

Independence Public Hearing March 3, 2009

Marian Gelb: I'm Marian Gelb, and I'm the executive director of the Iowa Environmental Council and I'm here today on behalf of the Iowa Environmental Council to speak on maintaining the list of the cold water trout streams proposed to be OIW in this new rulemaking process. These streams as Adam discussed are currently designated by the DNR as high quality waters based on an assessment that occurred, water quality assessment that occurred in the eighties. And with these proposed rules as Adam explained, the OIW designation will replace the HQW designation that we've been using previously. Just to give you the full definition of the HQW, Iowa's current WQS are what HQW or waters with exceptional better water quality than the minimum WQS and with exceptional recreational and ecological importance. Further, and I quote now, special protection is warranted to maintain the unusual unique or outstanding, physical, chemical or biological characteristics which these waters possess. So they're special. The proposed ADR propose to replace the old HQW with this new OIW designation, but more importantly, the proposed rules would finally give these waters the special protection that our current rule requires but which has never been fully implemented in Iowa in the past, even though we designated them. I understand that the information gathered to list these streams as HQW twenty years ago might not be consistent with their current quality, water quality. In fact, in most cases, my bet is that it's better today than it was in the 1980's, thanks in part to considerable investment on the part of state and federal agencies as well as public and private partnerships to restore and protect these trout streams. A few streams may not meet the criteria for designation as OIW right now, but that's why we have these public hearings, so the public has an opportunity to let the DNR know which streams they consider to be special and important and deserving of that protection. Following the quote of the comment period, tomorrow, the DNR will indeed based on these Public Comments will consider which of the proposed streams should be designated as OIW on the basis of the information provided by people like you in the watersheds that enjoy the recreational benefits as well as the economic benefits these resources provide. In considering whether to support designation of a special stream segment as an OIW, its important to consider as I just said, not just the future cost of protecting this resource from new pollution, but also the economic benefit of preserving one of Iowa's most precious natural resources. These cold water trout streams are not just enjoyed by Iowans but people from Illinois, Wisconsin and Minnesota as well as visitors from a variety of other places, they come to Northeast Iowa to enjoy trout fishing. Those who visit not only fish but they enjoy other recreational activities, they visit local shops, they go to eateries, they even do lodging, and all of these activities bring revenue not only to the local community but to the state. So designating our high quality trout streams as OIW opens the potential to bring even more revenue to Iowa. A 2006 DNR trout angler survey, found that licensed anglers made an estimated over 535 thousand trips to Iowa trout streams in 2006. They estimate approximately twenty-seven dollars per trip including what I mentioned, food, lodging, transportation, etc. So it's estimated that they spend more than fourteen million dollars annually on trout fishing in Iowa. Now based on study of the economic impact of trout angling by Trout Unlimited, if we protect Iowa's trout streams from further degradation, and invest in restoring these waters to be comparable to those in our neighboring states like Minnesota and Wisconsin, Iowa could earn as much as two hundred dollars per angler visit from residents and up to three hundred and ninety dollars per angler visit from non-residents. So if you crunch those numbers, we could get up to twenty one million

dollars or more, actually thirty if you add both of those together. Thirty million dollars brought into the state and boosting local economies. So while keeping these forty-six stream segments in Northeastern Iowa that are currently on the list proposed designated as outstanding, it can have significant economic benefits. I also like to emphasize the economic benefits of this designation including preserving the ecological diversity of these waters. If we allow the cold water trout streams to become polluted and degraded, we will see this impact our own native Iowa brook trout as well the rainbow and brown trout that have been introduced into this area since the eighteen hundreds. These trout species need clean waters and stream beds to spawn and feed, without that clean water, none of those trout will survive. The spring fed cold water streams of Northeast Iowa are found in what's called the driftless area, the geological and ecologically unique region, this area is considered a national treasure by anglers and is listed as a critical ecosystem in need of protection and restoration by the EPA region 7. The EPA the USDA and Fish and Wildlife Service, the DNR and local landowners have already made great investments in restoring the habitat of these cold water trout streams. Unfortunately, Iowa lags behind our neighbors of Wisconsin and Minnesota in stream protection and restoration. But if we take this much needed step of passing these AD rules to protect these streams from further degradation, we can begin to restore and protect this natural treasure that Iowa has. Finally, I would like emphasize that no degradation does not mean no development, I think that's a huge issue. While the current draft prohibits degrading, the quality of the selection of cold water trout streams, unless its temporary or limited, this does not mean that the communities in the watershed of these streams cannot grow or welcome new industry. This only means that any new or expanding discharge cannot degrade water quality. I firmly believe this is an incentive for smart growth and development as well as an invitation for green industry. We believe the DNR is making a bold move by listing a handful of Iowa Waters as outstanding. But this designation will protect our water, our land and natural resources for many generations to come. I've heard comments about the cost of protecting these OIW but I believe that the cost of not doing so is much greater than the cost of protection of these trout streams. For more information, you may have already picked one up, we brought copies, several copies of the DNR publication concerning Iowa trout streams. I encourage you to pick one up if you haven't and we look forward to working with the department and citizens affected by this designation to ensure a clean environment and thriving comments. Thank you for giving me the opportunity to speak today, the Council would like to express our general support for these AD Implementation procedures, and we do have some other specific issues relative to the rules and we will be submitting written comments addressing those specific details by tomorrow. Thank you.

