

**MINUTES**  
**OF THE**  
**ENVIRONMENTAL PROTECTION COMMISSION**  
**MEETING**  
**JANUARY 18, 2011**

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

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**MEETING MINUTES**

**CALL TO ORDER**

The meeting of the Environmental Protection Commission was called to order by Chairperson Charlotte Hubbell at 10:05 a.m. on January 18, 2011 in the Ingram Office Building, Windsor Heights, Iowa.

**COMMISSIONERS PRESENT**

Gene Ver Steeg  
Charlotte Hubbell, Chair  
David Petty  
Susan Heathcote  
Paul Johnson  
Martin Stimson, Vice-Chair  
John Glenn  
Lorna Puntillo, Secretary – by phone  
Dee Bruemmer

**ADOPTION OF AGENDA**

Change the time of the dinner from 7:00 pm to 6:30 pm.

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

**APPROVED AS AMENDED**

**APPROVAL OF MINUTES**

Changes to page 22 – Lorna Puntillo asked that her comment should be revised to only say “What steps will be done to find alternative methods?”

Changes to page 23 – Paul Johnson said that his comments should say “We need to get away from pitting urban against rural. Our number one pollutant is still sediment and that the report was very weak on that point”.

Change to page 1 – Gene VerSteeg was present not absent.

*Motion was made by Susan Heathcote to approve the December 2010 minutes as amended. Seconded by John Glenn.*

**APPROVED AS AMENDED**

**DIRECTORS REMARKS**

Pat Boddy introduced our new Department Director Roger Lande.

<b>INFORMATIONAL ONLY</b>
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**CONTRACT - IOWA STATE UNIVERSITY FOR ESTIMATION OF WILDLIFE VALUE IN FARMED WETLANDS**

Dr. Mary Skopec, with the Geological and Water Survey bureau presented the following item.

**Recommendations:**

Commission approval is requested for a three year-service contract with Iowa State University of Ames, Iowa. The contract will begin on January 19, 2011 and terminate on July 15, 2013. The total amount of this contract shall not exceed \$135,881. 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 a State and Tribal Wetland Grant from U.S. EPA.

**Background:**

Approximately 95% of nearly 4 million acres of wetlands located in Iowa's portion of the Prairie Pothole Region (Des Moines Landform Region) are drained and farmed primarily for row crops. Many of these wetland basins are too wet to produce consistent crop yields and too dry to function as normal wetlands. Very little information currently exists that documents their value in terms of water quality, wildlife food and/or habitat and key hydrological aspects. This contract is a subset of the grant activities which includes a three year monitoring study of this wetland type that focuses on three components 1) Wildlife value 2) Water quality, and 3) Hydrological conditions. Five HUC-10 subwatersheds will be selected for sampling during the spring and summer months (hydrology will be documented throughout the project duration). The final product from this project will yield data that documents farmed wetland status. The information would be of value to watershed groups, wetland/wildlife professionals, agricultural groups, conservation groups, hydrologists, water quality groups, and the public. This information would be used to inform decisions related to drainage, wildlife management, water quality, and watershed health.

**Purpose:**

The parties propose to enter into this Contract for the purpose of retaining the Contractor to provide: services to collect information on drained or farmed wetlands in Iowa. Specifically, this contract will focus on collecting and analyzing data on the value of drained/farmed wetlands to wildlife by examining the general patterns of farmed wetland use by waterbirds, amphibians, and reptiles along with the timing and duration of use, locational preferences, reasons for use (food type and availability), and vegetation composition.

**Contractor Selection Process:**

Iowa State University and Dr. Steve Dinsmore was chosen using the Code of Iowa (455B.103), which directs the DNR to contract with public agencies of the state. Iowa State University and Dr. Steve Dinsmore was chosen for this project because of their expertise in wildlife monitoring, specifically related to bird populations. Dr. Dinsmore is the author of numerous peer-reviewed publications including journal articles, book chapters, and other articles. He was also a co-principle investigator on the US EPA wetland grant application.

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

**APPROVED AS PRESENTED**

**CONTRACT - GREENSTAR FOR MOBILE EDUCATION EXHIBIT TRANSPORTATION**

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

**Recommendations:**

Commission approval is requested for a one (1) year-service agreement with Greenstar of Des Moines, Iowa. The agreement will begin on January 18, 2011 and terminate on December 31, 2011. The total amount of this agreement shall not exceed \$30,000 on an annual basis. DNR shall have the option to annually renew this agreement as long as this agreement and any extensions do not exceed a six-year period, per Department of Administrative Services contracting guidelines.

**Funding Source:**

This agreement will be funded through the Household Hazardous Materials Program of the Groundwater Protection Fund.

**Background:**

Iowa Code Chapters 455B.484 and 455F.2 state that the Department policy is to provide education to Iowans in the areas of solid waste and household hazardous waste, etc. In partnership with Department stakeholders it was agreed that providing a mobile education exhibit would be a cost effective means of providing public awareness and education, as well as assisting environmental educators and school teachers with an alternative and complimentary approach to their activities. The mobile education exhibit is also supportive of corporate and public agency events, community celebration events and county fairs.

**Purpose:**

The parties propose to enter into this agreement for the purpose of retaining the Contractor to provide: transportation, maintenance and inspection services.

**Contractor Selection Process:**

Greenstar was chosen using the competitive Request for Proposal process. Greenstar was selected for this project after review of the competitive proposal submitted and previous experience in providing the activities outlined in the attached Statement of Work.

Charlotte Hubbell asked where the displays are set up. Tom Anderson said mainly at schools, county fairs, business and industries.

Dee Bruemmer asked how long the department sees this program continuing given the household hazardous waste facilities and the education they are providing.

Tom Anderson said that the education that is given goes beyond the Household Hazardous Waste Materials Program. There is an educational component including water quality and energy.

Lorna Puntillo praised the Household Hazardous Waste Materials Program and its efforts. The trailer is very dynamic. Is it a possibility that the refundable payment can become non-refundable?

Tom Anderson said that we could. However schools are the main audience and I'm not sure that they could afford this service.

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

**APPROVED AS PRESENTED**

**ADOPTED AND FILED – AMENDMENTS TO WASTEWATER RULES TO INCLUDE PESTICIDE DISCHARGES, INCLUDING CHAPTERS 60, 64, AND 66**

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

The adopted and filed rule for changes to Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 64, "Wastewater Construction and Operation Permits," and Chapter 66, "Pesticide Application to Waters" is being presented to the Commission for final decision. The rules will allow for the use of a new General Permit (No. 7) to authorize discharge of biological pesticides and chemical pesticide residues to waters of the United States, as required by U.S. Sixth Circuit Court of Appeals in a decision on January 7, 2009.

The Notice of Intended Action (NOIA) was published in the Iowa Administrative Bulletin on September 8, 2010 as **ARC 9056B**. Six public hearings were held throughout the state with notice of the hearings sent to various individuals, organizations, and associations, and to

statewide news network organizations. Comments were received from nine persons and organizations. A responsiveness summary addressing the comments can be obtained from the Department of Natural Resources.

Coverage under NPDES Pesticides General Permit (No. 7) will be required for the application of 1) biological pesticides and 2) chemical pesticides which leave a residue that result in a discharge to Waters of the United States. Applicable pesticide applications include those for control of aquatic nuisance insects, weeds, algae, and bacteria or fish parasites, aquatic nuisance animals, and forest canopy pests. Irrigation return flows and agricultural runoff are not covered under the General Permit No. 7 as they are specifically exempted from the Clean Water Act. The permit requires all operators to implement Best Management Practices (BMPs) to minimize discharges resulting from pesticide applications. The BMPs include following label instructions, conducting regular equipment maintenance, and visually monitoring application sites when possible. Larger applicators have additional requirements, including the submittal of annual activity reports to IDNR and the preparation of management plans.

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

- Add the new Notice of Intent, Notice of Termination, and Annual Reporting forms for the new General Permit No. 7.

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

- Exempt discharges of biological pesticides and chemical pesticide residues that do not reach the waters of the United States from the requirement to obtain a DNR operating permit.
- Require the issuance of a General Permit No. 7 for specific pesticide discharges that reach waters of the United States.
- Exempt pesticide discharges which do not meet the thresholds established in General Permit No. 7 from the requirement to submit a Notice of Intent.
- Establish effective and expiration dates for General Permit No. 7.
- Exempt General Permit No. 7 from the collection of permitting fees.
- Other changes as needed to accommodate the issuance of General Permit No. 7.

