

**MINUTES**  
**OF THE**  
**ENVIRONMENTAL PROTECTION COMMISSION**  
**MEETING**  
**OCTOBER 19, 2010**

**INGRAM OFFICE BUILDING**  
**7900 HICKMAN ROAD**  
**WINDSOR HEIGHTS, IOWA**

**RECORD COPY**

Filename: ADM 1-1-1  
Sender's initial: \_\_\_\_\_

## TABLE OF CONTENTS

Call to Order .....	1
Commissioners Present .....	1
Commissioners Absent .....	1
Adoption of Agenda.....	1
APPROVED AS AMENDED .....	1
Directors Remarks .....	1
INFORMATIONAL ONLY .....	2
Approval of Minutes .....	2
Contract – University of Northern Iowa for IOWATER program development.....	2
Obligation .....	4
APPROVED AS PRESENTED .....	5
Contract - IDALS Division of Soil Conservation for Watershed Improvement Project .....	5
APPROVED AS PRESENTED .....	6
Public Participation.....	6
John Kallen .....	6
Wally Taylor, .....	7
Jim Yungclas.....	7
Shari Hawk.....	8
Neila Seaman .....	8
Natalie Snyders .....	8
Judy Lonning .....	9
David Goodner.....	9
Bill Sherman .....	10
John Struznik .....	10
Grant Menke .....	10
Jack Troeger.....	12

Shannon Garretson.....	12
Dick Bird.....	13
Adam Mason.....	13
Final Rule – Chapter 61 – Water Quality Standards (Stream Reclassifications via Use Assessment and Use Attainability Analyses) .....	14
APPROVED AS AMENDED .....	17
Contract - IDALS-DSC for Nonpoint Source Program Basin Coordinator Staffing Assistance Contract.....	17
APPROVED AS PRESENTED .....	18
Final Rule - Chapters 22 and 33: Air Quality Program Rules – PSD and Title V Greenhouse Gas Tailoring Rule .....	18
APPROVED AS PRESENTED .....	26
Notice of Intended Action - Amendments to Chapter 65 - Animal Feeding Operations .....	27
INFORMATION .....	28
ICCI et al. Petition For Rulemaking .....	30
PETITION DENIED.....	33
2011 EPC Dates and Locations.....	33
APPROVED AS AMENDED .....	34
Monthly Reports .....	34
INFORMATION .....	34
General Discussion .....	34
Next Meeting Dates .....	35
Adjournment .....	35



**MEETING MINUTES**

**CALL TO ORDER**

The meeting of the Environmental Protection Commission was called to order by Secretary Lorna Puntillo at 10:00 a.m. on October 19, 2010 in the Ingram Office Building, Windsor Heights, Iowa.

**COMMISSIONERS PRESENT**

Gene Ver Steeg  
Charlotte Hubbell, Chair – arrived at 10:10 am  
David Petty  
Susan Heathcote  
Martin Stimson, Vice-Chair – arrived at 10:05 am  
Dee Bruemmer  
Lorna Puntillo, Secretary  
John Glenn

**COMMISSIONERS ABSENT**

Paul Johnson

**ADOPTION OF AGENDA**

Move up Item 9 – Final Rule – Chapter 61-Water Quality Standards to after public participation.

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

**APPROVED AS AMENDED**

**DIRECTORS REMARKS**

Interim Director Boddy gave an update on the following items:

- After an Emergency Disaster proclamation from Governor Culver, the Department is addressing problems associated with eroding sediment from the breach of the Lake Delhi dam. Initial remedies investigated were much more long-term, comprehensive and costly. It has only been in recent weeks that a more complete understanding has been gained of how quickly and unpredictably the erosion has been occurring, making it evident stabilization work must occur quickly. It is also imperative to get the work done before winter weather occurs. The work is intended to stop the severe impacts of what is known as a “head cut”. It is estimated that equivalent of 18,000 dump truck loads of sediment has already been released downstream of the dam. The funding for the emergency stabilization work will come from the Governor’s office.
- The Iowa Farm Bureau Federation has sued the Department and the Environmental Protection Commission related to the antidegradation rules. Their argument is based

on a conflict of interest of a Commissioner and validity of whether or not a Commissioner had Iowa residency during the vote.

- Karl Brooks, EPA Regional Administrator, will be visiting Des Moines next week and is open to an informal meeting with Commissioners if you are interested.

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

## **APPROVAL OF MINUTES**

### **July 20, 2010**

Susan Heathcote said that she wants to make sure that the discussion on the AFO/CAFO rule is completely captured during today's meeting.

Charlotte Hubbell said that on page 23 – Her comments should read as, “We should look at the factors in deciding whether or not an operation is a CAFO. How are the animals counted? Fed? Manure collected? And not just the single issue of how a facility is roofed.”

<i>Motion was made by Susan Heathcote to approve the July 20, 2010 minutes as amended. Seconded by David Petty. Motion carried unanimously.</i>
---

### **August 17, 2010**

<i>Motion was made by Gene VerSteege to approve the August 17, 2010 minutes as presented. Seconded by Dee Bruemmer. Motion carried unanimously.</i>
---

### **September 21, 2010**

Minutes have been postponed until the October meeting.

## **CONTRACT – UNIVERSITY OF NORTHERN IOWA FOR IOWATER PROGRAM DEVELOPMENT**

Mary Skopec, Monitoring Coordinator of the Iowa Geological and Water Survey presented the following item.

**This agenda item was tabled from the September 2010 meeting pending further discussion.**

### **Recommendations**

Commission approval is requested for a 2 year-service contract with the University of Northern Iowa. The contract will begin on October 1, 2010 and terminate on September 30, 2012. The total amount of this contract shall not exceed \$236,709.30. 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 monies appropriated for the Water Quality Monitoring Program (Environment First Funding – cost code 04HA). Contracting Authority is the Code of Iowa 455B.103.

**Background**

In 1999, the Iowa DNR along with more than 50 partner agencies, non-governmental groups, and other entities came together to develop a volunteer monitoring program. The IOWATER citizen monitoring program has successfully assisted volunteers in collecting water quality data on local streams, rivers, lakes and ponds. With more than 3,000 trained volunteers, the IOWATER program has become an invaluable component of the DNR's stream and lake monitoring system.

**Purpose**

The parties propose to enter into this Contract for the purpose of retaining the Contractor to provide services to continue development of the IOWATER program: To advance the program, the IOWATER program seeks to work with UNI to develop a program to evaluate the attitudinal and behavior changes in volunteers resulting from participation in the IOWATER program. Results from the surveys will be used to modify the program to better meet volunteer goals. IOWATER has also been used in K-12 classrooms since its inception; however future use of IOWATER in the classroom will require aligning the IOWATER program elements with the Iowa Core Curriculum and the State Environmental Literacy Plan. UNI will assist the IOWATER program with developing pre-service and in-service training for teachers to facilitate the use of IOWATER to meet aspects of the education standards. Lastly, UNI will help develop a storm water monitoring module for use with municipalities, DOT, and developers to help collect transparency data on construction projects and to evaluate the effectiveness of these data to meet goals of reducing storm water impacts on receiving streams.

**Contractor Selection Process**

UNI was chosen using the intergovernmental agreement process. UNI was chosen for this project due to their expertise in evaluation and educational science.

