

**MINUTES OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING**

August 17, 2021

Video and Teleconference

Approved by the Commission September 21, 2021

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Sender's Initials jzs

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Meeting Minutes

CALL TO ORDER

The meeting of the Environmental Protection Commission (Commission or EPC) was called to order by Chairperson Ralph Lents at 10:00 a.m. on August 17, 2021, via a combination of in-person and video/teleconference attendees. A verbal attendance list was conducted for Commissioners, Department of Natural Resources (DNR) staff, and members of the public. Jerah Sheets, Board Administrator, provided a tutorial of the Google Meet features.

COMMISSIONERS PRESENT

- Brad Bleam
- Rebecca Dostal
- Stephanie Dykshorn
- Amy Echard – video conference
- Patricia Foley
- Lisa Gochenour – video conference
- Harold Hommes
- Ralph Lents
- Mark Stutsman

COMMISSIONERS ABSENT

None

Tamara McIntosh, DNR General Counsel, stated that the Commission was hosting this meeting via teleconference consistent with Iowa Code section 21.8, which authorizes electronic meetings when meeting in person is impossible or impractical. The impractical standard was satisfied due to COVID-19-based medical directives to physically distance.

OFFICIAL MEETINGS OPEN TO PUBLIC (OPEN MEETINGS), § 21.8

Electronic meetings. 1. A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following: a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible. b. The governmental body complies with section 21.4. For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation. c. Minutes are kept of the meeting. The minutes shall include a statement explaining why a meeting in person was impossible or impractical. 2. A meeting conducted in compliance with this section shall not be considered in violation of this chapter. 3. A meeting by electronic means may be conducted without complying with paragraph “a” of subsection 1 if conducted in accordance with all of the requirements for a closed session contained in section 21.5.

APPROVAL OF AGENDA

Motion was made by Mark Stutsman to approve the agenda as presented. Seconded by Amy Echard. The Chairperson asked for the Commissioners to approve the agenda by saying aye. There were no nay votes. Motion passes.

AGENDA APPROVED AS PRESENTED

APPROVAL OF MINUTES

*Motion was made by Lisa Gochenour to approve the July 7, 2021, EPC minutes as presented. Seconded by Rebecca Dostal.
Brad Bleam-aye, Lisa Gochenour-aye, Patricia Foley-aye, Mark Stutsman-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.*

APPROVED AS PRESENTED

MONTHLY REPORTS

- Division Administrator Ed Tormey summarized the agenda, which consisted of mostly contracts and rulemaking, along with the standard monthly reports.
- Tamara McIntosh provided a summary of a petition for rulemaking the Commission and Department recently received. She briefly explained the process for staff’s internal review, which will form the basis of a future recommendation to the Commission, clarified the Commission’s role, and provided an estimated timeline.
- Tim Hall provided an update on the drought conditions for Iowa.
- <http://www.iowadnr.gov/About-DNR/Boards-Commissions>

INFORMATION

DIRECTOR’S REMARKS

- Director Kayla Lyon summarized the Department’s efforts at the Iowa State Fair, including presenting Environmental Leader Awards for farmer conservation practices.

INFORMATION

ADOPTED AND FILED – 567 IAC CHAPTER 215 - MERCURY-ADDED SWITCH RECOVERY FROM END OF LIFE VEHICLES

Theresa Stiner summarized the results of public meetings for the proposed rulemaking.

Public Comments – None

Written Comments – None

*Motion was made by Harold Hommes to approve the agenda item as presented. Seconded by Amy Echard.
Brad Bleam-aye, Lisa Gochenour-aye, Patricia Foley-aye, Mark Stutsman-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.*

APPROVED AS PRESENTED

ADOPTED AND FILED - CHAPTERS 20, 22, 23, AND 25 – AIR QUALITY

Christine Paulson summarized the results of public meetings for the proposed rulemaking.

Public Comments – None

Written Comments – None

*Motion was made by Stephanie Dykshorn to approve the agenda item as presented. Seconded by Patricia Foley.
Brad Bleam-aye, Lisa Gochenour-aye, Patricia Foley-aye, Mark Stutsman-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.*

APPROVED AS PRESENTED

ADOPTED AND FILED - CHAPTER 50-52, 70-73 – DAM SAFETY RULES UPDATE

Jon Garton summarized the results of public meetings for the proposed rulemaking. He noted an update to the agenda item in the Commissioner packet with the rule’s effective date actually being October 13, 2021.

Public Comments – None

Written Comments – None

*Motion was made by Brad Bleam to approve the agenda item as presented. Seconded by Stephanie Dykshorn.
Brad Bleam-aye, Lisa Gochenour-aye, Patricia Foley-aye, Mark Stutsman-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.*

APPROVED AS PRESENTED

NOTICE OF INTENDED ACTION – AMEND 567 IAC CHAPTERS 117 AND 116 – WASTE TIRE MANAGEMENT AND WASTE TIRE HAULERS

Mel Pins presented the proposed rulemaking, which will make the rules consistent with Iowa Code. He answered questions regarding the timeframe between the statute’s effective date and promulgation of these rules, financial differences to industry from additional insurance requirements, and compliance approaches with past and current haulers.

Public Comments – None

Written Comments – None

*Motion was made by Harold Hommes to approve the agenda item as presented. Seconded by Patricia Foley.
Brad Bleam-aye, Lisa Gochenour-aye, Patricia Foley-aye, Mark Stutsman-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.*

APPROVED AS PRESENTED

CONTRACT WITH BEAVER CREEK WATERSHED MANAGEMENT AUTHORITY

Kyle Ament presented a watershed improvement contract. He described the efforts with demonstration plots and local farmers.

Public Comments – None

Written Comments – None

*Motion was made by Patricia Foley to approve the agenda item as presented. Seconded by Stephanie Dykshorn.
Brad Bleam-aye, Lisa Gochenour-aye, Patricia Foley-aye, Mark Stutsman-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.*

APPROVED AS PRESENTED

CONTRACT WITH EASTERN IOWA REGIONAL UTILITY SERVICES SYSTEM (EIRUSS)

Theresa Enright presented a contract with a community public water supply system. She shared the funding timeframes, which includes the ability to back date incurred costs of planning and design. She also discussed the number of people and connections moving from private wells to a public water supply system.

Public Comments – None

Written Comments – None

*Motion was made by Stephanie Dykshorn to approve the agenda item as presented. Seconded by Mark Stutsman.
 Brad Bleam-aye, Lisa Gochenour-aye, Patricia Foley-aye, Mark Stutsman-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
 Motion passes.*

APPROVED AS PRESENTED

CONTRACT AMENDMENT WITH IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP (IDALS) FOR IOWA GREAT LAKES TARGETED WATERSHED PROJECT

Steve Konrady presented a watershed improvement contract. He described the approach with NRCS and IDALS to aid farmers with cover crop practices. Local project coordinators work with their counterparts in Minnesota because about 25% of the watershed is outside of Iowa.

Public Comments – None

Written Comments – None

*Motion was made by Harold Hommes to approve the agenda item as presented. Seconded by Brad Bleam.
 Brad Bleam-aye, Lisa Gochenour-aye, Patricia Foley-aye, Mark Stutsman-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
 Motion passes.*

APPROVED AS PRESENTED

CONTRACT WITH EUROFINs EATON ANALYTICAL, LLC

Roger Bruner presented a contract for laboratory services. He described the importance of state certification and shared there were two bids submitted.

Public Comments – None

Written Comments – None

*Motion was made by Rebecca Dostal to approve the agenda item as presented. Seconded by Amy Echard.
 Brad Bleam-aye, Lisa Gochenour-aye, Patricia Foley-aye, Mark Stutsman-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
 Motion passes.*

APPROVED AS PRESENTED

GENERAL DISCUSSION

- Jennifer Nelson, Budget & Finance Chief, provided an educational summary of the Department’s budget cycle and timelines, revenue sources, and expenses.
- Ed Tormey informed the Commission that Jerah Sheets is taking a new role with the agency.
- Jerah Sheets provided logistic details for the upcoming EPC business meetings and educational tours.

ADJOURN

Chairperson Lents thanked the Commission and DNR.

