

**Waukon Public Hearing
March 3, 2009**

Mike Root: I'd like to start by thanking the DNR for the opportunity to voice our concerns about the proposed AD policy. My name is Mike Root, I'm a project manager for Brooning Rock Products Incorporated. We along with fifteen other aggregate producers operate limestone quarries and sand and gravel pits throughout the northeast Iowa six county area of Allamakee, Winneshiek, Howard, Chickasaw, Fayette and Clayton Counties. The implementation of this plan as it is currently written has the potential to limit the production in many of the existing quarries and sand pits and prevent any replacement or alternative sites from being developed when the existing material reserves are depleted. This six county area is one of the few locations within our state with a high quality aggregate required by the construction industry can be economically produced. The impact this plan to existing operations and future operations would be felt not only by the company I work for, but by all aggregate producers, road contractors, building contractors, the agriculture industry and every citizen in the area. In 1983 the code of federal regulations required all states to adopt a state wide AD policy. In conforming to these laws, most states adopted to establish a 3 tier process and implementation procedure as recommended by the code. With tier 1 the lowest and tier 3 being the highest. Tier 3 waters are designated as Outstanding National Resources. According to the proposed rule, DNR wants to implement an additional tier designation of 2.5 to include main surface waters as OIW. The rule also provided a list of criteria to be considered in putting a water body into this proposed tier. Yet in October of 2008, the EPC amended into the rulemaking forty-five OIW with the tier 2.5 designation. 32 of these water bodies are located in this six county area. There were no public hearings, no require nominations, no supporting documents and no evidence that the required criteria outlined in your plan was met. Appendix B of the Implementation Procedures lists the streams and the length of the streams that had the tier 2.5 OIW designation. In this six county area is about 158 miles of stream length. At face value, that doesn't seem excessive considering that the total six county area is about 3789 square miles. That is until you review the maps of the OIW and discover not only the stream designated, the entire watershed is designated as an AD zone. All of a sudden the area in this plan becomes very significant because a very large portion of this six county area is located in these watersheds. Furthermore, in Howard County, Winneshiek County and Allamakee County, part of the designated watersheds extend into the neighboring state of Minnesota. How can you control the loads generated in these areas when they are totally out of your jurisdiction? Almost all the quarries and sandpits are located in these watershed. If we cannot discharge water, we cannot quarry the rock, therefore the process that aggregates require to produce road surfacing, concrete for roads, buildings, bridges, asphalt paving and agriculture will have to be processed and hauled in by truck from outside the watershed areas. Counties, cities, state, building contractors and farm budgets are already under a large strain due to fuel costs, massive flood damage, severe winter weather and a very depressed economy. Incurring higher cost for processed aggregate will mean less road miles that can be improved, repaired, or resurfaced. Less available funds for building construction therefore, limiting the number of new building constructions commercially and in the private sector. Increased truck traffic will also lead to further breakdown of the road system. The agricultural community will also feel the impact of higher prices for aggregate products related to their needs for crop and livestock production and their ability to move their products to market over decent roads. The DNR's fiscal impact statement covering this rulemaking states, "the

overall cost statewide cannot be estimated with any degree of accuracy due to the absence of readily available information to thoroughly research the multitude of variables that will affect whether or not treatment improves or will be technically possible or what will happen if there are cost prohibitive.” As to the benefits of the fiscal impact statement says, “none of the potential benefits has a readily identifiable monetary value and will not be estimated in this impact statement.” According to the impact statement no one knows what kind of costs are involved and who will pay these costs or if they will be so high that nobody will be able to afford them. Or even after all that will the whole plan actually have an significant benefits. The problems with this rulemaking are as variable as is its effect and benefits. With 71% of the affected watersheds in this six county area, most of the burden of this proposed rule falls on the communities, businesses and taxpaying citizens of these counties. Before this rulemaking proceeds, the necessary information for the proper research to evaluate the effects, costs and benefits needs to be completed. Thank you for the opportunity to express our concerns.

