mitigating circumstances. Seconded by Gene VerSteeg. Roll call vote went as follows: David Petty – aye; Susan Heathcote – aye; Gene VerSteeg – aye; Marty Stimson – aye; Paul Johnson – nay; Dale Cochran – nay; Lorna Puntillo – nay; Charlotte Hubbell – aye. Motion carried.

ACTION TAKEN

REFERRAL TO THE ATTORNEY GENERAL – SEBERGAN PIGS, INC. (LEE COUNTY) – ANIMAL FEEDING OPERATIONS

Kelli Book, Attorney for the Department presented the following comments:

This afternoon Josh Sobaski, DNR Field Office 6 environmental specialist and Dennis Ostwinkle, DNR Field Office 6 supervisor are here to answer questions you may have about this

facility or its history. The Department is requesting that the Commission refer Sebergan Pigs, Inc. to the Attorney General's Office because of the facility's failure to comply with the freeboard requirements; its failure to maintain a current manure management plan; and its failure to comply with provisions of a previous administrative order. In addition to the current violations, Sebergan Pigs has an extensive history of violations, including at least six Notice of Violation letters and two previous administrative enforcement actions for the same violations as the current violations.

Sebergan Pigs owns an animal feeding operation located in Lee County, Iowa. The most recent MMP indicates the facility has 900 swine, with a two-cell unformed manure storage structure. The manure storage structure is less than 200 feet from a water of the state.

The regulations require that manure stored in an earthen manure storage structure must maintain a minimum of two feet of freeboard in the structure. On October 30, 2009, DNR Field Office 6 conducted an inspection at the facility and determined there was less than two feet of freeboard in the manure storage structures. As shown by the photographs on pages 5 and 6 of the litigation report there was about 4 inches of freeboard. Additionally, in January 2010, the facility submitted the quarterly freeboard levels for the basins to the field office. The report indicates that the freeboard in the north cell has been less than two feet since the week of October 12, 2009. The specific freeboard levels are shown on page 4 of the litigation report.

If these had been Sebergan Pigs only freeboard exceedances, the DNR likely would not be standing before the Commission today. But Sebergan Pigs has had ongoing violations of the freeboard requirements. Administrative Order No. 2004-AFO-98 was issued to the facility on August 11, 2004. The order was issued for the freeboard violations that had been observed by DNR Field Office 6 during three different inspections on May 7, 2002, March 20, 2003, and June 8, 2004. Notice of Violation letters had been issued for each of the inspections. The order required the facility to maintain at least two feet of freeboard at all times, remove all trees, cut the weeds and maintain the grass on the structure at all times, submit a MMP and yearly updates, and to pay an administrative penalty of \$2,000.00.

On June 15, 2007, DNR and Sebergan Pigs entered into Administrative Consent Order No. 2007-AFO-18. This consent order was entered into to address freeboard violations discovered by DNR Field Office 6 during inspections on December 30, 2004, March 15, 2005, and April 12, 2006. Notice of Violation letters were issued for the December and March inspections. The consent order also included violations of the facility's MMP in that the facility had not included all fields in the plan. The consent order required Sebergan to determine the lowest point in the each basin cell and establish a permanent device to observe the freeboard, to submit quarterly reports to the field office indicating weekly freeboard measurements, and to pay an administrative penalty of \$7,500.00.

In addition to the freeboard exceedances, during the October 30, 2009 inspection the field office also discovered that Sebergan Pigs was applying manure to a field that was not included in his MMP plan. This was the second time that Sebergan Pigs had been cited for failing to include all fields in the MMP. The first time was during the February 16, 2007 DNR Field Office 6 inspection.

This is Sebergan Pig's third referral from enforcement in the past six years. The October 30, 2009 inspection along with the quarterly reports submitted in January 2010 indicate that Sebergan has currently failed to maintain adequate freeboard in the basins since at least the beginning of October 2009. In addition to the current violations, Sebergan Pigs has had a consistent issue with maintaining the two feet of freeboard requirement. During at least six inspections at the facility between 2002 and 2007, the field office has discovered freeboard exceedances. The DNR requests referral to the Attorney General's Office because of Sebergan Pigs ongoing violations of the freeboard requirements. After two administrative orders since 2004, the Department believes that referral to the Attorney General's Office is the most appropriate enforcement action to proceed with.