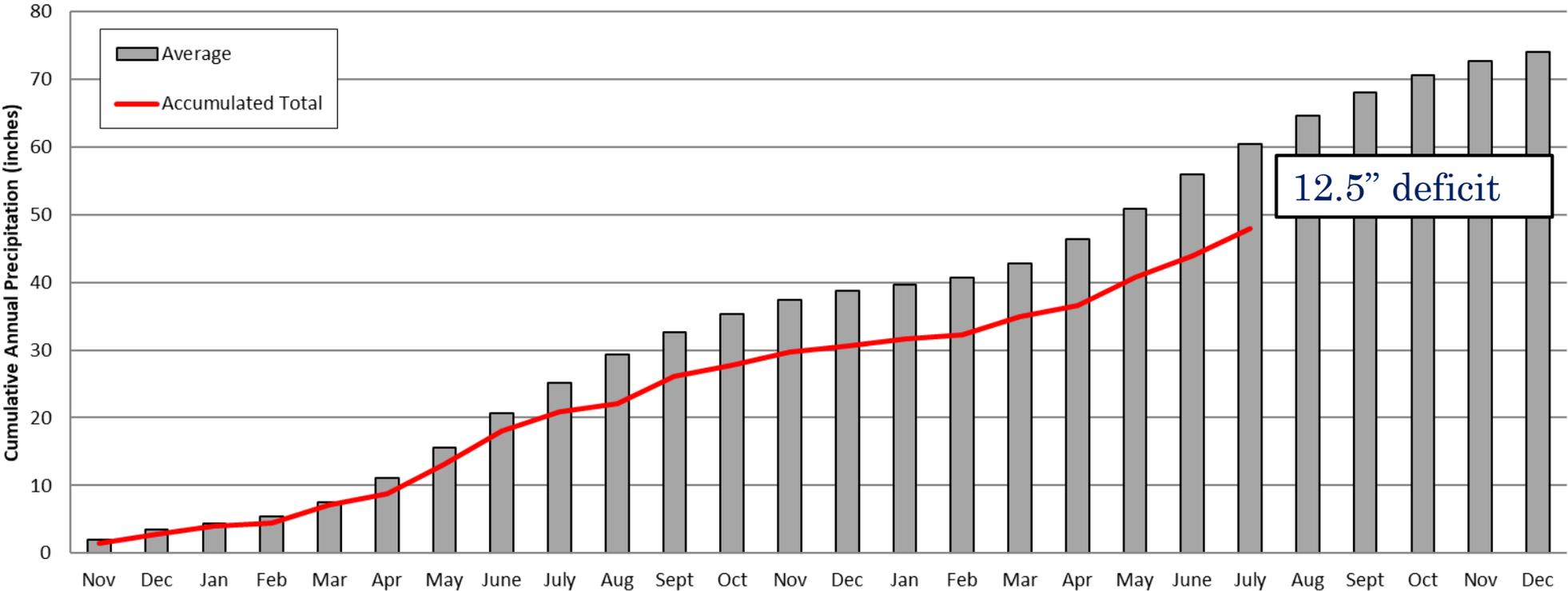
The Chairperson adjourned the Environmental Protection Commission meeting at 12:00 pm on August 17, 2021.

ADJOURNED

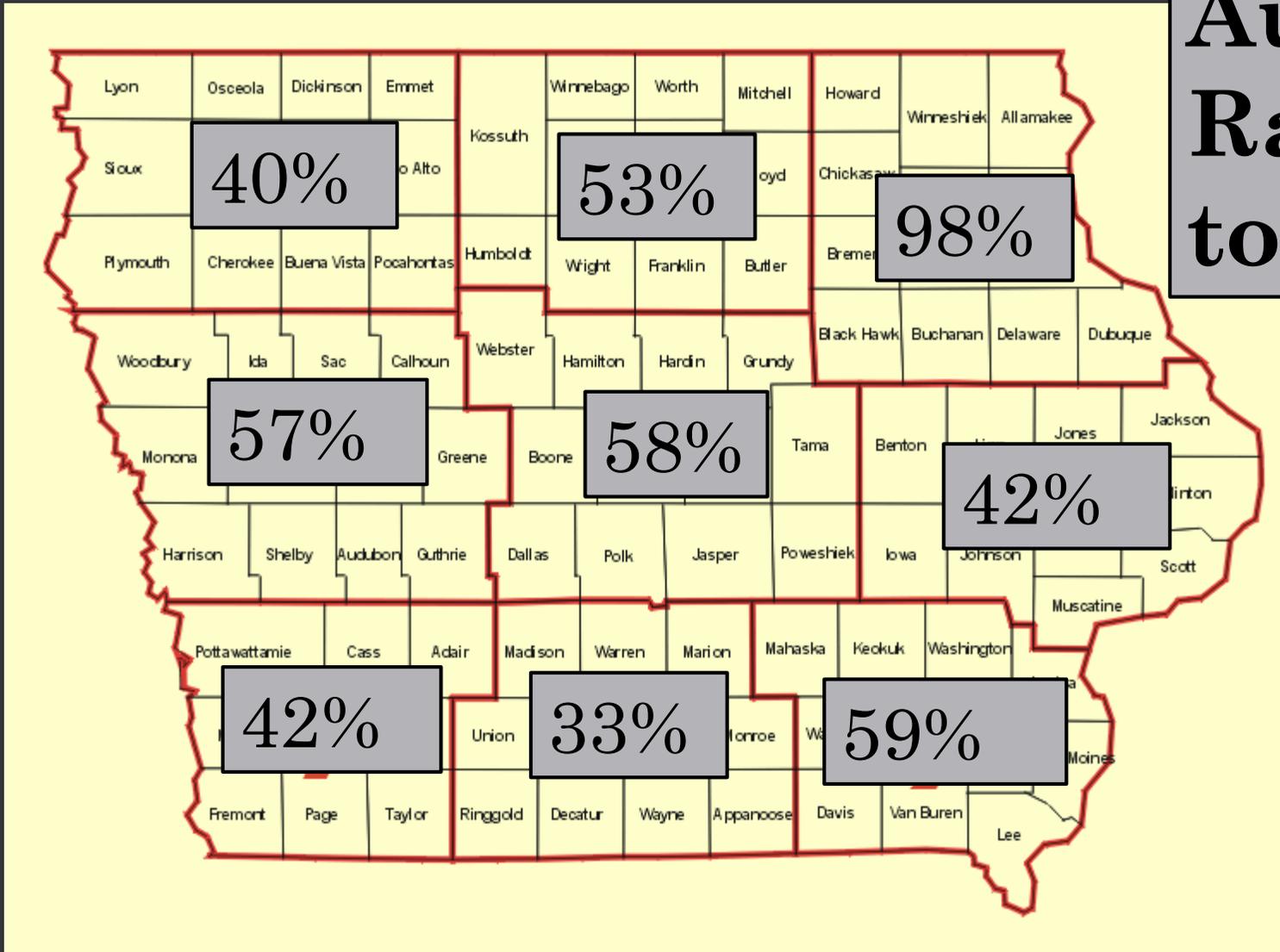
Drought Conditions Update

Since we last met . . .

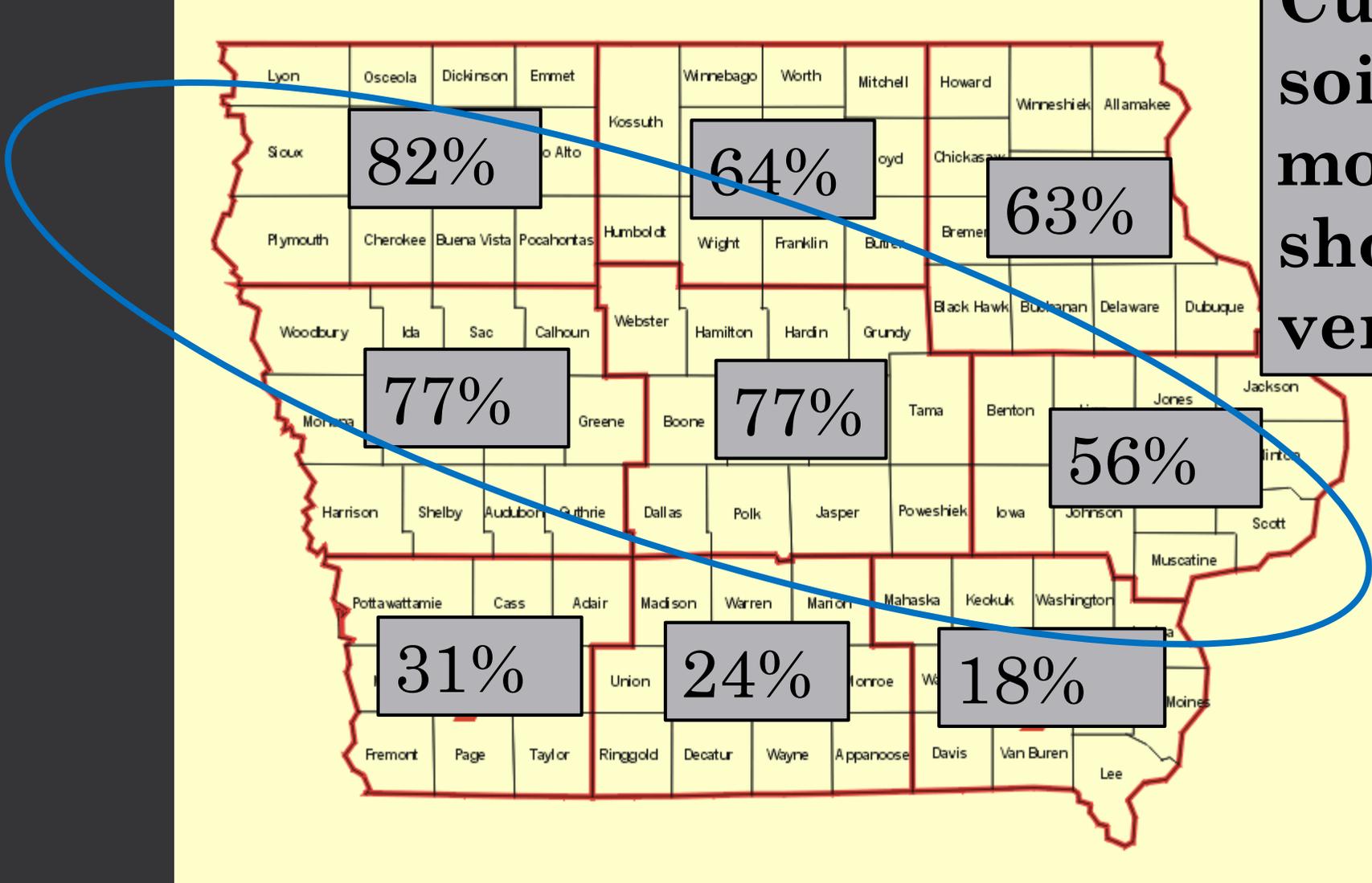
October 2019 to Present Iowa Statewide Cumulative Precipitation