Marian Gelb: Hi, I’m Marian Gelb, and I’m the executive director of the Iowa Environmental Council. I can tell from the questions tonight from Adam’s presentation that this is going to be a tough crowd, so please don’t throw any fish heads at me because of what I’m going to say here. Cause I’m here tonight to speak in favor of maintaining the Iowa Outstanding Waters being proposed in this rulemaking process. Adam explained what those OIW are, gave the definitions, these are waters that were previously known as high quality waters here in Iowa, the waters that have exceptionally better water quality than the minimum water quality standards and exceptional recreational and ecological importance and further that definition goes on to state and I quote, “that special protection is warranted to maintain the unusual, unique or outstanding physical, chemical and biological characteristics of these waters.” Basically, we have always had in our rules if you will this high quality designation. But there was never an implementation procedure to protect them as I just described, and this rulemaking package will allow for the protection that’s been in place but never implemented, that’s a good thing I think. We’ve heard a lot of discussion about the list of nominated OIW that are in the proposed rule. I’ll agree, maybe not all of those waters actually qualify to be in that list. But I would submit, that’s why we have public hearings like this, and that’s why the DNR takes public comments so that the public who enjoy those waters has an opportunity if they feel that they are special enough to let the DNR know. So I actually think it’s a good thing that they populate it and if some need to be removed then, this is the public’s change to have those removed. I think that as you consider this rule package and that designation of local trout streams as a local outstanding water, that it’s important not to just think about the cost of that but to think about the benefits that are also derived by having those cold water trout streams here in your neck of the woods. Back on that table, there’s a 2006 study that the DNR did on, that they performed a survey of anglers, Susan has that right there and it’s back there, and they found that in surveying those anglers there in 2006 there were more than 535 thousand angling trips to Iowa trout streams. And that on average, those anglers spent about twenty-seven dollars a trip whether that’s lodging, food, gas, equipment, you name it. Trout Unlimited, which we also have a couple of these studies, did a study of trout streams in this area and Minnesota and Wisconsin and Minnesota and Wisconsin is a little further ahead of Iowa in terms of restoring and protecting their trout streams. Anglers in Wisconsin and Minnesota tend to spend as much as two hundred dollars per angler per visit. And three hundred and ninety dollars per angler per visit from nonresidents. So my point is that there is significant potential revenue and I don’t really think that I need to be telling you this

because you folks that live up here probably already know this, but there's significant economic benefit to having these cold water trout streams that are maintained and not degraded. I also probably don't have to tell you that you live in a very unique area, this driftless area is a geologically and ecologically unique region and is considered by the EPA region 7 as a critical ecosystem in need of protection and restoration. So you live in a very unique area, it's special and it should be carefully preserved. I'd also like to comment finally, that no degradation does not necessarily equate to no development. It doesn't mean that communities in these watersheds of these streams cannot grow or welcome new industry. It only means that any new industry or expanding or any industry or city, growing city with an expanding discharge cannot degrade that water. And I think this is an incentive for smart growth, and development as well as an invitation for green industry. Not a bad way, I think we have to move towards a more sustainable economy environmentally. And lastly, I've heard a lot of comments about the costs associated with these OIW and I would submit that there's a much greater cost in not protecting them. So I appreciate the opportunity to address you tonight. I also want to say, Adam throughout this whole process the DNR has done a fantastic job and I appreciate all the time and your effort and it's too bad that tonight's the last public hearing because you're really getting good.