STATEMENT of WORK

<p><b>Obligation</b></p> <p><b>Task 1: Study of IOWATER/Project AWARE volunteers</b>  <b>Description:</b> Conduct qualitative research to evaluate attitudes, perceptions and mobility of existing IOWATER volunteers. Assess and evaluate the service learning effectiveness related to IOWATER and Project AWARE</p> <p>The contractor shall provide the following deliverables:</p> <ol style="list-style-type: none"> <li>1. Monthly status report on activities, problems, or issues with task 1.</li> <li>2. Develop a post-AWARE survey to evaluate the effectiveness of Project AWARE to increase volunteer knowledge on water quality issues, natural resource issues, watershed awareness, and volunteer roles in improving local water bodies (as approved by the IOWATER coordinator and/or the section supervisor of the Watershed Monitoring and Assessment Section).</li> <li>3. Compile Results of the survey and provide tabular and graphical results to the IOWATER program.</li> <li>4. Integrate the post-AWARE survey results with the pre-event survey to evaluate the changes in attitude or behavior resulting from AWARE.</li> <li>5. Write a report summarizing the results (including tabular and graphical representation of each question), interpretation of survey results, and implications for the IOWATER/AWARE program and suggested future directions.</li> <li>6. Participate in Project AWARE to conduct interviews with volunteers regarding attitudes and behavior changes resulting from volunteer participation in AWARE.</li> <li>7. Provide an evaluation of the pre-event survey for the 2011 event with modifications specific to the county and water body selected by the AWARE team.</li> </ol>
<p><b>Task 2: Develop IOWATER for Educators</b>  <b>Description:</b> Align IOWATER with the Iowa Core Curriculum and State Environmental Literacy Plan</p> <p>The contractor shall provide the following deliverables:</p> <ol style="list-style-type: none"> <li>1. Monthly status report on activities, problems, or issues with task 2.</li> <li>2. Compile information on Iowa’s State Environmental Literacy Program and the Iowa Core Curriculum</li> <li>3. Conduct a comparison of the IOWATER program to the Iowa Core and the State Environmental Literacy plan in order to assess how IOWATER can align with the needs of each grade level. Compile the results of this evaluation in a report.</li> <li>4. Meet with IOWATER staff, selected educators, and area education agency professionals to review the comparison of IOWATER and curriculum information.</li> <li>5. Develop a pre-service and in-service training session for K-12 educators that incorporate IOWATER into the classroom.</li> <li>6. Pilot the pre-service/in-service training for 30 teachers. Conduct survey of teachers to evaluate their opinions of the training and relevancy to classroom requirements for Iowa Core or State Environmental Literacy.</li> </ol>
<p><b>Task 3: Develop Low Impact Development Monitoring</b>  <b>Description:</b> Work with existing low impact development programs in cities to monitor water quality and quantity from project areas and evaluate LID effectiveness. The contractor shall provide the following deliverables:</p> <ol style="list-style-type: none"> <li>1. Monthly status report on activities, problems, or issues with task 3.</li> <li>2. Develop monitoring plan and quality assurance project plan to assess the effectiveness of LID programs in Dubuque, Cedar Falls, Mason City and West Union.</li> <li>3. Meet with DNR staff to review and modify the draft plans and revise plans based on DNR approval.</li> <li>4. Compare turbidity as measured with electronic meters with data collected with a transparency tube.</li> <li>5. Conduct monitoring of LID practices in the above mentioned cities. Collect water volume, sediment, oil and grease, nutrients, and bacteria from LID practices.</li> <li>6. Prepare a report on the LID practice monitoring including graphical representations of the data, interpretations of the results and suggestions for future improvement.</li> </ol>

**Task 4: Develop IOWATER Storm water Module**

**Description:** Develop a monitoring module for storm water professionals to measure sediment levels in water discharged from storm water sites. The contractor shall provide the following deliverables:

1. Meet with a focus group of storm water professionals to discuss the program elements, elicit feedback on the program design, take notes on their suggestions and incorporate their suggestions in to the draft workshop design. Develop criteria for inclusion in module.
2. Implement the draft design with a pilot group. Use the criteria from deliverable #1 to evaluate the success of the program and suggest improvements before the workshop is finalized.
3. Write a report summarizing the results of the pilot workshop, interpretation of workshop results, implications for monitoring program and suggested future directions.

*Motion was made by Susan Heathcote to untable the contract with the University of Northern Iowa. Seconded by David Petty. Motion carried unanimously.*

Dee Bruemmer requested that the Department include more detailed contracts for future meetings so we can better understand the scope of the project.

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

**APPROVED AS PRESENTED**

**CONTRACT - IDALS DIVISION OF SOIL CONSERVATION FOR WATERSHED IMPROVEMENT PROJECT**

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

**Recommendations**

Commission approval is requested for a contract with the Iowa Department of Agriculture and Land Stewardship Division of Soil Conservation (IDALS DSC) for the Tete Des Morts Creek Phase 2 Project to implement watershed improvement practices. The total amount of this contract shall not exceed \$239,400.

The funding source for this contract will be funded through EPA Section 319 grant funds.

**Background**

The following contract is presented for approval:

Tete Des Morts Creek: Phase 2 Project (IDALS DSC)	\$239,400
Total	\$239,400

**Purpose**

The parties propose to enter into this contract for the purpose of implementing agricultural watershed educational efforts and watershed improvement practices for the project selected.

**Contractor Selection Process**

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

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

**APPROVED AS PRESENTED**

## **PUBLIC PARTICIPATION**

**JOHN KALLEN**, representing MidAmerician Energy presented the following comments:

MidAmerican Energy Company (“MidAmerican”) supports the Iowa Department of Natural Resources (“DNR”) decision to amend Chapters 22 and 33 of the Iowa Administrative Code to reflect EPA designated greenhouse gas (“CHG”) emission levels – i.e. the “GHG Tailoring Rule”.

However, MidAmerican has identified three specific areas of concern in these proposed amendments. MidAmerican has addressed our concerns to DNR in both written and public comments. However, as detailed in the rule comment responsiveness summary DNR staff has decided not to accept any of our proposed changes/recommendations.

First, the Tailoring Rule is facing legal challenges across the country by groups from all sides of the issue. No one can predict the ultimate outcome of the litigation. MidAmerican believes the Iowa rules should include a provision that automatically rescinds the Iowa rules if and when the federal Tailoring Rules are vacated. It is important that Iowa is not an outlier on this important issue, effectively enforcing a rule that has been vacated/stayed/rescinded at the federal level.

Second, the Tailoring Rule will require MidAmerican facilities to implement Best Available Control Technology (“BACT”) for greenhouse gases beginning in January 2011. However, EPA has not yet established what constitutes BACT and what technology will be required during any new construction and modification permitting reviews. Nor does an established control technology exist for greenhouse gases. This uncertainty negatively impacts regulated entities that need to incorporate BACT cost considerations as part of their long-term planning processes. MidAmerican submits that the DNR must work with regulated entities to provide clear deadlines and anticipated outcomes as part of the any implemented BACT guidance. MidAmerican recommends that the DNR provide an opportunity for a stakeholder workgroup to convene to address the development of BACT guidance and recommendations.

Third, MidAmerican is concerned that certain language in DNR’s proposed rules could cause confusion among stakeholders. As the rules are currently drafted, certain GHG emissions are “subject to regulation” under the Tailoring Rule, but would not be considered “regulated pollutants” for Title V fee applicability purposes. MidAmerican believes the distinction can be clarified without changing the intent of the rule.

In closing, MidAmerican continues to support DNR's efforts to amend the Iowa Administrative Code to comply with the federal GHG Tailoring Rule. However, MidAmerican hopes that the DNR and the EPC will consider our input before this rule is finalized.

**WALLY TAYLOR**, with the Iowa Chapter of the Sierra Club addressed the Animal Feeding Operations rule.

Item 65.4 - should apply to operation permits and require them when certain conditions are present.

Item 65.5(1) – We believe it should be repealed.

Item 65.5(2) – We believe it should be repealed.

Item 65.5(4) – We think the DNR should be required to carry out these functions rather than they *may*. This gives the DNR the discretion to do nothing.

Item 65.6(1) – certain stakeholders, including the Sierra Club suggested that there could be a non-exclusive list of factors in determining whether a CAFO proposes to discharge. These factors *may* include those referenced by EPA in its guidance issued in May of this year.

Item 65.6(2) – We believe there should be no certification process, this just allows people to keep on violating the law without ever having to get a NPDES permit.

Item 65.10 – We think the county supervisors should have more factors to consider than what's on the matrix.

We also support the ICCI petition.

**JIM YUNGCLAS**, ICCI member from Wright County said that his area of the state has shown the world what lack of regulation on factory farms does for the image of Iowa and how it affects everyone.

You wouldn't think in the aftermath of that I'd have to be here today pleading with public servants not to allow spreading of manure on frozen ground to protect the water we drink. Everyone knows it's a horrible practice that's why legislation was passed to put a stop to it.

But before I get into that I would like to read the Mission Statement of the DNR so everyone here understands what we are supposed to be about. This is what it says"

To conserve and enhance our natural resources in cooperation with individuals and organizations to improve the quality of life in Iowa and ensure a legacy for future generations.

Two weeks ago we buried my wife's aunt who was 108 and was born in the house where we live. In her life time our efficient agriculture system along with the guardians of our resources have shipped ½ of Iowa's topsoil down to the Gulf of Mexico, all in the name of economic development and cheap food.

I mentioned I am from Wright County and like dozens of other in the county, we live adjacent to more than one large corporate owned factory livestock operation. My wife and I are also at the age where we need to move to a place with less grass to mow, so we listed our farm and buildings with a realtor and were advised that the proximity of the factory farms would decrease the value of our property considerably.

Now I am here today asking you to pass the rule presented to you by ICCI to help protect the quality of water in the State. Now I ask you in the light of your mission and the deplorable protection of our environment, are that such a hard thing to do?

My wife and I, along with our neighbors and hundreds of citizens across this State live by these factories, breathe the foul air they produce, incur losses to our property and quality of life. And then you grant some of them an extension to spread manure on frozen ground so they suffer hardship and can continue to ruin our water quality and quality of life.