August Rainfall to date



**Current
soil
moisture
short to
very short**

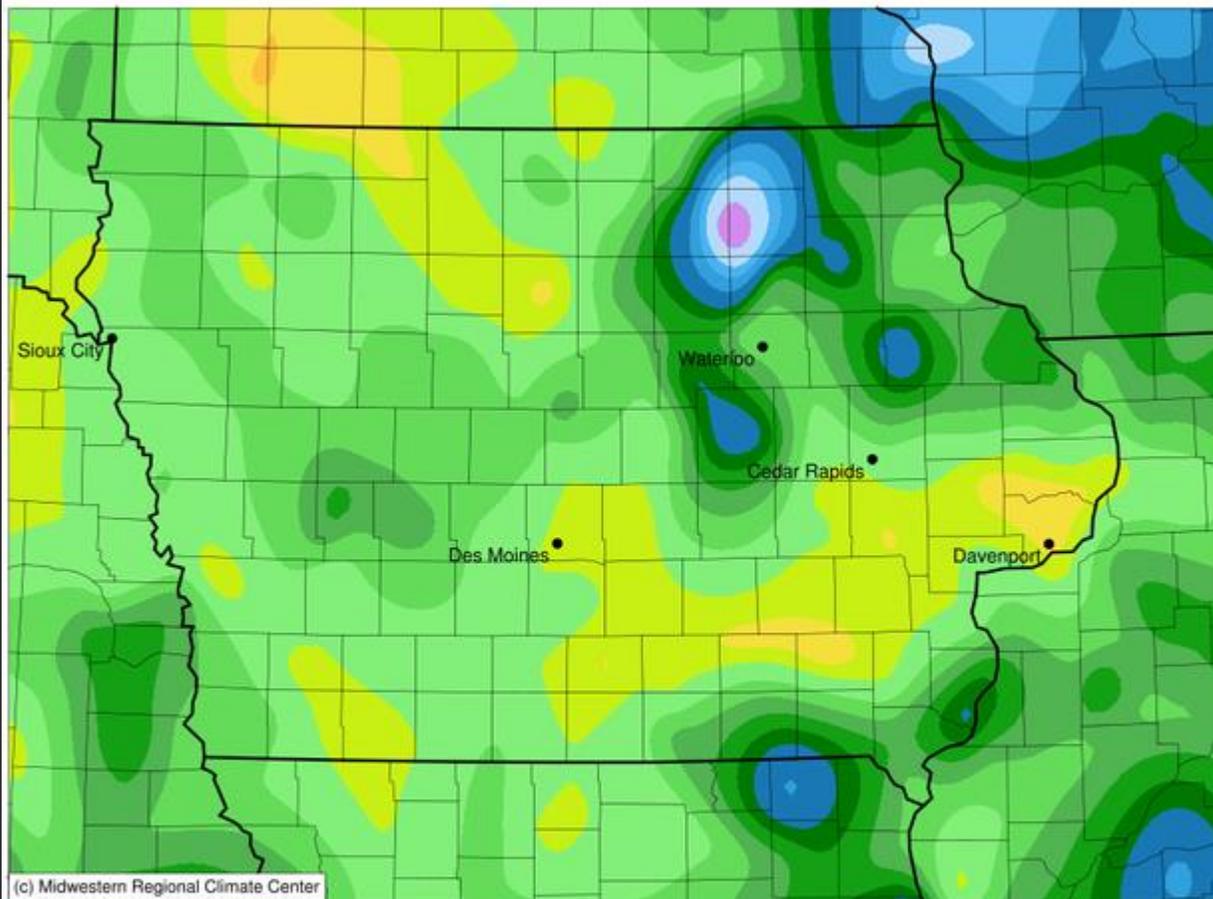


Statewide Rainfall

So far in August:

Normal:	2.11 inches
2021:	1.15 inches

Accumulated Precipitation (in)
August 01, 2021 to August 17, 2021



(c) Midwestern Regional Climate Center



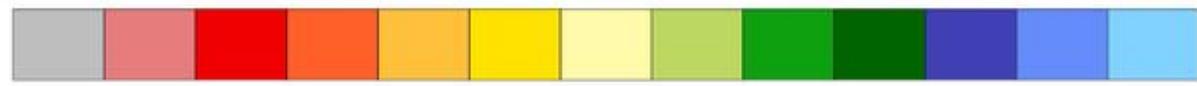
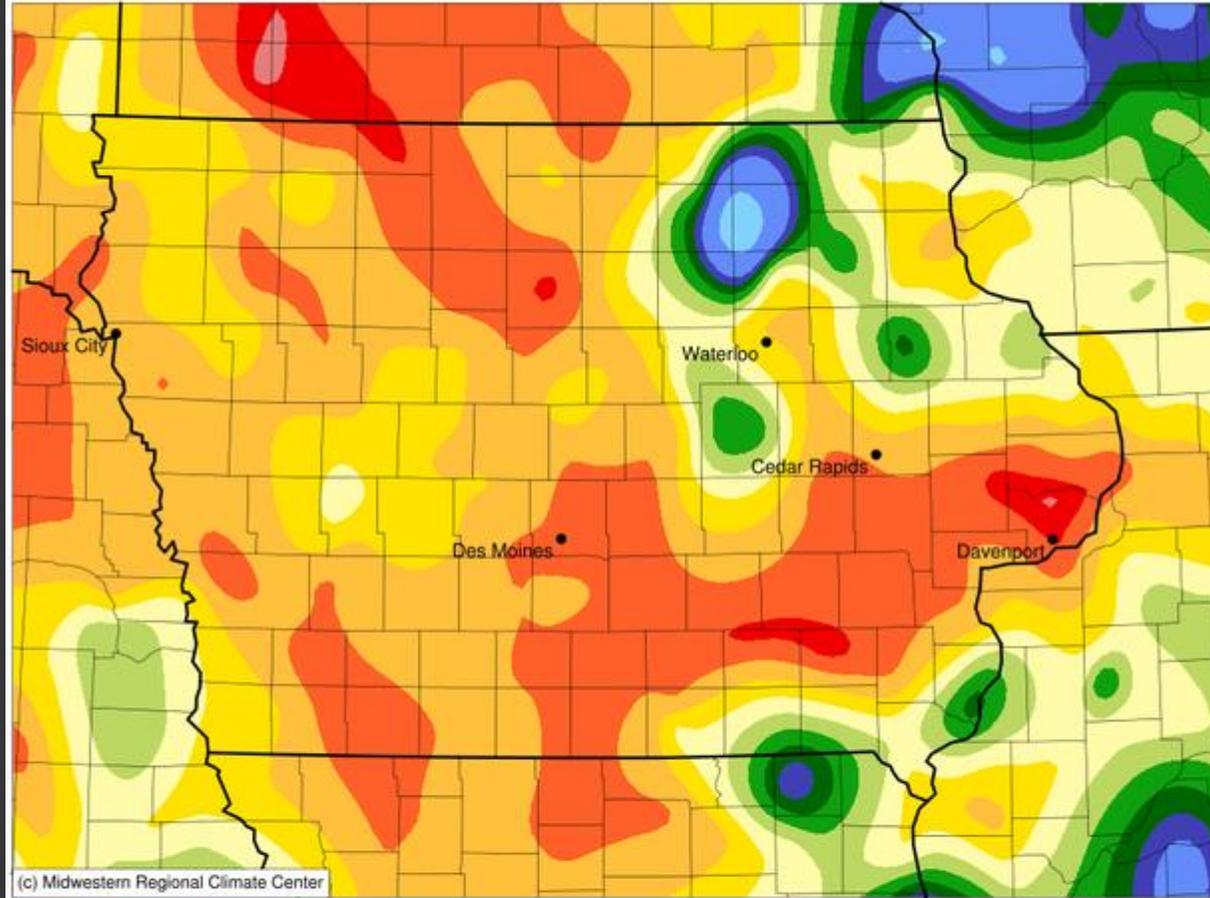
0.01 0.1 0.25 0.5 1 1.5 2 2.5 3 4 5 6 8

Stations from the following networks used: WBAN, COOP, FAA, GHCN,
ThreadEx, CoCoRaHS, WMO, ICAO, NWSLI,
Midwestern Regional Climate Center
cli-MATE: MRCC Application Tools Environment
Generated at: 8/17/2021 9:55:22 AM CDT