Larry Gullett: My name is Larry Gullett, I'm the director of Jones County Conservation Board and I want to say first of all, I think this is a great process. One of the, it's nice to have everybody engaged and talking about water quality, and not only are we talking about it and engaged in water quality, but this, if these proposals, the AD proposal, this will make each community talk about it and get engaged in water quality. So the process that's been outlined as far as the AD rule process, at least the Jones County Conservation Board feels that it will be good for water quality in Iowa because it helps get everybody engaged in the decision making process related to environmental quality. I've learned a lot today just listening to some of the comments and concerns that different people have in the room that's a great process to go through. For the last two years Jones County Conservation Board has tested the water quality in the Wapsipicon River, the Maquoketa River and the North Fork of the Maquoketa in Jones

County. In 2007, sixty-six percent of the time that you visited those rivers on average, the rivers exceeded the levels considered safe for recreational activity within the river. By the levels considered safe by the EPA. So between two thirds of the time you go to those rivers, that are high use recreation rivers, they exceeded the standards considered safe by the EPA. In 2008, they exceeded the standards eighty percent of the time. In one of the test locations, they exceeded the standards one hundred percent of the time. And many of the test results on those rivers weren't even close to what's considered being safe. They weren't even reasonable. And we think that the reason why our water quality has deteriorated to the level that it is in Iowa is people just don't know how bad the water really is. And so to solve this problem, we need this comprehensive approach where we're not just singling out farmers, and agricultural interests and business interests, it's everybody's problem. And the AD rule process targeting cities and communities where the major, most of the population lives in Iowa, will let everybody know that we all have a responsibility for this issue. So our conservation board discussed the proposed AD rules at two board meetings. One on December 8, and one on January 12 and we submitted a letter of support to Mr. Schnieders and the DNR in support of the proposed rules and I'll just read two paragraphs from the letter of support. "Please consider this letter as a strong letter of support for your proposed action of adopting AD rules. We are especially pleased with the Tier 2.5 designation protecting Iowa's Outstanding Cold Water Streams which are so important to thousands of people who visit Northeast Iowa and fish for trout. In addition to benefiting people, the Tier 2 and Tier 2.5 AD protections and other parts of the rules in general will also benefit all fish and wildlife that depend on a clean and healthy environment. At one time in our past, all of the streams in Iowa would have met the criteria for Tier 2.5 designation and your effort to protect these final remnants is greatly appreciated. The economic, recreational and social benefits of protecting all of Iowa's rivers and streams is immense. Under the proposed rules we understanding communities will be required to study and complete additional planning related to upgrade or expansion of wastewater treatment facilities that would result in new or increased pollutant discharges and that degradation from new or increased wastewater discharges will be prohibited to 2.5 waters. We think this additional focus of communities and community leaders on meeting standards for clean water is best for Iowa in the short and long term. If there is any way the affordability or cost analysis could also include the benefits of the clean water of fish and wildlife, it would also be beneficial. A cost benefit analysis is key to the decision making process. Thank you for your efforts in keeping Iowa's waters safe and clean." Thank you.