Eldon McAfee, Attorney representing Sebergan Pigs. Lee Peeper and Dave Benil are present with me today. We are not denying the freeboard violations or the fact that manure was applied on fields that did not have an updated MMP. There have been issues between the DNR and my clients and how those discussions occurred. On behalf of Sebergan we don't believe the violations rise to the level of Attorney General. We understand that there have been violations of the freeboard however, it never ran over. These freeboard violations occurred in 2008, and we all know that 2008 was a bad year for weather and the constant rain did not help with keeping the levels below freeboard. Sebergan continues to move forward and plans to dredge out the solids to allow more room. Due to the weather related circumstances and efforts of improving, we ask that you do not refer this matter to the Attorney General but rather enter into an agreement with the DNR.

Motion was made by Marty Stimson to refer Sebergan Pigs, Inc. to the Attorney General. Seconded by Lorna Puntillo. Roll call vote went as follows: Susan Heathcote – aye; Marty Stimson – aye; Paul Johnson – aye; Dale Cochran – aye; David Petty – nay; Gene VerSteeg – nay; Lorna Puntillo – aye; Charlotte Hubbell – aye. Motion carried.

REFERRED

REFERRAL TO THE ATTORNEY GENERAL - JERRY PASSEHL

Tamara Mullen, Attorney for the Department made the following comments:

Michelle Johnson from DNR Field Office 2 is here today to answer any questions.

The Department is requesting the Commission vote to refer Mr. Passehl to the AG's office for ongoing violations and breach of a consent order.

Since 2003, Mr. Passehl has been issued 5 NOV's, one issued after the consent order was signed and its deadline for compliance had passed. Mr. Passehl has been repeatedly found in violation of the State's Appliance Demanufacturing Permit rules, storm water NPDES rules, waste tire stock piling rules, and hazardous condition law.

These violations are the basis for *ALL* 5 NOVs *and* the consent order.

Mr. Passehl signed a consent order in December 2008 agreeing to come into compliance on these issues and pay a \$3,000 penalty.

The compliance deadline for the order was March 2009, one year ago this month.

As of the Department's last inspection in November 2009, Mr. Passehl still had soil contamination, unsorted tires, expired NPDES permit, and has paid only \$304.95 on his \$3,000 penalty.

After the initial breach of the consent order in March 2009, the Department agreed to a 2-week window of compliance a payment plan of \$500/month.

He has failed to comply with these agreements.

If you recall, I stood before you in September 2009 to seek a referral at that time. Mr. Passehl asked for a delay to hire an attorney. It was granted.

The Department renewed negotiations with Mr. Passehl in exchange for not pursuing the referral. HE agreed to finalize his cleanup efforts and to pay the penalty in full after a personal auction of his private car collection.

Neither happened. Again, the last inspection in November 2009 showed violations remain, and no further payments on the penalty have been made.

The Department has worked extensively with Mr. Passehl on this issue. There is no reason, after 7 years, 5 NOVs, a breached consent order, and 2 post-breach agreements, to believe further administrative action will yield a different result.

Referrals to the AG's office help uphold the INTEGRITY of the administrative process.

If the administrative process loses credibility as an effective enforcement tool, it ceases to function as designed.

Mr. Passehl has shown willful disregard to the laws and rules of the State applicable to this matter.

Further and heightened action is needed. I respectfully request the Commission refer Mr. Passehl.

Mr. Jerry Passehl said that he has been in the recycling of cars and their parts for years. I have zoned areas for recycling cars, oil and other parts. Random dumping of tires and other things has occurred on my property and ditches. I filed these reports with the Sheriff's office.

I currently have 450 tires in a pile, of which only 100 are unusable.

After the DNR visited my site during the winter (which they did not walk through the yard or look at the tire pile), I did not receive any follow up from DNR on what they wanted me to do. They've never measured the tire pile. I'm planning on cleaning up this site. We've gone through a tough winter and things are getting greener, I want to clean this up.

Motion was made by David Petty to refer Mr. Passehl to the Attorney General's office. Seconded by Marty Stimson. Motion carried unanimously.

REFERRED

APPEAL OF PROPOSED CONTESTED CASE DECISION – PORT LOUISA LAND CO.

Randy Clark, Attorney with the DNR Legal Services Bureau presented the following information.