I do not understand the mentality that says this type of economic development is more important than the protection of the very resources we need for survival.

It is with that in mind that I ask you to pass this petition today.

**SHARI HAWK**, requested the Commission to support the ICCI petition. This will help protect our water so future generations can enjoy this resource. Our children and grandchildren will have dirtier water than what we have now if we don't do something about it. Please protect our water.

**NEILA SEAMAN**, with the Iowa Chapter of the Sierra Club addressed the water quality standards (stream reclassifications via Use Assessment and Use Attainability Analyses).

Once again, you will be faced with the decision to determine what will be secondary and primary recreation for stream segments.

For example, Otter Creek in Fayette and Buchanan County has five classifications for its 18 miles of stream. It's very confusing to the public when you break up the stream into various designations. We believe it should be protected at its' highest level for the entire stretch. Roberts Creek in Clayton County and Ames Creek are just a few other examples. This doesn't make sense. If kids play at the stream at one spot, it would seem natural that they are playing somewhere else in that stream.

Iowans want their rivers and streams to be protected at the fullest extent possible. Comments collected by the DNR included streams and rivers that were not included in this package because the coordinates required were not included. DNR stated in their responsiveness summary that many of the comments were too general to change DNR's recommendation.

**NATALIE SNYDERS**, representing the Iowa Citizens for Community Improvement presented the following comments regarding number 10 on the agenda – the rulemaking petition filed on August 19<sup>th</sup> by ICCI:

This rulemaking petition is requesting 2 things – strengthen the director's discretionary rule, which is what CCI members call the Water Protection Rule and close a 5-year exemption for the factory farm industry to use "not enough storage" as an emergency exemption for the ban on manure spreading on frozen and snow-covered ground.

I feel as though I'm addressing this posthumously, as it may be dead on arrival. From the looks for this meeting's agenda for your minds have already been made up.

It looks as though this is going to be swept under the rug. CCI members who have to live by factory farms can't just sweep this problem under the rug. They have to live with this problem every day.

Former director Richard Leopold stated over 1.5 years ago that DNR was going to work on strengthening the director's discretionary rule. Not only did you not move forward, but another group filed a rulemaking petition and you did nothing to address it.

You also know that spreading manure on frozen ground is a horrible practice that pollutes our waterways, yet you are going to continue to allow a loophole large enough for a manure truck to drive through.

When CCI members spoke before the Administrative Rules Review Committee asking them to place an objection on this loophole, there were also questions raised by some legislators about whether passing that rule change violated the intent of the legislation that was passed.

The reasons you have given for not moving forward are lack of staff time and other rulemaking priorities. I realize you are moving forward with the rulemaking related to NPDES permits – which, by the way, is rulemaking EPA is requiring after CCI along with Sierra Club filed a de-delegation petition because of the lack of action from DNR on that issue. You are finally updating those rules 3 years after our petition was filed.

So what is going to be the excuse the next time we ask you to strengthen the discretionary rule. How long will you wait? Until we have no clean water left? After people can't afford their water bills anymore because of the cost of cleaning it is so high?

If you vote to deny this petition, it will be a vote for the factory farm industry to keep polluting our waterways. And a vote against a better quality of life for all Iowans.

You think this is swept under the rug, but this won't be the last time you hear from us about this issue.

**JUDY LONNING**, ICCI member urged the Commission to support the ICCI petition that will protect our water and will stop the application of manure on frozen ground. We need to stop allowing the degrading of our water for profit. Most of this profit goes out of state. Please support our petition to protect our waters.

**DAVID GOODNER**, ICCI member from Des Moines spoke to the rule on application of manure on frozen or snow covered ground. We believe there is a large loophole that was written by the EPC. It's very broad and allows application of manure for 5 more years. There are 542 polluted waterways in Iowa. One of the worst states in the country. DNR has already stated that in the 2010 copy that the draft numbers are going to increase. There has been more than 700 manure

spills since 1995 and more than 60 since 2006. Our petition will strengthen the department's discretionary rule and would make it easier to deny permits for factory farms that want to build in already polluted watersheds that have a high concentration of factory farms. It would also close the 5 year loophole. It will help protect and clean up our water. Once again, the DNR doesn't have the staff to do their job and enforce the rules. We reviewed the Clean Water Act petition last night and the way the draft department rules are written. It will be very difficult to require all factory farms to receive discharge permits the way they should. Our members will not support it.

**BILL SHERMAN**, from Hampton said that we used to swim in Cherman Park in Hampton in a damned up pool of water from the river. Today the park is open but the pool of water is closed and dirty. We need to stop the trend of polluting Iowa's water. I want my grandchildren to be able to swim in the streams without the risk of health issues.

Charlotte Hubbell asked the DNR to determine what the use of the stream is for that area.

**JOHN STRUZNIAK**, a hunter and fisherman stated his support for the ICCI petition. I have lived in many states and Iowa has the worst waterways and manure problem that I have ever seen. Shame on you! There are no excuses. Accept this petition for future generations.

**GRANT MENKE**, with the Iowa Renewable Fuels Association (RFA) presented the following comments regarding the Greenhouse Gas Tailoring rule – Chapter 22 and 33.

The RFA is the nation's largest trade association representing U.S. ethanol producers, and the IRFA is the largest trade association representing Iowa's ethanol and biodiesel producers, we are concerned that the amendments by the EPC may result in Iowa implementing more stringent regulatory requirements than may ultimately be required by the federal regulation with which the state is seeking to harmonize. As such, we are urging the EPC to delay consideration of the proposed amendments until such time that there is more certainty surrounding federal regulatory actions intended to regulate greenhouse gas (GHG) emissions. Alternatively, and at the very least, EPC should add certain provisions to its amendments that would nullify regulatory actions based on federal rules that may ultimately be stayed or deemed invalid by a court.

The EPC states that the "...purpose of this rulemaking is to assure that sources of greenhouse gas emissions in Iowa are regulated in the same manner and at the same levels as specified in new federal regulation for greenhouse gases, the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule)."

As the EPC and Iowa DNR are surely aware, numerous legal challenges have been filed in the US Court of Appeals for the District of Columbia challenging the US Environmental Protection Agency's (EPA) four regulatory actions that it claims result in the regulation of GHG from stationary sources. This week, a motion is being filed in the D.C. Circuit seeking a stay of the stationary source effects of the EPA's GHG actions (allowing the regulation of GHG emissions from light duty vehicles to proceed but staying implementation of the PSD and Title V programs until the court can resolve the merits of the challenges to EPA's action). Moreover, there will

ultimately be a substantive decision on the validity of EPA's actions here as they relate to GHG emissions from stationary sources.

Given these pending legal challenges, the state of Iowa should not adopt proposed changes to state law and revisions to its Clean Air Act State Implementation Plan that could ultimately make its regulations more stringent than federal regulations. This is precisely what would occur should the EPA Tailoring Rule be stayed or ultimately invalidated.

In addition, we note that PEA is still contemplating how to treat biogenic GHG emissions from the fermentation and combustion of biomass and Biofuels under PSD and Title V programs. In the final Tailoring Rule, EPA without explanation failed to exclude biogenic emissions, marking a substantive change from its longstanding policy of treating biogenic CO<sub>2</sub> emissions as carbon neutral. EPA recently published a Call for Information to serve as a "first step..In considering options for addressing emissions of biogenic CO<sub>2</sub> under the PSD and Title V programs..." (See 75 Fed. Reg. 41174)

RFA and IRFA believe inclusion of biogenic GHG emissions in determinations of the applicability of PSD or Title V Permitting Programs is not scientifically justified, runs afoul of accepted state, national and international GHG accounting methods, and is contrary to public policies enacted to encourage development of a robust renewable fuels industry in the United States. Further, we question EPA's actual authority to regulate biogenic emissions under the Clean Air Act.

Moreover, inclusion of biogenic emissions is contrary to longstanding accounting practices used by Iowa DNR in preparing its annual GHG Inventory Reports. It has been the practice of Iowa DNR to expressly acknowledge the carbon neutrality of biogenic emissions from ethanol fermentation and biomass combustion. These biogenic emissions are excluded from the state GHG emissions total in Iowa DNR's annual GHG Inventory reports. According to DNR's recently released 2009 report, "GHG emissions from the combustion of biomass are not included in the statewide GHG emissions total because, like ethanol fermentation, they are considered biogenic emissions, meaning that the carbon in the biomass was recently contained in living organic matter."

While the pending legal actions described above alone render Iowa's consideration of the proposed regulatory changes premature, the fact that EPA has not yet decided how to handle biogenic emissions under the Tailoring Rule adds to the prematurity of Iowa's proposed regulatory actions.

