

**MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
OCTOBER 20, 2015**

**DNR AIR QUALITY
7900 HICKMAN ROAD
WINDSOR HEIGHTS, IOWA**



Chuck Gipp, Director

11/17/15

Bruce Troutman for Chuck Gipp

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Vice Chairperson Chad Ingels at 10:00 a.m. on October 20, 2015 at the DNR Air Quality offices at 7900 Hickman Road in Windsor Heights, Iowa.

COMMISSIONERS PRESENT

- Nancy Couser
- Cindy Greiman, Secretary
- LaQuanda Hoskins
- Chad Ingels, Vice Chair
- Ralph Lents
- Joe Riding
- Bob Sinclair
- Gene Ver Steeg

COMMISSIONERS ABSENT

- Mary Boote, Chair

ADOPTION OF AGENDA

Motion was made by Bob Sinclair to approve the agenda as presented. Seconded by Cindy Greiman. Motion carried unanimously.

APPROVED AS PRESENTED

APPROVAL OF MINUTES

Motion was made by Ralph Lents to approve the September 15, 2015 and October 8, 2015 EPC meeting minutes. Seconded by Joe Riding. Motion carried unanimously.

APPROVED AS PRESENTED

MONTHLY REPORTS

- Bill Ehm shared with the Commission a summary of the Auditor’s Report.
- Bill Ehm shared with the Commission the Pollution Prevention Internship Program year end summary with the accomplishments of the interns. He summarized the amount of energy saved, waste reduced, water usage reduced, and other business cost savings and environmental impacts to date as a result of the program.
- Bill Ehm shared with the Commission the Department’s plan to celebrate the 30th anniversary of the DNR and the success stories.
- Bill Ehm shared with the Commission the updated look and feel of the DNR’s website at iowadnr.gov. The site will auto format to any device size being used to access information.

The following monthly reports have been posted on the DNR website under the appropriate meeting month:
<http://www.iowadnr.gov/InsideDNR/BoardsCommissions.aspx>

- | | |
|------------------------------|--------------------------------------|
| 1. Rulemaking Status Report | 4. Administrative Penalty Report |
| 2. Variance Report | 5. Attorney General Referrals Report |
| 3. Enforcement Status Report | 6. Contested Case Status Report |

INFORMATION

PRESENTATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

Eric Wiklund, Supervisor, of the NPDES Section of the Water Quality Bureau presented the Commission with an educational overview of the NPDES program. During his presentation he reviewed the Clean Water Act, programs the NPDES section oversees, the permitting process, and was available to answer questions from the Commission.

INFORMATION

PUBLIC COMMENT

Larry Ginter – ICCI

Larry Ginter shared with the Commission that the DNR, in its news release regarding the Stoney Creek manure spill, did not identify the source of the spill. It concerns him that the DNR did not initially know where this spill came from. Only later did DNR identify the source of this spill. The egg wash was dumped on the corn field and he questions what is in the liquid and if the location is a legal spot to dump. He felt the situation is fishy and if he were in charge, he would shut the business down in a New York minute. He is mad that this business received help from the USDA to clean up its dead chickens and the business showed its appreciation by dumping this liquid and killing fish. He does not understand how building pits can overflow – only poor management allows this. He feels the facilities have either too many hogs or poor management. There are good producers but he is frustrated with those who violate the law and nothing happens to the violators.

Shari Hawk – ICCI

Shari Hawk shared with the Commission a recent newspaper article about the Park Rangers obtaining 37 automatic rifles for \$52,000 for public safety. Not all safety can be done with a gun. There are people confined to their homes in the rural areas because of the industrial waste around their home. With the dense waste in the air, residents cannot open their windows nor have a picnic. She asked the Commission to find another \$52,000 to improve the AFO program so that facilities don't create misery for residents around them. She asked for the Commission to not sign off on any more facilities.

Vern Tigges – ICCI

Vern Tigges came before the Commission to address the short comings and challenges of the DNR. He reviewed the timeline history of the ICCI dedelegation petition and the events that have occurred to date. He feels it is a complicated mess with the nutrient management program not working and spills continually occurring. He believes ICCI may have to go back to EPA for results.

Mary Clark – ICCI

Mary Clark submitted her written comments and photos to the Commission. She believes the death of her newborn son was due to nitrate contaminated drinking water and she worries about other poor women drinking water with high nitrates. There are 725 polluted water ways and voluntary compliance of the manure reduction strategy isn't working. She provided the Commission with a list of farms who have had multiple manure spill violations over the past 7 years. She feels those facilities with multiple violations need to be held responsible. The Des Moines Register had an article and picture of a drain pipe going into Bear Creek and she believes it is unacceptable to pollute the water ways. She believes the water program is getting worse rather than better. She questioned how many Clean Water permits have been issued to farms? For those issued permits, how come they have not been shut down when manure was released? Native Americans believe we borrow the land from future generations and it should be returned in a better condition than when we received it.

Janis Elliot – ICCI

Janis Elliot shared with the Commission when she was a young girl at school she followed the rules but there were always a few kids that caused problems. It made her mad when a few bad actors would make the entire class miss recess and stay inside with their heads on the table. She moved back to Iowa because she loves the people and the land. Most people in Iowa are responsible and love their land and many farmers take care of it. But there are some violators – including certain hog farmers. If the facility has had 4-5 manure spills, the facility should have a permit. She asked the Commission to issue Clean Water permits instead of construction permits.

Chloe Craig – ICCI

Chloe Craig shared with the Commission she and her dad have been fishing together all her life. Fishing was her favorite hobby along with swimming. She worries that when she has a family they are not going to be able to eat the fish, swim in the water, or drink the water.

Max LaBland – ICCI

Max LaBland thanked Mr. Wiklund for his educational presentation on NPDES permits and thought it was excellent. He believes Clean Water permits are an important tool and we should always be looking for improvements. He spent 30 years of his life as a methods and procedures expert continually improving processes. He knows change is constant so issuing a permit to a facility cannot be considered permanent. He knows he has to check his drain for hair and septic system for clogs. Clean Water permits are not a burden for responsible businesses. He believes citizens need to hold someone accountable and Clean Water permits can be used as a tool. In his opinion, the EPC is not using the tool for CAFOs. He inquired into the number of confined facilities with a Clean Water permit.

Patti McKee – ICCI

Patti McKee attends the EPC in memory of her mother's friend whose home was near a CAFO and she could not go outside or be in the sun due to the polluted air and water. Every manure spill and improper dump steals people's health, clean water, healthy soil, and the livelihood of the small farms. She believes we are stealing today from our future generations of children, grandchildren, and great-grandchildren. If we don't clean up today then they will have to clean up later. Allowing the stealing for Ag profit isn't right because future generations can't drink or breathe profits. She believes issuing Clean Water permits, meaningful fines, and valuable inspections are needed.

Jess Mazour – ICCI

Jess Mazour inquired into the whereabouts of the manure release report because it was not included in the packet. Thus far in 2015, there have been 52 manure spills in comparison to last year's 39 manure spills. Of those this year, 11 manure spills reached the water and 5 were just in the last week. One of the reasons for the manure spills was a pit overflowed. In manure management plans, a person is to be on site every day. If a pit is overflowing, she believes a person is not onsite daily which is negligence and the facility should be shut down. The DNR press releases to the public about the manure spills are misleading by saying the responsible party responded quickly. She believes water quality isn't getting better. She does not believe the DNR should applaud the efforts of a violator for a manure spill that shouldn't have happened in the first place. Tile lines on steep slopes are directing nitrates, phosphorus, and manure into our water. Most rural communities don't have the resources like Des Moines Water Works to remove the nitrates from their drinking water. She encouraged the Commissioners not to listen to the legislators, Governor, and the DNR because they are not providing the Commission with correct information. She asked the EPC to enforce the Clean Water Act more than just a slap on the wrist because voluntary compliance doesn't work.

Carrie Fisher – ICCI

Carrie Fisher addressed agenda item #15 regarding the Kossuth County district court ruling. She believes the expansion of the swine facility is too close to a recreational area. The permit has been denied by Kossuth County, DNR, an Iowa Administrative Law Judge, and district court. The only group that has approved the permit is the EPC. The opportunity is upon the EPC to step up to the plate and do the right thing to protect the environment and accept the district court ruling. She thought the NDPES presentation was great and understands it is a complex topic but is concerned with Mr. Wiklund not remembering poor water quality in his life. She believes he doesn't need to have a memory and all he has to do is look at the impaired waters list and the Des Moines Water Works nitrate removal system. She believes if manure was flammable, Iowa's rivers would be on fire.

Written Comments Submitted

- None

END OF PUBLIC COMMENT**DIRECTORS REMARKS**

DNR Director Chuck Gipp thanked the Commission for participating in the emergency EPC meeting the prior week to review the proposed air quality fee rules. He explained how the current fee is collected based on the emissions. With business and industry reducing their pollution by 34%, penalizing those entities by increasing fees would not be a good model. The legislature asked for stakeholders to develop recommendations for sustainability of the air quality programs. The proposed rules will collect feedback from all stakeholders on the options for a flat fee or billable hours. He again thanked the Commission for their support.

INFORMATION

CONTRACT AMENDMENT #1 – IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP – WATER QUALITY IN RATHBUN LAKE

Rachel Glaza, Environmental Specialist, of the Watershed Improvement Section of the Water Quality Bureau presented the following item.

The Department requested Commission approval of a contract amendment to an existing contract with the Iowa Department of Agriculture and Land Stewardship – Division of Soil Conservation and Water Quality. Commission approval is requested to amend the amount of the contract to \$919,044 and extend the contract ending date to December 31, 2018. This is an addition of \$86,000 to the contract amount. Commission rule requires that any contract amendment in excess of \$25,000, or 10% of the original contract, whichever is greater be approved by the Commission. See 567 IAC chapter 8 (incorporating by reference 561 IAC chapter 8).

Funding Source: Federal – Environmental Protection Agency.
This project will be funded through Section 319 of the Clean Water Act.

Background:
The Rathbun Lake watershed includes slightly more than 354,000 acres. The six counties in the Rathbun Lake watershed are Appanoose, Clarke, Decatur, Lucas, Monroe and Wayne. The Wayne Soil and Water Conservation District (SWCD), in cooperation with other partners of the Rathbun Land and Water Alliance, have undertaken a highly effective approach to water quality protection. The overall goal of the Water Quality in Rathbun Lake Project is to reduce sediment and phosphorus delivery to Rathbun Lake and the lake’s tributaries. Project activities will assist landowners to apply best management practices (BMPs) that will reduce sediment and phosphorus delivery to Rathbun Lake and its tributaries. This contract will provide funding for staff support, watershed outreach activities and BMP cost-share until December 31, 2018.

Purpose:
The purpose of the Original Contract and the Contract Amendment is to implement BMPs and water quality educational programming for the project selected.

Contractor Selection Process:
DNR has entered into this contract with IDALS-DSC based on Iowa Code section 455B.103(3).

Contract History:
On August 18, 2015 the Commission approved the Water Quality in Rathbun Lake Contract No. 16-ESD-WQB-RGLAZ-0024 with the Iowa Department of Agriculture and Land Stewardship – Division of Soil Conservation for the amount of \$833,044.

The Commission engaged with Rachel Glaza and Bill Ehm regarding the efforts being made when working with reluctant land owners.

Motion was made by Gene Ver Steeg to approve the agenda item as presented. Seconded by Ralph Lents. Motion carried unanimously

APPROVED AS PRESENTED

PRESENTATION OF THE BIONET – IOWA’S AMBIENT BIOLOGICAL MONITORING DATA

Roger Bruner, Supervisor, and Jamie Mootz, Statistical Research Analyst, of the Water Monitoring and Assessment Section of the Water Quality Bureau presented the Commission with an educational overview of the online BioNet resource. During the presentation they demonstrated how the resource works, where to find information, and how the resource is planned to grow.

INFORMATION

PRESENTATION OF THE MANURE APPLICATOR CERTIFICATION ONLINE TRAINING

Gene Tinker, AFO Coordinator, and Collen Conroy, Clerk Specialist, presented the Commission with an educational overview of the online Manure Applicator Certification training. During the presentation they demonstrated the log in process, educational modules, historical tracking features, along with payment options. The online resource will be available in addition to the Iowa State Extension, County offices, and DNR ESD Field Office training opportunities.

INFORMATION

2016 EPC DATES

Jerah Sheets, Board Administrator, presented the Commission with meeting dates, educational tours, and joint meeting options for 2016. During his presentation he gathered feedback from Commissioners to make adjustments and present in November the 2016 schedule for Commission's decision.

INFORMATION

KOSSUTH COUNTY DISTRICT COURT RULING – KOSSUTH COUNTY V. IOWA DNR ET AL

David Steward, Assistant Attorney General, addressed the Commission with consideration of a construction permit in question of violation of the separation distance. In August 2014, the Commission approved the construction permit. Kossuth County appealed the Commission's decision and court ruling reversed the decision and remanded it back to the Commission to review Plum Creek Wildlife Area has facilities. After reviewing the Iowa Code and DNR rules regarding public use areas and separation distances, he recommended if a Commissioner made a motion it should include consideration of the following three factors: Whether the land in question 1) is owned by a government entity, 2) has a facility(ies), and 3) if it has a facility(ies) that attracts the public to congregate for periods of time.