On July 11, 2007, the DNR objected to a variance request by Port Louisa Land Co. (Port Louisa). Port Louisa had sought approval to construct additional cabins in the floodway of the Mississippi River which would violate Louisa County's Department approved Flood Plain Management Ordinance. Port Louisa appealed the DNR's objection to the variance request and a hearing on this matter was held on June 15, 2009.

A Proposed Decision was issued on July 1, 2009. The Proposed Decision affirmed the DNR's objection to the variance request. On July 17, 2009, Port Louisa appealed the Proposed Decision. Port Louisa filed a brief on December 7, 2009 and the DNR filed a reply brief on February 23, 2010.

March is flood awareness month. Part of that awareness is determining whether or not flood insurance is available, which is not available through private companies but through FEMA. The DNR primarily regulates flood plain development on a case-by-case basis by reviewing individual applications and delegating its regulatory authority to a local government. Louisa County has adopted a Flood Plain Ordinance, which complies with FEMA standards. Once the DNR delegates its regulatory authority the DNR is no longer required to review individual applications. Local governments must enforce the requirements in their ordinances in order to be eligible for flood insurances and other benefits of the National Flood Insurance Program. All approved local government ordinances, including Louisa County, must prohibit human habitation in the floodway and not allow any structure in the floodway which would result in an increase in the 100 year flood level. Port Louisa's request to construct additional cabins in the Mississippi River floodway could not be granted under Louisa County's ordinance, so the Appellant submitted a variance request to Louisa County. Under DNR's rule, this variance request must be sent to the DNR for approval. The DNR then reviews to ensure rules and standards are being met and followed. The DNR's review of the Port Louisa's variance request concluded that the project not quality for the granting of a variance because it did not

demonstrate unnecessary hardship, did not show it was not contrary to the public interests and did not show it was not contrary to the floodway construction prohibition.

Port Louisa asserts that the DNR does not conduct an investigation, look at the property or make any measurements but merely requires the applicant to hire an expert, “who must use a hydraulic model to show a mathematical calculation which is based upon measurements and some mathematical model.”

If this project were to proceed, it could have devastating impacts to the Louisa County residences that need flood insurance.

We ask that you affirm the Administrative Law Judge’s decision.

Tim Wink, representing Port Louisa Land Co. asked the commission to overrule the proposed decision and grant a variance. The local people don’t understand why the additional cabins can’t be constructed and we are asking for your help. The statute mandates that the DNR be involved in this process. The area we are talking about is so huge. There is no habitation anywhere nearby. I don’t believe we are covered under any flood insurance. We appreciate your time and consideration of our request.

Motion was made by Dale Cochran to affirm the Administrative Law Judge’s decision. Seconded by David Petty. Motion carried unanimously.

ACTION TAKEN

REFERRALS TO THE ATTORNEY GENERAL – PAUL NAGLE

Kelli Book, Attorney for the Department made the following comments:

The Department is requesting that the Commission refer Paul Nagle to the Attorney General’s Office for asbestos NESHAP violations in connection with an abatement project in Ames, Iowa. This afternoon, Tom Wuehr, DNR air quality environmental specialist is here. Mr. Wuehr conducted the investigation where the asbestos violations were discovered.

Inhalation of asbestos fibers can cause lung disease, asbestosis and cancer, specifically mesothelioma. There is no known safe level of exposure to asbestos and because of that federal regulations are in place to regulate the removal and disposal of asbestos during renovation and demolitions of commercial buildings.

In order to ensure proper asbestos removal is done, the regulations require that all regulated asbestos be removed prior to the start of any activity that would disturb it. The asbestos containing material is required to remain adequately wet during the removal and until properly contained. By requiring that all asbestos containing material be removed and remain wet until collection reduces the possibility of asbestos fibers being released into the air.

Once the asbestos containing material is removed, the material must be kept wet until it is sealed in leak tight containers.

At the time of the violations, Mr. Nagel was a licensed asbestos abatement contractor. He was hired by Sargent Enterprises to remove asbestos from the Sargent and Todd Building in Ames, Iowa prior to demolition.

The building owners had an asbestos inspection performed in July 2009. The inspection was conducted as part of the upcoming demolition. The inspections revealed several areas of the building that contained asbestos. The ceiling texture, the dry wall texture, the wall adhesive, and the flooring material all contained regulated amounts of asbestos.