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

- Revise Chapter 66 to comply with the requirements noted in Chapter 64 and in General Permit No. 7. Add references Chapter 64 and General Permit No. 7.
- Remove the existing requirements, the denial conditions, and the special conditions for the previous aquatic pesticides general permit. All of these requirements and conditions are included in the draft of General Permit No. 7.

The rules and General Permit No. 7 will become effective on March 30, 2011.

Charlotte Hubbell asked about the small businesses that would be impacted. Chuck Corell said that it may affect them but not in a big way. They would not need to apply for the permit. It's basically one big permit that will cover everyone whether they know it or not. To our knowledge, the only entities that would need to apply would be the Department of Transportation and the Department of Natural Resources.

Pat Boddy said the impact is a beneficial impact not a negative one.

Charlotte Hubbell asked how applicators will even know that they are covered and how will the department know whether or not they are in compliance.

Chuck Corell said that DOT would know when they exceed the threshold based on the proximity to streams when applying pesticides to road ditches. DNR has talked to the drainage districts and they don't believe that they will exceed the thresholds.

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

**APPROVED AS PRESENTED**

## **PUBLIC PARTICIPATION**

**NATALIE SNYDERS**, representing Iowa Citizens for Community Improvement (ICCI) commented on Item 11 impaired waterways. Currently, there are 572 waters impaired in the state. This number has increased again. We would like to live in a state where the numbers go down instead of up. ICCI members have attended the CAFO hearings across the state and we hope that all facilities would be required to obtain a NPDES permit.

**KEN BOWEN**, commented on the Impaired Waters List. To the members of government, don't you think it would be cheaper to print a copy of the waterways that aren't on the impaired waters list? I encourage this commission and the DNR to take advantage of the full force of EPA's cleanup of Iowa's waterways and provide all Iowans with clean water.

**CHRIS GRUENHAGEN**, representing Iowa Farm Bureau said that in Burkart's report on Lake Nutrients, they used the reference lakes approach using datasets. The data is from 2000 and 2006. EPA's review of this monitoring data states that a limitation of Iowa's monitoring approach is that there is a lack of reference conditions for Iowa lakes. The current Iowa monitoring data doesn't answer questions on temporal and spacial variability in various parameters. Additionally, Dr. Downing's methodology reflects that at least six visits are necessary. Iowa is only collecting 3-5 samples per year under the contract that was approved last month. We believe that the data set that was used as a reference lake approach to establish the numbers in the nutrient standard have insufficient accuracy-based standards and pose an economic burden on the regulatory community.

My next comments are in regards to the process of these studies. Director Leopold hired Burkart to write the report because of his experience. Burkart was put in charge of writing the report and holding committee meetings. This group was required to follow the open meetings law and they failed to do so for their first two meetings in June. Once the meetings were open to the public, no one was allowed to make comment but only to observe. This has not been an open process

therefore resulting in rulemaking that is unreasonable, arbitrary and capricious. Furthermore, we would request that Susan Heathcote abstain from participating in this rulemaking based on conflict of interest and biases, since she is employed by the Iowa Environmental Council and has influence on their policies. With all due respect, we feel this would disqualify her participation.

**LEE SEARLES**, with the Iowa Environmental Council said that they would support the air quality proposed fee cap change as a short term solution to allow the DNR to fulfill its statutory requirements but encourage the DNR to continue to work with stakeholders to draft a solution for long term financial needs. The Title V fees need to be a part of this state to continue protecting the air quality of this state. The new fee should have the ability to meet the needs of the air quality bureau. We would not support the fees to be transferred to the state's General Fund. The regulated community should pay the costs of implementing this program, rather than taxpayers.

**MARIAN GELB**, Executive Director with the Iowa Environmental Council addressed Item 7 Nutrient Water Quality standards for recreational uses. We support the expansion of the criteria for the lakes protected to only those with a mean deep greater than 3 meters to include all lakes that have a maintained public beach and all significantly publicly owned lakes. Expanding these criteria allows for more protection to recreational areas. We support the findings of Mr. Burkart's report. We also support the criteria for 1 meter secchi disk depth as a transparency indicator. We are discouraged by the fact that DNR is not proposing a numeric standard for phosphorus. This would allow the Department to take a proactive approach to protecting our recreational resources by ensuring that phosphorus levels are not exceeded. We have the opportunity to curb ahead of time any adverse affects in our aquatic life in our lakes. We fear by only using the secchi depth and chlorophyll A, we risk the chance of protecting the early warning signs to protect aquatic life.

**RICH WHITE**, Director of the Iowa Limestone Producers Association said our members are very appreciative of the efforts of DNR staff. The DNR took the time to go out and visit the various sand operations and quarries across the state. DNR staff asked a lot of questions to ensure that they understood how the water was moving through our facilities. They then went back to their offices and began the difficult task of the rulemaking process. We still have a few questions on how the rule is to be interpreted but we are hopeful we can get those answered within the next few weeks. Overall, the DNR did a very professional job on these rules and the efforts they took to understand our operations. Thank you.

**JAMES HODEN**, with Linn County Public Health commented on the Title V fee cap. The Title V permit fees are based on emissions and therefore the reduction of emissions during the past years is now resulting in a lower amount collected. Business and industries are continuing to spend millions in order to implement efficiency technologies that will reduce their emissions. The dollar per ton fee approach is flawed when that is the only basis to determine the fee rate. There needs to be a more sustainable method for funding of the DNR air quality bureau.

**NICOLE MOLT**, Government Affairs Director with the Iowa Association of Business and Industry expressed her gratitude for the time and effort the DNR has put into creating options; however at this time we are opposed to all of the options listed by the Department. We need to

find a long term solution and we would look forward to working with the Department. We would encourage the EPC to keep the \$56 per ton fee cap for one year. This does not cut funding to the Department nor jeopardize the quality of Iowa's air. It will give DNR and industries time to sit down and have discussions on what other options we could review. We request that you take no action. There are a lot of proposed rules today and today in the Wall Street Journal, President Obama had an opinion article about looking at all federal regulations and that they be reviewed carefully, addressing environmental protection but also allowing for the economy to grow. Governor Branstad has also made comments similar in nature. We would encourage you to look closely at the regulations and allow the economy to get through this recession.

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

### **NOTICE OF INTENDED ACTION – CHAPTER 61 – NUTRIENT WATER QUALITY STANDARDS FOR LAKES TO SUPPORT RECREATIONAL USES**

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

The department appointed Mike Burkhart, a professor at Iowa State University, to head a science advisory panel to research nutrients and their effects on swimming in Iowa lakes. The department has developed draft criteria necessary to support swimming based on the recommendations from the NSA.

The NSA recommended setting two criteria that are necessary to support swimming: Secchi disk depth of one meter or greater and chlorophyll-a of no higher than 25 micrograms per liter (ug/l). Both of these are measures of the transparency of the water.

The Commission approved a notice with these criteria in November 2009 but adequate responses to public comments received would have required major revisions to the proposed rule so in March 2010 the Commission rescinded the notice. The criteria presented today are the same as presented in November 2009 but instead of applying to lakes with a mean depth of greater than three meters the criteria will apply to a specific list of lakes.

The list of lakes to which these criteria will apply was developed after reviewing a comprehensive list of Iowa lakes on an individual basis. A lake was added to the list if it had a maintained beach, appeared on the list of Significant Public Owned Lakes list or has a mean depth of more than three meters (9.9 feet). Lakes with a very large drainage area to surface area ratio, lakes where swimming is prohibited, and privately owned lakes were removed from the list.

Gene VerSteeg asked what the economic impact would be. Chuck Corell said that state lakes will see the biggest impact. A TMDL would need to be written for those lakes. For private landowners that have watershed areas above that lake they would have resources available to them. We have no authority to require those landowners to do anything. It's on a volunteer basis.

David Petty said that the Impaired Waters list will continue to increase in numbers because the standards are getting harder and harder to meet.

Paul Johnson requested that if these standards are not met than the public should be notified and the information posted. He went on to ask if the DNR has looked at other states that are agriculture based, is it fairly common to have these standards? Chuck Corell said that a team was established to look at the natural made lakes and the history of their water quality. We've also reviewed other states standards.