Garlyn Glanz: My name is Garlyn Glanz, I'm the director for the Delaware County Conservation Board and the Delaware County Conservation Board has asked me to just make a few brief comments. They wish to go on the record as being in support of the proposed WQ protection standards for our rivers and streams that we've heard about and discussed here today. I can stand here and tell you without hesitation that it is very important to our community, our county, in terms of tourism and our local recreational needs and it has a major impact on us economically in Delaware County. It's important, the Conservation Board feels it's important that these rules as presented continue to be strong and protective as the law allows and they would not be favor of watering them down or taking them down to a lower notch as in terms of enforcement. We are also in agreement and support of the proposed list of OIW listed in Delaware County, I believe there are five streams. And we support that list and we encourage that to be passed accordingly. And we do plan on submitting a set of written comments as well. Thank you.

Al Schafbuch: My comments are pretty short. I got a look at this from the side of having a little economic development in Iowa. Because I think that the Tier 2.5 should not be implemented being that it's not required by the federal law and adding this special Tier for Iowa will only make business that want to start in Iowa go to other states where the cost to acquire the AD from that will be easier. The proposed implementation procedures need to be modified due to the fact that using the Tier 2.5 will stop the economic development in the watershed where it's implemented. There will be no way that the towns in this area can grow, new businesses cannot admit one molecule of pollution will be allowed in an area targeted with the 2.5, they will have zero growth and they will lose population and degrade this time. If someone wants to start a business they'll have to pay that four to sixteen thousand dollars and it's really prohibited because we won't get any economic benefit at all. The other item is the agricultural stormwater discharges and agricultural irrigation are exempt from federal permitting requirements that should be specifically exempted from the AD analysis. Non-point sources need to be exempted from the analysis, and I encourage you to take these points, use these points as a guideline when employing the AD analysis and I do feel that agriculture is doing a lot of things to make sure the water's clean. The water's gotten cleaner in the last twenty years and part of it's because we're not just spreading manure anymore, it's all incorporated, it's all done according to salt test, it's done in a very good way that's helping with the water's today. And again my name is Al Schafbuch.

Brian Dunt: I'm Brian Dunn with the Utility Superintendent for the city of West Union. I've worked there since 1979 and at the sewer plant since 1981. If I'm not mistaken, West Union is the only wastewater plant discharging into Outer Creek, an OIW. My belief as we all know, the stream didn't become an OIW overnight, I would like to know how much stream data the DNR or EPA has collected on our creek for the last thirty years. I could supply you with any data you would like to see from our West Union Wastewater plant for that same time period. In the late 80's we were receiving heavy industrial waste from both an egg plant and a pork processing plant. We were continually discharging heavy VOD's, suspended solids and ammonia compared to today's limits. Yet it was still a trout stream that it did not adversely affect. In fact I think we are a benefit to the stream, in 1997, the Co-op in town had a fertilizer spill that caused a fish kill, the fish kill at our wastewater discharge point. Our discharge point is approximately one mile upstream following the creek from where trout are stocked. One of our employees at the wastewater plant, regularly fishes at our discharge point. Due to the size of the large trout that are caught, we all know that they have been there for some time. I'm an avid outdoorsman myself and I am all for clean water, but these rules for wastewater plants are on the verge of being ridiculous. The DNR needs to take a look at the non-point source pollution.

Sherman Lundy: My name is Sherman Lundy and I'm with BMC Aggregates and I'm here on behalf of BMC Aggregates and also the Aggregate industry. Three or four points, one of the main issues is if you recall the slide on ambient concentration or the ambient discharge versus the TMDL or CMDL, we firmly believe if you have a TMDL, it's total maximum daily load, that's the load. If you have some kind of ambient value that says you...for example, you used 1.25 and you had this ambient value of 1.25, the TMDL is 1.25, that should be your goal, that should be the limiting factor in terms of any kind of discharge. Because that's the set value of impact and if you do that, I think you'd reduce one of the concerns about the concept of the