On September 24, 2009, Mr. Wuehr was contacted by Iowa OSHA about the improper asbestos removal at the building. An OSHA inspector had been on site and observed the lack of containment and a large amount of debris around the building. Mr. Nagle informed the OSHA inspector that he had just removed the drywall in some of the interior rooms. During the walk through of the building, the OSHA inspector observed dry debris scattered throughout the building. During the inspection, the asbestos containing ceiling material and the wall adhesive had been disturbed and removed. The flooring material had not been removed yet. The OSHA inspector noted bags of asbestos material sitting in the middle of the dry debris. The OSHA inspector requested that DNR also conduct an inspection.

On September 25, 2009, Mr. Wuehr went to the building. He observed a large amount of dry debris scattered throughout the building. There are pictures of this debris on pages 5 and 6 of the litigation report. As you can see the debris is in a dry condition and could easily be disturbed. From the asbestos inspection prior to the demolition it is known that the ceiling texture and dry wall adhesive contained asbestos and that material was scattered with the debris throughout the building. There was no containment limiting access to the building. Mr. Wuehr noted a pass through window that had been created to move the debris from the building. A picture of the window is on page 6 of the litigation report. Mr. Wuehr collected a sample of the debris from the window and caulking which contained 15% Chrysotile asbestos.

Following DNR and OSHA's investigations, the owner of the building hired another asbestos abatement contractor who cleaned up the debris and removed the remaining of the asbestos prior to the demolition.

The DNR believes that the violations discovered by Mr. Wuehr alone would warrant referral to the Attorney General's Office. Mr. Nagle failed to keep all asbestos material adequately wet until contained and he failed to seal all asbestos material in leak tight containers. As a result of the violations discovered at the Ames project, Iowa OSHA took an enforcement action against Mr. Nagle for failing to set up containment and for failing to clean and dispose of all asbestos. As part of the enforcement action, Mr. Nagle was required to surrender his asbestos supervisor license and asbestos abatement permit to Iowa OSHA.

To further strengthened the DNR's request for referral, Mr. Nagle has a long history of asbestos violations. Mr. Nagle received two Letters of Deficiency in August 1991 for two asbestos projects.

Mr. Nagle has also received four Notice of Violation letters from the DNR. In September 1992 he was issued a Notice of Violation letter for notification deficiencies for a project in Clarion.

In April 1993, Mr. Nagle was issued a Notice of Violation letter for failing to remove all asbestos containing material prior to demolition for a project in Des Moines. This Notice of Violation led to Administrative Order No. 94-AQ-07, issued on January 24, 1994. The order required Mr. Nagle to stop any and all illegal removal and waste disposal of asbestos material and to comply with the regulations in the future. He was also required to pay an administrative penalty.

In February 1997, Mr. Nagle was issued a Notice of Violation letter for an asbestos project in Ames.

In December 2001, Mr. Nagle was issued a Notice of Violation letter for failing to keep all asbestos material wet and failing to seal all material in leak tight containers. The Notice of Violation led to Administrative Order No. 2002-AQ-20, issued on April 4, 2002. The order required Mr. Nagle to stop any and all illegal removal and waste disposal of asbestos material and to comply with the regulations in the future. He was also required to pay an administrative penalty.

Based on the information presented today as well as the information provided in the litigation report, the Department requests that the Commission refer Mr. Nagle to the Attorney General's Office for appropriate enforcement action. The Department requests that Mr. Nagle be referred because he failed to keep all asbestos material adequately wet and failed to contain the material in leak tight containers during an abatement project at the Sargent and Todd building in Ames, Iowa. These are not only serious violations of the DNR's asbestos regulations, but also violations of the two previous administrative orders issued to Mr. Nagle in that they both required Mr. Nagle to comply with the asbestos regulations in the future. In addition to Mr. Nagle's current violations he has a long asbestos history that had resulted in at least two Notice of Deficiency letters from EPA, at least four Notice of Violation letters from DNR, two administrative orders from the DNR and the removal Mr. Nagle's asbestos licenses' by Iowa OSHA. If you have any questions, Tom or I will be happy to answer them. Thank You.