**August
rainfall**

Accumulated Precipitation (in): Percent of 1991-2020 Normals

August 01, 2021 to August 17, 2021



2 5 10 25 50 75 100 125 150 175 200 300

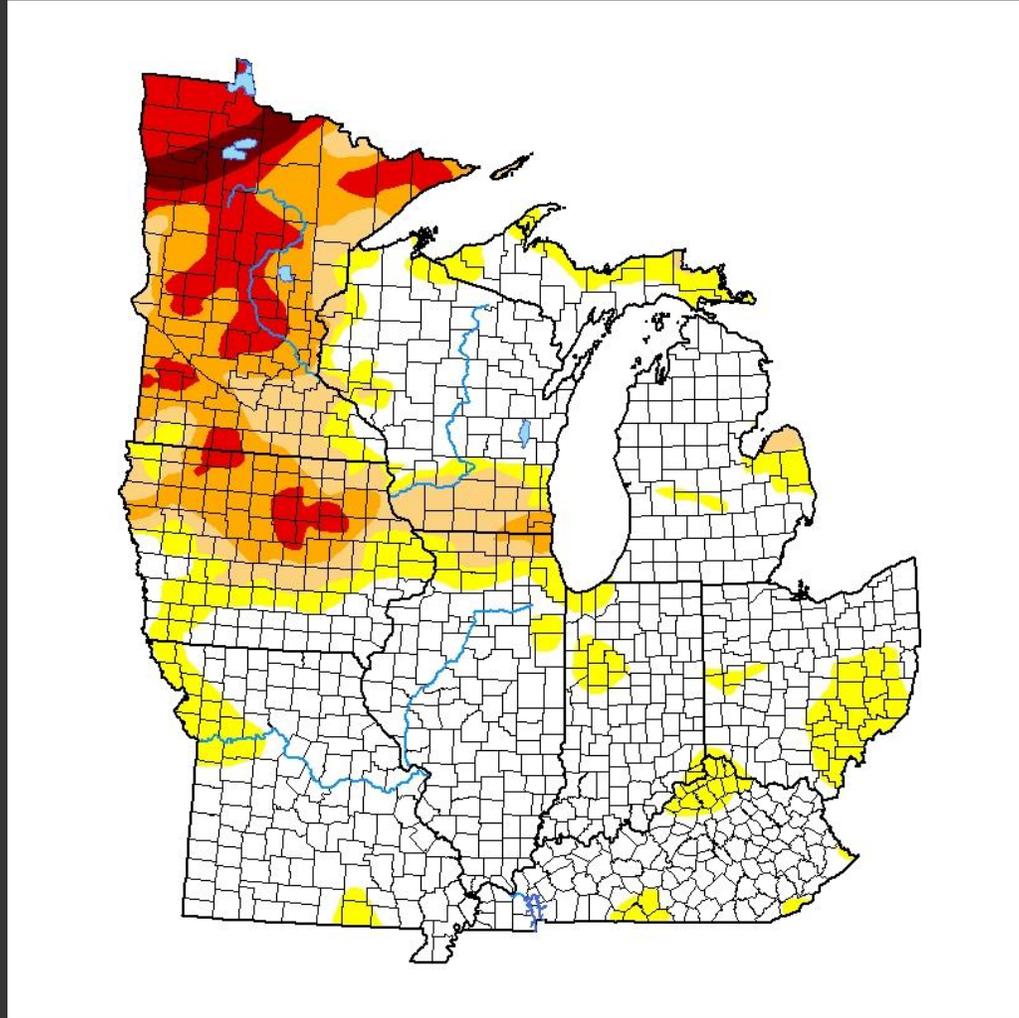
Stations from the following networks used: WBAN, COOP, FAA, GHCN, ThreadEx, CoCoRaHS, WMO, ICAO, NWSLI,

Midwestern Regional Climate Center
cli-MATE: MRCC Application Tools Environment
Generated at: 8/17/2021 9:56:35 AM CDT

August
rainfall –
percent of
normal

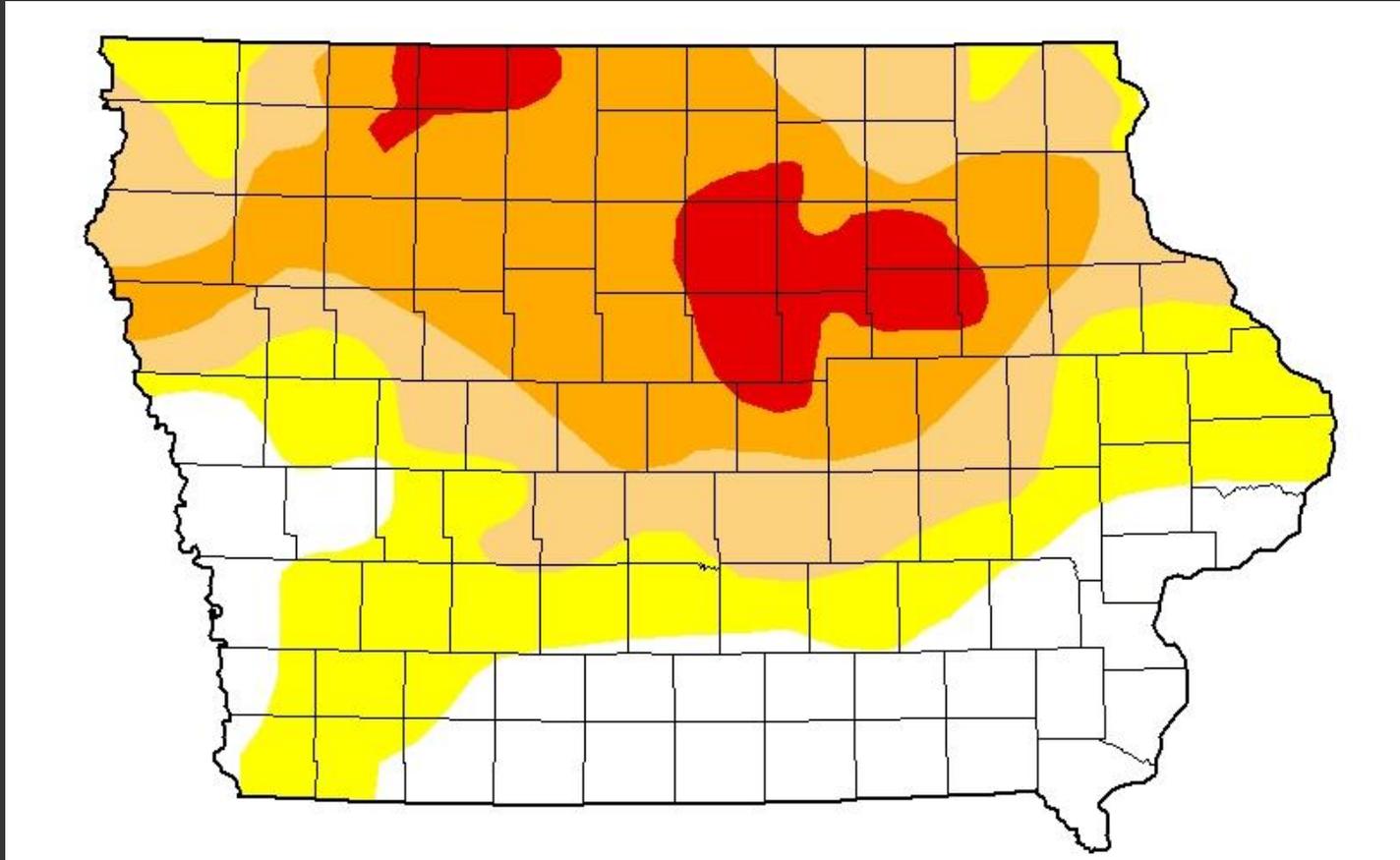
US Drought Monitor

(August 12)