Todd Holmes, Kossuth County Attorney, addressed the Commission stating the Plum Creek Wildlife Area has facilities that attract the public. He is aware the lake is not on Table 2 but continues to argue Table 2 is not all inclusive. Table 2 has numerous lakes that were previous pits and have similar characteristics to lake in question. Table 2 also has water bodies like Polk County's Canary Marsh similar to the lake in question which have no traditional facilities like docks or restrooms but suggests the water body itself constitutes as the facility. He stated the County invests in the maintenance of the property and the DNR covered 90% of the riffle installation costs and repeatedly have stocked the lake with fish. The lake in question itself is a facility and attracts the public to congregate and so the P&J Pork proposed facility would be in violation of the separation distance.

Eldon McAfee, attorney representing P&J Pork, stated the Plum Creek Wildlife Area does not have facilities that would qualify as a public use area. He distributed exhibits from the first hearing to utilize as visuals during his presentation. The rock riffle is in the river and is a structure separate from the lake and thus unable to be used as determining if the lake has facilities. The northern portion of the property is blocked from vehicle traffic and only accessible via foot or boat.

Eldon McAfee disagrees with the court decision with Table 2 being non-exclusive. He stated that since the courts are making their determination based on their definition of the word "as", then he desired a definition of lake. He summarized his review of determining what constitutes as a lake and was unable to find a definition in Iowa Code. He did find Table 2 is utilized for two purposes; one for protection of major water sources and two for facility separation distances. He does not believe Todd Holmes provided the Commission with evidence of a proper comparison of lakes on Table 2 with the lake in question. He believes the burden upon the County was not met.

Neither party has explored the route of a variance request.

In Chapter 69 of the Iowa Code, lakes are defined but Eldon McAfee disagrees with using the definition from one chapter to be applied to another chapter. With the court's close review and interpretation of the word "as" it would not be appropriate to swap definitions between chapters.

Eldon McAfee and Josh Brusner, applicant, shared with the Commission the meetings with the DNR and County over the years in planning for the original site and expansion. Josh Brusner did not feel that he or Pinnacle, the firm he hired for the design work, received concerns from the DNR or the County through various meetings regarding separation distance with a wildlife area.

Motion was made by LaQuanda Hoskins to go into closed session to discuss litigation strategy with counsel. Seconded by Nancy Couser. Joe Riding-yea, Bob Sinclair-nay, Ralph Lents-yea, LaQuanda Hoskins-yea, Nancy Couser-yea, Gene Ver Steeg-yea, Cindy Greiman-yea, Chad Ingels-nay, and Mary Boote-absent. Motion passes.

CLOSED SESSION

The Commission conducted a Closed Session for approximately 20 minutes.

Commissioner LaQuanda Hoskins expressed her reasoning for voting in August 2014 to deny the permit due to the fact the lake was being stocked with fish to attract people and thus she felt the area was a public use area. With the court decision Table 2 is not exclusive, it continues her support to deny the permit.

Commissioner Gene Ver Steeg does not feel the County provided sufficient evidence to the volume and frequency of use of the lake. He expected stories of people congregating and fishing.

Commissioner Joe Riding expressed concern with the County's approach to engage with the applicant after a permit application was submitted. The applicant spent time and money up front with the understanding there were no objections and is now surprised by the County's objections. It is unfortunate and could have been averted with open communication.

Motion was made by Gene Ver Steeg to approve the building permit because it was determined the land is owned by the county however the lake itself is not a facility because the County did not provide sufficient evidence that this lake is like lakes in Table 2 and thus will not need to address if the congregation of the public.. Seconded by Bob Sinclair. Joe Riding-nay, Bob Sinclair-yea, Ralph Lents-yea, LaQuanda Hoskins-nay, Nancy Couser-nay, Gene Ver Steeg-yea, Cindy Greiman-yea, Chad Ingels-nay, and Mary Boote-absent. Motion fails.

MOTION FAILS

Motion was made by LaQuanda Hoskins to deny the permit based off the area is owned by the County and the County has provided sufficient evidence that Plum Creek Wildlife area is a facility because it is like lakes in Table 2 and this lake does attract the public to congregate and remain in the area for periods of time. Seconded by Nancy Couser. Nancy Couser-yea, Gene Ver Steeg-nay, Cindy Greiman-nay, Joe Riding-yea, Bob Sinclair-nay, Ralph Lents-nay, LaQuanda Hoskins-yea, Chad Ingels-yea, and Mary Boote-absent. Motion fails.

MOTION FAILS

David Steward stated to the Commission with no successful motion passing the permit remains denied.

Motion was made by Gene Ver Steeg to reconsider both failed motions at a future EPC meeting when all nine Commissioners are present which may be a teleconference meeting following public meeting laws and rules where the public can participate. Seconded by Cindy Greiman. Bob Sinclair-yea, Ralph Lents-yea, LaQuanda Hoskins-nay, Nancy Couser-yea, Gene Ver Steeg-yea, Cindy Greiman-yea, Joe Riding-nay, Chad Ingels-yea, and Mary Boote-absent. Motion passes.

RECONSIDERED

General Discussion

- Commissioners discussed the rule making process when engaging with Stakeholder groups.

Vice Chairperson Ingles adjourned the Environmental Protection Commission meeting at 2:36 p.m., Tuesday, October 20, 2015.

NPDES currently oversees the following programs

- Municipal NPDES Permitting
- Industrial NPDES Permitting
- Storm Water NPDES Permitting
- On-Site Wastewater Permitting
 - < 1,500 gallons/day
- Concentrated Animal Feeding Operation (CAFO) Permitting

Permit Issuance/Renewal Process

- Individual/Group desiring a permit submits an application to discharge
 - Very important step
- We act on the application and write (draft) a permit based on applicable requirements
 - Water Quality Standards (WQS)
 - Federal Effluent Limits Guidelines (ELG)
 - Best Professional Judgment (BPJ)
- 30-day Public Notice period
 - Opportunity for permittee, public and EPA to comment
- Finalization of permit

Typical Impacts of a New/Reissued NPDES Permit

- New or more stringent limit triggers a compliance schedule
 - Gives permittee time to act to comply with discharge requirements
 - Plant upgrade
 - Move outfall
 - Source reduction/alternative disposal option
- Plant upgrade requires a construction permit from DNR Wastewater Engineering Section
 - Design standards
 - State Revolving Fund (SRF)

Typical Impacts of a New/Reissued NPDES Permit

- Costs \$\$\$ – None of this happens for free!
- Flexibilities
 - Extended compliance schedules
 - Integrated Planning
 - Disadvantaged Community Status
 - Consent Order

Internal Partners in DNR

- Water Quality Monitoring and Assessment Section
 - Develop Water Quality Standards (WQS)
 - Develop the Wasteload Allocation (WLA)
 - Develop Integrated Report (Impaired Waters List)
- Watershed Improvement Section
 - Total Maximum Daily Load (TMDL)
- Wastewater Engineering Section
 - Issues construction permits for new/upgraded facilities
- Field Offices
 - Inspections
 - Data review

External Partners

- Iowa League of Cities
- Iowa Water Environment Association
- Iowa Environmental Council
- Iowa Association of Business and Industry
- Iowa Economic Development Authority
- US EPA

What's On The Radar...

- Iowa Nutrient Reduction Strategy
 - Feasibility studies
 - Plant upgrades
- Integrated Planning
- Electronic Reporting Rule

Final Thoughts

- Expectations for improved water quality are always increasing
 - Better science
 - Improved technology
- NPDES permits come with high expectations but also with significant flexibilities
- Five year permit lifetime establishes the timeframe for reevaluation – always looking for improvement

Questions?



Eric Wiklund
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10-20-15

EPC/DNR Meeting

I'm Mary Clark, a proud member of ICCI and a rural Polk County landowner with a well for our water uses. I have lived with a well as my primary source of water over half of my adult life. When I was pregnant with my son, unknowingly I drank extremely polluted well water with a nitrate content of over 39 parts per million, which is 4 times the legal safe limit for human consumption. My son only lived one day. I believe his death may well have been caused by my drinking high nitrate contaminated water during my pregnancy. I worry about other young women who may be drinking well water with high nitrate contamination. I worry that some poor young woman may lose her child from drinking nitrate contaminated water.

Our polluted waterways in Iowa have increased 15% over 2014, which includes a startling total of over 725 polluted waterways. This information clearly indicates the voluntary compliance of the manure reduction strategy is definitely not working. Self regulation of the Ag Industry in Iowa hasn't worked, doesn't work, and can't work.

Our water quality in Iowa is getting worse, not better. We talk about the problems and the sources of the problems regarding our water quality. We reveal the specific causes of the water pollution and yet the problems of water pollution remain, and increase. Even though we have agencies and commissions specifically designated to guard and protect our natural resources in Iowa, the degradation of our water continues at an alarming pace.

As leaders, as policy makers, as law makers, as adults we all have the responsibility to be care takers of our environment and our precious natural resources. We have an obligation to think of all those who follow us, who come after us, the next generations. What are we leaving our children and our grandchildren?

A Native American proverb says: *We do not inherit our earth from our ancestors; we borrow it from our children.* My dear departed father always said, "If you borrow something, always return it in better condition than you received it".

We have an obligation to return this earth to our children and grandchildren in better condition than we received it. We aren't fulfilling our responsibility. With disrespect for our children and grandchildren, we are trashing THEIR world! We allow CAFOs to destroy our precious resources in Iowa. This is immoral! Please do what the citizens of Iowa request and expect you to do, protect our water, land and air from those who destroy them.

Please put PEPOLE and our Planet before Corporate Agriculture profits.

We have only ONE life support system, we do not have a Planet B. Please protect it.

Dm Register Photo
Roland
Tile from a farm
drains into Beer
Creek.

Story
County



The State Legislature, the DNR and the EPC are not protecting the public trust; our water, our air and our soil are being polluted.

Are the profits of a few corporate farms more important than the health and welfare of Iowa's residents? Please put people's health above agriculture's profits.

The following are documented manure spills, source DNR.

Jasper County:

Clinton Voss- spill 8-27-14, this is their 2nd documented manure spill, didn't notify DNR in 6 hours.

It reached a body of water fish kill occurred. Fine: \$348.27

Last inspection was 2-3-2006. Has had multiple manure management violations. 4,000 hogs.

O'Brien County:

Summit Dairy, owner John Westra: spill: 8-16-14, didn't notify DNR in 6 hours. Spill reached Mill Creek- killed 865,940 fish and polluted 28 miles of stream. Fine: \$160,497.36 (mainly for fish kill). Last inspection 2008, but DNR was onsite in April 2014.) Amount of spill unknown.

1,500 dairy cows in confinement.

Mitchell County

Pronet Farms, owner Ronald Litterer- Spill: 10-31-14. DNR was notified by neighbor w/in 6 hours. **5,000 gallons, reached Little Cedar River** which is already on polluted waterway list. 3,736 gestation hogs. Last inspection date unknown.

Keokuk County

LDR Ranch, owner Dennis Striegel: spill 11-12-14. DNR was notified w/in 6 hours. 1800 gallons of toxic liquid manure spilled. It reached an unnamed tributary of Clear Creek, which is a tributary of the Skunk River. Fine unknown. Animals confined: 1,900, gestation. Last inspection on 9-2-2004

Audubon County:

By Audubon-Manning Veterinary Clinic, spill: 10-13-13 their 4th documented manure spill, they did notify DNR in 6 hours.

Last onsite inspection was April 2007, desk top inspection 9-25-14.

5,000 gallons of manure spilled - it reached a body of water. 4,425 hogs.

Spill history: 3-26-2001, 7-30-03, 10-26-2013, 10-31-2013.

Guthrie County:

Van Meter Feed Yard, spill:10-4-14 this is their 5th documented manure spill, didn't notify DNR in 6 hours. **Last inspection was on 6-30-11.** 14,000 Cattle feed lot.

200,000 gallons of manure spilled, press release says it reached a body of water.

Spill history: 4-9-01, 11-18-03, 11-17-04, 03-24-10, 10-4-14. **No fine issue as yet.**

Wright County:

Iowa Select, Dows spill: 1-20-14 their 3rd documented manure spill, didn't notify DNR in 6 hours.

1,000 gallons of manure spilled, reached **drainage ditch & the Iowa River.** **No fines.**

16,000 hogs on site.

Last inspection April 2013, deficiency was found.

These polluting farms need to have Clean Water Act permits to operate, or shut them down.