In conclusion, and in light of the significant uncertainty surrounding the federal Tailoring Rule and other federal regulatory activities aimed at regulating GHG, we encourage Iowa EPA to delay moving forward with amendments to the Iowa Administrative Code. If Iowa proceeds, we encourage the Commission to include provisions that would readily allow for nullification of state regulatory actions in the event the federal Tailoring Rule is stayed or deemed invalid. To that end, if Iowa remains compelled to move forward with the proposed regulatory changes, it should include provisions in these regulations that state:

- 1) To the extent the PSD program or Title V program applicability is stayed by a court in whole or in part, these regulations shall apply such programs consistent with such a stay for the period of time such stay is in effect.
- 2) If EPA's determination that GHGs can trigger PSD permitting is held invalid by a court, any provision of these regulations that allows GHGs to trigger PSD permitting is ineffective for that purpose.
- 3) If EPA's determination those GHGs are "subject to regulation" within the meaning of Section 165(a)(4) of the federal Clean Air Act is held invalid by a court, the term "subject to regulation" as defined in these rules shall not include GHGs.
- 4) If EPA issues a rule that excludes biogenic emissions or EPA's inclusion of biogenic emissions in the PSD and Title V evaluation for greenhouse gas emissions is held invalid by a court, biogenic emissions shall not be included in any PSD applicability analysis for GHGs in any such BACT evaluation.

We appreciate the opportunity to comment and look forward to working with the EPC and DNR regarding this matter.

**JACK TROEGER**, from Ames spoke on behalf of Earth. I ask the Commission to support and pass the ICCI petition. We humans are the most abusive species on earth. There are nearly 6,000 CAFOs in Iowa, mostly hogs, approximately 15 million, and there were once zero CAFOs. Once again, as members of the Environmental Protection Commission you have the opportunity today to step up, step out, step forward and step off the island of denial and say no to the abusive practices of spreading liquid manure on frozen ground. By voting no on this petition you are publicly announcing to Iowans and the Earth that you support the corporate and agribusiness bullies that abuse Iowa's water and land base. You would not allow a rapist to abuse their victim for another 5 years while you doddle about what to do next.

**SHANNON GARRETSON**, with the Iowa Environmental Council provided the following comments:

First, I would like to recognize the effort and work done by the DNR staff to conduct these stream assessments.

I would like to emphasize some comments previously submitted by the Iowa Environmental Council on these proposed stream designations. A primary contact recreational use can only be removed or rebutted if the UAA determines that primary contact uses are not existing or attainable. If that conclusion cannot be made because of lack of data, information or lack of time or resources to collect that data then the presumptive A1 use should be retained. For example:

We feel that the information used to assess Elk Creek in Clayton County, the North Branch of the Volga River in Fayette County, the North Fork Maquoketa River in Dubuque County, the Little Turkey River in Clayton County, and the entire accessed portion of Roberts Creek in Clayton does not adequately rebut the presumption that primary contact recreation is attainable in these locations, therefore they should be presumed A1 for primary contact recreation.

The burden of proof should be to show that the appropriate designation is other than A1, primary contact recreation. I would like to stress that a synonym for attainable is potential.

Mill Creek in Jones and Cedar Counties, the West Fork Cedar River, and the West Fork Little Sioux River all had comments explaining the potential for primary contact recreation, therefore they should be designated as A1.

The Council strongly believes that if a stream flows through a public access area such as picnic areas or playgrounds then that stream should be designated at a minimum for A3 children’s play uses because of the potential for kids to play in these waters, even though the frequency of these types of recreation might be difficult to determine.

For example, Hoosier Creek in Linn County, East Buttrick Creek in Webster and Greene counties, the East Cedar River in Calhoun County, Frink Creek in Polk County and Rock Creek in Polk County all flow near communities or public areas, therefore the designation of A3 should be considered.

Thank you and I look forward to working with the Department for clean, safe waters in Iowa.

**DICK BIRD**, ICCI member said that Iowa’s waters are disgusting! I’m disappointed that we’ve seen very little outcome from this Commission, just like the DNR. There’s always some excuse on why we can’t protect our natural resources. The people that pollute our land, water and air need to take responsibility and clean up their own mess. You need to look around and do something. I see little hope of anything happening but I can still hope.

**ADAM MASON**, ICCI member asked the commission to support the petition for rulemaking. We see the 5 year extension to apply liquid manure on frozen or snow covered ground as a loop hole. There’s not enough land to apply all of the manure that we produce in this state. You should be able to consider how many facilities are already in one watershed before another one is permitted to construct. That’s common sense. Once again, we’ve had 700 manure spills in the last 15 years. Therefore, we need to make sure that all facilities that have discharged or have the potential to discharge obtain Clean Water Act operating permits. Stand up for the environment today and move forward with strong regulations.

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

Charlotte Hubbell reiterated that this commission has put rules in place to protect Iowa’s water, however it has not been easy. The Legislature and the Administrative Rules Review Committee has stopped or changed the rules that we have passed. You also have to keep in mind that we have only been conducting water monitoring samples for the last ten years.

**FINAL RULE – CHAPTER 61 – WATER QUALITY STANDARDS (STREAM RECLASSIFICATIONS VIA USE ASSESSMENT AND USE ATTAINABILITY ANALYSES)**

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

The Commission will be asked to approve a final rule to amend the state's water quality standards (WQS). The rule amendments, if approved, would:

1. Revise and list approximately 93 river and stream segments as Class A2 Secondary Contact Recreational Use designated waters in the rule-referenced document "Surface Water Classification."
2. Revise and list approximately 303 river and stream segments as Class A2 Secondary Contact Recreational Use and Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document "Surface Water Classification."
3. Revise and list eight stream segments as Class A2 Secondary Contact Recreational Use and Class B(WW-3) Warm Water-Type 3 designated waters in the rule-referenced document "Surface Water Classification."
4. Revise and list 38 river and stream segments as Class A3 Children's Recreational Use and Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document "Surface Water Classification."
5. Revise and list 23 river and stream segments as Class A3 Children's Recreational Use Designated waters in the rule-referenced document "Surface Water Classification."
6. Revise and list 39 stream segments as Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document "Surface Water Classification."

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

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

The adopted amendments have been modified from those published in the original NOIA, including specific changes to 17 stream segments: 14 streams with classification changes, one (1) stream with an administrative spelling change, and two (2) streams removed from rule making

based on the need for additional information.. The modifications were made after all comments from the public comment process were considered.

The stream descriptions provided in the preamble are designed to provide clear notice to the public and may be subject to non-substantive corrections to conform to the format used in the stream classification document. The stream classification document now being adopted by reference also contains non-substantive revisions to previously adopted stream designations to correct typographical or descriptive errors. All designations conform to the previously-approved use designations, as amended by the Commission.

The original Notice of Intended Action (NOIA) was published in the Iowa Administrative Bulletin on March 10, 2010 as **ARC 8599B**. An amended NOIA was published in the Iowa Administrative Bulletin on July 28, 2010, as **ARC 8978B**. Seven public hearings were held across the state in six regional locations. Approximately 180 persons or groups provided written or oral comments on the proposed WQS revisions. A responsiveness summary has been prepared addressing the comments received in terms of the issues involved.

Comments from stakeholder groups and other persons or organizations may be made at the Commission meeting regarding the rule changes. As discussed in the Responsiveness Summary, the Department believes that the rule changes will be protective of water quality and the uses being made of Iowa waters. Due to the size of the Responsiveness Summary document and Rainfall Drought information has been posted on the DNR internet at <http://www.iowadnr.gov/water/uaa.html>.

Seven public comment hearings were held with about 180 public comments received.

An EPC subcommittee meeting including Susan Heathcote and Charlotte Hubbell identified eight stream segments that should have additional review. Three of those eight have been identified and amended in the final rule handout in red:

Bear Creek in Dallas County – changed from Class A2 to Class A1

Indian Creek in Story County – to include to its confluence with the East and West Indian Creeks (S16, T82N, R22W, Story County)

West Fork Little Sioux River in Cherokee/Monona County – changed from Class A2 to Class A1

Lori McDaniel explained that additional comments were received about these specific stream segments therefore changes were made to the final rulemaking.

Lori went on to discuss the reasons why the DNR did not reclassify Ames Creek (Clinton County SE of DeWitt), Hoosier Creek (Linn County) – it was a pooled area because of a log jam, Mill Creek (Cedar/Jones Counties), Roberts Creek (Clayton/Fayette Counties) and West Fork Little Sioux River (Cherokee/Monona Counties).