John Glenn said that most of the sediment comes from the outside. Phosphorus is in the sediment. I would like to fully understand on how this rulemaking will affect Rathbun Lake. We are working very hard with DNR to address some of the areas around the lake that contribute a large amount of sediment. Will this criteria change the "safety" of this lake? Chuck Corell said that the Department has just started the rulemaking process so it is hard to know the effects of this rule.

Six hearings are scheduled to be held. I will follow up on the comments made by Chris Gruenhagen in regards to the first two meetings held by Dr. Burkart and what happened at the meeting and if there were any minutes taken.

Wayne Gieselman said that he believes these meetings were posted on the state calendar but individual invites were probably not sent.

Gene VerSteege said that this will have a huge impact on some and requested that we have a longer comment period. At least another month or so.

The Commissioners agreed to add a south central public hearing at Honey Creek and add a couple of more hearings in March. The public comment period will be extended until April 30<sup>th</sup>.

Ed Tormey explained the provision in the Iowa Code regarding conflicts of interest. In previous communications with the Iowa Ethics and Campaign Disclosure Board, that Board stated that you should abstain from participation when there is a personal financial gain.

*Motion was made by Dee Bruemmer to approve the amendment to extend the public comment period until April 30, 2011. Seconded by Paul Johnson. Motion carried unanimously.*

Susan Heathcote disclosed the fact that she is employed by the Iowa Environmental Council.

*Motion was made by Dee Bruemmer to approve the NOIA as amended. Seconded by Marty Stimson. Motion carried unanimously.*

**APPROVED AS AMENDED**

**PRESENTATION - DRAFT 2010 STATE LIST OF CWA SECTION 303(D) IMPAIRED WATERS LIST BY JOHN OLSON, DNR**

The complete presentation can be viewed at: <http://www.iowadnr.gov/epc/11jan/11.pdf>

Section 303(d) of the federal Clean Water Act (CWA) requires that each state prepare, every two years, a list of its waters that do not fully meet state water quality standards. Iowa's 2010 draft of impaired waters is part of Iowa's "integrated report." According to U.S. EPA guidance, states should provide a single water quality monitoring and assessment report—the Integrated Report—that combines the water quality reporting requirements of Section 305(b), the impaired waters listing requirements of Section 303(d), and the lakes reporting requirements of Section 314 of the CWA. Integrated reports are to be composed of five categories that are designed to give the public and other stakeholders a comprehensive summary of the water quality status in the state. Category 5 of the Integrated Report is the state's Section 303(d) list of impaired waters. Waters in Category 5 must be prioritized for preparation of a total maximum daily load (TMDL) to determine the load of pollutants that a water can receive and still meet state water quality standards.

Iowa's draft 2010 list of impaired waters contains 446 water bodies. The 2010 list represents IDNR's sixth biennial impaired waters list prepared for EPA approval. This draft list is a subset of the approximately 1,200 Iowa water bodies or waterbody segments (streams, rivers, lakes, and wetlands) assessed for support of state water quality standards by IDNR staff for the 2010 Integrated Reporting cycle. For comparison, Iowa's final 2008 list contained 435 impaired waters, the 2006 list contained 279 water bodies; and the final 2004 list contained 225 water bodies. The draft 2010 list will be available for public notice for a period of 45 days from January 18, 2011 through March 4, 2011. Following the close of the public comment period, IDNR will prepare a responsiveness summary of comments received. Changes in the list will be made based on public comments, and IDNR will submit the revised draft to U.S. EPA Region 7 for review and final approval.

John Olson said that lakes have been removed from this list. There are success stories out there. However, local partnership is very important and plays a critical role in a lakes success.

Al Bonini said that the Department has received more inquiries for matching funds in order for locals to improve their water bodies. We are able to do about 12-15 TMDLs per year. We do prioritize these projects by going out and visiting the site, talking to stakeholders and the local partners. EPA has a guideline that we have to complete a TMDL within 13 years after it's first listed.

<b>INFORMATION</b>
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**PROPOSED RULE – AMENDMENT TO WASTEWATER RULES CHAPTER 64 – WASTEWATER CONSTRUCTION AND OPERATION PERMITS**

A summary of the draft amendments to Chapter 64 “Wastewater Construction and Operation Permits” is being presented to the Environmental Protection Commission for Notice of Intended Action. The amended rule is intended to re-issue NPDES General Permit # 5 for a period of five years. This general permit authorizes wastewater discharges, excluding separate storm water discharges, from facilities primarily engaged in mining, quarrying, and further processing of dimension stone, crushed and broken limestone, construction sand and gravel, clay, ceramic, and refractory minerals, and miscellaneous nonmetallic minerals, except fuels. The previously issued NPDES General Permit # 5 expired July 17, 2006.

The proposed modifications to the general permit include:

- update the effective date,
- revise the deadline for submitting a Notice of Intent,
- add a fee requirement,
- add a sulfate sampling requirement,
- add additional discharges not authorized by the general permit,
- add best management practices for new or expanded discharges,
- add definitions for new, expanded, and existing discharges, owner or operator, and facility or activity,
- add clarification of the mine or quarry operator’s duties required by the general permit.

A summary of the proposed amendments to Chapter 64:

- revise the transfer of title and owner address change requirements to include transfer of coverage under General Permit #5.
- establish an effective date for the reissue of General Permit #5.
- revise the NPDES fee schedule to include General Permit #5 annual fees.

Stakeholders participated in the development of these proposed rules. The department also plans to hold a public hearing to obtain additional public comments.

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

**APPROVED AS PRESENTED**

## **CONTRACT – IOWA STATE UNIVERSITY – HISTORIC AERIAL PHOTOGRAPHY PROJECT**

Chris Ensminger, Environmental Program Supervisor in the GIS Section presented the following item.

### **Recommendation:**

The Department requests Commission approval of a contract not-to-exceed \$50,000 with the ISU GIS Support and Research Facility for 1.5 year(s). This contract will provide aerial photography products including scanned images and photo centroids in support of the DNR's Historic Aerial Photography project.

### **Funding Source:**

This project will be funded through Watershed Initiative (Infrastructure) and Brownfield (EPA) dollars.

### **Background:**

The DNR's GIS Section is in the process of building a decadel series of historic photography from the 1930's through present. These photographs are proving to be extremely valuable in applications such as our Brownfields program where we need to know the history of a given property. Other applications include tracking the implementation of conservation practices on agricultural lands over time or evaluating when and how landscapes like the Prairie Pothole Region of the state have changed.

### **Purpose:**

This contract will provide the DNR with scanned images from the historic (hard-copy) photos and photo centroids that are used to locate the photos with other GIS information.

### **Scope of Work:**

ISU shall be responsible to deliver the following products as described:

Product 1: Scanned Photos Description: Scanned images at a maximum reasonable resolution (preferred 600dpi). Images will be requested by DNR as needed for project.

Product 2: Photo centroids with attributes: Image centers will be delivered in ESRI GIS format (Shapefile or Geodatabase) as requested by DNR.

Products will be delivered within 6 months of written request for product by DNR.

Chris Ensminger said that this information is available on the web for anyone to access. The Brownfield program funded us to get going on this work. Some of the money is from EPA, the GIS Bureau and a second grant from the Iowa Historical Society.

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

**APPROVED AS PRESENTED**

## **CONTRACT – IOWA STATE UNIVERSITY – GIS SERVICE BUREAU PROJECT**

Chris Ensminger, Environmental Program Supervisor in the GIS Section presented the following item.

### **Recommendation:**

The Department requests Commission approval of a contract in the amount of \$273,003 with the Iowa State University GIS Support and Research Facility for 1.5 years.

This contract will provide technical and coordination services to build GIS capabilities across state agency lines.

### **Funding Source:**

This project will be funded through Pooled Technology Grant dollars.

### **Background and Purpose:**

While the GIS infrastructure (data, hardware, software, expertise, etc.) in several agencies (DNR, DOT, HSEMD, etc.) is growing rapidly, others have just started (DED, DPH, IWD, etc.). Very little work has been done to attempt to identify and facilitate data and technology sharing among these agencies. There are many instances where data sharing will help the DNR make better decisions while saving both time and money. This project will highlight some of the more obvious opportunities, such as environmental data being used in DPH analyses, and start building the infrastructure needed to share data easily and efficiently.