Joe Cunningham: Hi I'm Joe Cunningham, I'm a lifelong resident of Waukon, Iowa and I live here for one reason and that is because I enjoyed growing up here. Clean water in this county isn't anything new. Our ancestors have been doing it for years, all you have to do is drive around the county and see the terraces, the trees and everything else. We have some of the best caretakers of the land in the world, in my opinion. What bothers me about the rules as I heard them explained tonight and what I have read about them, is that I live in Waukon, Iowa, it's a community, we take care of community sewage problems, we take care of community water problems, tier 2.5 makes it almost impossible for Waukon to grow and meets the needs of its citizens. If you take a literal interpretation of tier 2 which in the financial assessment singles out Waukon and...for public comment saying that its going to be very difficult for these cities to comply with your two requirement. I'm a member of the Sierra Club and I appreciate the information they have sent me. I didn't appreciate the statement today in a news release I got that said anyone who supports, City Bill 260 is in favor of dirty water. I find that an insult not only to me but to all the caretakers of the land and the county. And I don't look at 260 as putting the bill down, I look at it as giving Waukon time. Now in the comments I've heard so far from Adam, that the DNR is in the public statement process is getting input, that there needs to be some flexibility in tier 2 then that softens the way I look at this and it softens the rulemaking process. But one of the concerns I have is the people who implement rules, from time to time change. So the rules have to be very carefully written and very carefully vetted in the public arena. And we haven't seen that yet for softening up your 2.5, tier 2.5 for Pancrec and the city of Waukon is a very tough situation. And as a city father, I cannot tolerate it, so I can't support it. But as a man who fishes Paint Creek probably forty or fifty times a year I love clean water and it's there. The other thing we need to remember as I mentioned earlier in the questions and trying to get information, is that Paint Creek could not even be included in an OIW if the Creek hadn't been cared for by generations of good people. And what I see in tier 2.5 is a lack of trust in those people that continue to care for that land. Allamakee County has just passed one of the toughest zoning reforms in the county's history, limiting development throughout the county. You have to have larger pieces of land before you can put in septic systems. That growth, or the

growth of Waukon that is going to bring people here is going to be a responsibility on the city to grow and expand, tier 2.5 is not allowing to do that. I have no problems with clean water, if I did, I wouldn't be a member of the Sierra Club. But yet, I also have a conflicting responsibility to this community to see that it can grow. And tier 2.5 doesn't give that to me. My first thought would be to put Paint Creek at tier 2, that gives us some regal room to see the new regulations come down and maybe be able to live with them. The previous speaker talked about costs, and I would agree with her final statement, that if we don't do anything the state of Iowa, it's going to cost us a whole lot more as a state. Yet when we get into Waukon fixing the sewer treatment plant, unless we get some grants, that's going to fall on local property owners, and the fact that we have to, that we're called to a higher standard than a lot of communities, I think that's unfair to the local property owners. I in getting ready for the January meeting, if we could come in here and challenge the state and the DNR, to help Waukon become a tier 2.5 community, that would be great, give us some direction, bring your experts, bring in some funding, I would love to do it. But I don't think we're going to see that happen. If we can solve the problem with OIW in Waukon, I think we've solved a problem for a lot of the other communities, and as a city father, I'd welcome the help, and I'd welcome the opportunity as a native Allamakee County person, I would welcome that help. But I think we're going to be out here as a community of four thousand people with a lot of other needs and no financial help or very little help. So there's a tremendous cost, I think that the three counties that comprise the land mass that holds about fifty percent of the OIW are being punished for doing a good job for a long time so that these creeks are what they are today. And because somebody's worried that we won't continue to take care of them, we're called to a higher standard, and I don't think that's fair. I don't think we can afford it. I mentioned earlier this city has already done a lot of things to decrease the runoff and the pollutants from the city. We have spent a hundred thousand dollars relining all of our manholes from infiltration. We're smoke testing, trying to find the hundred year old sanitary sewer that's leaking and causing infiltration that goes through the sewage treatment plants so that when it rains we have four times the effluent that we normally have. We're looking at detention basins, the first one we ever built right south of this building, it's a new building, we're looking at now that it's partially complete, possibly becoming porous concrete. We're looking at all kinds of alternatives in the community, but if we have to focus on one, meaning our sewage treatment plant, all those other things that may impact your greater degree, will have to go undone. I think I've talked long enough, thank you.