discharge. If you don't do that, then it will affect over an area that is very arbitrary and depreciates the value upon which to base any kind of stream help. From the chemistry point of view and I don't know who came up with this at the DNR, someone needs to do a little bit of homework, the second part is related to the chemistry as well. And this issue is called mass-loading. If you implement the concept of mass-loading and Adam you said it well, one molecule it is impossible to have a discharge that is going to be completely clean all right, it is impossible, mass-loading, I mean you talked about one molecule, it's right in with that concept. If you not the values for the contaminants if you want to call them that, are given how? Concentration values, usually parts per millions, sometimes parts per billion but largely parts per million. If you're going to measure the concept of discharges, those discharges should be in concentrations, not mass-loading. Concentration values are in parts per million so therefore if a discharge that comes in under the...or really agree with the TMDL and impact the wildlife, I have no problem with that. But if you have a discharge measured in concentration that comes in under that TMDL or that MCL and in effect you are not impacting the quality of life in the stream then that should be permitted. Those are important considerations that need to be taken by the DNR as you review this process and the EPC too as soon as you all sit down and take a look at this because if you don't you're ignoring good chemistry. And I've been in the water chemistry business for a long time, and I can tell you those from a genuine concern in terms of quality measurement. Now among the other kinds of concerns and I have some of your presentation that you gave earlier on with regard to some time ago, I guess it was Clear Lake, and in the aggregate business, one of the concerns that we have is that we work with quarries, and many of our quarries are below ground. Obviously the rock in the ground here and the surface level we have rock here right? So if we utilize the rock we can make the pavement out here that everybody enjoys, the paved roads and all of these kinds of structures and features, these quarries are going to be below the ground surface. And gravity being what it is, when it rains or it snows, we get waters in those quarries all right? And more succinctly, we may also get a little groundwater seepage so that when we, pump the water from the quarries in order to mine the rock out of the ground in according to all the statutes available...what we find over here is now that they're going to be subjected to these AD rules and there is a bit of nitrate, I'm also the Farm Manager for the company and I can tell you as well that it isn't the manure that is the problem. It's the amount of two hundred pounds of nitrogen you get in the soil and if you get that beyond water moving into quarries, once in awhile you may get a discharge of nitrate that might be slightly higher not than the TMDL, which is going to be about ten points per million for Iowa, but let's suppose that you got an ambient structure that's four parts per million and you're discharging five parts per million over groundwater that you have processed, from water that has seeped in that you have processed by which you have no control and now you're not going to be allowed to discharge that water into streams or other types of recipient waters in that regard because you are doing what? Contributing to AD? No, you've already got a TMDL, you're just above the level of the ambient arbitrary capricious standard. So to that end, we need to go back and address that because we're not processing, we're simply discharging water out of here that rainwater or I mean groundwater seepage we have no control over any of that concentration to any stretch of the imagination. These are some things that need can be rectified very easily so that we can live with this regulation, we're all for clean water too, we live here and work here and do our play here just like everybody else. But we also need reasonable chemistry, reasonable science, legitimate science that addresses the problem, not arbitrary, capricious standards.