### **Scope of Work:**

5.1 Statement of Work. ISU shall be responsible to perform the following tasks as described by the Task Milestone Dates set out in the following table:

#### Task 1: Project initiation

Description: ISU GIS Support and Research (GISSRF) staff shall collect information on state agency GIS projects, including GIS data and software inventories, future needs, and other information needed for planning further GIS developments. ISU shall develop a plan for delivery of GIS services to state agencies working in conjunction with the State Agency GIS Steering Committee (under the supervision of the Joint CIO Council). ISU will begin to implement GIS services outlined in the plan. ISU project staff will work with state agency staff including Human Services, Economic Development, Public Safety, Cultural Affairs, and Public Health. Other agencies may be added as well.

Task milestone date: No later than August 30, 2011

Task 2: Provide GIS Services

Description: ISU GISSRF Staff shall continue providing GIS services to state agencies as directed by State Agency GIS Steering Committee and the service plan developed in TASK 1. ISU project staff will continue to work with state agency staff including Human Services, Economic Development, Public Safety, Cultural Affairs, and Public Health. Other agencies may be added as well. ISU GISSRF staff will provide support and technical assistance to the project as outlined in the project plan. ISU project staff will develop a project summary report and plan for continuation of services into the future and provide to the State Agency GIS Steering committee within 30 days of completion of the project.

Task milestone date: No later than December 31, 2012

Task 3: Administration & Supervision

a) Description: ISU GISSRF staff shall administer the GIS Service Bureau contract by hiring all staff hired for the project, in consultation with State Agency GIS Steering Committee.

b) Description: ISU GISSRF staff shall administer the GIS Service Bureau contract by supervising all staff throughout the project, in consultation with State Agency GIS Steering Committee.

Task milestone date: No later than December 31, 2012

Lorna Puntillo said that since there are other agencies involved, have they allocated monies?

Chris Ensminger said that DNR and several other agencies all went forward to obtain funds for the pooled technology grant.

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

**APPROVED AS PRESENTED**

**Commissioners went into closed session to meet with the Attorney General's office.**

*Motion was made by Dee Bruemmer to move into closed session based on Iowa Code section 21.5(1)c. Seconded by Paul Johnson. Roll call vote went as follows: David Petty – aye; Susan Heathcote – aye; Dee Bruemmer – aye; Gene VerSteege – aye; Marty Stimson – aye; Paul Johnson – aye; John Glenn – aye; Lorna Puntillo – aye; Charlotte Hubbell – aye.*

**NOTICE OF INTENDED ACTION: CHAPTER 22, “*CONTROLLING POLLUTION*,” CHAPTER 30, “*FEEES*”, AND CHAPTER 33, “*SPECIAL REGULATIONS AND CONSTRUCTION PERMIT REQUIREMENTS FOR MAJOR STATIONARY SOURCES – PREVENTION OF SIGNIFICANT DETERIORATION (PSD) OF AIR QUALITY*.”**

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

The Department is requesting permission from the Commission to proceed with the rulemaking process and publish a Notice of Intended Action to amend Chapter 22, “Controlling Pollution”, adopt a new Chapter 30, “Fees”, and amend 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 gain stakeholder input related to the scope, services, and funding options to address budget challenges facing the Department’s air quality program. Five options are proposed. Currently the Title V Operating permit program rules allow the Department to collect up to \$56 per ton for air pollutants emitted.

In December the Department presented the Commission with a proposed one-year fee cap of \$65. Members of the Commission requested the Department to explore alternative proposals to continue to provide the same level of service. The five options presented in this rulemaking were developed as a result of the Commission’s comments and subsequent Departmental review.

**Relationship Between the Title V Fee and the Title V Fee Cap**

Subrule 22.106(1) describes when the Title V fee is due and how it is calculated. It directs the Department to present each year an estimated or proposed budget to cover the reasonable cost of administering the Title V program no later than the March Commission meeting. The Title V fee is then calculated by dividing the estimated budget by the chargeable emissions as reported by facilities each March 31. The subrule requires that the Title V fee be set by the Commission no later than the May Commission meeting. The annual fee must be set at or below the Title V fee cap. This subrule also establishes the maximum Title V fee (fee cap), which can only be changed through administrative rulemaking. Since the program’s inception the Title V fee cap has been raised twice.

**Title V Fee Background**

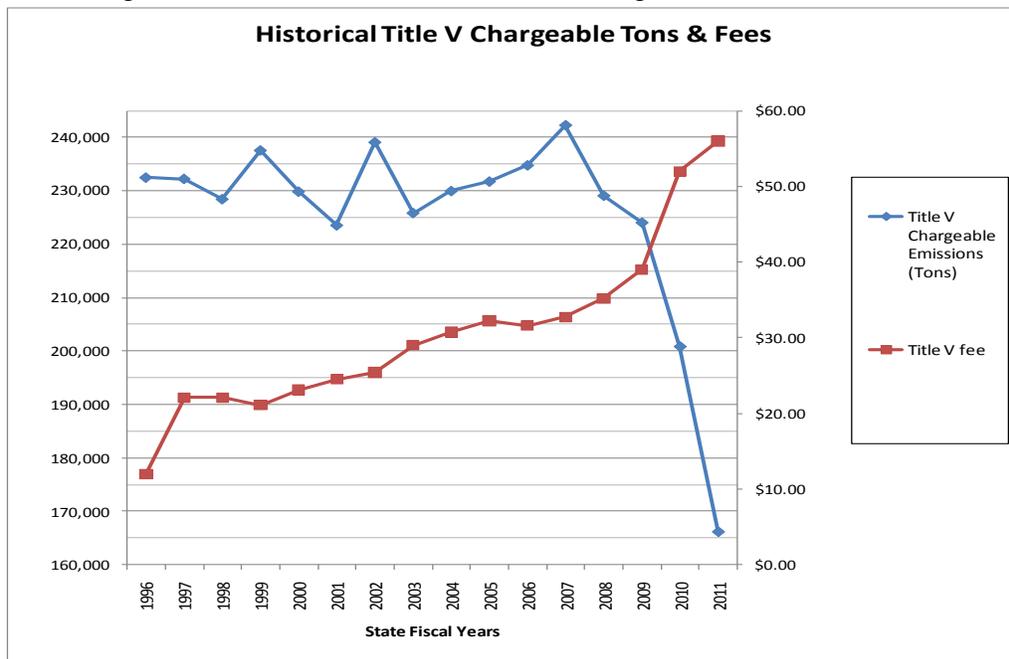
The Title V fee is required under the federal Clean Air Act (42 USC 7401-7671q) to be paid by those facilities with potential emissions that exceed the major stationary source thresholds. A major stationary source, also referred to as a Title V facility, is a facility that has the potential to emit 100 tons per year (tpy) or more of any air pollutant; or the potential to emit 10 tpy or more of any individual hazardous air pollutant; or the potential to emit 25 tpy or more of any combination of hazardous air pollutants. Currently Iowa has 278 Title V facilities. Examples of Title V facilities include electric utilities, grain processors, cement plants, and manufacturing operations.

In Iowa, the Title V fee is currently based on the first 4,000 tons of each regulated air pollutant emitted each year from each major stationary source in the state. Regulated air pollutants that Title V fees are paid on include: particulate matter equal to or less than 10 micrometers in diameter (PM<sub>10</sub>), sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOC), lead (Pb), and 187 hazardous air pollutants (HAP). The Title V fee is required to be sufficient to cover all reasonable (direct and indirect costs) required to develop and administer the Title V program requirements (42 USC 7661a).

The Title V fee is calculated by dividing the estimated budget by the chargeable emissions as reported by facilities each March 31. The Title V fees are due each July 1 and fund the program for the entire year. For example the Title V fees to be paid on July 1, 2011 are based on 2010 emissions and will fund the program for state fiscal year (SFY) 2012, or July 1, 2011 – June 30, 2012.

In the current fee structure the Title V fee increases as emissions decrease. Emission levels have varied over the history of the program (Figure 1). A sharp decline in tons occurred after SFY 2007's peak of 242,000 tons, to SFY 2011's current low of 166,000 tons.