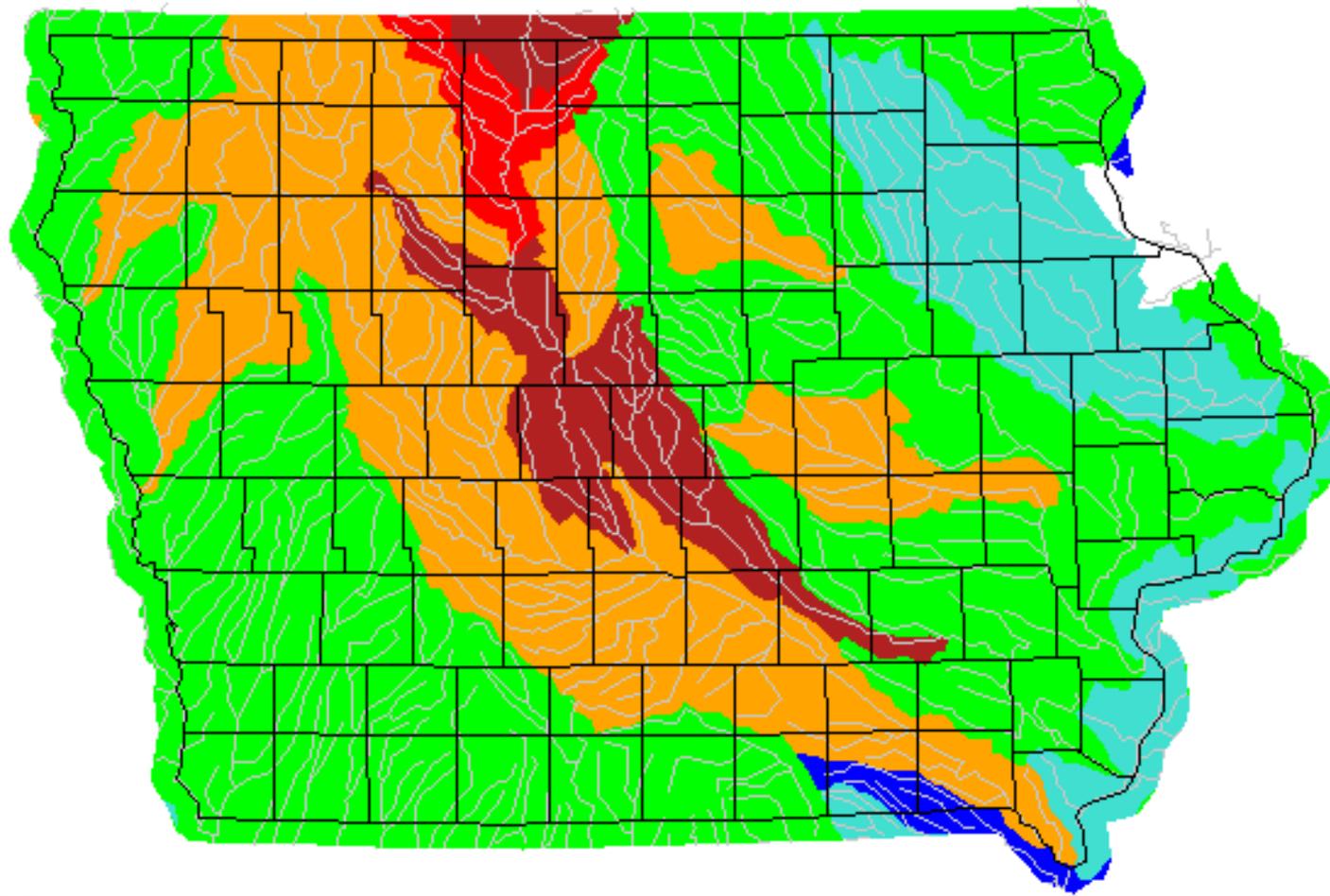


US Drought Monitor

(August 12)

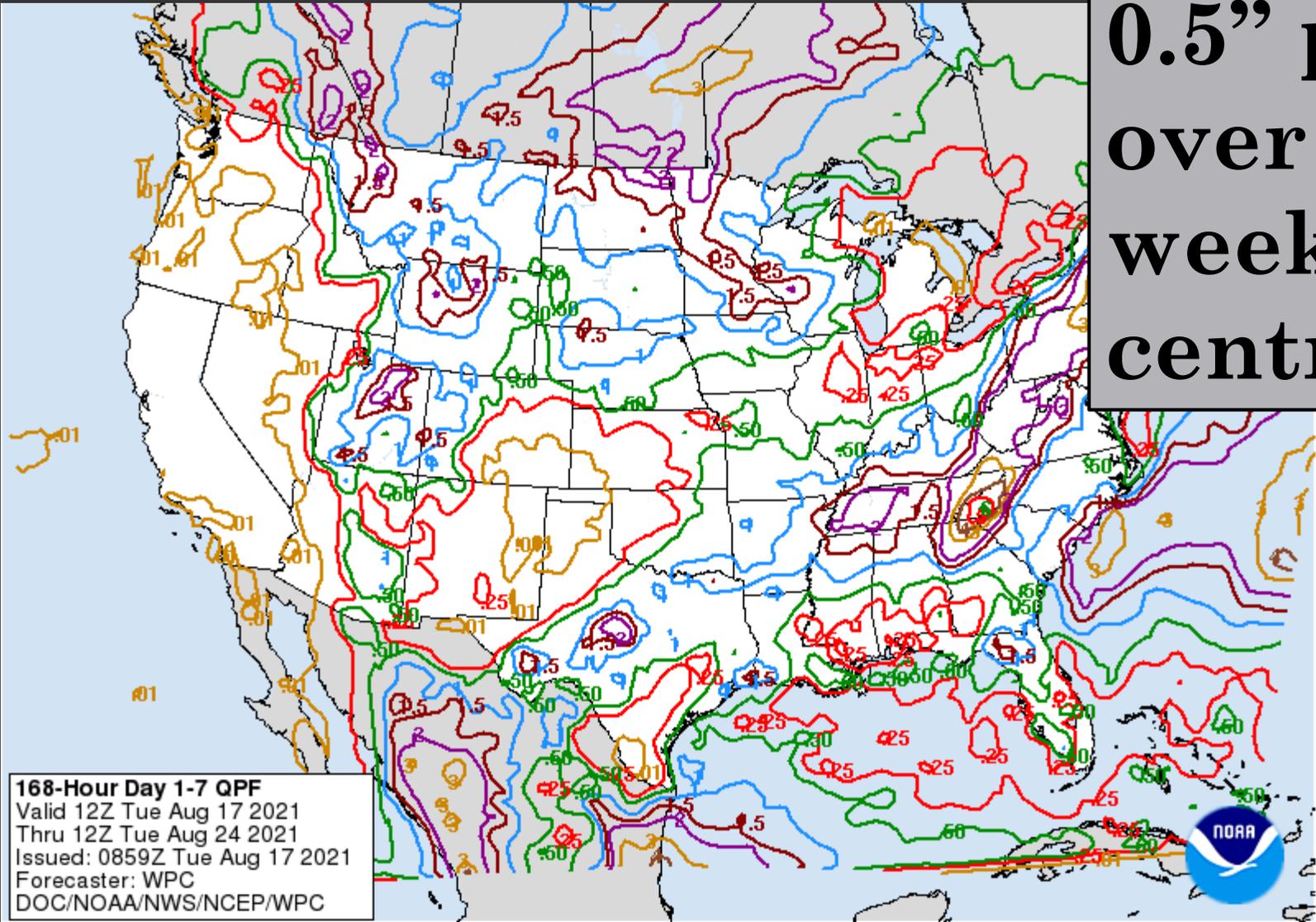


Monday, August 16, 2021



Explanation - Percentile classes								
Low	<10	10-24	25-75	76-90	>90	High	No Data	
	Much below normal	Below normal	Normal	Above normal	Much above normal			

**0.5" projected
over the next
week thru
central Iowa**



168-Hour Day 1-7 QPF
Valid 12Z Tue Aug 17 2021
Thru 12Z Tue Aug 24 2021
Issued: 0859Z Tue Aug 17 2021
Forecaster: WPC
DOC/NOAA/NWS/NCEP/WPC

Questions or
comments?

IOWA DEPARTMENT OF NATURAL RESOURCES

Petition by the Iowa Environmental Council and Environmental Law and Policy Center for the adoption of rules relating to animal feeding operations	PETITION FOR RULE MAKING
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The Iowa Environmental Council and Environmental Law & Policy Center present this petition for rule making pursuant to 567 IAC 5.1 and the Uniform Rules on Agency Procedure. The petition requests revision of rules relating to the siting of animal feeding operations. The revisions requested in this petition are based on the need to protect water quality, specifically as it relates to karst topography, groundwater and drinking water sources. The petition requests that the Iowa Department of Natural Resources (“DNR”) promulgate revised rules governing animal feeding operations.

1. Relevant Law

The Iowa Legislature has charged the Environmental Protection Commission (EPC) with adopting requirements regarding the construction of animal feeding operations (AFOs). Iowa Code section 459.103(1) states:

The commission shall establish by rule adopted pursuant to chapter 17A, requirements relating to the construction, including expansion, or operation of animal feeding operations, including related animal feeding operation structures. The requirements shall include but are not limited to minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing.

This statute gives the EPC broad authority to regulate AFO siting and construction requirements.¹

More generally, the EPC has broad statutory authority to “Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.”² No other department or commission has this duty – only the EPC has authority to adopt rules for water quality protection.

¹ See also IOWA CODE § 455B.173(12) (providing the EPC authority to “Adopt, modify, or repeal rules relating to the construction or operation of animal feeding operations, as provided in sections relating to animal feeding operations provided in chapter 459, subchapter III”).

² IOWA CODE § 455B.173.

2. Summary of Argument in Support of the Proposed Rules

Iowa law restricts the siting of animal feeding operations to protect water quality from manure pollution. The law includes specific protections for karst terrain, groundwater, and drinking water sources. The rules implementing the statute have not been effective at protecting water quality and must be revised.

Iowa Code prohibits unformed concentrated animal feeding operation (CAFO) manure structures above karst terrain. Formed concrete structures are allowed with certain protections in place. But scholarship on karst shows that there is risk in building CAFOs on karst terrain even with those protections,³ and the rules should address that risk. The rules should require greater vertical separation distance from karst terrain and recommendations in rule should be transformed into requirements.

To protect Iowa's drinking water, Outstanding Iowa Waters, and other waters of the state, the DNR must adopt rules requiring water pollution monitoring systems, consideration of environmental factors, and the adoption of additional minimum requirements for the approval of new construction. Doing so will protect Iowa's waters and provide clearer requirements for owners and operators attempting to construct or expand a CAFO or feedlot operation. Moreover, clear requirements will provide greater transparency for the public in understanding how CAFOs are sited.

A brief in support of the proposed rules is attached (see Attachment A).