Susan Heathcote passed out a list of the stream segments that the EPC subcommittee had questions and concerns about:

**Ames Creek in Clinton County SE of DeWitt** - Tributary of Wapsipinicon River. 4.59 miles of stream with only one assessment site. 1 public comment was submitted mentioning concerns about children's use of the creek. In addition, a postcard from a streamside resident was collected during the assessment saying their children play in the creek on their property at the site 839-1. DNR says children's use is not common, so A2. No assessment completed near Timber Creek residential area south of the assessment site. Recent aerial photos indicate expansion of residential homes in the area. Also, no assessment done near the confluence with the Wapsipinicon River where there is recreational access to Ames Creek from the Wapsi, a popular canoeing river. Question if the assessment at the one location is sufficient for the entire 4.59 miles of stream and in particular assessments in areas where recreational use is most likely to occur near subdivision and at the mouth. **Recommending A1 classification of the 4.59 miles of stream.**

**Hoosier Creek in Linn County** – DNR assessed 5.5 miles of Hoosier Creek in September 2009. Hoosier Creek flows along the south side of Cedar Rapids and along the west side of the town of Ely. DNR is recommending that the entire length of Hoosier Creek be downgraded from primary contact recreation to secondary contact recreation. Assessment data from site 104-3 near the Vista Road Bridge near Ely conducted in June 2006 do not appear to have been considered in the recommendation. This assessment site was the endpoint of a previous assessment on Hoosier Creek that was considered in UAA in round 1. The 104-3 site assessment found evidence of kids play upstream of the Vista Road Bridge in Ely, consisting of graffiti and mud balls on the bridge. There is also a foot path on the upstream side of the bridge. The previous UAA only affected the designation downstream from the bridge. The photo in the responsiveness summary of this site was the view looking downstream from the bridge. **Based on proximity to the town of Ely, evidence of children's play and the footpath upstream of the bridge, the segment upstream from the bridge near Ely should be designated A3 for children's recreation.**

**Mill Creek in Cedar/Jones counties** – DNR is recommending downgrading of recreational use protections from A1 primary contact recreation to A2 secondary contact recreation for a 9.5 mile-long segment of Mill Creek from the mouth at the Wapsipinicon River in Jones County south to the confluence with an unnamed creek NW of the town of Clarence in Cedar County. DNR saw no evidence of recreational uses and noted that there are no public use areas or formal accesses on the creek. A postcard distributed during the assessments to residents along the creek was returned by a resident living near site 814-2 around 2 miles south of Jones/Cedar County line. The resident reported that in the early 1990's their children would play and swim in the creek and would use the creek to canoe 4 miles to the Wapsipinicon River. The postcard documents swimming and canoeing as existing uses in the early 1990s so these uses are certainly attainable. **The lower segment of Mill Creek from an assessment site 814-2 to the mouth should be designated A1 primary contact recreational use.**

**Roberts Creek in Clayton/Fayette counties** – Four public comments were submitted. Based on the public comments, DNR is proposed to change the designation of Roberts Creek from the mouth to the Fawn Hollow Bridge to A1. However, DNR is still recommending A2 for the deep pools in the section of the river upstream of St. Olaf. **The A1 primary contact recreation use designation should be retained for all of these pools.**

Wayne gave a brief overview on the classifications of A1, A2 and A3 and what level of protection is required for each.

*Motion was made by Susan Heathcote to amend the final rulemaking to change the above bolded stream segments to the A1 classification. Seconded by Dee Bruemmer. Roll call vote went as follows: Susan Heathcote – aye; David Petty – nay; Dee Bruemmer – aye; Gene VerSteeg – nay; Lorna Puntillo – abstained; John Glenn – aye; Marty Stimson – aye; Charlotte Hubbell – aye. Motion carried.*

David Petty said that he voted no because it's too late in the game to be reclassifying DNR's recommendations.

*Motion was made by Marty Stimson to adopt the DNR's amendment as follows - Bear Creek in Dallas County – changed from Class A2 to Class A1; Indian Creek in Story County – to include to its confluence with the East and west Indian Creeks (S16, T82N, R22W, Story County) and West Fork Little Sioux River in Cherokee/Monona County – changed from Class A2 to Class A1. Seconded by Dee Bruemmer. Motion carried unanimously.*

*Motion was made by Marty Stimson to approve the final rule including the amendments made by the EPC and DNR. Seconded by Susan Heathcote. Motion carried unanimously.*

**APPROVED AS AMENDED**

## **CONTRACT - IDALS-DSC FOR NONPOINT SOURCE PROGRAM BASIN COORDINATOR STAFFING ASSISTANCE**

Allen Bonini, Supervisor of the Watershed Improvement Section in the Geological and Water Survey Bureau presented the following item.

### **Recommendations**

Commission approval is requested for an eight-month service contract with the Iowa Department of Agriculture – Division of Soil Conservation (IDALS-DSC). The contract will begin on November 1, 2010 and terminate on June 30, 2011. The total amount of this contract shall not exceed \$206,485. 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 US EPA Section 319 Nonpoint Source Program grant dollars.

**Background**

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

**Purpose**

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

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

**APPROVED AS PRESENTED**

**FINAL RULE - CHAPTERS 22 AND 33: AIR QUALITY PROGRAM RULES – PSD AND TITLE V GREENHOUSE GAS TAILORING RULE**

Christine Paulson, Environmental Specialist Senior in the Air Quality Bureau presented the following item.

The Department is requesting that the Commission adopt amendments to Chapter 22, "Controlling Pollution," and Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," of the Iowa Administrative Code.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on August 11, 2010, as ARC 8999B. A public hearing was held on September 13, 2010. The Department did not receive any comments at the public hearing. The Department received ten sets of written comments before the close of the public comment period on September 14, 2010. The submitted comments and the Department's response to the comments are summarized in the attached public responsiveness summary. The Department did not make any changes to the adopted rules from what was published in the Notice.

### **History of Federal Greenhouse Gas Regulations**

On April 2, 2007, the U.S. Supreme Court found that greenhouse gases, including carbon dioxide, are air pollutants covered by the Clean Air Act (*Massachusetts v. EPA*, 549 U.S. 497). The Court found that the U.S. Environmental Protection Agency (EPA) was required to determine whether emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.

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

- **Endangerment Finding:** EPA found that the current and projected atmospheric concentrations of the six, key, well-mixed greenhouse gases - carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>) - threaten the public health and welfare of current and future generations.
- **Cause or Contribute Finding:** EPA found that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution, which threatens public health and welfare.

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

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

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

**EPA's Greenhouse Gas "Tailoring Rule"**

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

The Tailoring Rule sets thresholds for GHG emissions that specify when permits under the PSD and Title V programs are required for new and existing facilities. This final rule "tailors" the requirements of these permitting programs to limit which facilities will be required to obtain PSD and Title V permits. The Tailoring Rule establishes a schedule that will initially focus air permitting programs on the largest sources that are already subject to PSD and Title V requirements. The Tailoring Rule then expands to cover the largest sources of GHG that may not have been previously covered by the PSD or Title V permitting program for other pollutants.

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

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

**Federal Tailoring Rule: Phased-In Implementation**

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

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

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

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

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

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

In this phase, PSD permitting requirements will, for the first time, cover new construction projects with a GHG PTE of at least 100,000 tpy (CO<sub>2</sub>e), even if they do not exceed the permitting thresholds for any other pollutant. Modifications at existing facilities that increase their GHG PTE by at least 75,000 tpy (CO<sub>2</sub>e) will be subject to permitting requirements, even if they do not significantly increase emissions of any other pollutant.

In Step 2, Title V operating permit requirements will, for the first time, apply to sources based on their GHG emissions even if they would not apply based on emissions of any other pollutant. Facilities with a GHG PTE at least 100,000 tpy CO<sub>2</sub>e will be subject to Title V permitting requirements.

### **Additional EPA Activities**

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

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

### **Department Rulemaking and Implementation**

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

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

### **Phase 1**

The first stage of these amendments, if approved, will become effective on January 2, 2011, the same date as the federal Tailoring Rule, and will affect power plants, industrial facilities, ethanol

plants, state universities, municipal utilities, and other facilities that are already considered major sources under the current state PSD and Title V programs.

#### *Title V*

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

The approximately 280 facilities that are currently subject to the Title V program have already been required to report GHG emissions under current state statute and state rules. As these facilities apply for, renew or modify their Title V permits, they must address GHG requirements, such as calculating and reporting GHG emissions using the CO<sub>2</sub>e methodology, and any other applicable requirements.

#### *PSD*

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

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

The Department received several comments regarding the PSD program requirements for BACT for greenhouse gases. The commenter's expressed concern that EPA had not yet issued BACT guidance for greenhouse gases. The commenter's recommended that establishing BACT standards or guidance should be a high priority for the Department, and that stakeholders should be included in the BACT guidance development.