Figure 1: Historical Title V Fees and Chargeable Tons



**Title V Fee Cap Background**

The Title V fee cap was created when the Title V program was adopted in the early 1990s. Stakeholders wanted the Department to have flexibility when setting the Title V fee but also wanted a maximum fee placed into administrative rules to allow appropriate notice for planning purposes.

The current Title V fee cap of \$56 was set in 2009 for fees collected on July 1, 2009 and July 1, 2010 with the expectation that emissions would not decline (Table 1). The economic downturn

combined with implementation of federal regulations led to a steeper than anticipated decline in emissions.

Table 1: Fees Collected Under the \$56 Title V Fee Cap

<b>Date Collected</b>	<b>Fee</b>	<b>Fee</b>	<b>Predicted Emissions</b>	<b>Actual Emissions</b>
July 1, 2009	\$52		224,000	201,000
July 1, 2010	\$56		224,000	166,000

The current Title V fee of \$56 was established at the May 2010 Commission meeting based on 166,000 tons. The reduced emissions dictated a reduction of \$1.2 million dollars (Table 2) for the current fiscal year in order to not exceed the maximum fee.

Table 2: SFY 2011 Reductions Made to Remain at the Title V Fee Cap of \$56

<b>Item</b>	<b>Reduction</b>	<b>Impacts to Services</b>
Reduced DNR air quality staffing by 4 positions and downgraded an additional 2 positions	\$551,364	Reduction of 2 staff, 2 vacancies held, 2 positions downgraded. Reduced work on emissions inventory, eliminated records and asbestos staffing.
Reduced DNR ambient air quality funding	\$371,319	Removed funding to cover monitoring lab expenses. Delayed purchase of air monitors.
Reduced Iowa Emissions Assistance Program at UNI	\$282,217	Refocused to education and outreach; discontinued direct permit and emission inventory assistance.
<b>TOTAL</b>	<b>\$1,204,900</b>	

### **Development of the SFY 2012-2016 Budget Projections**

#### **Stakeholder Process**

The Department has a long established tradition of meeting with stakeholders regarding Title V fiscal matters. The Department met with members of the public, industry, and environmental groups to obtain preliminary input on the Title V fee cap. Meetings were conducted on November 12, November 19, and December 2, 2010. The initial proposal to stakeholders, which is reflected below in option #2, presented a five-year fee cap of \$89.

Budget projections and estimates of further reductions in actual emissions indicate that revenue must be increased to maintain the current level of service. Emissions are anticipated to continue to decline by 5%, to 158,000 tons for the upcoming year, based on proposed and existing federal regulations. The five-year tonnage estimate predicts a decline to 138,000 tons.

Estimated expense increases include an additional \$305,000 or 4.9% in personnel costs, including the Department's indirect rate. Professional service contracts are estimated to increase by \$100,000 or 3.4%. Expense increases also include restoring the ambient monitoring support for equipment and analysis to SFY 2010 levels, which is an estimated increase of \$371,000. Finally, an additional \$11,000 is restored to allow maintenance of access to existing electronic

records. Total Title V expenses are projected at \$10,727,000, leaving the remaining \$18,000 for adjustments that may be needed in the budget process.

The purpose of this rulemaking is to establish, with important stakeholder input, either additional or new methods of funding the air quality program and continue to provide quality permitting services that protect air quality.

### **Program Efficiencies**

The DNR-Air Quality Bureau has obtained program performance efficiencies by being a leader in process improvements, Lean, and 5S events designed to streamline processes in business and government. In 2003 the first Kaizen event held in state government was on the air quality construction permit application review process. The complex construction permit permitting process was addressed in a Kaizen event in 2004. Small business assistance was reviewed in 2005, and additional aspects of small business assistance were re-reviewed and streamlined in following years. The original Kaizen process for construction permitting was revisited in 2006. These Kaizen and Lean events dramatically reduced the permit issuance turnaround time and increased the efficiency and standardization of permits. The goals of these events were not designed to reduce cost but to issue high quality permits more quickly.

In 2009, the Air Quality Bureau applied Lean techniques to create a stack test database to facilitate access to stack test data. These data are used in construction permitting to assist in establishing permit limits and in determining whether to require additional testing, and for work related to emissions inventory development and planning projects. An event in 2010 resulted in the creation of a standard operating procedures manual for construction permit application reviews. Use of the manual helps ensure consistency in the review and decision making associated with construction permit application reviews, and in the documentation of the application reviews.

The Department also met with stakeholders multiple times to effect further streamlining of the construction permitting process. During six separate permitting exemption workgroups, stakeholders assisted the Department in conducting rigorous technical evaluations of low emitting sources and processes which resulted in the addition in administrative rule of 19 new permitting exemptions. The low emitting sources and processes that were exempted from the construction permitting requirements were found to have little or no human health or environmental impacts. Finally, the Department participated in a workgroup to address issues related to guidance used for air quality analyses conducted as part of the construction permit application review process.

### **Current Rulemaking – Funding Options**

In December the Department presented the Commission with a proposed one-year fee cap of \$65. Members of the Commission suggested the Department explore alternate proposals to provide funding.

In consideration of existing regulatory authority, previous meetings and discussions with stakeholders on funding alternatives, and the time constraints for developing this rulemaking, the following alternatives were explored.

Whether the fee cap should be set for one or more years?

Would a standard base fee be appropriate?

Which pollutants should fees be assessed on and should a pollutant ceiling of 4,000 tons be retained or modified?

Whether a construction permit fee should be established to supplant a portion of the fees?

These alternatives were developed into specific funding options. Following are five options proposed to address the Department's Air Quality Bureau revenue. The Department also specifically request comments regarding the possibility of adopting rules that combine aspects of the proposed options.

**Option #1.** Establish a Title V fee cap of \$65 per ton based on a conservative estimate of the budgetary needs for the next year. This option is the original proposal provided to the Commission at the December 2010 Commission meeting. This option provides status quo services and does not address funding for critical program elements indicated in Table 6.

**Option #2.** Establish a Title V fee cap of \$89 per ton based on a conservative estimate of the budgetary needs for the next five years. It would fund the program and allow time to find additional efficiencies and funding resources. This information was provided to stakeholders in November 2010. The Title V fee would likely be set at \$65 per ton at the May Commission meeting. This option provides status quo services and does not address funding for critical program elements indicated in Table 6.

**Option #3.** Establish an annual minimum Title V fee of \$5,000 and raise the Title V fee cap to \$65 per ton. Every Title V facility would pay a \$5,000 minimum fee and also pay a lowered per ton emission fee. A minimum Title V fee would provide for a more equitable system as each facility would pay for the costs to issue initial Title V permits, renewals, and modifications to Title V permits, review emissions, and inspect facilities. A minimum Title V fee also would provide the Department with a more stable basis of funding and rely less on fees based on variable emissions. Assuming 275 facilities remain in the Title V program, a \$5,000 minimum Title V fee would provide \$1,375,000. The remainder of the budget would be accommodated by a \$56 per ton emissions fee. The \$5,000 Title V minimum fee and emissions fee of \$56 per ton would increase fees paid by approximately 250 facilities and decrease fees paid by approximately 25 facilities. The details of the change are listed in the attached spreadsheet Title V Fee Cap Scenarios, on a facility basis. The Title V fee cap of \$65 per ton is anticipated to provide sufficient funds through the next two years (SFY 2012-13). The first payment of the base fee would be due on July 1, 2011. This option provides status quo services and does not address funding for critical program elements indicated in Table 6.

**Option #4.** Remove the 4,000 ton ceiling on emissions, reduce the fee to \$47 per ton, and retain the existing fee cap of \$56 per ton. Based on the SFY 2010 budget estimate and using 158,000 tons of chargeable emissions, with an additional 62,000 tons of pollutants that currently exceed

the 4,000 ton cap, the Title V fee could be reduced to \$47 per ton. Carbon monoxide would continue to be excluded from the list of chargeable pollutants. Five facilities would incur higher fees while the remaining 270 facilities would have reduced fees. These five facilities may reduce emissions in the future based on existing and proposed federal regulations. This option provides status quo services and does not address funding for critical program elements indicated in Table 6.