Bob Watson: I have previously emailed comments to you, but there is a modification because of the way you've explained it, and I'll do that this afternoon when I go home and email you a new copy. And that modification is that the state no documentation, what I said before is that the state has no documentation to show that there would be a significant increase in the purity of Iowa waters if AD rules were adopted. I would modify that to say that there would be, that the State couldn't show that there would be a decrease in degradation if these regulations were adopted. And I come to that simply because of what I said before about the number of pigs in the state in the last five years have gone from fifteen million to twenty million, we know that there is going to be an increase of degradation of the streams, it doesn't matter what the point source people are doing. Lori Stone and I put this together, our comments and we're resisting the adoption of the AD simply from the point that George made earlier that we're not including agriculture. And I want to preface that on the understanding that if the technologies are the same, the technologies should come under the same regulations. In this case, what I mean is that if you have a sewer pipe here, and you have a confinement here, there are both closed structures, they both have untreated fecal waste in the bottom. That untreated fecal waste constantly generates poison sewer gases, hydrogen sulfide and ammonia, and those spaces must be vented for anybody to be alive inside of them. So descriptively, if not legally, confinements are wastewater treatment facilities at least sewer pipes, the collection part, they would come under the confined spaces regulations and in fact they do come under the confined spaces regulations if in fact they are tested for that. So if these are the same technologies, we would want them to be regulated with the same laws. All wastewater treatment plant discharges are treated, the effluent is treated, the biosolids are treated before it goes on. Any waste that comes out of the confinement it is not treated, and instead of being zero discharge as it is considered by the state. It should be considered 100 percent discharge because when that waste is spread on the land, its organic loading is actually higher than the raw human waste. And so you're already not dealing with the manure, but you're dealing with sewage because you've put it in a pit for six months to a year and it is allowed to cook and it becomes a toxic sewage rather than a beneficial manure. Also in the 150 years through wind and soil degradation and degradation of the microorganisms, the treatment that may have been there when we had eight to ten foot of black topsoil, is no longer that, we are basically farming subsoil in Iowa. A lot of the microorganisms in Iowa are gone. And those microorganisms will not treat many of the things that are agricultural waste the same as in human waste, such as hormones, antibiotics and any metals that may be there. So they are the same thing, they should be treated the same way, if not a wastewater plant for each confinement, you should at least be regulating them the same way that you do. If you are a city and you want to land apply the effluent that's been treated, it is more expensive and you have to follow stricter regulations to land apply that effluent and yet we're telling farmers that they can put this toxic sewage, not manure, toxic sewage onto the land with the only safeguard that we have is supposedly they have MMP's but since the DNR doesn't regulate MMP's or audit MMP's there isn't any actual regulation that is happening. In Northeast Iowa, we just done a LIDAR for Winneshiek County, a number of sinkholes has gone from over two hundred to a hundred and forty or so to over twelve hundred, it is legal to spread manure over the top of sinkholes and so this sewage is actually getting into our groundwater. So as a result of that, we feel that the stricter regulations as what AD regulations will do to communities doesn't serve any purpose, because we know that the degradation as long as agriculture both animal agriculture and crops per acre going up stays, as long as that continues, the degradation will continue, it doesn't matter what you do to the polluters. And getting to the West Union operator's comment, there

are a lot of places, a lot of treatment plants that have done studies, that the cleanest place in the receiving stream is actually at the effluent pipe of the treatment plant. That's been known for some time. So I think that's about it, because the technologies are the same technologies we think that they should be regulated the same, if you're going to do AD on point source, you should do it at least on confinements too.

Larry Stone: I'm Larry Stone in Elkader and I'm working somewhat with Bob Watson on this project, I should mention I'm a long time Iowa resident, my family is involved in farming, my wife's family is involved with farming. I'm a member of our county conservation board but I'm speaking as an individual today. I don't want to speak against the theory of AD, that goal, it's hard to argue that we shouldn't be doing as much as we can to make our waters as clean as we can. I guess to follow up on what Bob Watson said, I guess I want to emphasize and point out sadly that the utility of these regulations given the fact that we are not addressing non-point problems that we have in the state. It's easy, relatively easy to go to a point source discharge and say yes, we can measure this. It's much, much harder to go out on the land where sewage, as Bob described it from animal feeding operations is being spread and try to somehow get a handle on that and the state law doesn't just...frankly doesn't. So and its, its ridiculous to look at the point discharges and essentially ignore the non-point ones. And as Bob said, the sewage from animal feeding operations is required to be spread on the land and end up as non-point pollution whereas the sewage from the municipal or industrial facilities is requires to be monitored at the pipe where it mends with the river. I think if the livestock industry in particular chooses to use technology, that produces sewage, a city the size of Independence, discharges sewage which is strictly regulated, a 5000 head swine operation confinement would produce the same amount of sewage that is just dumped on the land. I think if the livestock industry chooses to use that technology, then they should be required to be, to have the same permits and restrictions as the municipal and industrial wastewater treatments have.

Rich White: I'm just going to make a couple of brief comments because, well I probably won't be brief. But some of this stuff I said, Sherman talked about earlier. I represent the limestone industry, my name is Rich White and when you think about...I think I need to make sure that everybody understands the problem that we're having with the AD ruling and that it's even broader than that. As Sherman pointed out, when you look at this asphalt road out there, you're really talking about a rock road, it's 85% of it the rock that's in it, the asphalt just holds it together. It's the same with the concrete highway, the parking lot across the street is rock, as are most of the roads in Iowa. It's important to realize that because even when we're talking about wind energy, each windmill takes about five thousand tons of rock and we end up in the state of Iowa using between 32 million and 35 million tons of rock in this state every year. It's a huge asset to the state and we can do that fairly cheaply. However, if we have to transport that very far, as a rough rule of thumb, every twenty miles you haul a load of rock, it doubles in cost because of the transportation portion of that. Now Adam talked about this not one molecule issue, and it's only on 2.5 AD, but there's another rule that I have to talk about a little bit, a gentleman in the back of the room mentioned it earlier in the questions and answer, but this total maximum daily load thing, TMDL, we have the entire Cedar River, above Cedar Rapids, the entire watershed is under a TMDL for nitrates and bacteria. The Raccoon River, above Des Moines, the entire watershed is under a TMDL for bacteria and nitrates. The next one that's coming up, I believe is coming up next month on the Des Moines River watershed, above Des