Welcome to BioNet

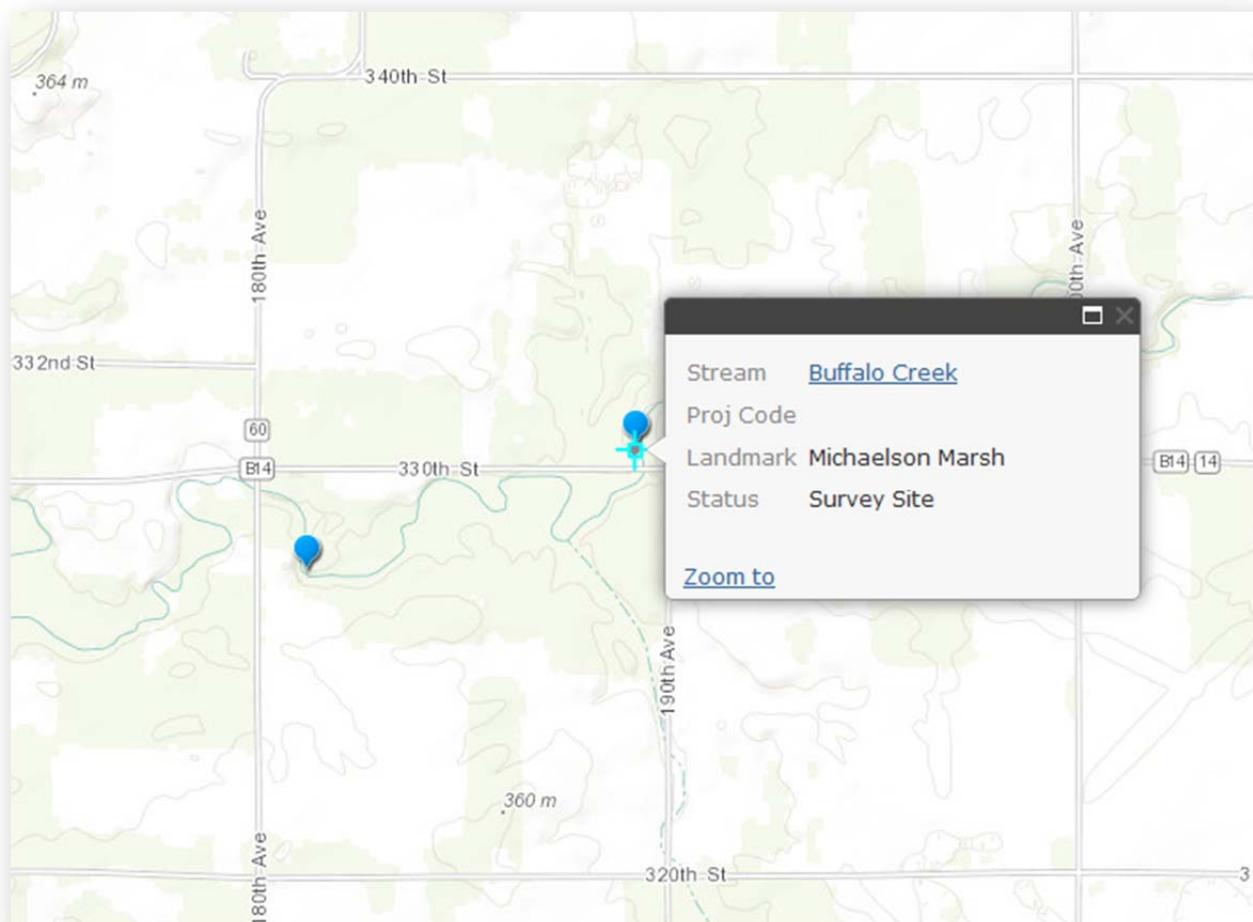
BioNet is the portal for sampling data and summary information collected using the protocols of the Stream Biological Monitoring and Assessment Program.

Begin your search by exploring the "Find a Site" section. You may also [learn more about the Biological Assessments](#) or [view the BioNet user guide](#).

<https://programs.iowadnr.gov/bionet>

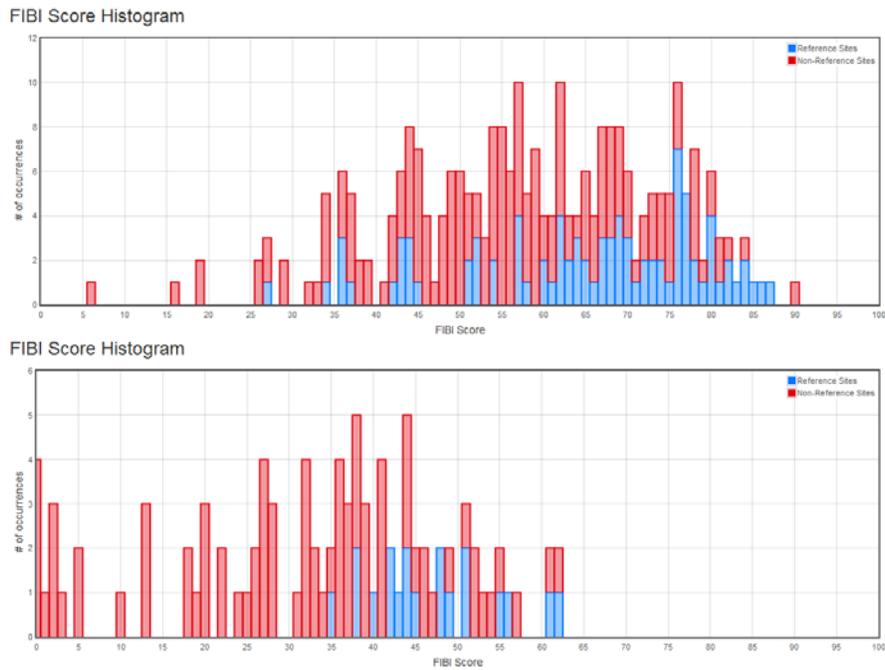
Since 1994, the Iowa Department of Natural Resources and the State Hygienic Laboratory (SHL) have sampled fish and benthic macroinvertebrates across the state to assess the biological integrity of Iowa's streams and rivers. The numbers and types of aquatic organisms found in a stream are useful indicators of the stream's health because they reflect changes in water quality and habitat.

BioNet is the application used by the Iowa DNR to store and summarize this biological monitoring information and make it available for internal use, external agencies, and the public.



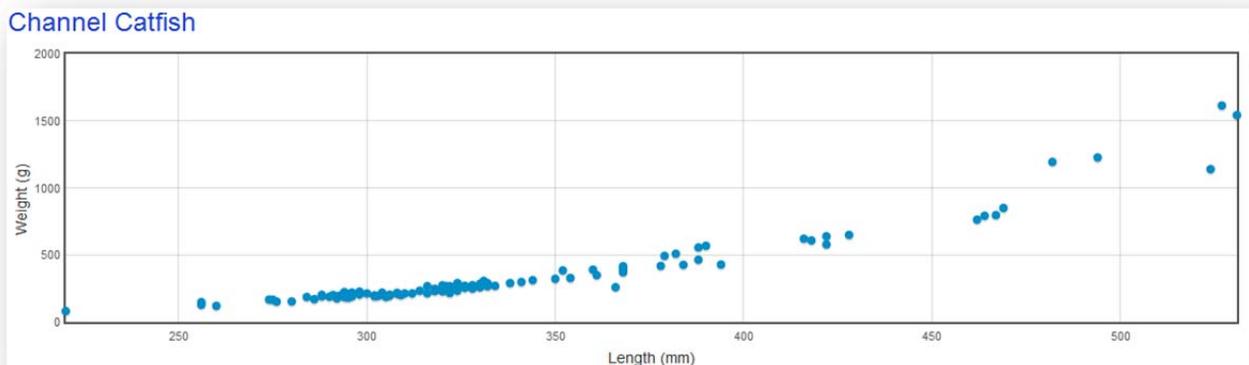
State-wide biological monitoring data, easily accessible

BioNet also contains features to help the public understand the work we do as part of the biological assessment program. An explanation of the program, a reference glossary (the “Codex”), publications, and a guide to Iowa’s EcoRegions can be found from the home page=>Documentation.



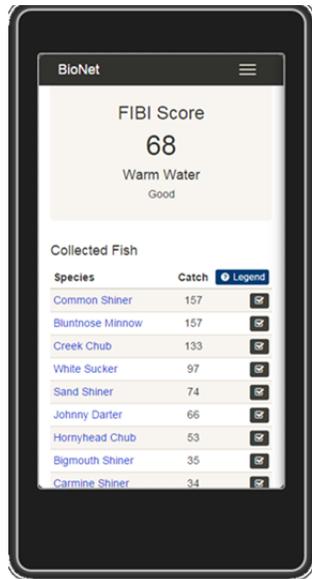
Fish Index of Biotic Integrity (FIBI) comparison of two EcoRegions- Iowan Surface (top) and Northwest Iowa Loess Prairies

Several sections within the Department use BioNet’s data and built-in tools for decision-making, program planning, and research. Water quality assessments use the Fish and Benthic Macroinvertebrate Indexes of Biotic Integrity (FIBI and BMIBI) to determine if a stream is meeting its aquatic life designated uses. Watershed groups and TMDL program staff can use the biological data to determine the efficacy of their management practices. DNR Fisheries fish sampling data is now available to the public for the first time.



DNR Fisheries fish sampling data is available in BioNet

In other public outreach, tools have been built into the application for an Iowa State University fish management class to calculate their own FIBI scores based on sampling data they've collected as part of their coursework. Additionally, landowners will soon receive another round of letters thanking them for allowing the program access to conduct field work on their property and instructions on how to find the data collected on the BioNet website.



On the technological side, BioNet is built with ease of use in mind. The pages are optimized for mobile users while still retaining powerful data management views for desktop users in an office or lab setting. Data entry and editing interfaces are designed specifically for DNR and State Hygienic Laboratory (SHL) staff to enter data quickly and accurately.

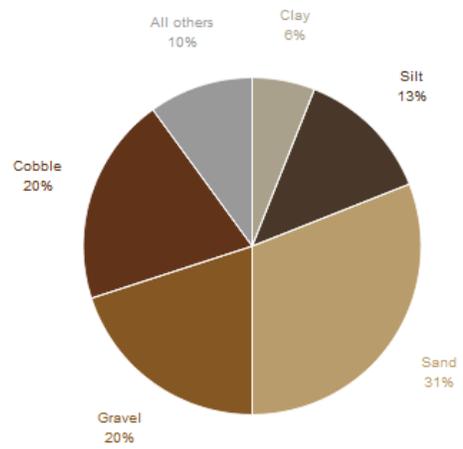
There are also built-in features that allow other web applications to request data from BioNet and use it however they see fit. This will allow greater access to the information and a seamless user experience. Users also have the ability to download data in a variety of formats.

The data in the application is live- when a new sampling session is entered, the data is immediately available and all statistics, graphs, and summaries are updated.

Reach Summary

Coarse Rock Embeddedness - Average	2.00
Maximum Depth	5.00 ft
Maximum Depth Exceeds Measuring Capacity	True
Measuring Capacity Exceeded - Station/Thalweg	True
Reach - Percent Soft Sediment	39.29 %
Reach - Total Habitat Reach Length	1026.00 ft
Stream Width - Average	34.31 ft
Stream Width - Standard Deviation	11.44
Streambank - Average Percent Bare - Left	76.50 %
Streambank - Average Percent Bare - Right	57.00 %
Thalweg Depth - Average	2.31 ft
Thalweg Depth - Standard Deviation	1.03
Thalweg Depth : Stream Width Ratio	14.85
Transect Depth - Average	1.45 ft
Transect Depth - Standard Deviation	0.89

Substrate Composition



Habitat summaries- Paint Creek, Yellow River State Forest

Manure Applicator Training Now Easier than Ever

Take advantage of a new **online training option** to

- Complete annual Commercial MAC training at your leisure – at home or the office
- Pay fees and print certificate
- Check your certification status

Find the link and log-in at www.iowadnr.gov/manureapplicator. Take one module at a time, or complete all modules in one session. For fees and status, see [Manure Applicator Certification Application](#) on the same page or check <https://programs.iowadnr.gov/mac/>.

Minimum Requirements:

- One person per computer.
- Use any device, but a personal computer will perform best.

Or, continue to take training in person or by viewing video, <http://www.agronext.iastate.edu/immag/>, and pay fees with a check or call the DNR for your certificate information at 515-725-8268. Or, use any combination of online and traditional training and fee payment.