Motion was made by Marty Stimson to refer Paul Nagle to the Attorney General's Office. Seconded by Susan Heathcote. Motion carried unanimously

REFERRED

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

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

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

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

During FY 2009, federal stimulus funds through the American Recovery and Reinvestment Act (ARRA) were allocated to Iowa's SRF programs. These funds were approved separately in the IUP supplement on the May 2009 Commission agenda. These funds were all allocated by February 17, 2010. The U.S. Environmental Protection Agency created a process for reallocation if any states could not use all of their ARRA funds. While it appears unlikely that there will be reallocated funds, the IUP updates identify projects that may be able to meet the new deadline of June 17, 2010 to be under contract with a signed loan agreement. This determination is based only on project readiness; once the amount of any reallocated money is known, disadvantaged community criteria will be applied to these projects to determine the amount of SRF loan forgiveness. Green projects will still be provided with 20% loan forgiveness based on funding availability.

The fourth quarter updates to the FY 2010 IUPs also include new projects and revised information about sources and uses of funding for the base SRF programs.

The CWSRF provides low-interest loans for wastewater and storm water infrastructure improvements and nonpoint source water quality projects. The fourth quarter update to the FY 2010 IUP shows project requests totaling \$659 million, plus \$29.5 million for non-point source projects.

The DWSRF provides low-interest loans to public water supplies to protect public health and improve infrastructure. The fourth quarter update to the FY 2010 IUP shows funding requests totaling \$259 million.

The amended Sources and Uses tables as of January 2010 for both CWSRF and DWSRF show that funds are available or obtainable to provide anticipated disbursements.

The fourth quarter CWSRF update includes changes to the uses of non-program income. Additional funds will be provided to the LiDAR project and for field office wastewater compliance activities, and funds will also be used for wastewater engineering project review for non-SRF projects.

A public meeting was held February 4, 2010 to receive comments on the proposed IUP updates. No stakeholders attended the hearing. The written comment period closed on February 11, 2010. No written comments were received. Several projects were added to the CWSRF priority list after the public comment period when it was determined that they were left off the list in error.

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

APPROVED AS PRESENTED

NOTICE OF TERMINATION OF RULE MAKING – CHAPTER 61 – NUTRIENT WATER QUALITY STANDARDS FOR LAKES TO PROTECT RECREATIONAL USES

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

The department is requesting that the commission terminate the rule making action for establishing nutrient water quality standards for lakes to protect recreational uses. After public hearings and consultation with stakeholder groups (Iowa Environmental Council, Izaak Walton League, Raccoon River, Sierra Club, DSM Waterworks), it was decided that substantive changes need to be made to the rule. The revisions planned will change the character of the rule enough to justify a new notice of intended action. The changes will also require some additional research by the department so amending the current notice would not be practical. The two remaining public hearings that were rescheduled for March 18, 2010, will be canceled.

The Notice of Intended Action was approved by the commission on November 17, 2009, and published in the Iowa Administrative Bulletin as ARC 8397B on December 16, 2009.

Mike Burkart with ISU lead the efforts of the Nutrient Science Advisory committee.

Susan Heathcote stressed the importance of keeping these rules moving forward.

Director Leopold said that Karl Brooks, Regional EPA Administrator is very supportive of these standards coming forth.

Motion was made by Susan Heathcote to rescind the rulemaking as proposed. Seconded by Lorna Puntillo. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT AMENDMENT WITH IDALS DIVISION OF SOIL CONSERVATION FOR THE SILVER CREEK WATERSHED PROJECT

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

Recommendations:

Commission approval is requested for a 2.5-year contract amendment with the Iowa Department of Agriculture and Land Stewardship Division of Soil Conservation (IDALS DSC) to implement watershed improvement practices through the Silver Creek Watershed Project, administered by the Clayton County Soil and Water Conservation District (SWCD). The Clayton SWCD recently completed an EPA-approved Watershed Management Plan (WMP) to identify watershed improvement practices needed to restore impairments in Silver Creek, through a previous contract between DNR and IDALS DSC. The purpose of the contract amendment is to begin implementing the practices identified in the WMP, through a contract amendment for additional funding and additional time. The total combined amount of the previous contract and contract amendment shall not exceed \$302,200.

Funding Source:

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

Background:

The following contract amendment is presented for approval:

Silver Creek Watershed Project (IDALS DSC contract amendment)	\$289,050
Silver Creek WMP (previously approved contract)	\$13,150
Total	\$302,200

Purpose:

The parties propose to enter into this contract amendment for the purpose of implementing watershed improvement practices through the Silver Creek Watershed Project.