These comments are addressed in detail in the attached public responsiveness summary. In summary, EPA's BACT guidance for GHG emissions is meant to assist state agencies in their BACT determinations. The newly-issued GHG BACT guidance will serve as additional guidance for already-established PSD regulations and guidance. Using EPA's guidance will help to ensure national consistency in BACT determinations. As in the past, the Department will establish BACT on a case-by-case basis for each individual PSD project. The Department is confident that it will be able to work with each affected facility to establish BACT for GHG emissions.

## **Phase 2**

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

#### *Title V*

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

#### *PSD*

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

#### **Outreach Activities**

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

- Presentation at EPC meeting – June 15, 2010
- Webinar (presentation and Q&A) – June 28, 2010 (additional webinars possible)
- Air Quality listserv article –week of June 28 and ongoing
- Presentation to Resale Power Group of Iowa – July 2010
- Air Quality webpage – ongoing
- Presentation to Iowa Utilities Board – September 2010
- Phone calls to potentially affected municipal utilities – September 2010
- Letters to all potentially affected facilities – September 2010
- Presentation to Iowa Association of Municipal Utilities – October 7, 2010

#### **Title V Fees**

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

The Department received several comments regarding Title V fees. In general, the comments stated that the proposed amendments were not clear on whether Title V fees would be assessed on greenhouse gas emissions, and that the Department should revise the final rules to clarify that greenhouse emissions are not included in Title V fee calculations.

These comments are addressed in detail in the attached public responsiveness summary. In summary, if the Department were to amend the definitions as suggested by the commenter's, this would result in state regulations that do not match federal regulations, and could result in EPA disapproving Iowa's implementation of the federal regulations.

EPA's preamble to the final, federal Tailoring Rule states that EPA is not addressing Title V fees for greenhouse gas emissions at this time. However, EPA recommends "that each program review its resource needs for GHG-emitting sources and determine if the existing fee approach will be adequate."

EPA's recommendation is in keeping with the Department's annual process for establishing the Air Quality Bureau budget and for setting the Title V fee. As part of this annual process, the Department holds several meetings for Title V fee payers and other stakeholders to discuss the budget and Title V fees. In addition to reviewing and discussing the reasonable costs to administer the Title V program, mechanisms for funding the air quality program are discussed each year, such as a fee for construction permits. The Department will continue to undertake a transparent and public process for developing the air quality budget and Title V fees.

#### **Comments Requesting Inclusion of an Automatic Rescission Provision in the Final Rules**

Several commenter's recommended that the Department place a provision in the adopted and published rules to allow for automatic nullification or rescission if the federal Tailoring Rule were to be vacated. These comments are addressed in detail in the attached public responsiveness summary.

In summary, the Department's response to these comments is as follows:

The Iowa Administrative Procedures Act, Iowa Code Chapter 17A, specifies how state agencies, including the Department, must undertake rulemakings. An important component of the required procedures includes public notice and opportunity for public participation. This opportunity for public involvement would be circumvented with an automatic rescission/nullification provision in the final rules, and would be in violation of the Iowa Code requirements. Additionally, Iowa Code 455B.133 set forth the Environmental Protection Commission the decision-making body for the Department of Natural Resources, Environmental Services Division. The Commission's authority and additional public input would be eliminated if the final rules provided for automatic rescission or nullification.

The Department cannot reasonably anticipate all possible federal actions related to greenhouse gases, and how these actions would affect the federal Tailoring Rule. It would be nearly impossible and highly impractical for the Department to describe each possible federal action in the final rules, and further describe the corresponding affect to the state rules. Attempting to do so would likely provide even more regulatory uncertainty for the Department and for regulated entities.

The Iowa Administrative Procedures Act, Chapter 17A, provides several remedies in the event of legal or other federal actions to the federal Tailoring Rule or to related federal greenhouse gas provisions. Chapter 17A sets forth specific provisions under which a state agency may conduct

“emergency” rulemaking. The Department believes that a full or partial vacatur of the federal Tailoring Rule regulations would certainly meet the requirements for “emergency” rulemaking. The options allowed under “emergency” rulemaking would significantly shorten the rulemaking schedule, and allow the Department to react to the changes in federal regulations relatively quickly. Additionally, Chapter 17A states that, “An interested person may petition an agency requesting the adoption, amendment or repeal of a rule.” This would allow a concerned party to implore the Department to undertake rulemaking if the federal Tailoring Rule or other related federal greenhouse gas regulation was repealed.

The Department may also choose to grant waivers or variances to the state adoption of vacated federal regulations.

### **Implications of Not Proceeding with the Proposed Rulemaking**

Several commenters recommended that the Department suspend finalizing its air quality amendments until the numerous legal challenges to the Tailoring Rule and other federal actions related to greenhouse gases and the Tailoring Rule are completed.

These comments are addressed in detail in the attached public responsiveness summary. In summary, it is not uncommon that EPA regulations are challenged through administrative or legal means. While some challenges are upheld by the courts, resulting in a remand or stay of the federal regulations, some EPA regulations are also upheld by the courts. Many of these legal challenges take years to resolve. As such, the Department cannot wait to undertake rulemakings until the appeals to federal regulations run their course. Iowa’s EPA-approved State Implementation Plan (SIP) and Iowa statute obligate the Department to ensure that the Clean Air Act is implemented and that citizens have air quality that is protected and maintained to the greatest extent possible.

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

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

If the Commission approves the final rules, the Adopted & Filed rulemaking will be published in the Iowa Administrative Code on November 17, 2010, and would become effective on December 22, 2010.

Susan Heathcote asked about the BACT and what is the process for getting those in place for facilities.

Christine Paulson said that it's on a case by case basis. We are currently waiting to hear from EPA on the control procedures. We have a process when we review each facility but just because a facility is PSD does not mean that it has to implement BACT.

Charlotte Hubbell asked about the recession of the state rules if the federal standards were not adopted because of the legal challenges.

Christine Paulson said that there are a number of administrative options available if these were not passed on a federal level or if they were amended. Emergency rulemaking would be an option that would probably take two months due to publishing requirements.

Gene Ver Steeg asked about biogenetic emissions.

Christine said that there would be very few facilities impacted by biogenic emissions. It would be a problem if we exempted them now and the federal rules do not allow for that exemption.

Marnie Stein said that biogenetics is not included for ethanol facilities because the corn would emit whether in a field or a facility.

Charlotte Hubbell asked if greenhouse gas emissions would be subject to fees.

Christine Paulson said that we would need a rule stating that greenhouse gas emissions are included as a Title V fee. EPA is not requiring states to collect fees, they are leaving that up to the states at this point. We feel that the Title V fee budget is very transparent and we are not aware of any other state that is charging for greenhouse gases except for California. We are implementing these codes changes and requirements using our current workload and FTE staff.

Lorna Puntillo asked if there is a provision in the code that states we can't be more stringent than federal law.

Christine Paulson said that we can have rules on the books that are not required at the federal level.

Marnie Stein said that the Department would send letters to applicable facilities stating that their permits are no longer required, if the federal rule is no longer in place.

*Motion was made by Susan Heathcote to approve the final rule as presented. Seconded by Marty Stimson. Roll call vote went as follows: Dee Bruemmer – aye; Marty Stimson – aye; John Glenn – aye; Susan Heathcote – aye; David Petty – nay; Gene VerSteeg – nay; Lorna Puntillo – aye; Charlotte Hubbell – aye. Motion carried.*

**APPROVED AS PRESENTED**

**NOTICE OF INTENDED ACTION - AMENDMENTS TO CHAPTER 65 - ANIMAL FEEDING OPERATIONS**

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

**ITEM 1.** Amend the following definitions in 567—65.1(459,459B):

“*NPDES permit*” means a written permit of the department, pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to authorize and regulate the operation of a CAFO.

**ITEM 2.** Rescind the definition of “operation permit” in 567—65.1(459,459B):

**ITEM 3.** Adopt the following **new** definitions in 567—65.1(459,459B):

Charlotte Hubbell asked for the final copy of the rules that are being rescinded or amended.

Randy Clark agreed and said that we will bring to the November EPC meeting a version of the rules with redline/strikeout.

**ITEM 4.** Rescind rule 567—65.4(459,459B)

**ITEM 5.** Amend subrule 65.5(2) as follows:

65.5(2) If departmental evaluation determines that any of the conditions listed in subrule 65.5(1) exist, the operation shall ~~institute~~ institute necessary remedial actions to eliminate the conditions if the operation receives a written notification from the department of the need to correct the conditions. This paragraph shall apply to all permitted and unpermitted animal feeding operations, regardless of animal capacity.