SIGNATURE
NAME, TITLE

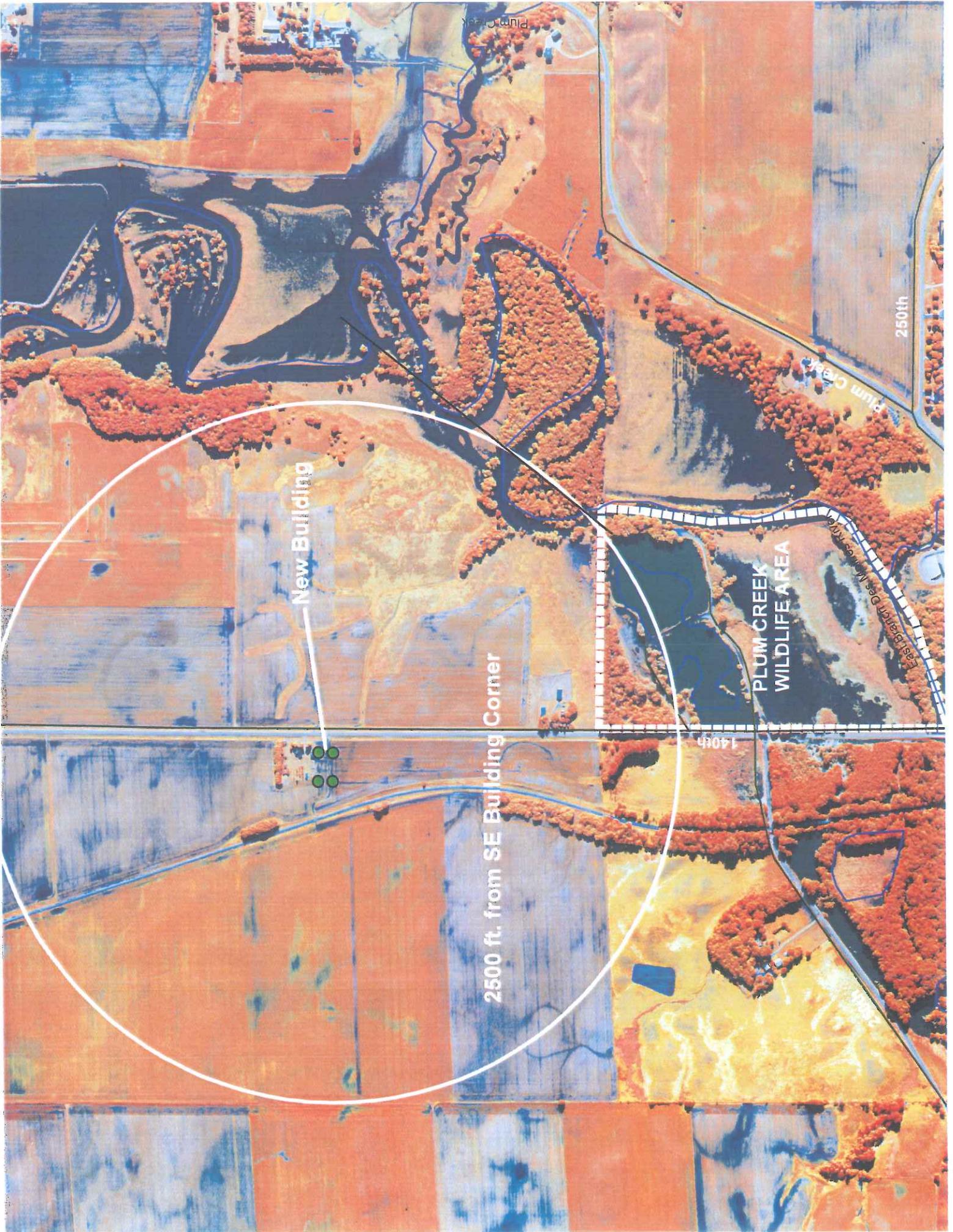




Department of Natural Resources
519 E Ninth St.
Des Moines, IA 50319

Mailing
Indicia

DRAFT



Plum Creek Wildlife Area

250th

Plum Creek

New Building

PLUM CREEK WILDLIFE AREA

East Bayshore Des Moines River

2500 ft. from SE Building Corner

140th

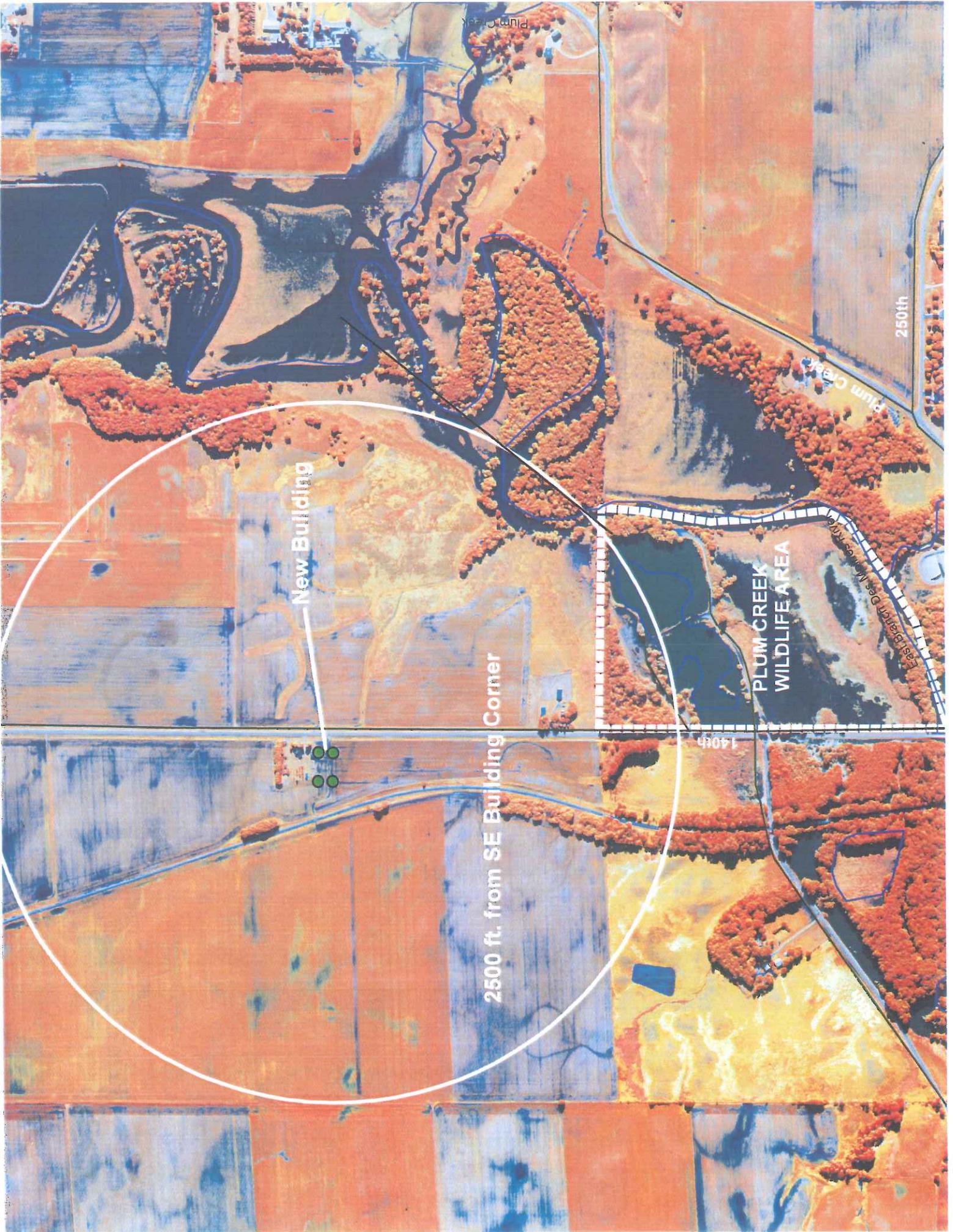




EXHIBIT
1

Boyer



Google earth

feet
meters

1000
400

EXHIBIT
11



EXHIBIT
3

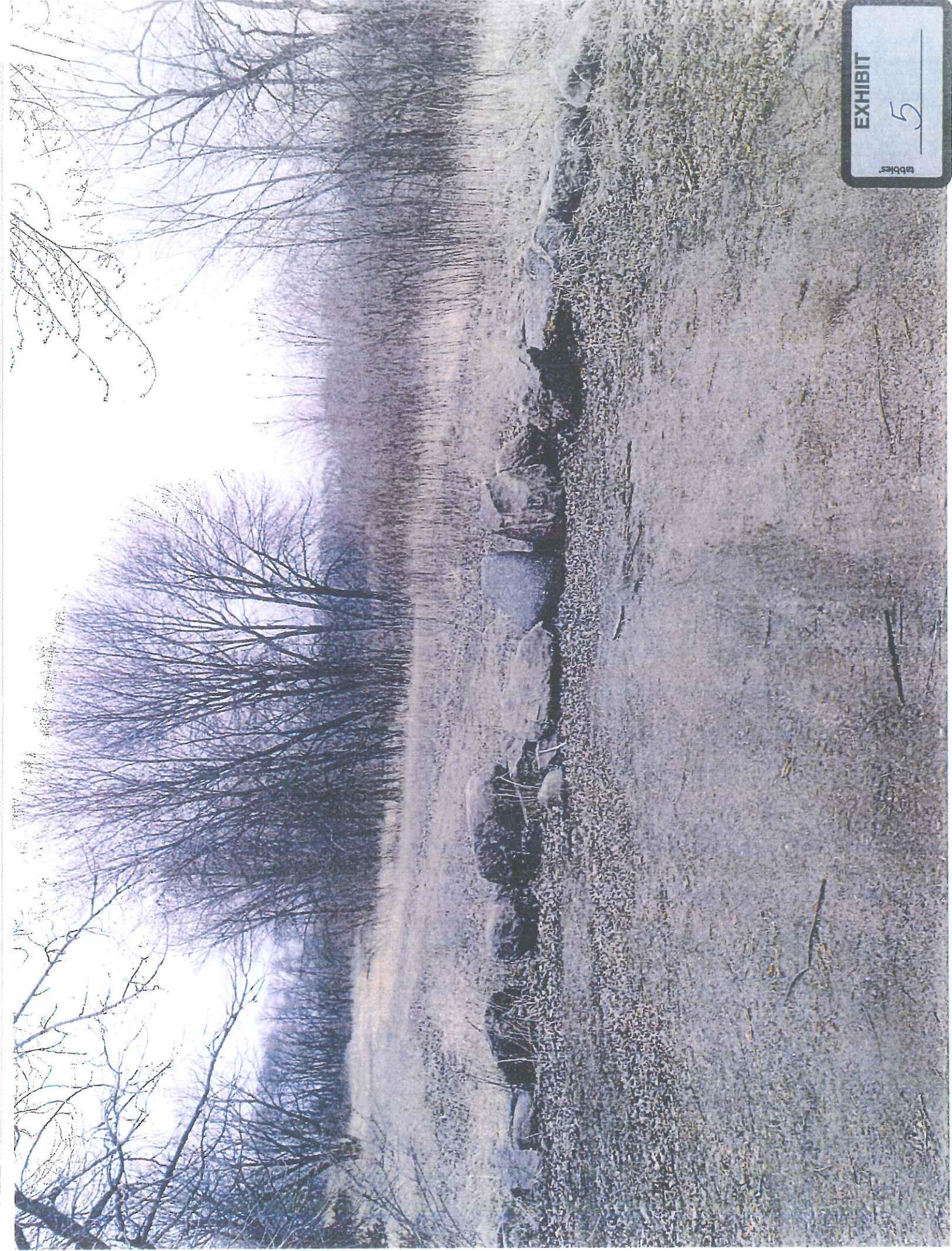
tabbies



EXHIBIT
4

tabbles

EXHIBIT
5



"Major water source"

means a water source that is a lake, reservoir, river or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding. Major water sources in the state are listed in Table 1 and Table 2 at the end of this chapter.

567 IAC 65.11(455B), Table 6
Minimum separation distances for a new confinement feeding
operation or expansion of an operation constructed on or after
March 1, 2003.

Type of Structure (liquid, semi-liquid and dry manure storage)	Total Animal Unit Capacity (AUC) (AU)	Residences, Businesses, Churches, Schools		Public use areas
		Unincorporated Areas	Incorporated Areas	
Confinement buildings and covered formed manure storage structures	500 AU or less	None	None	None
	501 AU to < 1,000 AU	1,250 feet	1,875 feet	1,875 feet
	1,000 AU to < 3,000 AU	1,875 feet	2,500 feet	2,500 feet
	3,000 AU or more	2,375 feet	3,000 feet	3,000 feet

Other Distances

Applies to all Confinement Feeding Operations, regardless of animal unit capacity, including operations with 500 AU or less, unless stated otherwise	
Major water sources, wellhead, cistern of an agricultural drainage well or known sinkhole (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	1,000 feet
Water sources other than major water sources, surface intakes of an agricultural drainage well (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Designated wetlands (owned and managed by the Federal government or the Iowa DNR)	2,500 feet
Right-of-way of a public thoroughfare (road, street or bridge) constructed or maintained by the state or a political subdivision (excluding operations with 500 AU or less)	100 feet

Agenda

Environmental Protection Commission

October 20, 2015
DNR Air Quality Building
7900 Hickman Road
Windsor Heights, Iowa

Tuesday, October 20, 2015 – EPC Business Meeting

10:00 AM – Meeting begins

1:00 PM – Kossuth County District Court Ruling

Public Participation¹ – Requests to speak during the business meeting Public Participation must be submitted to Jerah Sheets at Jerah.Sheets@dnr.iowa.gov, 502 East 9th Des Moines, IA 50319, 515-313-8909, or in-person by the start of the business meeting. Please indicate who you will be representing (yourself, an association, etc.), the agenda item of interest, and your stance of For, Opposed, or Neutral.

If you are unable to attend the business meeting, comments may be submitted via mail and email for the public record. The Commission encourages data, reports, photos, and additional information provided by noon the day before the meeting to allow ample time for review and consideration.

	Agenda topics	
1	Approval of Agenda	
2	Approval of Minutes	
3	Monthly Reports	Bill Ehm (Information)
4	National Pollutant Discharge Elimination System (NPDES) Presentation	Eric Wiklund (Information)
5	Public Participation	
6	Director's Remarks	Chuck Gipp (Information)
7	Contract Amendment #1 – Iowa Department of Agriculture and Land Stewardship – Water Quality in Rathbun Lake	Rachel Glaza (Decision)
8	BioNet – Iowa's Ambient Biological Monitoring Data	Roger Bruner & Jamie Mootz (Information)
9	Manure Applicator Certification Online Training Demonstration	Gene Tinker (Information)
10	2016 EPC Dates	Jerah Sheets (Information)
11	Kossuth County District Court ruling – <i>Kossuth County v. Iowa DNR et al</i>	David Steward (Decision)
12	General Discussion	
	•	
13	Items for Next Month's Meeting	
	• November 17, 2015 – EPC Business Meeting, Windsor Heights	
	• December 15, 2015 – EPC Business Meeting, Windsor Heights	

For details on the EPC meeting schedule, visit
<http://www.iowadnr.gov/InsideDNR/BoardsCommissions.aspx>

¹ Comments during the public participation period regarding proposed rules or notices of intended action are not included in the official comments for that rule package unless they are submitted as required in the Notice of Intended Action.