**Option #5.** Establish a pre-construction permit application fee for Title V facilities. The Department's air pollution control program is one of the few in the country that does not charge a pre-construction permit fee. A Title V or major source pre-construction permit application fee would fund construction permitting activities and remove the expenses from the emissions based fee. Stakeholders have commented on the desire to fund pre-construction permit activities in an alternate manner. In the current fee structure all Title V facilities support pre-construction permit activities. This option would charge fees on only those Title V facilities that use the service. Three separate levels of application fees are proposed and described in Table 3.

Table 3: Proposed Pre-construction Project Application Fees

<b>Type of Application</b>	<b>Description</b>	<b>Amount</b>
PSD	Prevention of Significant Deterioration projects.	\$20,000 per project and \$5,000 per point
Non-PSD Complex	A non-PSD project with more than 5 permits, or involves 112(g), or voluntary operating permits, or requires a public comment period.	\$10,000 per project and \$1,500 per point
Standard	A non-PSD project with 5 or less permit applications and does not involve 112(g), or voluntary operating permits, and does not involve a public comment period.	\$3,000 per project

Pre-construction permit activities include application completeness review; site visits as needed; review application purpose with applicant; emission calculations review; applicability determination; modeling, stack testing, recordkeeping, reporting determinations; engineering evaluation; permit drafting; modifying draft permit based on applicant comments; permit issuance; and associated tracking database and records support.

This rulemaking will also establish an applicability determination fee of \$1,000 for each determination request submitted to the Department, outside of a pre-construction permit application.

The current cost of these activities has been quantified and adjusted to reflect the estimated level of permitting for the upcoming year. These fees would (for state fiscal year 2012, beginning July 1, 2010) provide approximately \$1.2 million annually. Iowa Code 445B.133(8)“a” authorizes fees for Title V sources that are deposited into the air contaminant source fund (455B.133B).

#### **Consequences of projected underfunding of the air program**

Consequences of projected underfunding of the air program include insufficient data for complex permitting projects, significant delays in permit issuance, and the inability to complete federal requirements in a timely manner. Possible reductions are listed in table 5.

If the Title V fee cap is not raised, reduced staffing would increase by 20% the issuance time for pre-construction and operating permits. Significant additional federal standards such as new ambient air quality standards and emissions standards for hazardous air pollutants already have increased permit issuance time, and they will continue to climb without sustained or increasing support. Small business assistance provided by the University of Northern Iowa and Department of Economic Development would be reduced or eliminated in addition to the reduction in the current year (table 2). The ambient air monitoring network, which informs Iowans whether their health is being protected, would be reduced or eliminated. It also provides critical data to industry in support of quick permitting which if reduced or eliminated could significantly slow economic development projects by up to one year. If implementation of the federal Clean Air Act requirements declines below acceptable levels, EPA may pursue a deficiency finding for all or part of the state's implementation of the Act.

Table 5: Possible Reductions If Revenue Is Not Increased

Possible Program Reductions or Eliminations	Result
Curtail provision of electronic records.	Facilities and the public will have to physically come to the air quality bureau for records or pay higher costs to obtain records. Without additional staffing, this will result in delays that will delay facilities ability to apply for permits.
Reduced funding to local programs for major source support.	Local programs will have to scale back their assistance and rate of permitting or collect additional fees locally to maintain the same level of service.
Significantly reduce or eliminate the small business assistance programs. Provide limited services as a part of existing compliance assistance and permitting.	Assisting small businesses would fall on existing staff who have full permitting and compliance assistance duties.
Reduce effort in interstate pollutant transport emissions and regional modeling.	Mischaracterizations of Iowa facilities' emissions would be carried into federal and regional air pollution reduction plans. This in the past, and likely in the future, would result in unnecessary regulation of Iowa facilities.
Reduce assistance to facilities and communities approaching or near nonattainment.	Increasing number of areas showing nonattainment or exceedances of the health standards. Severe impacts on economic growth.
Eliminate supplemental funding of Attorney General's support.	Elimination of early review and prioritization of enforcement cases. Failure to take timely action when appropriate will excessively disrupt industry efforts to come back into compliance.
Reduce equipment support for monitoring network.	Increased periods of down-time on monitors will increase the number of instances where high values will be required to be substituted for missing data. This will increase the likelihood of "calculated" violations.

Possible Program Reductions or Eliminations	Result
Curtail development of compliance assistance tools and outreach activities.	Facilities and industry groups will no longer have specific guidance from the department on the implementation of new Hazardous Air Pollutant or New Source Performance Standards likely decreasing the level of compliance. Outreach on explaining permit requirements or permitting site visits will also be drastically reduced if not eliminated.
Reduce level of effort in operating permit issuance, construction permit issuance, compliance reviews, inspections, federal rule adoptions, attainment and nonattainment planning, emissions inventory collection and analysis, ambient air monitoring, dispersion and regional modeling, public records support, and stack-test observation.	Planning and adopting federal and state regulations, including those requirements in permits, providing compliance assistance and measuring and monitoring compliance and air quality are all integral to assuring that the quality of the air Iowans breathe meets federally established, scientifically credible air quality standards. Those standards are set to assure that children, the elderly, those with challenged health, and the healthy have air to breathe that is not injurious to health.

### Critical Unfunded Obligations.

The options listed above do not provide sufficient funding for critical program elements including the following: additional staffing required for mandatory greenhouse gas permitting; resources and staffing needed to comply with new requirements of many federal air quality standards; staffing requirements if non-attainment areas are declared in the State; and restoration of a portion of the small business permit assistance program eliminated made to help balance the SFY 2010 budget. Details are listed below in Table 6.

Table 6: **Unfunded** Requirements & Needs for SFY 2012

Unfunded Requirements	Explanation	Cost
Greenhouse Gas permitting	Based on current estimates	\$300,000
NO2 Monitoring Equipment, Operation, Maint.	New NAAQS requirements	\$218,364
SO2 Monitoring Equipment, Operation, Maint.	New NAAQS requirements	\$331,659
Ozone Monitoring Equipment, Operation, Maint.	New NAAQS requirements	\$783,399
PM2.5 Monitoring Equipment, Operation, Maint.	New NAAQS requirements	\$161,276
Nonattainment staffing	Six FTEs in 2 areas	\$450,000
Unfunded Needs	Explanation	Cost
Air Toxics at schools evaluations	Three FTEs and equipment	\$275,000
Forecasting	Three FTEs and equipment	\$300,000
Records Imaging	Backlog and ongoing	\$130,000
Reinvest in Small Business Assistance	Restore permitting assistance	\$230,000

Support for new monitoring to determine whether air quality meets new federal standards for air quality for sulfur dioxide, nitrogen dioxide, and ozone, and ongoing support for monitoring is critical. The department is faced with curtailing its investigation of the Air Toxics at Schools report that indicated dangerous levels of toxics near some schools in Iowa. New reviews of greenhouse gases in permits will slow permitting without investment of additional resources. Forecasting of air contaminant levels which may not meet new more strict health-based

standards will not be funded. Electronic access to records will only maintain the existing records. Electronic records access is now only available for most document types created prior to January 2005. No resources are provided in the Title V budget to accommodate any relocation expenses if the Bureau were required to move out of the current location.

Paul asked about the impact on the small business guidance program for air quality standards.

Catharine Fitzsimmons said that they help the regulatory community to understand the rules and standards. The program will be impacted by a reduction in revenue.

Gene VerSteege said that it appears stakeholders are not concerned with the loss of services since they are not willing to pay for the fee increase.

Catharine Fitzsimmons said that the state could lose delegation of these programs because of our inability to fulfill the tasks. And the DNR faces the possibility of additional cuts that the legislators implement this fiscal year.

Gene VerSteege said that it does not seem right to penalize the fee payers because of state employee's union contracts.

John Glenn said that it seems to make sense that the folks using the consultant should pay for the service rather than having the fee payers cover that expense.

Marty Stimson asked the department if their current proposal will cover future expenses and what if emissions continue to decrease.

Catharine Fitzsimmons said it's hard to determine, since we couldn't anticipate the economic downturn. Approving this notice of intended action today will allow for additional input and options from stakeholders.

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

**APPROVED AS PRESENTED**

## **CONTRACT - BADGER CREEK LAKE WATERSHED MANAGEMENT PLAN**

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

### **Recommendations:**

Commission approval is requested for a 14 month contract with the Madison County Soil and Water Conservation District (SWCD) to complete a watershed management plan (WMP) for the Badger Creek Lake Watershed. The purpose of the WMP is to identify actions needed to restore

Badger Creek Lake, an impaired lake in Madison County. The total amount of this contract shall not exceed \$33,080.