Brian Ridenour: Thank you DNR for a chance to comment. I'm Brian Ridenour, I'm the county engineer as many of you know. I think the handful of few people that did show that I invited to try and let them know what these regulations were about. I think that Mike Root did an excellent job at the limestone industry concerns, that part of it I asked a couple of the quarry operators to show up, Gary Wilchenson's here as well. We take care of about nine hundred miles of road, we buy millions of dollars of aggregate, sand, materials and my concern of course with the limestone area, we've enjoyed the benefits of northeast Iowa having that valuable resource. To not be able to use certain washing plants, quarries, more restrictions of course gets passed down to the taxpayer, and that's one of my concerns. Well we didn't go through the whole list of creeks, but in Allamakee County we got Clear Creek, Flint Creek, Little Flint Creek, Paint Creek, Harrison Creek, Silver Creek, Waterloo Creek, Wexler Creek, that covers the majority of the county. And when you classify them from high quality to OIW, I guess I gotta issue with 2.5 tier quality streams. We all here want speckles streams, we've been doing it

for years, with various permits. You know if I get a bridge permit on any of those streams, we're asked to follow certain guidelines and of course you know that all helps out. Everybody here I think wants those streams to remain high quality streams. What we have to decide and the reason for the public hearing is how much are we willing to pay to keep that as a valuable resource of the county? And I guess what we're trying to understand that, I did enjoy the, maybe the softening word of the 2.5 to maybe tier 2 a little bit expanded, I wasn't aware of that before the meeting, I was glad to hear that. Other than that, I did talk to the city and I'm glad that they have concern as well, we all should. And also McKee Manor, our county care facility, and Rob Daily here is with us and again, you know reading through some of the benefit cost analysis and that, quarries are listed, McKee Manor is listed, it's written right in here, McKee Manor care facility are likely more static in their operations and may not need to expand or further their operations and therefore will not need to expand their wastewater treatment plant infrastructure. Do we really know that? I guess that's why we're here. So, again I would like to thank you and I think everybody did well coming up here talking.

John Kulper: My name is John Kulper, I am also a limestone aggregates producer and we are concerned that we may have fallen in as an unintended consequence of these, as are perhaps some of our municipal friends. There's a couple of concerns that I have with this process and that is as I've said before the concept of Mass Loading and the single molecule being detrimental or degrading to a water resource. In the...in our area of industry where we receive groundwater, we get precipitation and we don't cause negative impact to those waters, its again an unintended consequence I believe that we are good stewards of the lands, and we're proud of that. And we feel that we improve water quality throughout discharges I'm certain of that. As Adam has said, in our instance it may be pretty simple because our treatment processes are pretty limited in maintaining that water, but that water quality that we discharge, but in the instances where its 2.5, and that is going to be the problem. In Independence earlier today, I had to ask or made the comment that perhaps in order to clarify a system that's proposed that the DNR conduct an alternative analysis to demonstrate and clarify those rules. Being here today, I would like to suggest they maybe do that on behalf of Waukon and if they can come up with some alternatives, designs or whatever they might be, addressing the complexities of this community, I think we could set a blueprint that would probably help a lot of folks. And you have those resources, and your engineers that do that, I think that would be an effort well spent. And that's all I've got, other than a thank you for showing up everybody.

Ron Fadness: My name is Ron Fadness and I'm in this room because I'm the general council for Brooding Rock Products in Decorah, but I'm standing here before you speaking because I'm somebody who grew up in Decorah, Iowa and loves this place like no other and I just got to move back here from Des Moines a month ago because of economic growth, Broodings is doing well, growing and they decided that they were big enough to need an attorney. So I got to move back to my home town, bring my kids back to this beautiful area and I'm going to take them trout fishing to the places my dad took me, and I couldn't be more excited to be here right now. That being said, obviously, I have dual interests here. One from a professional standpoint and one from a personal standpoint, but I think they really go hand in hand. My concern as I've understood this issue, relates to the overall ravine being what believe-it-or-not as being overly simplistic. By talking about any small degradation being prohibited, I believe we're missing the boat. What we should really be concerned about the net effects. It's been explained by many