Any person attending the public meeting and has special requirements such as those related to mobility or hearing impairments should contact the DNR or ADA Coordinator at 515-725-8200, Relay Iowa TTY Service 800-735-7942, or Webmaster@dnr.iowa.gov, and advise of specific needs.

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
October, 2015**

Name, Location and Region Number	Program	Alleged Violation	DNR Action	New or Updated Status	Date
Feinberg, Marty; Feinberg Metals Recycling Corp. Fort Madison (6)	Solid Waste	Operation Without Permit; Illegal Disposal	Referred to Attorney General	Referred	4/14/15
Kossuth County (2)	Animal Feeding Operation	DNR Defendent	Defense	Petition for Judicial Review State's Answer P&J Pork Motion to Intervene Order Granting Motion to Intervene Kossuth County Brief State's Brief District Court Review Without Oral Argument Ruling on Petition for Judicial Review Remanded to EPC	9/18/14 10/08/14 11/07/14 11/20/14 2/03/15 2/13/15 3/04/15 7/30/15
North Central Iowa Regional SWA Fort Dodge (2)	Solid Waste	Operating Permit Violations	Referred to Attorney General	Referred	9/17/13
Peeters Development Co., Inc.; Mt. Joy Mobile Home Park Davenport (6)	Wastewater	Monitoring/Reporting; Compliance Schedule; Discharge Limits; Operation Violations; Certified Operator Discipline	Referred to Attorney General	Referred Petition Filed Answer Filed	3/18/14 6/18/15 7/16/15

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
CONTESTED CASES**

October, 2015

DATE RECEIVED	NAME OF CASE	F.O.	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
10/29/09	Harlan Rudd; Karen Rudd; dba Rudd Brothers Tires	6	Order/Penalty	UT	Brees	Informal negotiation. CADR was submitted, partially rejected with options. Settlement letter sent 2/24/10.
3/11/10	Bondurant, City of	5	Order/Penalty	WW	Hansen	7/2013-On hold pending further investigation. 5/15 – Letter to City Attorney regarding meeting to discuss appeal.
2/28/11	Manson, City of	3	Order/Penalty	WS	Hansen	4/1/11 – Settlement conference held with City. 6/22/11- Settlement offer received from City attorney. 6/28/11- More information requested from City attorney concerning the settlement proposal. 11/29/11- Settlement meeting with City regarding new well project. 12/2011 – City proceeding with project. 6/2012- Contractor worked on new well to remove debris in well. Test pump to be installed to do test of well capacity. 07/2012- City to abandon new well and select new site for well to increase PWS capacity. 10/2012- Water plant work to be done week of 12/10/12. 5/2013- New well project & appeal on hold, pending UDSA funding decision. 6/2/13 – USDA funding decision received. 6/26/13 – New bid date for well project. . 7/2013- Tentative schedule for new well received from City’s engineer. 8/13 – Drilling on test well begun by contractor. 9/13 – Test well not productive, new well site approved by Dept. New test well to be drilled. 10/13- Test well drilled but not successful. Test well abandoned. City Council to decide on next step. 1/24/14 – City’s engineer sent revised construction schedule for another test well and production well. 5/23/14- Test well drilled but not successful. City Council to determine next step. 6/20/14- Letter sent to City requesting plan of action and schedule by 8/30/14 for returning to compliance with order. 8/29/14 – New schedule received from City, to be incorporated into proposed consent amendment. 01/26/14- Proposed consent amendment sent to City for review. 07/15 – Discussions with City regarding project schedule.

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
CONTESTED CASES**

October, 2015

DATE RECEIVED	NAME OF CASE	F.O.	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
8-27-12	Ag Processing, Inc.; Sergeant Bluff	4	Permit Conditions	AQ	Preziosi	Met with appellant on 7/8/15. Settled in concept.
11-21-12	Ag Processing Inc.	6	Permit Conditions	AQ	Preziosi	Met with appellant 8/6/15. Settled in concept.
3-04-13	Anderson Excavating Co., Inc.	4	Order/Penalty	SW	Scott	Landfill closure remains in final stages, and discussions concerning post-closure are underway. Company has obtained adequate financial assurance as required by regulation and order. Settlement of pending AO to be addressed once closure is complete.
6-10-13	Mike Jahnke	1	Dam Application	FP	Schoenebaum	Hearing held 7/30/14. ALJ upheld the permit issued by the Department. Mr. Jahnke appealed but on 11/3/14 he asked that his appeal be put on hold until April, 2015.
1/16/14	Council Bluffs Water Works	4	Permit Conditions	WW	Tack	Hearing continued. Settlement discussions ongoing.
4/17/14	REIC/Iowa Co. Sanitary Landfill	6	Permit Conditions	WW	Tack	4/27/15 Consent Order signed by REIC. Awaiting receipt.
10/01/14	Amsted Rail Company, Inc. (Griffin Wheel Co.)		Permit Conditions	SW	Scott	Company has agreed to stay pursuit of appeal of permit terms while groundwater testing is conducted by consultant to determine source of contaminants. Following investigation parties will continue negotiation of proper permitting requirements
11/13/14	Adam Timmerman	3	Order/Penalty	AFO	Book	Hearing has been continued. A settlement agreement has been reached and is under review by Mr. Timmerman. 9/15 – Consent amendment has been signed, awaiting penalty payment.
1/21/15	Sidney, City of	4	Permit Conditions	WS	Hansen	Negotiating before filing. 5/15 – Letter sent to City with settlement offer.
2/05/15	Mahle Engine Components USA	4	Order/Penalty	WW	Hansen	Negotiating before filing. 5/15 – Settlement conference to be scheduled.
3/31/15	Duane Covington	5	Notice to Revoke License	WS	Hansen	Hearing continued to 9/15/15.
5/22/15	Cedar Ridge Vineyards	6	Order/Penalty	WW	Hansen	Negotiating before filing.
7/02/15	Emmetsburg, City of	3	Permit Conditions	WW	Hansen	Negotiating before filing.

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
CONTESTED CASES**

October, 2015

DATE RECEIVED	NAME OF CASE	F.O.	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
7/07/15	Boone, City of	5	Permit Conditions	WS	Hansen	Negotiating before filing.
7/10/15	Barry Ewoldt	2	Notice of Verified Well Interference	WR	Crotty	Hearing set for 12/02/15.
8/21/15	Bradshaw Farms, LP		Flood Plain Development Permit for IDOT Bridge Replacement	FP	Schoenebaum	Negotiating before filing.

DATE: October, 2015

TO: EPC

FROM: Ed Tormey

RE: Enforcement Report Update

The following new enforcement actions were taken during this reporting period:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Coggon, City of (1)	Wastewater	Compliance Schedule	Consent Order	9/08/15
Lindoah, LLC; Hog Haven Montgomery Co. (4)	Animal Feeding Operation	Prohibited Discharge – Confinement; WQ Violations – General Criteria	Consent Order \$1,000	9/08/15
William Lawler; Jeff Lawler Dubuque Co. (1)	Animal Feeding Operation	Prohibited Discharge – Confinement; WQ Violations – General Criteria	Order/Penalty \$9,000 \$39.80/Fish \$623/Fisheries \$455/FO	9/14/15
Parks Finishing J3, LLC Fremont Co. (4)	Animal Feeding Operation	Land Application Separation Distance	Consent Order \$2,000	9/14/15
John Westra O'Brien Co. (3)	Animal Feeding Operation	Prohibited Discharge – Confinement; WQ Violations – General Criteria	Order/Penalty \$10,000 \$158,551/Fish \$1,945/FO	9/14/15
Jay Niday Sioux City (3)	Wastewater	Licensed Operator Discipline	Consent Order	9/14/15
Patrick Schwarte Sioux City (3)	Wastewater	Licensed Operator Discipline	Consent Order	9/14/15
Orange City, City of (3)	Wastewater	Discharge Limits	Consent Order	9/16/15
D & L Swine, LLC Osceola Co. (3)	Animal Feeding Operation	Prohibited Discharge – Confinement; WQ Violations – General Criteria	Consent Order \$500	9/16/15
Van Meter Feedyard, LLC Guthrie Co. (4)	Animal Feeding Operation	Prohibited Discharge – Open Feedlot; WQ Violations – General Criteria	Consent Order \$1,000	9/22/15

IOWA DEPARTMENT OF NATURAL RESOURCES
 ENVIRONMENTAL PROTECTION COMMISSION
 RULE MAKING STATUS REPORT
 October, 2015

Proposal	Stakeholder Engagement	Sent for Governor's Pre-Approval (Job Impact) Statement	Notice to EPC	Notice Published	ARRC No.	ARRC Mtg.	Hearing	Comment Period	Final Summary To EPC	Rules Adopted	Rules Published	ARRC No.	ARRC Mtg.	Rule Effective
1. Ch. 20, 21, 23, 25, 26, 27, 28, 31 and 33 – AQ 5-Year Rule Review; Rescissions and Updates														
2. Ch. 22, 23, 30 31 and 33 – AQ Program Application Fees		9/11/15 7/16/15												
3. Ch. 60, 62, 63, 64 and 67 – for National Pollutant Discharge Elimination System (NPDES) and Iowa Operation Permits		5/28/15 3/23/15												
4. Ch. 209 – Landfill Alternative Financial Assistance		4/15/15 5/28/15	8/18/15	9/16/15	2140C		10/06/05	10/06/15						

IOWA DEPARTMENT OF NATURAL RESOURCES
LEGAL SERVICES BUREAU

DATE: October 1, 2015
TO: Environmental Protection Commission
FROM: Ed Tormey
SUBJECT: Summary of Administrative Penalties

The following administrative penalties are due:

NAME/LOCATION	PROGRAM	AMOUNT	DUE DATE
Robert and Sally Shelley (Guthrie Center)	SW	1,000	3-04-91
Daryl & Karen Hollingsworth d/b/a Medora Store(Indianola)	UT	3,825	3-15-96
Greg Morton; Brenda Hornyak (Decatur Co.)	SW/AQ/WW	3,000	11-04-98
James Harter (Fairfield)	WW	1,336	8-01-01
* Floyd Kroeze (Butler Co.)	AFO	1,500	2-20-01
Midway Oil Co.; David Requet (Davenport)	UT	5,355	9-20-02
Midway Oil Co.; David Requet; John Bliss	UT	44,900	2-28-03
Green Valley Mobile Home Park (Mt. Pleasant)	WW	5,000	4-23-03
Midway Oil Company (West Branch)	UT	7,300	5-03-03
Midway Oil Company (Davenport)	UT	5,790	5-03-03
Albert Miller (Kalona)	AQ/SW	9,735	9-26-03
Mike Messerschmidt (Martinsburg)	AQ/SW	500	4-13-04
Interchange Service Co., Inc., et.al. (Onawa)	WW	6,000	5-07-04
# Dunphy Poultry (Union Co.)	AFO	1,500	6-27-04
# Cash Brewer (Cherokee Co.)	AFO/SW	10,000	8-25-04
# Doorenbos Poultry; Scott Doorenbos (Sioux Co.)	AFO	1,500	10-09-04
# Doug Sweeney (O'Brien Co.)	AFO	375	12-21-04
Harold Linnaberry (Clinton Co.)	SW	1,000	5-18-05
# Joel McNeill (Kossuth Co.)	AFO	2,460	1 21-06
Affordable Asbestos Removal, Inc. (Monticello)	AQ	7,000	4-28-06
# Troy VanBeek (Lyon Co.)	AFO	3,500	10-16-06
Larry Bergen (Worth Co.)	AQ/SW	257	11-01-06
# Joshua Van Der Weide (Lyon Co.)	AFO	3,500	2-25-08
Jon Knabel (Clinton Co.)	AQ/SW	2,000	12-16-08
# Rick Renken (LeMars)	AFO	996	7-03-09
# Brian Lill (Sioux Co.)	AFO	2,755	7-18-09
Denny Geer (New Market)	SW	9,476	10-31-09
Shrey Petroleum; Palean Oil; Profuel Three (Keokuk)	UT	10,000	3-19-10
Melvin Wellik; Wellik-DeWitt Implement (Britt)	AQ/SW	2,900	4-08-10
Alchemist USA, LLC; Ravinder Singh (Malcom)	UT	8,260	5-03-10
# LJ Unlimited, LLC (Franklin Co.)	AFO/AQ/SW	3,500	5-27-10
Bret Cassens; J & J Pit Stop (Columbus Junction)	UT	8,700	6-20-10
# Christopher P. Hardt (Kossuth Co.)	AFO	2,000	7-07-10
AKD Investments, LLC; H.M. Mart, Inc. (Blue Grass)	UT	6,900	8-06-10