Contractor Selection Process:

This project was chosen using a grant proposal application and committee review process.

Watershed Project Contract Amendment Summary

Contract Amendment: Silver Creek Watershed Project

Original Contract Amount: \$13,150

Original Contract Timeframe: January 1, 2010 to June 30, 2010

Amended Contract Amount: \$302,200

Amended Timeframe: January 1, 2010 to December 31, 2012

Summary: This contract amendment will provide an additional \$289,050 and an additional two and a half years in Section 319 funding to the Silver Creek Watershed Project for the purpose of implementing Best Management Practices. The project is funded jointly by DNR Section 319 and IDALS DSC funding, and is administered through the Clayton SWCD.

Silver Creek is a warm water stream located in northwest Clayton County, Iowa. The watershed includes a total of 17,991 acres (28.1 square miles), extending east from Luana to the outskirts of Monona, to a point where Silver Creek empties into Roberts Creek about three miles northwest of St. Olaf. Silver Creek was first added to the Section 303(d) Impaired Waters List in 2002 following biological sampling in 2000. It was determined that the Silver Creek biological community was impaired based on assessment of the fish and benthic macroinvertebrate communities, and the impairment was primarily caused by excessive sediment and ammonia. The Stressor Identification for Silver Creek was completed in December, 2007, and the TMDL was submitted to EPA for approval in February 2010.

The primary objectives in the Silver Creek watershed are: 1) Promote stream corridor and sinkhole protection along critical areas of the watershed, and install buffer practices on 40% of the Silver Creek stream channel; 2) Reduce sediment delivery in targeted areas; and 3) Implement an I&E program that will increase public understanding of water quality issues and encourage involvement and participation in water quality programs. To achieve these objectives the following BMPs will be offered: CRP, livestock exclusion fencing, pasture management, streambank stabilization, animal waste storage structures, terraces, grassed waterways, and sediment control basins.

Susan Heathcote asked how many TMDLs have and will get an implementation plan.

DNR staff agreed to get that information to the Commissioners.

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

APPROVED AS PRESENTED

AIR QUALITY - TITLE V FEE BUDGET REVIEW

Wendy Rains, Environmental Specialist Senior in the Air Quality Bureau presented the following item.

The Commission will be asked to consider the SFY 2011 Title V budget in anticipation of setting the annual Title V fee at the May Commission meeting. The Air Quality Bureau (Bureau) budget is summarized in the attachment for information. Expenditures paid from the Title V fee fund are included in the budget. A summary of anticipated revenues is outlined at the end of the budget. A description of all expenditure areas and funding sources is listed below.

The Title V budget cycle begins each December as the Bureau estimates the upcoming budgetary needs. Staff meet with a representative group of the core Title V fee payers each January to discuss the budget. This year the Bureau met with a core group of Title V fee payers on January 21, 2010. By March 31, sources required to obtain Title V Operating Permits submit annual emissions statements for the previous calendar year. The Bureau totals these emissions and provides that information to the Commission no later than the May meeting. The Commission will then be asked to set the fee based on the program budget.

A Title V operating permit is required for those facilities with potential emissions that exceed the major stationary source thresholds. A major stationary source is a facility that has the potential to emit 100 tons per year (tpy) or more of any air pollutant; or the potential to emit 10 tpy or more of any individual hazardous air pollutant; or the potential to emit 25 tpy or more of any combination of hazardous air pollutants. Currently Iowa has approximately 275 major stationary sources, also referred to as Title V facilities. Examples of Title V facilities include electric utilities, grain processors, cement plants, and manufacturing operations.

The Title V fee is based on the first 4,000 tons of each regulated air pollutant emitted each year from each major stationary source in the state. Regulated pollutants include: particulate matter less than 10 micrometers in diameter (PM₁₀) and particulate matter less than 2.5 micrometers in diameter (PM_{2.5}), sulfur dioxide (SO₂), nitrogen oxides (NO_x), volatile organic compounds (VOC), lead (Pb), and hazardous air pollutants (HAP). The fee is used to support the development and administration of activities associated with major sources subject to the Title V Operating Permit Program.