**Funding Source:**

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

**Background:**

The following contract is presented for approval:

Badger Creek Lake WMP (Madison Co SWCD)	\$33,080
<b>Total</b>	<b>\$33,080</b>

**Purpose:**

The parties propose to enter into this contract for the purpose of completing a watershed management plan for the watershed selected.

**Contractor Selection Process:**

This project was chosen using the DNR Watershed Planning Grant application and committee review process.

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

**APPROVED AS PRESENTED**

**CONTRACT AMENDMENT – GRESHAM, SMITH AND PARTNERS (GS&P) – SOLID WASTE ENVIRONMENTAL SYSTEMS PROGRAM CONSULTANT**

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

**Recommendation:**

The Department requests Commission approval to amend an existing contract with Gresham, Smith and Partners (GS&P) consulting group for an additional \$157,510 bringing the total contract amount to \$374,540. As amended, the term of the contract is October 20, 2009 to December 31, 2012. The scope of work of the original contract has been satisfactorily completed.

**Funding Source:**

This contract is funded by that portion of the solid waste tonnage fees remitted into the Solid Waste Alternatives Program (SWAP) account consistent with the appropriation set forth in Code of Iowa Section 455E.11, subsection 2, paragraph “a”, subparagraph (1).

**Background:**

In 2008, the Iowa Legislature passed House File (HF) 2570 which established a Solid Waste Environmental Management Systems (EMS) program for solid waste planning areas across Iowa. The legislation identified six specific areas that solid waste agencies participating in the program must be able to document continuous improvement in terms of meeting specific goals and objectives: These areas are: yard waste management; hazardous household waste management; water quality improvement; greenhouse gas reduction; recycling; and environmental education. The legislation also appropriated funding to assist in developing the program and providing ongoing support to the program participants. A nine member Solid Waste Alternatives Program Advisory Council appointed by the Director was created to provide program oversight and recommendations to the Commission regarding program participants and funding allocations. In 2009 six solid waste planning areas were selected as participants in a pilot project.

In order to assist the Council with developing the overall program and program participants in creating and implementing their EMSs, it was recommended by the Council to contract with a qualified consulting firm. In October 2009 the recommendation to hire GS&P to serve in this capacity was presented to the Commission and approved. The six pilot project participants have now completed the first cycle of their plans and are moving forward with their second phases (Tier II participants). Consistent with the legislation, it is anticipated that additional planning areas will be recommended by September 2011 to participate in the program (Tier I participants).

**Purpose:**

At its December 15, 2010 meeting the Solid Waste Advisory Council unanimously recommended that the contract with GS&P be amended in order to use their services for the following tasks:

1. Act as an advisor to the nine-member Solid Waste Alternatives Program Advisory Council (Council) in further developing and refining the Solid Waste Environmental Management System (EMS) Program.
2. Provide consulting assistance to the Department by providing guidance, resources and training for the purpose of developing in-house EMS consulting expertise so that staff can assist current and future program participants.
3. Assist solid waste agencies that are current participants in the program as well as new participants that will be accepted into the program in September 2011.

**Section 5 STATEMENT OF WORK**

5.1A Statement of Work. Contractor shall perform the following tasks. Contractor shall complete its obligations under this Contract by the Task Milestone Dates set out in the following table.

Obligation			
Task	What	Description	Task Milestone Date
#1.1 Council	Attend up to 10	Advise Council and provide status	Throughout term of contract

Assistance	Council Meetings & Advise Council	updates, respond to inquiries	
#1.2 Council Assistance	Periodic Progress Reports	GS&P will submit written progress reports to provide status updates on the EMS development and implementation of Tier I EMS Agencies, plus Tier II developments	Throughout term of contract
#2.1 DNR Assistance	Advise DNR staff	DNR staff training, guidance, resources, on-site training	Throughout term of contract
#2.2 DNR Assistance	EMS program participant recruitment	To promote EMS to Iowa SWA, cities etc	Throughout term of contract
#3.1 EMS Agency Assistance	On-site Training * more information in Attachment A1	A 2-Day On-Site Kickoff Meeting for Tier I participants 3 1.5 Day Semi-Annual On-Site meetings 3 semi-annual webinar meetings led by GS&P	Throughout term of contract
#3.2 EMS Agency Assistance	Tier II Conference * more information in Attachment A1	Work with DNR to prepare and host annual conferences in 2011 and 2012 for all EMS participants especially Tier II. GS&P will provide training materials and present information.	Throughout term of contract
#3.3 EMS Agency Assistance	Up to 12 monthly Conference Calls per Tier I participant	Individual and/or group calls to answer questions – coaching sessions	Throughout term of contract
#3.4 EMS Agency Assistance	EMS Participants Website	Host website and make available to all EMS and DNR participants as resource. Transition of appropriate information to DNR before end of contract.	Throughout term of contract
#3.5 EMS Agency Assistance	Tier I Agency Site Visits	GS&P will assist DNR with up to two site visits per Tier I participant.	Throughout term of contract
#4 Program Management	Project documentation as required, project scheduling	Invoice as specified, provide reports	Throughout term of contract

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

**APPROVE AS PRESENTED**

**CONTRACT AMENDMENT - THE STATE HYGIENIC LABORATORY AT THE UNIVERSITY OF IOWA FOR LABORATORY SERVICES FOR CONTAMINATED SITES PROGRAM**

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

**Recommendations:**

Commission approval is requested for a contract amendment of the service contract with The State Hygienic Laboratory at The University of Iowa. The term of this Contract Amendment shall be from January 18, 2011 through June 30, 2011 unless terminated earlier in accordance with the Termination section of the Original Contract. The total amount of this contract amendment shall not exceed \$40,000. The total amount of the original contract plus the amendment shall not exceed \$94,000. DNR shall have the option to renew this contract long as this contract and any extensions do not exceed a six-year period.

**Funding Source:**

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

**Background:**

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

**Purpose:**

The purpose of this amendment is to increase amount of contract from \$54,000 to \$94,000 due to a need to adjust the estimated total cost for lab analysis due to increased fieldwork within the Contaminated Sites section of the Land Quality Bureau.

**AMENDMENT STATEMENT OF WORK**

Statement of Work Contractor shall perform the following tasks in accordance with the Amendment:

Analyze and Report Environmental Media Samples Collected by Department staff during contaminated sites investigations (WMSF)

Analyze samples of water, soils, soil-gas, solvents, solid wastes, and other environmental media collected by the Department during contaminated sites investigations. The samples shall be tested for parameters as specified by the collector in consultation with laboratory.

Samples submitted for analysis shall be coded WMSF. All samples submitted to SHL by Department or SHL staff shall be coded to a specific monitoring activity and shall include a detailed list of the analyses to be performed unless other arrangements have been made before shipment of the sample to SHL. SHL log-in procedures shall accommodate this code. A monthly report of the logged-in samples shall be provided in a mutually agreeable format. Any deviation from normal sampling procedures, such as a change in sampling location, omission of samples for analysis, etc., shall be identified to DNR in writing prior to transmittal of analytical results.

For analytical results below the quantitation limit, the test quantitation limit shall be reported as "less than". Any results for tests run on samples after recommended holding times have been exceeded shall be so indicated or qualified as appropriate.

Submit information on data quality requirements and assessments (such as detection limit, quantitation limit, estimated accuracy, accuracy protocol, estimated precision, and precision protocol) to DNR for any sample upon request. Information on the analytical reference method, sample preservation and holding time also shall be provided if requested.

Provide copies of revised Methods Manuals and Standard Operating Procedure Manuals to the Department upon request. Copies of manuals and procedures shall be available from the laboratory.