#Animal Feeding Operation
BOLD Entries Have Been Referred to DRF

# Joe McNeill (Kossuth Co.)	AFO	2,460	12-23-10
Gonzalez & Sons Express, Inc. (DeSoto)	WW	8,000	4-20-11
David C. Kuhlemeier (Cerro Gordo Co.)	AQ/SW	500	6-30-11
Steve Friesth (Webster Co.)	AQ/SW	7,857	11-26-11
Josh Oetken (Worth Co.)	AQ/SW	8,220	3-11-12
Bhupinder Gangahar/Saroj Gangahar/International Business	UT	7,935	4-20-12
Finney Industrial Painting, Inc. (Fairfield)	AQ/WW	19	4-23-12
Terry Philips; TK Enterprises (Washington Co.)	AQ/WW	3,000	5-30-12
# Boerderij De Vedhoek, LLC (Butler Co.)	AFO	8,500	11-16-12
B Petro Corporation (Cedar Rapids)	UT	7,728	5-13-13
Ken Odom (Iowa Co.)	AQ/SW	5,000	4-26-13
Massey Properties, LLC; The Wharf (Dubuque)	WS	10,000	10-05-13
Robert Downing (Mahaska Co.)	AQ/SW	10,000	11-20-13
Shriners Hospital for Children, Inc. (Des Moines)	UT	8,890	12-03-13
Larry Eisenhower (Woodbury Co.)	AQ/SW	4,675	3-01-14
Randy Wise; Wise Construction (Buena Vista Co.)	AQ/SW	3,000	4-10-14
Advanced Electroforming, Inc. (Cedar Co.)	AQ	1,500	4-03-14
Western Iowa Telephone Assoc. (Lawton)	WW	4,000	5-24-14
Wendall Abkes (Parkersburg)	SW	3,000	7-30-14
Donna J. Jensen (Ringsted)	AQ/SW	3,000	10-17-14
Dennis Habben (Sioux Co.)	SW	3,000	11-01-14
Leda Properties, LTD (Dubuque)	WW	5,000	12-12-14
Annie's LLC; Togie Pub (Lime Springs)	WS	3,500	12-22-14
Joel Thys; Thys Chevrolet, Inc. (Benton Co.)	AQ/SW	10,000	1-04-15
West Central Cooperative (Halbur)	WW	4,000	1-04-15
Muscatine County Solid Waste Mgmt. Agency (Muscatine)	SW	6,000	2-11-15
# Mark Yeggy; Randalyn Yeggy (Washington Co.)	AFO	5,000	3-23-15
# Benjamin J. Waigand (Union Co.)	AFO	2,500	4-15-15
Aerial Crop Care; Tri State Agri; Hoppe Airspray (Lyon)	WW	3,500	4-23-15
# Cob Rollers Pork, LLC (Bremer Co.)	AFO	3,500	4-30-15
# Tim VanEaton (Orient)	AFO	6,000	7-21-15
	TOTAL	343,104	

The following penalties have been assessed but are not due at this time:

Gary Eggers (Stacyville)	SW/WW	10,000	10-17-15
# John Westra (O'Brien Co.)	AFO	10,000	-----
# Parks Finishing J3, LLC (Fremont Co.)	AFO	2,000	10-14-15
# William Lawler; Jeff Lawler (Dubuque Co.)	AFO	9,000	-----
# Adam Timmerman; AT Livestock Ent. South (Cherokee Co.)	AFO	4,250	11-23-15
	TOTAL	35,250	

The following penalties have been placed on payment plans:

* Reginald Parcel (Henry Co.)	AQ/SW	110	4-23-05
* Country Stores of Carroll, Ltd. (Carroll)	UT	1,408	6-06-05
* Douglas Bloomquist (Webster Co.)	AQ/SW	3,500	12-01-07
* Jack Knudson (Irwin)	UT	10,000	1-15-08
# Jerry Passehl (Latimer)	SW/WW/HC	3,845	7-01-09
Jerry Wernimont (Carroll)	AQ/SW	216	4-19-10

#Animal Feeding Operation

BOLD Entries Have Been Referred to DRF

# Ernest Greiner (Keokuk Co.)	AFO	500	10-10-10
R.H. Hummer Jr., Inc.; 2161 Highway 6 Trail (Iowa Co.)	AQ/SW	3,643	9-15-13
# Steve Grettenberg; Dragster LLC	AFO	500	11-20-14
Millard Elston III; The Earthman (Jefferson Co.)	AQ/SW	1,815	2-15-13
Simon Simonson (Kossuth Co.)	SW	3,300	11-30-14
Niehouse Cleaners & Draperies, Inc. (Marshalltown)	AQ	2,500	9-15-14
# David Dahlgren (Clarion)	AFO	2,250	12-15-14
# Steve Boevers and Dresden LLC (Chickasaw Co.)	AFO	4,500	2-01-16
	TOTAL	38,087	

The following administrative penalties have been appealed:

Harlan Rudd; Karen Rudd; Rudd Bros. Tires (Drakesville)	UT	10,000	
Bondurant, City of	WW	10,000	
Helen and Virgil Homer; Grandmas Snack Shop; (Aredale)	WS	8,461	
Anderson Excavating Company, Inc. (Pottawattamie Co.)	SW	10,000	
Mahle Engine Components USA, Inc. (Atlantic)	WW	10,000	
Cedar Ridge Vineyard, LLC (Swisher)	WW	1,500	
	TOTAL	49,961	

The following administrative penalties have been collected:

# Lindoah, LLC; HogHaven (Montgomery Co.)	AFO	1,000	
David C. Kuhlemeier (Cerro Gordo Co.)	AQ/SW	100	
# D & L Swine, LLC (Osceola Co.)	AFO	500	
Simon Simonson (Kossuth Co.)	SW	100	
# Vicky Kolker; Adams Dairy, LLC (Clayton Co.)	AFO	272	
# Van Meter Feedyard, LLC (Guthrie Co.)	AFO	1,000	
# Horras Hogs, LLC; DJB Family Farms, LLC (Jefferson Co.)	AFO	4,000	
	TOTAL	6,972	

#Animal Feeding Operation
BOLD Entries Have Been Referred to DRF

Monthly Variance Report
August 2015

Item No.	Facility/City	Program	DNR Reviewer	Subject	Decision	Date
1	Archer Daniels Midland	Air Quality	Reid Bermel	variance to increase SO2 limits	denied	8/3/2015
2	City of Waterloo	Wastewater	Brandy Beavers	reduction of some sampling frequencies for raw waste, final effluent and operational monitoring	denied	8/6/2015
3	University of Iowa	Air Quality	Reid Bermel	variance to use temporary generator without obtaining permit	Approved	8/7/2015
4	Archer Daniels Midland	Air Quality	Brian Hutchins	variance from construction permit requirements to run a trial and engineering test regarding fluid bed germ cooler in feedhouse.	Approved	8/7/2015
5	Alliant Energy	Air Quality	Dennis Thielen	variance to bypass baghouse to repair airline supplying dust collection bags	denied	8/13/2015
6	Absolute Energy	Air Quality	Ann Seda	variance to use un-denatured ethanol	Approved	8/13/2015
7	Mahaska County Sanitary landfill	Sanitary Disposal	Amie Davidson	variance to code requirement for liner installation	Approved	8/17/2015
8	City of Waterloo	Wastewater	Brandy Beavers	variance for reductions of some frequencies	Approved	8/18/2015
9	Proctor & Gamble	Air Quality	Dennis Thielen	variance for stack testing extension	Approved	8/20/2015
10	Roquette America Inc	Wastewater	Suresh Kumar	variance from design standards to allow higher organic loadings to aeration tanks instead of maximum allowed 40 lbxBOD5/da/1,000 cu ft	Approved	8/25/2015
11	Clear Lake 12th Avenue Bridge over Clear Creek	Flood Plain Management & Dam Safety	Chad Billings	variance to code for bridges & road embankments	Approved	8/26/2015
12	Monsanto Co - Williamsburg	Air Quality	Reid Bermel	variance to install and operate equipment without obtaining modified permit	Approved	8/27/2015
13	Koch Nitrogen	Air Quality	Ann Seda	variance to operated a portable emission control system at facilities without first obtaining construction permit.	Approved	8/28/2015

**Environmental Protection Commission
Iowa Department of Natural Resources**

ITEM

7

DECISION

TOPIC

**Contract Amendment #1 – Iowa Department of Agriculture and Land Stewardship –
Water Quality in Rathbun Lake**

Recommendations:

The Department requests Commission approval of a contract amendment to an existing contract with the Iowa Department of Agriculture and Land Stewardship – Division of Soil Conservation and Water Quality. Commission approval is requested to amend the amount of the contract to \$919,044 and extend the contract ending date to December 31, 2018. This is an addition of \$86,000 to the contract amount. Commission rule requires that any contract amendment in excess of \$25,000, or 10% of the original contract, whichever is greater be approved by the Commission. See 567 IAC chapter 8 (incorporating by reference 561 IAC chapter 8).

Funding Source: Federal – Environmental Protection Agency.

This project will be funded through Section 319 of the Clean Water Act.

Background:

The Rathbun Lake watershed includes slightly more than 354,000 acres. The six counties in the Rathbun Lake watershed are Appanoose, Clarke, Decatur, Lucas, Monroe and Wayne. The Wayne Soil and Water Conservation District (SWCD), in cooperation with other partners of the Rathbun Land and Water Alliance, have undertaken a highly effective approach to water quality protection. The overall goal of the Water Quality in Rathbun Lake Project is to reduce sediment and phosphorus delivery to Rathbun Lake and the lake's tributaries. Project activities will assist landowners to apply best management practices (BMPs) that will reduce sediment and phosphorus delivery to Rathbun Lake and its tributaries. This contract will provide funding for staff support, watershed outreach activities and BMP cost-share until December 31, 2018.

Purpose:

The purpose of the Original Contract and the Contract Amendment is to implement BMPs and water quality educational programming for the project selected.

Contractor Selection Process:

DNR has entered into this contract with IDALS-DSC based on Iowa Code section 455B.103(3).

Contract History:

On August 18, 2015 the Commission approved the Water Quality in Rathbun Lake Contract No. 16-ESD-WQB-RGLAZ-0024 with the Iowa Department of Agriculture and Land Stewardship – Division of Soil Conservation for the amount of \$833,044.

Scope of Work:

For an outline of the **Statement of Work**, see the attached project summary.

Rachel Glaza, Environmental Specialist
Watershed Improvement Section, Water Quality Bureau – ESD
September 25, 2015

DNR Section 319-Funded Watershed Project Summary

Project Name: Water Quality in Rathbun Lake

Original Contract Amount: \$833,044

Value of Amendment: \$86,000

Amended Amount: (833,044+86,000) = \$919,044

Original Time Frame: August 18, 2015 – June 30, 2018

Amended Time Frame: October 20, 2015 – December 31, 2018

Description: Provide funding for staff support, information/education activities and best management practices cost-share for high priority areas within the Rathbun Lake Watershed.

Project Goal: Reduce sediment and phosphorus delivering to Rathbun Lake.

The Wayne SWCD, in cooperation with the Rathbun Land and Water Alliance, has undertaken a highly effective approach to water quality protection through the Water Quality in Rathbun Lake Project. This approach is achieving a significant reduction in the sediment and phosphorus that impair water quality in Rathbun Lake and its tributaries through the targeted application of best management practices (BMPs) for priority land in the watershed. The Alliance and its partners have developed an approved Watershed Management Plan that guides the activities of the Water Quality in Rathbun Lake Project, including those described in this project implementation plan. This plan proposes to initiate the implementation of project activities in two new targeted sub-watersheds. Specifically, project activities will assist landowners to apply BMPs that will reduce sediment and phosphorus delivery from priority land used primarily for row crop production in the two targeted sub-watersheds. Planned activities include: (1) geographic information system (GIS) analysis to confirm the location of priority land that requires BMPs; (2) assistance for landowners to apply BMPs including terrace systems, grade stabilization structures, and water and sediment control basins for 1,500 acres that will reduce the annual delivery of sediment by 2,250 tons and phosphorus by 7,500 pounds; (3) evaluation of the benefits from BMP application using GIS analysis and water quality monitoring; and (4) watershed outreach activities that encourage landowners to apply BMPs for priority land to protect water quality.

Initiation of the next phase of the Water Quality in Rathbun Lake Project as proposed in this contract will result in the installation of BMPs for more than 1,500 acres in two new targeted sub-watersheds. At least 750 of these acres will be priority land with the remaining acres considered associate priority land since, due to its location, this land must also be treated to adequately address the priority land. These BMPs will reduce the annual delivery of sediment and phosphorus to Rathbun Lake and its tributaries by an estimated ***2,250 tons of sediment and 7,500 pounds of phosphorus.***

The two targeted sub-watersheds identified for this phase of the Water Quality in Rathbun Lake Project are:

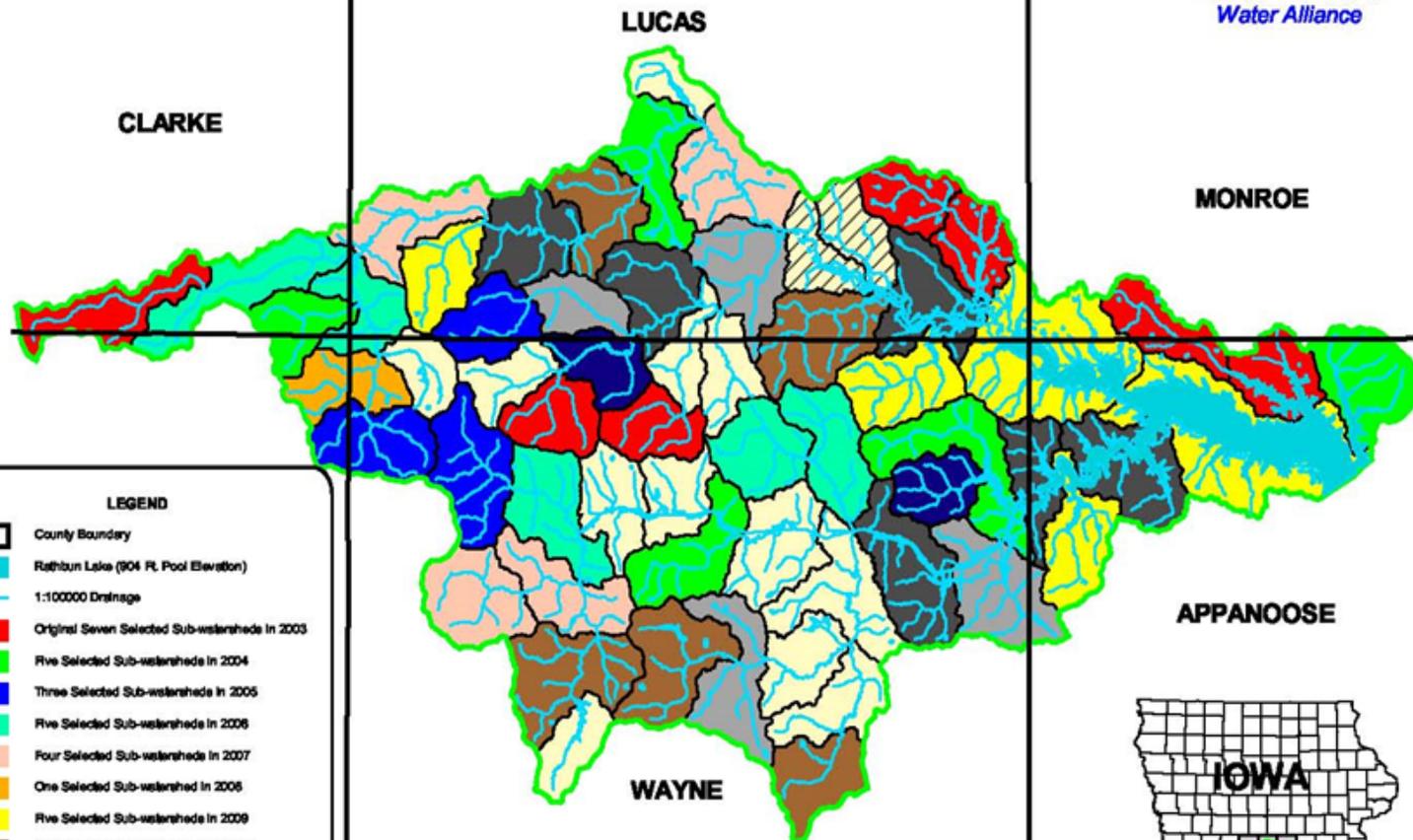
- **Ragtown Branch (Lucas County)** GIS analysis and field data collection completed during a recent assessment update identified 1,374 acres of priority land in this sub-watershed. Assessment findings indicate that this priority land delivers an estimated 4,414 tons of sediment and 11,814 pounds of phosphorus per year to Rathbun Lake and its tributaries. Twelve landowners own and/or operate farms with priority land in the sub-watershed. At least eight of these landowners are likely to install BMPs for this priority land.
- **Chariton River #9 (Lucas County)** GIS analysis and field data collection completed during a recent assessment update identified 482 acres of priority land in this sub-watershed. Assessment findings indicate that this priority land delivers an estimated 1,628 tons of sediment and 4,151 pounds of phosphorus per year to Rathbun Lake and its tributaries. Eight landowners own and/or operate farms with priority land in the sub-watershed. At least six of these landowners are likely to install BMPs for this priority land.

These two targeted sub-watersheds are located in the 12-digit hydrologic unit with code 102802010208 and name Lost-Branch-Chariton River. Please see attached maps.

Water Quality in Rathbun Lake 2014: Targeted Sub-Watersheds Rathbun Lake Watershed

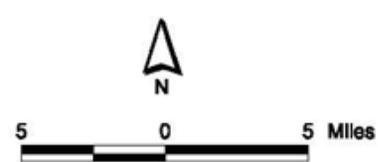


Rathbun Land and
Water Alliance



LEGEND

- County Boundary
- Rathbun Lake (904 Ft. Pool Elevation)
- 1:100000 Drainage
- Original Seven Selected Sub-watersheds in 2003
- Five Selected Sub-watersheds in 2004
- Three Selected Sub-watersheds in 2005
- Five Selected Sub-watersheds in 2006
- Four Selected Sub-watersheds in 2007
- One Selected Sub-watershed in 2008
- Five Selected Sub-watersheds in 2009
- Five Selected Sub-watersheds in 2010
- Four Selected Sub-watersheds in 2011
- Six Selected Sub-watersheds in 2012
- Two Selected Sub-watersheds in 2013
- Two Proposed Sub-watersheds in 2014
- Rathbun Lake Watershed (354,062 Acres)



Source: Rathbun Land and Water Alliance
Iowa DNR NRGIS (Best Data)
IDALS DSC
Prepared By: Rathbun Regional Water Association

Water Quality in Rathbun Lake 2014: Proposed Targeted Sub-Watersheds

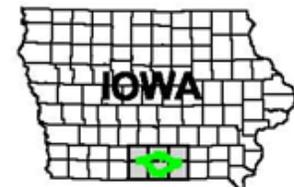


Rathbun Land and
Water Alliance



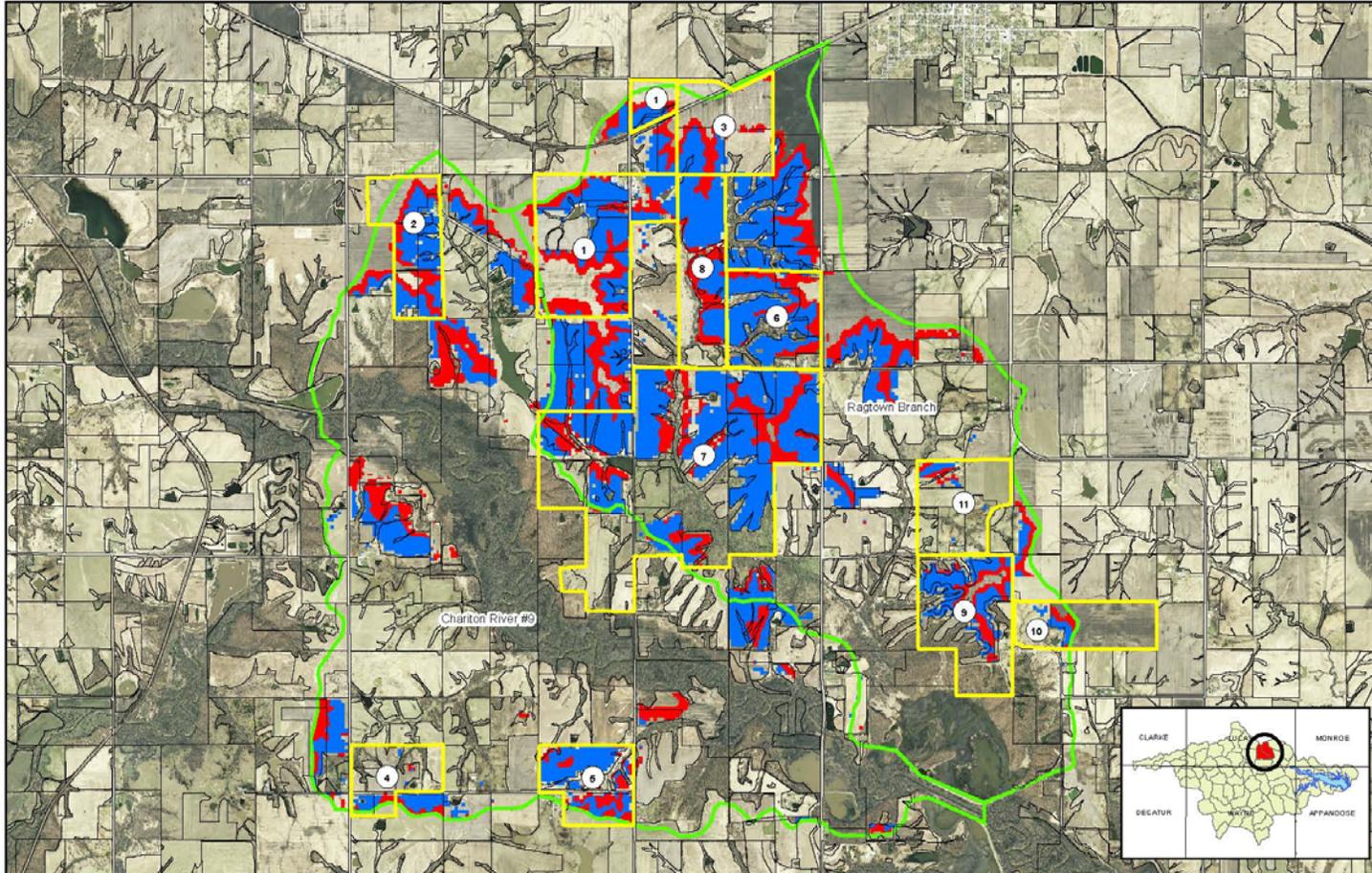
LEGEND

- County Boundary
- Rathbun Lake (904 Ft. Pool Elevation)
- 1:100000 Drainage
- Targeted Sub-Watersheds Proposed in 2014
- Rathbun Lake Watershed (354,062 Acres)



Source: Rathbun Land and Water Alliance
Iowa DNR NRGIS (Base Data)
IDALS DSC
Prepared By: Rathbun Regional Water Association

**Chariton River #9 and Ragtown Branch
Sub-Watershed Assessment Results
Priority Areas Identification**



Legend

- Field Boundaries
- Watershed Boundary
- Priority Lands**
 - No Priority
 - Priority
 - High Priority
 - Highest Priority
- Landowner ID Number (See Table)



Summary of Assessment Results

Acres in the sub-watersheds	7,784 acres
Acres in the priority areas	1,856 acres
Sediment delivery from priority areas before BMPs	6,042 tons per year
Reduction in sediment delivery as a result of BMPs	2,250 tons per year
Phosphorus delivery from priority areas before BMPs	15,965 pounds per year
Reduction in phosphorus delivery as a result of BMPs	7,500 pounds per year



Source: Eastern Land & Water Alliance (ELWA)
Data: GIS
Map Date: 10/15/2010
Prepared By: Tyler J. Jacobs (ELWA)
* RUSLE Q3 P Factor and Sediment Delivery Ratio (SDR) model
used for sediment and phosphorus delivery. All USGS model
outputs are in 100-foot increments.
Updated assessment information available on the ELWA website

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

10

Information

TOPIC 2016 EPC Dates

The Department is requesting feedback from the Commission regarding scheduling the 2016 Environmental Protection Commission meeting dates and locations.

Wednesday, January 20, 2016

- 7-9:30 a.m. Legislative Meet & Greet Event – State Capitol
- 10 a.m. - 1 p.m. Joint NRC/EPC Meeting – Wallace State Office Building
- 1-4 p.m. EPC Business Meeting – Wallace State Office Building

February 16, 2016 – EPC Business Meeting

March 15, 2016 – EPC Business Meeting

April 18, 2016 – Proposed Education Tour – Iowa County

April 19, 2016 – EPC Business Meeting

May 17, 2016 – EPC Business Meeting

Afternoon tour of Easter Lake Watershed Improvement Project

June 20, 2016 – Proposed Education Tour – TBD

June 21, 2016 – EPC Business Meeting

July 19, 2016 – EPC Business Meeting

August 16, 2016 – EPC Business Meeting

September 19, 2016 – Proposed Education Tour – TBD

September 20, 2016 – EPC Business Meeting

October 18, 2016 – EPC Business Meeting

November 15, 2016 – EPC Business Meeting

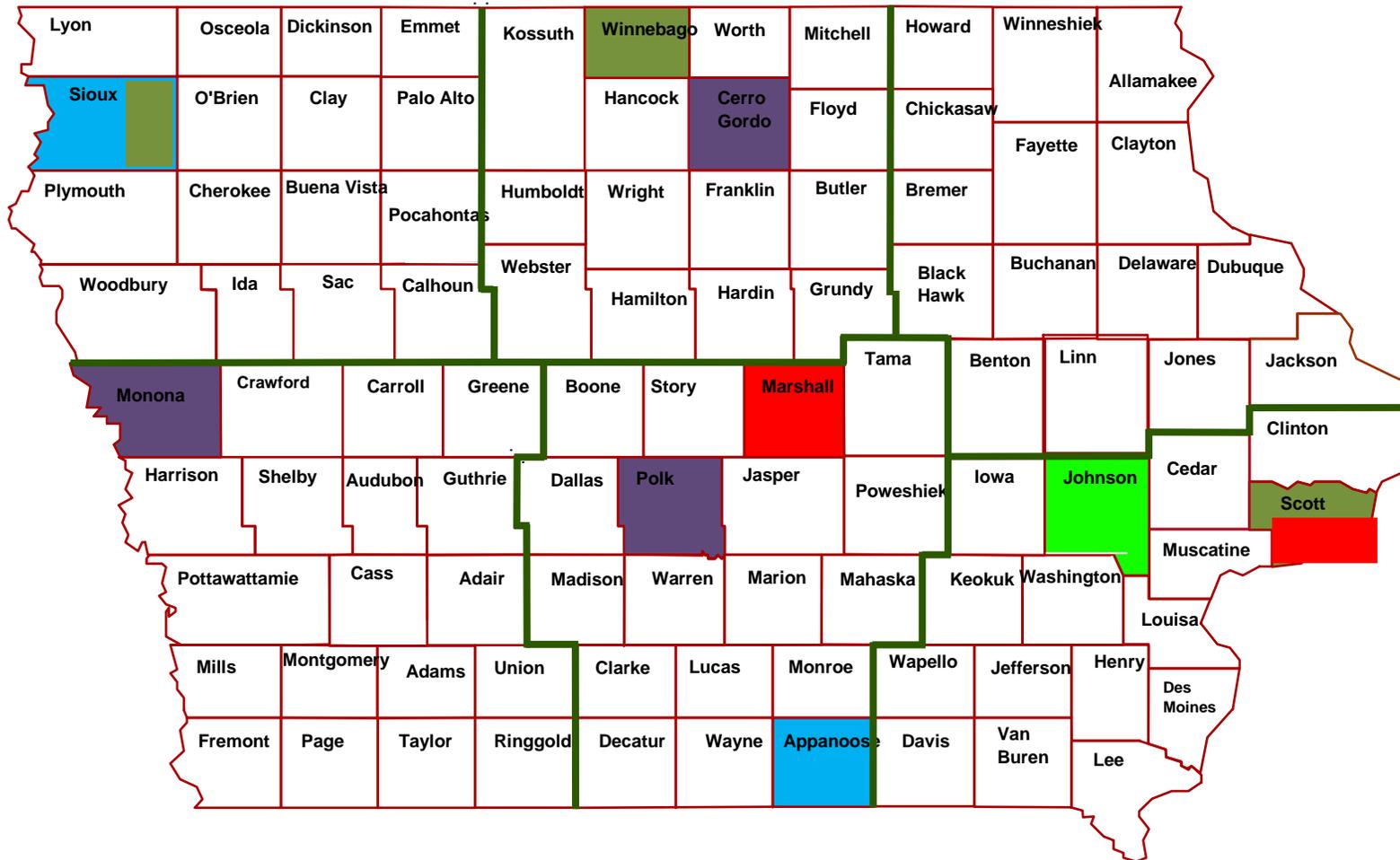
December 20, 2016 – EPC Business Meeting