Overall Program Funding - Clean Air Act (CAA) section 105 money is awarded to the department through a Performance Partnership Grant (PPG) with the EPA. The PPG is the financial component of the Performance Partnership Agreement (PPA). The department negotiates the PPG on an annual cycle while the PPA is negotiated on a two-year cycle. The PPA contains the mutually agreed upon goals that the EPA and DNR will work together to achieve during the two year agreement period. For air quality, the tasks that must be accomplished to achieve the agreed upon goals are contained in the 105 work plan, which is an attachment to the PPA. As indicated in Table 1, CAA section 105 funds require state matching dollars whereas CAA section 103 funds do not. No Title V money is included in the PPG.

Table1. Summary of Cost Centers and Funding Sources

Program Area	Expenditures (Cost Center)	Funding Source*
Air Title V includes		
	1430	TV Fees
Legal Services		
IT Support	3520	TV Fees
Title V Operating Permit Program	7230	TV Fees
Title V Field Program	7421	TV Fees
Air Quality Program includes:		
Air Quality central office base program	7220	CAA 105 & GF
PM 2.5 Monitoring network	7240	CAA 103
Greenhouse Gas Activities	7250	Env. First/TV Fees

Air Quality field office base program	7419	CAA 105 & GF
Ambient Air Monitoring	17HA	Env. First
Diesel Emission Reduction Grants	7260 & 7270	Federal Grant

- * TV Fees – Title V fees
 - CAA 105 – Clean Air Act section 105 grant with a state match required
 - CAA 103 – Clean Air Act section 103 grant with no state match required
 - Env. First – Funding under the state Environment First Fund
 - GF – Legislatively appropriated General Funds or other state funds
 - Federal Grants – federal diesel emission reduction grants

Carryover Funds - The Bureau has been working each year since the program’s inception to develop a budget that more accurately reflects the amount of funding required to implement the Title V program. In past years, the budget was planned with approximately a one percent reserve, however, the carry over funds have accumulated each year to an amount greater than 1%. The Bureau implemented measures in SFY 2009 to reduce the amount carried over into SFY 2010. Approximately \$236,000 was carried forward from SFY 2009 to SFY 2010 with a projected ending SFY 2010 balance of approximately \$60,000. The Bureau projects to carry forward approximately \$130,000, instead of the \$60,000, into SFY 2011, due to anticipated lower personnel costs.

Program Changes - The Bureau reassigned one FTE from the review of minor source emission inventories to major source inventories during SFY 2010. Significant errors were being found in inventories submitted by major source facilities. Major source emissions inventories are increasingly being used for national planning efforts such as interstate transportation of air pollution. Additional review is essential to quality assure the data submitted to the Bureau as it is relied on for both national and regional planning. The data will be essential as non-attainment becomes increasingly more likely.

Given the continued importance of major source emissions inventories, the Bureau proposes to maintain this position in Title V and move up to 0.5 – 1.0 FTE of an existing position in the emission inventory section. These positions are partially offset by the removal of one FTE due to a new funding mechanism for communication staff. A recent kaizen event recommended funding communication staff by indirect rates rather than each program area or bureau providing dedicated funding.

Cost Savings Measures – In January 2010, the Department of Administrative Services renegotiated the lease for the 7900 Hickman location resulting in a savings of approximately \$9,000 per year. The Bureau anticipates remaining at this location for part, if not all, of SYF 2011.

The Bureau is replacing some office equipment with leased equipment. The DNR’s Management Services Division has found cost savings with leasing certain equipment. The combination of the reduced building rental costs and new cost of leased equipment result in a net decrease of \$4,000.

One vehicle was not replaced in the current fiscal year, leaving the Bureau with 6 vehicles. The reduction in the Bureau’s fleet is not anticipated to adversely impact work activities. Vehicles

are needed primarily for asbestos inspections, stack test observations, and permitting assistance visits. In a typical year Bureau staff cumulatively will drive 100,000 miles. In 2009 staff drove 130,000 miles.

Ambient Air Monitoring Changes – The ambient air monitoring program continues to prepare for the many changes to federal ambient air quality standards. The ambient monitoring program projects minimal increases for SFY 2011. The equipment replacement deployment funded in the current year will be at approximately the midpoint of completion by the end of the year. The remaining equipment deployment will continue into SFY 2011. EPA may establish new monitoring requirements during the year which may require additional resources.