3. Summary of Data in Support of the Proposed Rules

A. Concentrated Animal Feeding Operations Rapidly Expanded in Iowa.

The number of animal feeding operations in Iowa has grown significantly over the last 30 years. Most of the growth has been in the form of large concentrated animal feeding operations, primarily hog and hen confinements. In 1990, Iowa had 789 large CAFOs.⁴ By 2019, the number of large CAFOs quintupled to 3,963, and has continued to grow since 2019.⁵ The total number of animal feeding operations in the state is far larger, including 2,500 facilities that are slightly below the "large CAFO" threshold to avoid regulation, plus thousands of smaller operations.⁶

The growth in the number and size of CAFOs has increased the quantity of manure generated. The

³ See Van Brahana et al., *CAFOs on Karst—Meaningful Data Collection to Adequately Define Environmental Risk, with a Specific Application from the Southern Ozarks of Northern Arkansas*, US GEOL. SURVEY SCI. INVEST. REP. 5035, 97.

⁴ Jamie Konopacky and Soren Rundquist, "EWG Study and Mapping Show Large CAFOs in Iowa Up Fivefold Since 1990," Environmental Working Group, Jan. 21, 2020.

⁵ *Id.*; IEC analysis of DNR AFO database, available at <https://programs.iowadnr.gov/animalfeedingoperations/>.

⁶ IEC analysis of DNR AFO database, available at <https://programs.iowadnr.gov/animalfeedingoperations/>.

amount of manure Iowa now generates is equal to a population of 168 million people.⁷ Most of this manure is not treated before being applied to cropland, where it can serve as fertilizer for crops. It can also run off the fields in stormwater, infiltrate soil and pollute groundwater, or reach surface waters via tile drainage. The high volume of manure produced in Iowa has led to areas of the state with manure application at rates that exceed crop needs.⁸ This excess manure application leads to nitrate and phosphorus pollution.

B. Iowans Bear the Consequences and Costs of Excess Manure.

Excess nitrate in sensitive areas increases the risk that nitrate enters groundwater or drinking water sources. Nitrate contamination of drinking water can cause blue-baby syndrome, birth defects, bladder cancer, thyroid cancer, and other cancers.⁹ Additionally, manure runoff from CAFOs into local water sources can promote the growth of harmful algal blooms causing illness in both animals and humans.¹⁰ These adverse health effects to humans include liver damage, neurotoxicity, gastrointestinal problems, and various flu-like reactions. Manure can also contaminate surface water and groundwater with fecal bacteria that can cause gastrointestinal and respiratory illness.¹¹

The cost to remove nitrate and other pollutants attributable to livestock operations from drinking water is astronomical. If the current amount of nitrogen run off from farms fields and CAFOs continues, Iowans will be responsible for up to \$333 million over the next five years to remove nitrates from drinking water.¹² Removing these nitrates through water treatment, rather than preventing them from entering waters at the source of pollution, is costly and often unaffordable for public water systems and unaffordable for some private well owners.¹³ Rural Iowans can pay as much as \$1,200 per person per year for nitrate treatment of drinking water.¹⁴ Cities struggle to cope with the cost of nitrate removal as well, facing high treatment costs for removal.

Harmful algal blooms produce toxins and have led Des Moines Water Works to consider spending \$30 million to drill new wells in order to provide safe water to more than 500,000 people.¹⁵ Bacteria contamination is widespread in surface waters around the state, leading to high rates of contamination of private wells. Iowans cannot afford the continued pollution of their groundwater

⁷ Chris Jones, “50 Shades of Brown,” June 6, 2019, available at <https://www2.iuhr.uiowa.edu/cjones/50-shades-of-brown/>.

⁸ Chris Jones, “Make America MRTN Again,” June 21, 2019, available at <https://www2.iuhr.uiowa.edu/cjones/make-america-mrtn-again> (showing that manure produced in some Iowa counties meets or exceeds crop needs for phosphorus and nitrogen, despite continued sales of commercial fertilizer).

⁹ “The Explosion of CAFOs in Iowa and Its Impact on Water Quality and Public Health.” Iowa Policy Project
¹⁰ *Id.*

¹¹ “Recreational Water Quality Criteria,” U.S. EPA (2012), at 12, available at <https://www.epa.gov/sites/default/files/2015-10/documents/rwqc2012.pdf>.

¹² “Rural Iowans Bear Brunt of Water Treatment Costs for Nitrate Pollution from Farms and CAFOs.” *Union of Concerned Scientists*, 14 Jan. 2021, www.ucsusa.org/about/news/rural-iowans-bear-brunt-water-treatment-costs-nitrate-pollution-farms-and-cafos.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Merchant, James, and David Osterberg. “The Explosion of CAFOs in Iowa and Its Impact on Water Quality and Public Health.” *Iowa Policy Project*, Iowa Policy Project, Jan. 2018, www.iowapolicyproject.org/2018docs/180125-CAFO.pdf.

and drinking water sources.

4. Text of the Proposed Rule

This petition proposes rule changes to Iowa Administrative Code, title 567, chapter 65.

A. Proposed karst rule changes

- i. Allow for approval of structures less than 25 feet above karst only if designed by NRCS.*

Amend section 65.15, paragraph (14) as follows:

(2) A minimum ~~5~~ 25-foot layer of low permeability soil (1×10^{-6} cm/sec) or rock between the bottom of a formed manure storage structure and limestone, dolomite, or other soluble rock is required if the formed manure storage structure is not designed by ~~a PE or~~ NRCS qualified staff.

(3) If the vertical separation distance between the bottom of the proposed formed manure storage structure and limestone, dolomite, or other soluble rock is less than ~~5~~ 25 feet, the structure shall be designed and sealed by a PE or NRCS qualified staff person who certifies the structural integrity of the structure. A 2-foot-thick layer of compacted clay liner material shall be constructed underneath the floor of the formed manure storage structure. However, it is recommended that any formed manure storage structure be constructed aboveground if the vertical separation distance between the bottom of the structure and the limestone, dolomite, or other soluble rock is less than ~~5~~ 25 feet.

- ii. Prohibit CAFO structures less than 5 feet above karst.*

Amend section 65.15, paragraph (14), by adding the following:

(6) Construction of underground formed and unformed manure storage structures less than 5 feet above karst terrain is prohibited.

B. Proposed drinking water rule changes

- i. Require water pollution monitoring systems*

Amend 65.15(21) by adding the following subsection:

Groundwater monitoring. The department shall require that the owner of a confinement feeding operation install and operate a water pollution monitoring system as part of an unformed manure storage structure.

Amend 65.109(10) by adding the following subsection:

Groundwater monitoring. The department shall require that the owner of an open feedlot install and operate a water pollution monitoring system as part of an unformed manure storage structure.

ii. *Require the consideration of environmental factors in siting*

Amend 65.5(3) as follows:

The department ~~may~~ shall evaluate any proposed confinement feeding operation or proposed expansion of a confinement feeding operation that requires a construction permit or manure management plan with respect to its potential adverse impacts on natural resources or the environment.

...

b. *In addition to the requirements in rules 567-65.9(459,459B), 567-65.10(459,459B), 567-65.11(459,459B) and 567-65.17(459,459B), the department ~~may~~ shall deny a construction permit, disapprove a manure management plan or prohibit construction of the proposed operation at the proposed location if the director determines from the evaluation conducted pursuant to this subrule that the operation would reasonably be expected to result in any of the following impacts:*

...

Amend 65.5(3)(c) by adding:

Criteria valuing environmental impacts shall account for animal agriculture's relationship to quality of the environment and the conservation of natural resources, and shall include factors that refer to all of the following:

a. Topography.

b. Surface water drainage characteristics.

c. The suitability of the soils and the hydrology and hydrogeology of the site.

d. The proximity to public use areas and critical public areas.

e. The proximity to water sources, including high-quality water resources and drinking water sources.

iii. Adopt additional minimum requirements for the approval of new construction permits

Amend section 65.5(3) as follows:

The department ~~may~~ shall evaluate any proposed confinement feeding operation or proposed expansion of a confinement feeding operation that requires a construction permit or manure management plan with respect to its potential adverse impacts on a natural resources or the environment.

a. In conducting the evaluation, the department shall consider the following factors:

...

(5) whether any water source in proximity to the proposed confinement feeding operation is impaired, whether there are any existing water quality improvement plans for proximate water sources, the proximity of the confinement feeding operation to drinking-water sources, and the number of existing animal feeding operations in proximity to the water sources for the location of the proposed construction or expansion of the confinement feeding operation.

b. In addition to the requirements in rules 567-65.9(459,459B), 567-65.10(459,459B), 567-65.11(459,459B) and 567-65.17(459,459B), the department ~~may~~ shall deny a construction permit, disapprove a manure management plan or prohibit construction of the proposed operation at the proposed location if the director determines from the evaluation conducted pursuant to this subrule that the operation would reasonably be expected to result in any of the following impacts: ...

Amend section 65.103(5) as follows:

The department ~~may~~ shall evaluate any proposed open feedlot operation or proposed expansion of an open feedlot operation that requires a construction permit with respect to its potential adverse impacts on natural resources or the environment. For the purpose of this subrule, open feedlot effluent includes manure, process wastewater, settled open feedlot effluent and settleable solids.

a. In conducting the evaluation, the department shall consider the following factors:

...