Jerah Sheets

Environmental Services Division

Environmental Protection Commission

Past Tour Locations



2011
SHL & Wastewater

2012
Wastewater
Watershed

2013
Lewis & Clark
Drinking Water
Landfill Alternatives
SHL Lab

2014
Lake Restoration
Lake Restoration & Wastewater
Ag Industry

2015
Alcoa & Topsoil
JBS

BEFORE THE ENVIRONMENTAL PROTECTION COMMISSION

IN THE MATTER OF:

P & J PORK, LLC

WRITTEN SUBMISSION FOR HEARING

DIA NO: 14DNR002

Kossuth County, Iowa, submits the following in support of its position that the Plum Creek Wildlife Area is a “Public Use Area” as defined in 567 IAC 65.1:

The Honorable David A. Lester, District Court Judge for the Third Judicial District of Iowa, on judicial review of the Environmental Protection Commission’s decision in this matter, sets forth in his ruling that 567 IAC 65.1 (3) requires a three-prong analysis to determine whether the property is considered a “public use area” subject to the 2,500 foot separation requirement. The first prong is to determine whether the property is land owned by the United States, the state, or another political subdivision. The second prong is to determine whether the property has any “facilities.” The final prong is to determine if the “facilities” are of the type “which attract the public to congregate and remain in the area for significant periods of time.”

It is undisputed that Plum Creek Wildlife Area is owned by a political subdivision. Consequently, there is no need to address the first prong.

In Addition, Judge Lester found that the list of lakes contained in Table 2 is a non-inclusive list. Therefore, the second prong requires a determination as to whether or not the body of water in the Plum Creek Wildlife Area is “like” or “similar to” the lakes listed in Table 2. The Court correctly pointed out that “this is the contested issue in the present case.”

In reviewing the list of lakes contained in Table 2, one can’t help but notice that there are several lakes listed that originated as pits. In addition, at the first hearing before the Commission a concern was raised that the Plum Creek Wildlife Area has no structures that have been built, such as rest rooms, docks, or shelters. You will find when you look at Table 2 that there are several lakes listed that also do not have structures added or built. The few that I have found to date are Kounty Pond in Buchanan County, Cottonwood Pits in Monroe County, Hagan Wildlife Pond in O’Brien County, Leinen Pits in Osceola County, and Carney Marsh in Polk County.

Almost all of the lakes listed in Table 2 provide places for parking, swimming, fishing, and boating. The Plum Creek Wildlife Area offers the same amenities. Further, some of the listed lakes provide places to hunt and observe wildlife. So does the Plum Creek Wildlife Area.

Many of the listed lakes are stocked with fish to attract anglers. Some by the Iowa DNR. The Iowa DNR stocks the Plum Creek Wildlife Area with channel catfish every other year.

It is clear that the Plum Creek Wildlife Area is “like” or “similar to” the lakes listed in Table 2 and should be considered a “facility.” There is no requirement of additional constructed facilities or structures to satisfy the second prong. The body of water is enough. The second prong is satisfied.

Finally, regarding the third prong. Due to the fact that the contested issue in this case is the second prong and I believe that all Commissioners have copies of my prior briefs, including the brief submitted to the Iowa District Court in the judicial review proceeding, for the sake of brevity and to prevent repetition I will not address the third prong in this submission. I believe these prior submissions make it clear that the facility is the type “which attract the public to congregate and remain in the area for significant periods of time.”

I have submitted responses to a couple of questions that I received from Mr. David Steward. I trust that these responses were provided, along with the questions asked, to all of the commissioners.

Respectfully submitted,

Todd M. Holmes
Kossuth County Attorney

BEFORE THE IOWA ENVIRONMENTAL PROTECTION COMMISSION
DES MOINES, IOWA

<p>IN THE MATTER OF P & J PORK, LLC Facility ID No. 66873</p> <p style="text-align: center;">Appellant</p>	<p>APPELLANT P & J PORK'S SUBMITTAL TO THE IOWA ENVIRONMENTAL PROTECTION COMMISSION FOLLOWING REMAND FROM THE IOWA DISTRICT COURT PURSUANT TO THE COURT'S RULING ON PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION DATED JULY 30, 2015</p> <p>DOCKET NO. 14DNR002</p>
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Appellant P&J Pork, LLC files this Submittal To The Iowa Environmental Protection Commission Following Remand From The Iowa District Court Pursuant To The Court's Ruling On Petition For Judicial Review Of Agency Action Dated July 30, 2015:

1. P&J Pork's construction permit application for an additional hog confinement building was denied because the Department determined that P&J Pork's proposed hog confinement building is less than 2,500 feet (the required separation distance from public use areas for P&J Pork's proposed building) from the closest point of the abandoned gravel pits at the Plum Creek Wildlife Area. This denial for the construction permit was upheld by the Administrative Law Judge but overturned by the Environmental Protection Commission (EPC) ruling that the basis for reversal was "because the Plum Creek Wildlife Area does not constitute a 'facility' and therefore is not a 'public use area' as defined in 567 IAC 65.1." Kossuth County then appealed to the Iowa District Court for Kossuth County and the court overturned EPC's action and remanded the case to EPC for further action. The Court ruled that the EPC improperly found that the Plum Creek Wildlife Area was a "facility" when it should have determined whether there were "facilities" located within the Area and if there were, whether those facilities "attract the public to congregate and remain in the area for significant periods of time." The Court also ruled that on remand the EPC is to exercise its discretion and determine whether the body of water in the Plum Creek Wildlife Area is a facility like those lakes listed in Table 2 of the DNR rules. See Court's Ruling pp. 5, 6, and 7.

2. The definition of public use area in DNR rules is:
"Public use area" means that portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time. Facilities include, but are not limited to, picnic grounds, campgrounds, cemeteries, lodges, shelter houses, playground equipment, lakes as listed in Table 2 at the end of this chapter, and swimming beaches. It does not include a highway, road right-of-way, parking areas, recreational trails or other areas where the public passes through, but does not congregate or remain in the area for significant

periods of time.

3. The key issue in this case is the second sentence of the definition which provides: “Facilities include, but are not limited to, picnic grounds, campgrounds, cemeteries, lodges, shelter houses, playground equipment, lakes as listed in Table 2 at the end of this chapter, and swimming beaches.”
4. To comply with the instructions from the Court on remand, the EPC must reexamine the information submitted to it at the hearing on Aug. 19, 2014.¹ The EPC should not consider any new information that would be inconsistent with information it received on Aug. 19, 2014.²
 - a. As pointed out to the Court by the Iowa Attorney General on behalf of EPC in its Brief at page 8:

“In common terms, “facility” means “something (such as a building or large piece of equipment) that is built for a specific purpose.” Merriam-Webster Dictionary (Online ed. 2015); *see also ABC Disposal Sys., Inc. v. Dep’t Of Natural Res.*, 681 N.W.2d 596, 603 (Iowa 2004) (“The plain meaning of a facility is ‘something that is built, constructed, installed, or established to perform some particular function.’”) (quoting *Webster’s Third New International Dictionary* 812–13 (unabr. ed. 2002)); *U.S. Jaycees v. Iowa Civil Rights Comm’n*, 427 N.W.2d 450, 454 (Iowa 1988) (“facility” is “something (as a hospital, machinery, plumbing) that is built, constructed, installed or established to perform some particular function or to serve or facilitate some particular end.”) (quoting *Webster’s Third New Int’l Dictionary* (1976)). The examples contained in the list of recognized “facilities” include “picnic grounds, campgrounds, cemeteries, lodges, shelter houses, playground equipment, lakes as listed in Table 2 at the end of this chapter, and swimming beaches.” 567 Iowa Admin Code 65.1. Other than the reference to lakes listed in Table 2, each and every category of “facility” is something that is built and/or maintained for a specific purpose. Obviously a lake may be considered a facility for purposes of the rule, but clearly not all lakes or other bodies of water not contained in Table 2 are facilities – some bodies of water may have the characteristics of a facility while others may not. The rule does not identify what characteristics make any particular lake or body of water a facility.”

¹ To assist the EPC with that review, the full administrative record is available from the Iowa Attorney General. Most importantly, the audio recording of both the Aug. 19, 2014 and the Sept. 8, 2014 meetings is available from the Iowa Attorney General. While being mindful of the time constraints upon all Commissioners, P&J Pork respectfully requests that EPC members listen to this recording in advance of the upcoming meeting to assist with the determination required by the Court’s remand.

² For example, the Court noted that were three signs posted at the entrance to the Area. See Court’s Ruling, p. 3. It appears that there is at least one additional sign now posted at the entrance, a sign that states “Swim at Your Own Risk, No Lifeguard on Duty.” This sign, and any other signs or items that were not present at the time of the first hearing should not be considered by EPC at this time.

- b. As determined by the EPC on Aug. 19, 2014, there is nothing in the Plum Creek Wildlife Area within the 2,500 feet separation distance to the P&J Pork proposed hog building that meets the requirements for a facility. No picnic grounds, no campgrounds, no lodges, no shelter houses, no playground equipment, and no swimming beaches. Further, there are no structures similar to those listed such as restroom facilities.

As discussed at the previous hearing, there is a riffle area on the river separate from the abandoned gravel pits that was established as fishing area. This is shown in Exhibits 1 and 11 which are part of the Agency record in this case and which will be shown to and discussed with EPC at the upcoming hearing. This riffle area established by DNR for fishing, if it were determined to be a facility, is outside of the 2,500 feet separation distance.³ In addition, Exhibits 3, 4, and 5 of the Agency record which will be shown to and discussed with EPC at the upcoming hearing show that vehicular access to the closest portions of the gravel pits that are within the 2,500 feet separation distance to the proposed hog building have been blocked off with large rocks. See the last page of DNR Exhibit A in the Agency record which will be shown to and discussed with EPC at the upcoming hearing.

- c. While the EPC must respect and follow the Court's ruling for purposes of this remand, when the record is examined, it is clear the EPC has already performed the proper analysis that the Plum Creek Wildlife Area does not contain facilities. The EPC simply needs to repeat this analysis and, to satisfy the Court's remand instructions, this time explicitly set out its analysis and findings in its ruling.
- d. The EPC once again must determine whether the abandoned gravel pits themselves are a facility. While P&J Pork respectfully disagrees with and objects to the Court's analysis and ruling that the list of lakes in Table 2 is not all inclusive because of one word – the word “as” – the EPC must follow the Court's ruling for purposes of this remand. Although under the Court's Ruling the EPC cannot exclude the abandoned gravel pits as a facility because they are not on the list, the EPC certainly has the discretion to take into account the absence of the pits from the list when it determines whether the pits are a facility. The fact that there may be some lakes on the lengthy list in Table 2 with some similar characteristics to the Plum Creek Wildlife Area is not conclusive as to whether the abandoned gravel pits are a facility as there are many lakes on that list with characteristics much different than Plum Creek Wildlife Area. As determined by EPC at the first oral hearing in this case and as will be further discussed at the upcoming oral hearing, the abandoned gravel pits themselves do not have the

³ See DNR Rule 567-65.11(9)b: “Measurement to a public use area shall be to the facilities which attract the public to congregate and remain in the area for significant periods of time, not to the property line.”

necessary characteristics of a facility.

5. In conclusion, the Plum Creek Wildlife Area is not a facility and does not contain a facility within the definition of public use area in Iowa Admin. Code r. 567-65.1. Accordingly, P&J Pork respectfully requests that the Environmental Protection Commission issue a final agency action overturning the Proposed Decision and approve the Construction Permit Application for P&J Pork, Facility ID No. 66873.

Dated: Sep. 28, 2015.

/s Eldon McAfee
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