There continues to be a potential for significant change in the federal Clean Air Act (CAA) Section 103 grant that supports PM 2.5 monitoring. The PM 2.5 laboratory analysis, estimated at over \$221,000 annually, has been funded by this grant. Given the ongoing uncertainty with the grant, the entire amount of the lab analysis will be tentatively budgeted by Title V fees. If the CAA 103 grant continues to pay for lab analysis, the Title V funds will be carried forward into the next year as it was this year.

Title V Budget Changes – The Bureau is projecting that the statewide calendar year emissions for 2009 will be lower than last year's emissions. The current estimate is 192,500 tons, which is 7,500 tons less than the prior year. Actual emissions data will be used in calculating the final Title V fee for the May Commission meeting.

Details on where changes to the budget are being proposed are listed in the attached spreadsheet in the "Notes" column.

1. **Personnel and indirect costs:** As the personnel costs have not been finalized, the Bureau is using an estimate of 3% increase for all FTE positions. The indirect costs are estimated to increase from 14.03% to 14.9% in SFY 2011. These levels may be impacted by legislative activity, such as the retirement incentive program.
2. **Professional Services:** The agreements are still under negotiation. Amounts listed reflect the preliminary estimates or the current year's amounts.

Summary – Total Title V Fund expenditures are proposed to be increased from the current SFY 2010 budget levels by 1.8% or \$193,000 in the SFY 2011 budget. The current estimate for Title V tonnage anticipates a decline of 7,500 tons, or 3.8%, from 200,000 tons last year to 192,500 tons. The projected decline in emissions results in nearly \$340,000 in reduced revenue. The estimated carry forward amount of \$130,000 is approximately \$100,000 less than the prior year. Estimated interest for SFY 2011 has also been lowered by \$50,000. The fee is proposed to increase by \$4.00, or 7.7%, from \$52.00 per ton to \$56.00 per ton. The Commission will be asked to set the fee in May based on actual emissions data and a final draft budget.

INFORMATION

FINAL RULE– CHAPTER 15 – CROSS MEDIA ELECTRONIC REPORTING

Jason Marcel, Environmental Program Supervisor in the Air Quality Bureau presented the following item.

The Department is requesting that the Commission adopt Chapter 15 “Cross Media Electronic Reporting” of the Iowa Administrative Code.

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

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

Adoption of this rule is required for the Department’s CROMERR application(s) to EPA. The Department submitted its CROMERR application for an existing air quality electronic document receiving system on January 10, 2010.

The Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on January 13, 2010 as ARC 8467B. A public hearing was held on February 15, 2010. No comments were received during the public comment period.

If the Commission approves the final rules, the Adopted & Filed rulemaking will be published in the Iowa Administrative Code on April 7, 2010, and will become effective on May 12, 2010.

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

APPROVED AS PRESENTED

CONTRACT –IT DATABASE CONTRACT FOR FLOOD PLAIN MANAGEMENT

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

Recommendation:

The Department requests Commission approval of a contract to develop a Flood Plain Management Database with *QCI for not to exceed \$147,500.*

Background:

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

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

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

Funding Source:

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

Purpose:

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

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

Consulting Firm Selection Process for the Flood Plain Management Database:

- February 18: Technology Governance Board Full Approval
- February 19: Issue RFP to Targeted Small Businesses
- February 23: Email RFP to list of ITQ contractors and post on DAS and DNR web sites
- February 26: Intent to Bid Form and Questions due
- March 1: Questions & answers provided
- March 12: Proposals due

- March 15: Evaluation & Selection
- March 16: Environmental Protection Commission Contract Request for Approval
- March 22: Contractor start
- September 30: Implementation

Scope of Work:

For the scope of work development requirements, see the attached software requirements specifications.

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

APPROVED AS PRESENTED

MONTHLY REPORTS

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

The Commission discussed their May EPC meeting in Sioux Center. Possible tours may include a dairy farm, open feedlots, water and irrigation.

NEXT MEETING DATES

April 20, 2010 – Windsor Heights

ADJOURNMENT

Motion was made by Marty Stimson to adjourn the meeting. Seconded by David Petty. With no further business to come before the Environmental Protection Commission, Chairperson Charlotte Hubbell adjourned the meeting at 5:50 p.m., Tuesday, February 16, 2010.

Richard A. Leopold, Director

Charlotte Hubbell, Chair

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