**ITEM 6.** Amend rule 567--65.5 (455B) by inserting the following **new** subrule:

65.5(4) The department *may* evaluate any animal feeding operation that is not defined as a large or medium CAFO, and designate it as a CAFO if, after an on-site inspection, it is determined to be a significant contributor of manure or process wastewater to waters of the United States. In making this determination, the department shall consider the following factors:

- a. The size of the operation and the amount of manure or process wastewater reaching waters of the United States;
- b. The location of the operation relative to waters of the United States;
- c. The means of conveyance of manure or process wastewater to waters of the United States;
- d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the United States; and
- e. Other relevant factors.

65.103(2) No animal feeding operation with an animal capacity less than that specified for a medium CAFO shall be designated as a CAFO unless manure or process wastewater from the operation is discharged into a water of the United States:

- a. Through a man-made ditch, flushing system, or other similar man-made device;  
or
- b. Which originates outside of and passes over, across or through the facility or otherwise comes into direct contact with animals confined in the operation?

Charlotte Hubbell asked why the first sentence in Item 6 reads as *may* it should state *must*.

Randy Clark said that *may* is federal language.

Charlotte Hubbell asked if we could adopt the 65.103(2) language under item b. on page 5 to item b on page 8. The language on page 5 (b) (as noted below) reads clearer. Let's make this change so it's consistent.

(1) *Manure or process wastewater is discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or*

(2) *Manure or process wastewater is discharged directly into waters of the United States which originate outside of and pass over, across or through the facility or otherwise come into direct contact with animals confined in the operation.*

Charlotte Hubbell asked what constitutes a significant contributor of a manure discharge. There seems to be some inconsistency between what makes an operation a large or medium sized CAFO. The word significant adds a whole level of ambiguity.

Randy Clark said that we cannot be more stringent than the federal rules but we are basically adopting the federal language. We have been working with EPA and we will continue to address these language issues. It's still illegal to discharge any manure to a water of the state.

**ITEM 7.** Amend rule 567--65.6(459,459B) by rescinding the rule and inserting the following in lieu thereof:

567—65.6(459) NPDES Permits

65.6(1) NPDES permit required. The owner or operator of a CAFO must seek coverage under an individual NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated or maintained such that a discharge will occur. (this is federal language)

Stakeholder groups (as mentioned by Wally Taylor) and environmental groups favored naming specific events that would constitute a discharge. Producer groups wanted to leave this the same as the federal regulations. They argued that additional state language would be considered more stringent language, as compared to the federal regulations. We are recommending keeping the federal language.

Charlotte Hubbell said that we know the Department is uncomfortable with language that states a CAFO *proposes* to discharge because there's no certainty that it ever will discharge.

David Petty said that if you don't have a permit and you have a discharge than you are in hot water. You have to be willing to prove that you won't have a discharge.

Charlotte Hubbell wanted to know how EPA explains the discrepancy. You can't say it is a CAFO if it falls under the limits of animal units unless there is a significant discharge. But on the other hand, if it discharges into a water it's a CAFO.

Pat Boddy asked how the Department can incorporate any clarity in the language of our rules.

Charlotte Hubbell suggested that we take out the word significant.

Randy Clark said that we can not do that because it's a federal requirement. Any size discharge is illegal.

Susan Heathcote said that it defines the difference between a medium and large sized CAFO. It gives the ability to consider factors such as the location of the facility in proximity to a stream, on a slope with or without vegetation. It's a judgment call on whether or not it's significant but you can consider all of these factors when determining if it's significant.

Charlotte Hubbell said that it appears that both of these sections apply to CAFOs that are smaller than medium CAFOs and one says you have to have a discharge and the other one says you have to have a significant discharge in order to be considered a CAFO. I would just like some clarification.

Susan Heathcote asked how a mis-management issue is addressed or how it's determined that there has been too many discharges. I believe this is a gray issue amongst the environmental groups.

David Petty said that if the issue has not been changed or addressed...then that would constitute mis-management or if a CAFO permit is required.

Ed Tormey said that we have had CAFOs in the state with a discharge but very few (1-3) that have had multiple discharges and those were referred to EPA for enforcement. I realize that everyone would like more guidance on this issue but unless it comes from the EPA then I'm not comfortable putting a number on the amount of discharges.

Randy Clark said that EPA does address this issue in their preamble because of the amount of questions that they received. Their solution was a "no discharge certification" and an objective list of all things that producers need to go through to prove to us (EPA) that you do not intend to discharge. This is a voluntary thing for producers. The question for us is do we want to allow this "no discharge certification" option. Producers say to leave this as an option and just reference it and environmental groups say this shouldn't be an option because it allows them to pollute without a permit. That is not my understanding since the requirements are very strict.

Charlotte Hubbell said that we will need some clarification on this. What are the consequences?

Randy Clark said there is a lot of federal regulation explaining this requirement.

Charlotte Hubbell said that the discretionary rule states that manure from the operation is causing or may reasonably be expected to cause pollution to a water of the state. Now, the Department is not willing to use this language to deny a construction permit because it's too loose because they don't know when a facility will reasonably cause pollution in order to deny the permit. But in these rules, we are saying that a CAFO proposes to discharge and is therefore required to get a NPDES permit if it's designed, constructed or maintained such that a discharge will occur. Maybe we should use this language in the discretionary rule, then we could deny a permit. This keeps coming back and I'm not letting it go for another five months.

Randy Clark said Item 8-9 are clean up items, Items 10-14 deal with the nutrient plan requirements under the federal regs and Item 13 addresses reorganizational issues. Item 15 deals with the open feedlot rules and open discharge language. Item 17 addresses out of date deadlines. Item 18 addresses change of deadline for submission of NPDES permits. Items 19-21 is about the term references/definitions – we're just adopting the federal rule language.

The Department plans to be back in November, or at the latest in December.

**INFORMATION**

*Motion was made by Gene VerSteeg to go into closed session to discuss pending litigation and strategy with the Attorney General's Office per Iowa Code section 21.5(1)(c). Seconded by Marty Stimson. Roll call vote went as follows: Marty Stimson – aye; Dee Bruemmer – aye; John Glenn – aye; Susan Heathcote – aye; David Petty – aye; Gene VerSteeg – aye; Lorna Puntillo – aye; Charlotte Hubbell – aye. Motion carried.*

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

**ICCI ET AL. PETITION FOR RULEMAKING**

On August 19, 2010, ICCI et al. submitted a Petition For Rulemaking (see attachment).The Petition requests that the Commission institute rulemaking proceedings regarding rules pertaining to confinement feeding operations.

ITEM 1 - the Petitioners request that the Commission shorten the period during which insufficient manure storage capacity will be accepted as a reason for emergency application of liquid manure on frozen or snow covered ground. The petition requests that the period be limited to the winter of 2010-2011. The Petition does not include data and reason in support of this request as required in 561 IAC 5.1.

ITEM 2 - the Petitioners request that the Commission amend 567 Iowa Administrative Code (IAC) 65.5 pertaining to Department Evaluation of animal feeding operations and adopt new associated definitions in 567 IAC 65.1. In general, the Petitioner requests these amendments so that the DNR and the Commission will have the authority during the construction permitting process or manure management plan (MMP) review process to consider: the concentration of already existing facilities in a watershed; the location of a facility or manure management fields

near an already impaired waterway or the location within an impaired watershed; and the proximity of the facility or manure application fields to sensitive areas, including but not limited to publicly owned land, designated areas, trout streams and karst terrain.

The Commission notes that the Department already has the authority in the Department evaluation subrule to consider the first and last of the three above listed areas in the evaluating construction permit applications and MMPs. The remaining changes required by the Petitioner appear to add comparatively little to the subrule. Further, it is noted that the required language would delete consideration of manure runoff potential in land application areas, manure hauling distance, and location of an operation or manure application area in a public water supply two-year capture zone.

The commission's effort to pass the existing Department evaluation subrule was subject to much opposition. Subsequently, the General Assembly's Administrative Rules Review Committee placed an "objection" on the subrule. Thus, the Department has concluded that any attempt to amend this subrule would require not only an expenditure of scarce resources but would be met with opposition by the legislative branch.

The Department is already deeply involved in and preparing for numerous time consuming endeavors necessary to protect the environment such as animal feeding operations rule and Chapter 65 regarding NPDES permits.

Pursuant to 561 IAC 5.4(2), within 60 days after the filing of the Petition, the Commission must, in writing, deny the Petition, and notify the Petitioner of its action and the specific grounds for the denial, or grant the Petition and notify the Petitioner that it has instituted rule-making on the subject of the Petition.

The Department recommends denial of the Petition.

Wayne Gieselman said that this is not a loop hole big enough for manure tankers to drive through to apply in the winter. This only applies to a few older facilities, that don't currently have the storage capacity.

Randy Clark distributed a proposed response for the Commission's consideration.