people that in some ways we're being punished for being good stewards for all these years. And I think that's the case, if we look at the list of Outstanding Waters, they are heavily concentrated right here, obviously a lot of that's geography, but also a lot of that is a culture here. People treasure those resources and take care of them. By saying these beautiful places and beautiful waters cannot be degraded in any small iota, in the name of improving what we have, or keeping what we have, I think is penalizing as I said earlier the people who have done such a good job taking care of things. I think we need to focus on is not AD as in one small step means that its black and white and is prohibited but let's work to promote growth, I know that AD is about preventing us from going the wrong way, but like I said if you have three entities that have gone away, time marches on and we progress, our industries have become less polluting, if we lose two coal fire plants and somebody wants to build a smaller whatever, clean coal plant what have you, if we're improving things shouldn't that be a step in the right direction, shouldn't we be supporting that? But if instead you wind up with the two plants closed, we went from this level of pollution on a scale of ten say an eight down to a five and now we're going to go back to a six, we can't do that, even though the net effect is to have gone from an eight to a six. And that's incongruous with what we should be trying to do. So, as I said, it's overly simplistic, and what we really need to be focusing on is flexibility to allow productive change, not simply denying all change that might have any adverse effect. It has been suggested that the flexibility is the goal of the EPC and I would trust that that is the case, but I would hope that we could be flexible not only in the ways we can avoid any small degree of pollution such as arguing about ground application versus discharge into a stream, but flexibility to say okay, we changed our profile for the better in these eight areas, so we'll have a common sense approach and allow some increase to another approach. Again looking big picture not simply in avoiding any type of degradation whatsoever. The problem I see with this also, to some extent it was raised as a good point, but this is controlled by the state of Iowa, well that's good and bad, we don't have to ask Washington DC if we want to allow this ethanol plant to locate in Allamakee County, but we do have to ask Des Moines. It's good that we're not having to go all the way to DC, but it would be nice if the decision were made locally by a county board of supervisors and a city council that have been elected by their residents that live here and have spent their lives treasuring this place and we would allow local control of these matters. I think really what we're looking at is that these additional costs are incurred right here by these taxpayers in these cities and these counties and these school districts. The decisions of how much those costs are going to increase are being made in Des Moines, and the benefits in large part are going to the people in Cedar Rapids that love to come up here on a weekend to go trout fishing. Admittedly there's economic benefits here for the people coming up trout fishing, but maybe those other municipalities in the form state aide could participate and cost sharing for these extra costs that the city of Waukon among others will incur in planning for future growth. Another thing I see as a drawback as was pointed out with the map of Waukon, are you really reducing the amount of net pollutants going into our environment, or are we just choosing to send them all to one place? Those four slob live in southwest of Waukon, they're going to get hammered because their stream is going to go from level two to level one because over here this 2.5 can't go to 2.4. So it seems to be we're playing a shell game, we're just passing the pollutants on to one place, pitched all our garbage in the landfill instead of spreading it around the countryside. Maybe we need to look at it from a more broad based perspective. And finally, I do certainly believe that however good natured or well intentioned it may have been to classify these forty-five bodies of OIW, specifics do need to be made on a case by case basis, not just because maybe some don't apply, but we do have this

thing in our constitution called due process and as an attorney having spent time listening to the learned minds of the University of Iowa College of Law, I can assure that due process is required for this kind of determination, and it hasn't been delivered to date. Finally I think that this really just comes down to again as I said, over simplicity, we have to avoid unintentioned consequences by well intentioned rules. Is anybody against improving our water quality, of course not, I'm not, that's why I'm so proud to be able to move back here with my kids. This is the area that offers so much for so many. But by the same token, in the name of preventing one molecule of nitrates of getting into Paint Creek, we can't go to the extreme consequence of prevent Waukon of affordably adopting a new wastewater treatment plant. If the cost is too prohibitive what are they going to do? Continue to operate without a permit? And things are never going to improve? They're just going to stay the status quo. If you want things to change, you've got to make it economically feasible for people of goodwill to do the right thing. So with that, let me just commend the people who have put in time to advance this, certainly it's a noble goal and one that I personally and certainly think my employer as well support and we all live here and we all love it here, but we just ask that a little bit of flexibility be applied across the board, not just within the ways we can try and achieve a standard that may in fact be unattainable in many cases. Thank you.