(5) whether any water source in proximity to the proposed open feedlot operation is impaired, whether there are any existing water quality improvement plans for proximate water sources, the proximity of the open feedlot operation to drinking water sources, and the number of existing animal feeding operations in proximity to the water sources for the location of the proposed construction or expansion of the open feedlot operation.

5. Description of Affected Class of Persons

All Iowans will be affected by the proposed rules because the rule change could improve water quality statewide. The ubiquity of CAFOs and threats associated with nitrogen and phosphorus pollution put all Iowans at risk. In addition, non-Iowans who are interested in or rely on Iowa's water resources will benefit from the cleaner water.

6. Request for a Meeting

Petitioners respectfully request a meeting with DNR regarding this petition as provided at 567 IAC 5.1 and the Uniform Rules on Agency Procedure.

7. Agency Consideration

The Uniform Rules on Agency Procedure provide that the agency must respond "within 60 days after the filing of the petition or within any longer period agreed to by the petitioner." Petitioners agree to a period of consideration for the petition of up to six months from the date of filing (with an additional extension of up to three months upon consent by petitioners). This extension will 1) ensure that DNR can adequately solicit public input and provide affected parties with a sufficient opportunity for input, 2) ensure that the state has enough time to conduct a fiscal/job impact

analysis, and 3) provide adequate time for permit derivation discussions.¹⁶

8. Inquiries

Communication regarding this petition should be directed to Michael R. Schmidt of the Iowa Environmental Council, Mailing Address: 505 5th Avenue, Suite 850, Des Moines, Iowa 50309. Email: schmidt@iaenvironment.org. Phone: 515-244-1194, extension 211.

9. Enclosures

Enclosure A: Brief in support of proposed rule making

Signed:

/s/ Brian G. Campbell
Dr. Brian G. Campbell
Executive Director
Iowa Environmental Council
Phone: 515-244-1194 ext. 201
505 5th Avenue, Suite 850
Des Moines, Iowa 50309

/s/ Joshua T. Mandelbaum
Joshua T. Mandelbaum
Senior Attorney
Environmental Law & Policy Center
Phone: 515-244-1153
505 5th Avenue, Suite 333
Des Moines, Iowa 50309

¹⁶ See Environmental Protection Commission, Denial of Petition for Rulemaking by Iowa Environmental Council and Environmental Law and Policy Center at 4-5 (October 14, 2013) (describing the need for public input before issuing notice of intent to adopt rules).

ATTACHMENT A

BRIEF IN SUPPORT OF PETITION FOR RULE MAKING TO REVISE RULES RELATING TO ANIMAL FEEDING OPERATIONS

I. BACKGROUND

Iowa is known for its agricultural production, including livestock and the crops they eat. Livestock in Iowa has become highly concentrated in animal feeding operations, with more than 12,000 active facilities identified by Iowa DNR. The manure produced by animals in animal feeding operations (AFOs) is far greater than the human waste in the state. It has contributed to the state's poor water quality and can only be remedied by amending the state's regulatory oversight.

A. CAFO Regulation in Iowa Is Lax.

The number of animal feeding operations in Iowa has grown significantly over the last 30 years. Most of the growth has been in the form of large concentrated animal feeding operations, primarily hog and hen confinements. Large AFOs with at least 1000 animal units and medium AFOs with at least 500 animal units (plus specifically designated AFOs) are known as *concentrated* animal feeding operations, or CAFOs.¹⁷ In 1990, Iowa had 789 large CAFOs.¹⁸ By 2019, the number of large CAFOs quintupled to 3,963,¹⁹ and it has continued to grow since then. The total number of animal feeding operations in the state is far larger, including 2,500 facilities that are slightly below the “large CAFO” threshold to avoid regulation, plus thousands of smaller operations.²⁰

The growth results from the lax oversight of CAFOs by the state. State law requires new large confinement operations to complete a “master matrix” scoring system, which overrides any local objection to the facility.²¹ A passing score will allow the confinement CAFO to be built. Open feedlots often need no permit at all, except perhaps for a manure lagoon, and are subject to different requirements from confinements.²² The legal distinction between confinements and open feedlots does not necessarily reflect the practices at the facilities, because “open feedlots” may be almost completely roofed and handle manure like a confinement operation.²³ Very few facilities – less than 2 percent – have obtained discharge permits under the Clean Water Act.²⁴ Manure

¹⁷ Iowa Admin. Code r. 567-65.100 (defining “concentrated animal feeding operation”).

¹⁸ Jamie Konopacky and Soren Rundquist, “EWG Study and Mapping Show Large CAFOs in Iowa Up Fivefold Since 1990,” Environmental Working Group, Jan. 21, 2020.

¹⁹ *Id.*

²⁰ IEC analysis of DNR AFO database, available at <https://programs.iowadnr.gov/animalfeedingoperations/>.

²¹ IOWA CODE § 459.305.

²² IOWA CODE § 459A.205; *see* § 459A.202 (requiring operating permits but repealed by its own terms per 2006 Acts, ch 1088, §2).

²³ *Cf.* IOWA CODE §§ 459.102 (defining “confined feeding operation” as being totally roofed); 459A.102 (defining “open feedlot operation” as an “unroofed or partially roofed animal feeding operation”).

²⁴ IOWA CODE § 459.311(2) (requiring compliance with the Clean Water Act requirements for permits); IEC analysis of DNR AFO database, available at <https://programs.iowadnr.gov/animalfeedingoperations/>.

management plans required for large facilities can be amended on-site without immediate submission to the DNR.²⁵ Documentation of compliance with manure management plans is not public.²⁶ The lack of regulatory oversight has encouraged the rapid growth described above.

New CAFOs can be built anywhere in the state, including in sensitive areas where the potential environmental consequences of a spill or failed manure containment system are greatest. The recent approval of a nutrient management plan for Supreme Beef LLC exemplifies this problem.²⁷

B. Unfettered CAFO Expansion Has Harmed Iowa's Water Quality.

Water quality in Iowa is poor and getting worse. CAFOs and Iowa's existing regulations (and lack thereof) play a significant role in the state's water quality problems.

The growth in the number and size of CAFOs led to an increase in the quantity of manure generated. Iowa now generates the manure equal to a population of 168 million people.²⁸ Most of this manure is not treated before being applied to cropland, where it can serve as fertilizer for crops. However, it can also run off fields in stormwater, or infiltrate the soil and pollute groundwater. The high volume of manure excreted in Iowa has led to areas of the state with manure application at rates that exceed crop needs.²⁹ This excess manure contains nitrate, phosphorus, and bacteria that can pollute Iowa waters when it is over-applied or improperly applied.³⁰

Nitrate concentrations in Iowa surface waters have been substantially increasing in recent years.³¹ The total load of nitrate leaving the state, measured as a five-year running average, has doubled in the last 17 years.³² Private wells across the state – located primarily in rural areas – have recorded high concentrations of nitrate and bacteria.³³

The Iowa DNR has listed or proposed to list hundreds of stream segments for impairments that may be caused by animal feeding operations:³⁴

²⁵ IOWA CODE § 459.312(3) (allowing annual updates to be submitted to the DNR).

²⁶ IOWA CODE § 459.312(12).

²⁷ See Erin Jordan, "Iowa DNR approves 11,600-head cattle feedlot near Monona," *The Gazette* (April 5, 2021), available at <https://www.thegazette.com/news/iowa-dnr-approves-11600-head-cattle-feedlot-near-monona/>.

²⁸ Chris Jones, "50 Shades of Brown," June 6, 2019, available at <https://www2.iuhr.uiowa.edu/cjones/50-shades-of-brown/>.

²⁹ Chris Jones, "Make America MRTN Again," June 21, 2019, available at <https://www2.iuhr.uiowa.edu/cjones/make-america-mrtn-again> (showing that manure produced in some Iowa counties meets or exceeds crop needs for phosphorus and nitrogen, despite continued sales of commercial fertilizer).

³⁰ Iowa Department of Agriculture and Land Stewardship, Iowa Department of Natural Resources, Iowa State University College of Agriculture and Life Sciences, *Iowa Nutrient Reduction Strategy* (rev. 2017), §2.1 at 4, 7-8.

³¹ Chris Jones, "Manure Matters: IA 2020 Nitrate Summary," Mar. 1, 2021, available at <https://www2.iuhr.uiowa.edu/cjones/manure-matters-ia-2020-nitrate-summary/>.

³² *Id.*

³³ Iowa Environmental Council and Environmental Working Group, "Iowa's Private Wells Contaminated by Nitrate and Bacteria," Apr. 2019, available at https://www.ewg.org/interactive-maps/2019_iowa_wells/.

³⁴ "2020 305(b) Assessment Summary," Iowa DNR, available at

- 429 stream segments for bacteria;
- 150 segments for biological uses;
- 96 for fish kills; and
- 22 for organic enrichment.

In addition, DNR has proposed to list numerous lakes for impairments that may be caused by animal feeding operations.³⁵

- 94 for algal growth;
- 32 for indicator bacteria; and
- 11 for organic enrichment.

Although DNR has not investigated the cause of most of these impairments, water quality improvement plans published by the DNR that analyze impairments have attributed pollution to livestock and called for changed practices.³⁶ DNR has also found that about 40 percent of fish kills are caused by animal waste.³⁷

C. Water Pollution Has Public Health and Economic Consequences.

Iowans face a barrage of pollutants in their drinking water, including nitrate, microcystins, and bacteria. These threats affect both public water supplies and private wells.