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

**APPROVED AS PRESENTED**

**PROPOSED NEW RULES AND RULE AMENDMENTS - NEW RULES, CHAPTER 48 --- GHEX – CLOSED LOOP GROUND HEAT EXCHANGERS AMENDMENTS TO CHAPTER 38 – PRIVATE WATER WELL CONSTRUCTION PERMITS: 39 – REQUIREMENTS FOR PROPERLY PLUGGING ABANDONED WELLS: CHAPTER 49 – NON PUBLIC WATER SUPPLY WELLS: CHAPTER 82 – WELL CONTRACTOR CERTIFICATION**

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

In 2005 the department was asked by a committee of individuals who work within the geothermal drilling industry in our state to participate in a process that would identify areas within the geothermal construction process that can lead to groundwater protection issues and system failure. The industry believes that substandard installations could increase the risk to

system owners and to the state's resources – a premise the department agrees with. Starting in 2006, the department began discussions with the initial stakeholder group as well as the statewide drilling organizations and began to identify the specific needs of the drilling industry and how those needs can be balanced with the need for sound environmental controls. Some initial work was done to cooperatively raise the level of protections used during the construction of GHEX boreholes. Even though there were a number of improvements in basic borehole protections implemented by industry during this phase of stakeholder involvement, the overall need for a specific GHEX construction standard remained and further stakeholder discussions and meetings created movement towards the development of a standard.

The goal for the stakeholders/industry and the department during our meetings is to achieve reasonable borehole construction standards that provides greater protection to the state's groundwater resources than the current rule provides and to help specify the minimum construction standards that allow a GHEX systems to function properly. Within this framework, our discussions and meeting have lead to the creation of a new set of administrative rules that should provide additional protections to our groundwater and the aquifers penetrated by GHEX boreholes and will generally be viewed as comparable to a national standard for the GHEX industry.

The work with the industry stakeholders is nearly complete and we have received numerous comments from stakeholders and departmental staff. Comments from all stakeholders have helped transition the draft rules into their current form and we are readying for public hearings. We plan to present the new draft rule and existing rule changes as a Notice of Intended Action at the February Commission meeting and will request to move these items forward by scheduling and participating in public hearings.

Pending Commission approval, our plan is to have six public hearings across the state. Although we have not made any firm scheduling commitments yet, we propose that three of the hearings are to be held during non-business hours to allow access to those whose jobs will not allow traditional daytime participation in our hearing.

The following is a brief summary of the proposed changes:

1. Creation of new rules - Chapter 48 – GHEX – Closed Loop Ground Heat Exchangers. The proposed rules will address the specialty construction that these boreholes require and increase the protection standards provided during borehole installation and operation.
2. Chapters 38 – Private Water Well Construction Permits. Provide for dedicated permit application form information and notification requirements.
3. Chapter 39 – Requirements for Properly Plugging Abandoned Wells. Amendments to the current language to include a rule citation for proper abandonment of GHEX loop boreholes.
4. Chapter 49 – Nonpublic Water Supply Wells. Rescind the current rule citation for GHEX boreholes, Chapter 49.29 and add a statement as to where the GHEX rules can be found.
5. Chapter 82 – Well Contractor Certification. The addition of one new certification classification – GHEX Driller, along with a new specialty exam to certify the individuals doing this work.

Information regarding the draft Chapter 48, and the proposed changes to Chapters 38, 39, 49, and 82 are included with the Commission packet.

<b>INFORMATION</b>
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## **PROPOSED CONTESTED CASE DECISION - DEBRUCE GRAIN, INC.**

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

On December 4, 2008, the Department denied DeBruce Grain, Inc.'s (DeBruce Grain's) application for a Group 2 Grain Elevator Permit. The reason for the denial was that Group 2 Grain Elevator Permits can only be issued to certain types of grain elevators. These types of grain elevators are "country grain elevators," "country grain terminal elevators," and "grain terminal elevators," as those terms are defined in 567 Iowa Administrative Code 22.10(1). Each one of the definitions requires that the grain elevator not be "located at" a soybean oil extraction plant.

DNR determined that DeBruce Grain's grain elevator in Creston, Iowa, did not fall within any of the three defined categories because it is "located at" a soybean oil extraction plant. The soybean oil extraction plant is known as Creston Bean Processing. DNR made this determination because the two facilities are located on adjacent properties; the two facilities are physically connected by a 417-foot permanent enclosed conveyor belt used to transport all the raw soybeans that Creston Bean uses from DeBruce Grain's grain elevator to Creston Bean Processing's soybean oil extraction plant; and Creston Bean Processing is a wholly-owned subsidiary of DeBruce Grain. As part of the application denial letter, DNR notified DeBruce Grain that it should submit standard construction permit applications for its unpermitted equipment.

DeBruce Grain filed a Notice of Appeal on January 15, 2009. A contested case hearing was held before Administrative Law Judge Margaret LaMarche on September 8, 2010. The sole issue presented by this appeal is whether DeBruce Grain's grain elevator in Creston, Iowa, is "located at" Creston Bean Processing within the meaning of 567 Iowa Administrative Code 22.10, thereby making it ineligible for a Group 2 Grain Elevator Permit.

In addition to the reasons for denial mentioned above, at the hearing DNR argued that its position was supported by EPA guidance documents relating to 40 Code of Federal Regulations Part 60, Subpart DD, "New Source Performance Standards for New, Modified and Reconstructed Grain Elevators." These EPA guidance documents interpret the definition of "grain storage elevator" found at 40 Code of Federal Regulations Part 60, Subpart DD, section 60.301(f). That definition also includes the term "located at." DNR determined that DeBruce Grain's Creston grain elevator is a "grain storage elevator" within the meaning of both Subpart DD and DNR's rule 22.10. In addition to requiring that successful Group 2 applicants fall within the above-defined types of grain elevators, DNR rule 22.10 also specifically excludes grain

elevators that are “grain storage elevators.” DNR also argued that the soybean plant could not operate independently of the grain elevator because the soybean plant did not have its own receiving or unloading area.

DeBruce Grain argued at the hearing that the common and ordinary meaning of the words “located at” connote a grain elevator that is located on the same, and not on contiguous or adjacent, property. DeBruce Grain also argued that DNR had erroneously concluded that DeBruce owned both the grain elevator and the soybean plant; that the soybean plant did have its own receiving or unloading area; and that DeBruce should not be penalized for having an efficient method of transporting whole beans to the soybean plant.

On January 4, 2011, Administrative Law Judge Margaret LaMarche issued a Proposed Decision reversing the Department’s decision to deny the application by DeBruce Grain for a Group 2 Grain Elevator Permit. The Administrative Law Judge ruled that DeBruce Grain’s grain elevator is not “located at” the Creston Bean Processing soybean plant, and that the two EPA guidance documents did not provide support for DNR’s analysis of the unusual and possibly unique relationships between the DeBruce Grain facility and Creston Bean Processing’s facility. She further ruled that the grain elevator and soybean plant were located on separate parcels of real estate owned by separate legal entities, and that the soybean plant’s bulk weigher system functions as its whole bean handling operation. The Administrative Law Judge ruled that if the Proposed Decision becomes a final decision, the application should be remanded back to DNR staff to complete its evaluation of DeBruce Grain’s Group 2 Permit application, including review of the Potential to Emit (PTE) calculations.

There has been no appeal of this Proposed Decision. The Department does not intend to appeal the Proposed Decision. In the absence of an appeal, the Commission may decide on its own motion to review the Proposed Decision within 30 days following the issuance of the proposed decision or at the next regular meeting of the relevant commission, whichever date last occurs. Given the existing state of the law, the facts in this case, and the proposed decision, the Department is not recommending further review or the use of further Department resources in this case. If there is no review of this Proposed Decision, then the decision automatically becomes the final decision of the agency.

**NO ACTION TAKEN**

## **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>
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### **GENERAL DISCUSSION**

To view the completed 2010 Legislative Report, please visit:  
[http://www.iowadnr.gov/epc/files/epc\\_report.pdf](http://www.iowadnr.gov/epc/files/epc_report.pdf)

<i>Motion was made by David Petty to approve the legislative report for 2010 with the additions noted today. Seconded by Marty Stimson. Motion carried unanimously.</i>
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Tetra Tech, Inc. has been hired to conduct a TMDL on the Mississippi River. They anticipate that this will be done by next fall.

### **NEXT MEETING DATES**

February 15, 2011

### **ADJOURNMENT**

<i>Motion was made by Marty Stimson to adjourn the January EPC meeting. Seconded by David Petty. Motion carried unanimously.</i>
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With no further business to come before the Environmental Protection Commission, Chairperson adjourned the meeting at 5:30 p.m., Tuesday, January 18, 2011.

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Roger Lande, Director

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Charlotte Hubbell, Chair



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