Ed Tormey and Barb Lynch said that the Department will carefully evaluate and track the emergency applications and their current manure storage. We would allow them to apply in a regulated manner however there may be enforcement action because of it. We will know when and where applications will be taking place if there is a fish kill or pollution to a water way.

The Commissioners voted on the two issues of the Petition separately.

*Motion was made by David Petty to deny Item 1 of the Petition to shorten the period during which insufficient manure storage capacity will be accepted as a reason for emergency application of liquid manure on frozen or snow covered ground Seconded by Gene VerSteege. Motion carried unanimously.*

Ed Tormey said that DNR will still review the emergency request to determine if the producer truly has “insufficient” manure storage capacity.

Susan Heathcote said that she appreciates the legal explanation. I believe it’s important that we honor the decisions of this commission and the agreement we reached at the July EPC meeting regarding the entire CAFO rule package.

Wayne Gieselmann said that this does depend on the size of the facility. So we will get calls but there maybe times when we can’t do anything about it. If they do not qualify for an emergency application, we will be informing the producer.

Charlotte Hubbell asked how the Department will ensure that producers will be in compliance after five years.

Barb Lynch said that when producers call in, we will explain the rules as well as during inspections. We do a lot of publications and handouts for our producers. We also have training for manure applicators. State Revolving Fund(SRF) monies can be used for these types of facilities to assist in getting into compliance.

Susan Heathcote said that five years also gives producers time to economically assess whether or not they should continue to be an operation. The economy has been hard lately so more time for producers to assess would be valuable.

*Motion was made by Gene VerSteege to deny Item 2 of the Petition pertaining to Department Evaluation of animal feeding operations and adopt new associated definitions in 567 IAC 65.1. Seconded by Marty Stimson.*

Charlotte Hubbell said that she favors this portion of the petition. I still believe the discretionary rule is fine with or without the ARRC objection to its use. This rule should be used in a public manner as the Department sees fit to deny a construction permit. I do believe that in our legislative report to the Governor and General Assembly that we stated the concentration of animal feeding operations continue to be a concern voiced by citizens at commission meetings. Our recommendation is that the legislature should consider authorizing the Department to assess the cumulative impacts of existing livestock facilities to air and water quality when considering approval of a new livestock facility. My reading of the rule is that the Department shall consider the following factors when conducting an evaluation: flow, vegetation, and location in a capture zone. The Department can consider the cumulative impact of existing CAFOs. I believe this has merit and we should amend, not do away with the current rule.

It was mentioned that the Petition would strike most of the existing text, not add to existing language. Commissioner Hubbell said that it was her understanding that the Petition amended existing rules. If it’s a strike out, then I would not be in support of this Petition.

Susan Heathcote said that we would like to see this rule strengthened and used more, especially when there is an accumulation of CAFOs in an area. It's an enforcement and management issue and I don't believe we are using this to its fullest extent. I would like us to have a discussion in the future on what we can do to strengthen this rule.

Charlotte Hubbell withdrew her comments and stated that she is not in support of this Petition.

*Motion carried unanimously.*

**PETITION DENIED**

**2011 EPC DATES AND LOCATIONS**

The Department is requesting permission from the Commission to proceed with scheduling the 2011 Environmental Protection Commission meeting dates and locations.

January 18, 2011 – Air Quality Building, Windsor Heights  
 January 19, 2011 – Legislative Breakfast, State Capitol 7:30-9 a.m.  
 January 19, 2011 – Joint NRC/EPC Meeting, Des Moines 10 a.m. – 3 p.m.  
 (Commissioners decided that they will just proceed with an EPC training/educational session.)

February 15, 2011 – Air Quality Building, Windsor Heights  
 March 15, 2011 – Air Quality Building, Windsor Heights  
 April 19, 2011 – Air Quality Building, Windsor Heights  
**May 16, 2011 – Johnson County – EPC Tour**  
**May 17, 2011 – Johnson County – EPC Meeting**  
 June 21, 2011 – Air Quality Building, Windsor Heights  
 July 12, 2011 – Air Quality Building, Windsor Heights  
 July 13, 2011 – Joint NRC/EPC Meeting, Des Moines 10 a.m. – 3 p.m.  
 August 16, 2011 – Air Quality Building, Windsor Heights  
**September 19, 2011 – Humboldt County – EPC Tour**  
**September 20, 2011 – Humboldt County – EPC Meeting**  
 October 18, 2011 – Air Quality Building, Windsor Heights  
 November 15, 2011 – Air Quality Building, Windsor Heights  
 December 20, 2011 – Air Quality Building, Windsor Heights

Pat Boddy said that the NRC does not want to meet in January but will meet in July if EPC plans to participate. We will work on a substantive agenda topics to help encourage participation. Commissioners are asked to send in topics that they would like to address.

*Motion was made by David Petty to approve the 2011 dates as amended. Seconded by Marty Stimson. Motion carried unanimously.*

<b>APPROVED AS AMENDED</b>
----------------------------

**MONTHLY REPORTS**

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

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

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

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

**GENERAL DISCUSSION**

Wayne gave updates on the following topics:

- The Department is creating some extra funding proposals for Air Quality and CAFO programs.
- There will be a joint press release between DNR, IDALS, Department of Soil Conservation – on application of anhydrous ammonia.

There were a few comments made during the public comment period that just are not true. Iowa is not the worst in the nation on impaired waters. We are about 25<sup>th</sup> in ranking. I'm not saying we don't have problems but there is no basis of fact in saying that we were ranked 4<sup>th</sup> from the bottom. The more you monitor the more you will find impairments. We have only been water monitoring for 10 years.

Charlotte Hubbell asked that we discuss the bluffland mining issue at next month's meeting as well as the Iowa Policy Project – Focusing on farm runoff.

Jim McGraw gave an update on the RIDE project.

Lorna Puntillo asked for an update on the PM2.5 standards at the next meeting.

**NEXT MEETING DATES**

November 16<sup>th</sup> – Windsor Heights

**ADJOURNMENT**

*Motion was made by Marty Stimson to adjourn the meeting. Seconded by John Glenn. Motion carried unanimously.*

With no further business to come before the Environmental Protection Commission, Chairperson adjourned the meeting at 4:40 p.m., Tuesday, October 19, 2010.

---

Patricia Boddy, Interim Director

**INDEX**

**2**

2011 EPC Dates and Locations, 32

**A**

Adjournment, 34

Adoption of Agenda, 1

Amendment-Notice of Intended Action

Chapter 65

Animal Feeding Operations, 27

Approval of Minutes, 2

**B**

Bird

Dick, 13

**C**

Call to Order, 1

Chapter 61

Water Quality Standards

Final Rule, 14

Chapter 65

Amendment-Notice of Intended Action

Animal Feeding Operations, 27

Chapters 22 and 33

Air Quality Program Rules – PSD and  
Title V Greenhouse Gas Tailoring Rule

Final Rule, 18

Commissioners Absent, 1

Commissioners Present, 1

Contract

IDALS Division of Soil Conservation

Watershed Improvement Project, 5

IDALS-DSC

Nonpoint Source Program Basin

Coordinator Staffing Assistance, 17

University of Northern Iowa

IOWATER program development, 2

**D**

Directors Remarks, 1, 2

**F**

Final Rule

Chapter 61

Water Quality Standards, 14

Chapters 22 and 33

Air Quality Program Rules – PSD  
and Title V Greenhouse Gas  
Tailoring Rule, 18

**G**

Garretson

Shannon, 12

General Discussion, 34

Goodner

David, 9

**H**

Hawk

Shari, 8

**I**

ICCI et al. Petition For Rulemaking, 30

IDALS Division of Soil Conservation

Watershed Improvement Project

Contract, 5

IDALS-DSC

Nonpoint Source Program Basin

Coordinator Staffing Assistance

Contract, 17

IOWATER program development

Contract

University of Northern Iowa, 2

**K**

Kallen

John, 6

**L**

Lonning

Judy, 9

**M**

Mason  
Adam, 13  
Menke  
Grant, 10  
Monthly Reports, 33

**N**

Next Meeting Dates, 34  
Notice of Intended Action  
Chapter 65  
Animal Feeding Operations, 27

**P**

Public Participation, 6

**S**

Seaman  
Neila, 8  
Sherman  
bill, 10  
Snyders  
Natalie, 8  
Struznik  
John, 10

**T**

Taylor  
Wally, 7  
Troeger  
Jack, 12

**U**

University of Northern Iowa  
IOWATER program development  
Contract, 2

**W**

Water Quality Standards  
Final Rule  
Chapter 61, 14  
Watershed Improvement Project  
Contract

IDALS Division of Soil  
Conservation, 5

**Y**

Yungclas  
Jim, 7