Moines and when you put those all together and when you look at the fact that limestone is really not accessible in Northwestern Iowa, pretty soon we start running out of places where we can go. And one of the things that bothers us a lot about this rulemaking is as Sherman mentioned, we work below the ground level and we have to move...the water that seeps into there, we have to move. We add hardly anything to it, Susan will point out, that there's something that drips off the trucks and stuff that get into it, but it's diminutive, it's small amounts that we add. Basically, we are pumping out what we receive and if you work for a city and the water, you know that if you have a well on your property, you know that nitrates in almost any well that you have in the state of Iowa. So that's a situation that we don't add to, but its in our water. And I think its important to realize too that both of the TMDL's that I'm talking about over there on this low molecule thing and the AD of the 2.5 or 3 level, the drinking water, I don't think there's a city in the state of Iowa, at least one that I can find by looking on the internet, that meet that kind of standard with their drinking water. That's a very strict standard. And I guess in...what we're asking for is some sort of diminutive exception so that we can continue to provide valuable asset, limestone that this state needs and still be able to function. Thank you.

John Kulper: Hi my name is John Kulper, I'm with Windlen Quarries also a company engaged in the aggregates production in the state of Iowa. I'm very thankful to get an opportunity to participate in this process, again, I like to reiterate that we are not opposed to AD or water quality. We just need something being permitted that's going to work that's going to be practical and reasonable. Not to beat a dead horse, but I guess I'm going to, as my colleagues have talked and discussed this concept of mass loading is something that's somewhat impractical. I understand the reasons the DNR wants to implement it, it's very conservative and protective, it is very easy. But a concept that I've learned to live by is that if you can't measure it, you can't manage it, and there isn't a direct way to measure the TMDL other than stream characterizations. As my college Sherman mentioned, whenever you are looking at the chemical properties of the water, those measurements are made with the concentrations by parts per million, parts per billion, mass load is not so easy to get your arms around. And as Rich says, our productions, our processes as aggregate operators, doesn't have much if any impact to the water quality, we simply are inheriting it because we are working below the ground surface and because it does rain and snow. And I think there needs to be an avenue built into the AD rules that would allow for folks in other industries such as ours, that receives that type of process or that product, the at source water, to be able to discharge it into a surface water, be it a 2.5 or 3.0. Once that water without having to go through this alternative analysis process, right now it's a very vague process, it's uh...we're a little uncertain as far as who will qualify to conduct that and what exactly the criteria would need to be met in order to look at it. For us although it would appear simple as far as alternatives and the cost associated, for a large part, we simply discharge from the sump sometimes into a retention cell and into a receiving body. But there are other expenses. Moving dirt costs a lot of money, and it's for, in an industry such as ours, I don't think you're getting juice for the squeeze so to speak. So I just want to make that comment as well, what I think may help in understanding for the public would be if the DNR were to look at and conduct an alternative analysis which would I think serve to demonstrate better and provide better understanding of what is expected. My last comment would go towards addressing the inclusion of the waters, in the rule, without having gone through the rule process. It was alluded to several times here that water resources are dynamic, they're not static, they change, the data being as old as it is, I don't think that it is representative of the water quality we have. Folks from Jackson

County that you alluded to saying they don't believe the water body. Anyway, in conclusion I'm thankful to be allowed to be a part of this process, I'm glad to be working with quality people like Adam. One thing I've noticed, I've gone to a handful of these and there has been an EPC commissioner present, I think that speaks of the importance of this process. And I just hope that we can work to implement a procedure that is going to be practical and reasonable. Thanks.