Nitrate in drinking water poses such serious human health threats that the Safe Drinking Water Act requires nitrate concentrations in public water supplies to stay below 10 mg/L.³⁸ Nitrate in drinking water can cause blue-baby syndrome, birth defects, bladder cancer, thyroid cancer, and other cancers.³⁹ But even concentrations below the Safe Drinking Water Act standard of 10 mg/L may cause a range of health problems, including cancer.⁴⁰

Nitrate has become a major concern for Iowa's drinking water utilities. The DNR has stated that the water supplies of 260 cities and towns are at risk from nitrate contamination.⁴¹ Community drinking water managers have publicly stated that installing nitrate treatment would be prohibitively expensive.⁴² Rural water utilities identified nitrate as a top concern for contamination

<https://programs.iowadnr.gov/adbnnet/Assessments/Summary/2020>.

³⁵ *Id.*

³⁶ *See, e.g.*, "Water Quality Improvement Plan for Raccoon River, Iowa," Iowa DNR Watershed Improvement Section (2008), available at

<https://www.iowadnr.gov/portals/idnr/uploads/water/watershed/tmdl/files/final/raccoon08tmdl.pdf>.

³⁷ *Id.*

³⁸ 40 C.F.R. § 141.62.

³⁹ "Nitrate in Drinking Water: A Public Health Concern For All Iowans," Iowa Environmental Council (Sept. 2016), available at https://www.iaenvironment.org/webres/File/Nitrate_in_Drinking_Water_Report_ES_Web.pdf (citing Brender, Jean D; Weyer, Peter J; Romitti, Paul A; et al. 2013. Prenatal Nitrate Intake from Drinking Water and Selected Birth Defects in Offspring of Participants in the National Birth Defects Prevention Study. *Environmental Health Perspectives*, Vol. 121(9):1083-1089. <http://ehp.niehs.nih.gov/1206249/>).

⁴⁰ *Id.*

⁴¹ Donnelle Eller, "High nitrate levels plague 60 Iowa cities, data show," Des Moines Register (Jul. 4, 2015), available at <https://www.desmoinesregister.com/story/money/agriculture/2015/07/04/high-nitrates-iowa-cities/29720695/>.

⁴² Kate Payne, "Study: Nitrate Contamination in Water More Likely to Affect Lower Income Communities in

in a recent survey,⁴³ and the impacts of increased nitrate concentrations disproportionately affect lower-income communities.⁴⁴

Private wells in Iowa have widespread contamination above the standard for nitrate in public water supplies under the Safe Drinking Water Act. Based on thousands of tests, 12 percent of private wells exceeded 10 mg/L and more than 20 percent averaged at least 5 mg/L.⁴⁵ The average nitrate concentration in private wells in Iowa is 4.4 mg/L and has increased over time.⁴⁶ An analysis of Iowa wells found the distances to the nearest sinkhole and the nearest animal feeding operation were important variables for predicting well contamination.⁴⁷

The cost to remove nitrate and other pollutants from contaminated drinking water is enormous. Iowans may be responsible for up to hundreds of millions of dollars to remove nitrates from drinking water in the coming years.⁴⁸ The Des Moines Water Works spent millions of dollars to expand its nitrate removal facility and can have annual operating costs that exceed \$1 million.⁴⁹ Removing these nitrates through water treatment, rather than at the source of pollution, is costly for state and local agencies and unaffordable for some private well owners.⁵⁰

Additionally, manure runoff from CAFOs into local water sources can contain phosphorus pollution that promotes the growth of harmful algal blooms (HABs), which can cause illness in both animals and humans while limiting uses of surface water for drinking and recreation.⁵¹ HABs are comprised of cyanobacteria that can produce toxic microcystins. Exposure to microcystins in HABs has led to deaths of dogs and, in rare cases, humans.⁵² Microcystins can also cause serious

Iowa,” Iowa Public Radio (June 28, 2021), available at <https://www.iowapublicradio.org/ipr-news/2021-06-28/study-nitrate-contamination-in-water-more-likely-to-affect-lower-income-communities-in-iowa> (quoting a rural water system manager).

⁴³ Alicia Vasto and Silvia Secchi, “Rural Water Systems in Iowa: Analysis of Opportunities and Challenges,” Iowa Environmental Council (Feb. 2021), at 8, available at <https://www.iaenvironment.org/webres/File/Rural%20Water%20Systems%20in%20Iowa.pdf>.

⁴⁴ Anne Schechinger, “In Midwest farm states, nitrate pollution of tap water is more likely in lower-income communities,” EWG (June 23, 2021), available at <https://www.ewg.org/news-insights/news/midwest-farm-states-nitrate-pollution-tap-water-more-likely-lower-income>.

⁴⁵ Iowa Environmental Council and Environmental Working Group, “Iowa’s Private Wells Contaminated by Nitrate and Bacteria,” Apr. 2019, available at https://www.ewg.org/interactive-maps/2019_iowa_wells/.

⁴⁶ *Id.*

⁴⁷ Wheeler, D.C.; Nolan, B.T.; Flory, A.R.; et al. 2015. Modeling Groundwater Nitrate Concentrations in Private Wells in Iowa. In *Science of the Total Environment*, Vol. 536:481-488. <http://www.ncbi.nlm.nih.gov/pubmed/26232757>.

⁴⁸ “Rural Iowans Bear Brunt of Water Treatment Costs for Nitrate Pollution from Farms and CAFOs.” *Union of Concerned Scientists*, 14 Jan. 2021, www.ucsusa.org/about/news/rural-iowans-bear-brunt-water-treatment-costs-nitrate-pollution-farms-and-cafos.

⁴⁹ MacKenzie Elmer, “Water Works plans \$15 million for expanded nitrate facility,” *Des Moines Register* (May 25, 2015), available at <https://www.desmoinesregister.com/story/news/2017/05/25/water-works-plans-15-million-expanded-nitrate-facility/336648001/>.

⁵⁰ *Id.*

⁵¹ “Harmful Algal Blooms,” U.S. EPA, last visited August 9, 2021, available at <https://www.epa.gov/nutrientpollution/harmful-algal-blooms>.

⁵² *Recommended Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin*, U.S. EPA (May 2019) at 59-61, 64-68 (describing studies).

short-term and long-term illnesses including liver damage, neurotoxicity, gastrointestinal problems, and various flu-like reactions.⁵³ Beyond the human impacts, HABs can harm aquatic life.⁵⁴ Algae blooms can lower dissolved oxygen to a point that causes fish kills.⁵⁵ Cyanotoxins may accumulate in the muscles and internal organs of fish.⁵⁶

Des Moines Water Works has had to deal with increasing concentrations of microcystins in its source water, the Des Moines and Raccoon Rivers.⁵⁷ The agency recently reported that, for the first time ever, both the Des Moines and Raccoon River sources have exceeded the drinking water standard for microcystins.⁵⁸ Des Moines Water Works previously characterized the Des Moines River as “essentially unusable” for one-third of 2020 due to persistently high levels of microcystin.⁵⁹

Manure also contains fecal pathogens including *E. coli*, cryptosporidium, giardia, and viruses.⁶⁰ Even temporary exposure to these bacteria from recreation can cause gastrointestinal illnesses such as vomiting, nausea, and diarrhea.⁶¹ Public water supplies must eliminate essentially all of these pathogens, but private wells may not provide the same level of treatment. In Iowa, 22,000 of 55,000 private wells (40%) that tested for bacteria contained coliform or fecal coliform bacteria.⁶² A smaller number, approximately 4,300 wells, tested positive for bacteria every single time they were tested.⁶³ Thousands of Iowans are drinking water that can make them sick.

Pollution by nitrate, phosphorus, microcystins, and bacteria is especially harmful where the pollutants can most easily enter surface water or groundwater. These include areas of karst terrain, shallow groundwater, and surface drinking water sources. Iowa cannot afford to have these waters laden with nitrate, phosphorus, microcystins, and bacteria.

⁵³ *Id.*

⁵⁴ *Id.* at 109.

⁵⁵ See Iowa Department of Natural Resources, Methodology for Iowa’s 2018 Water Quality Assessment, Listing, and Reporting Pursuant to Sections 305(b) and 303(d) of the Federal Clean Water Act at 66 (Dec. 31, 2019), available at <http://publications.iowa.gov/31281/1/2018%20IA%20Methodology-Final.pdf>.

⁵⁶ *Recommended Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin*, U.S. EPA (May 2019) at 109.

⁵⁷ “Des Moines Water Works Detects Microcystin in Des Moines Water System,” Des Moines Water Works (Aug. 3, 2016), last visited July 9, 2021, available at <http://www.dmww.com/about-us/announcements/advisory.aspx>.

⁵⁸ Ted Corrigan, Des Moines Water Works CEO, “The Increasing Challenge of Producing Safe Drinking Water,” Iowa Learning Farms webinar (July 7, 2021), available at <https://www.iowalearningfarms.org/page/webinars>.

⁵⁹ Kate Payne, “Des Moines Water Works Advances Plans To Build New Wells In Light Of River Pollutants,” Iowa Public Radio (Apr. 22, 2021), available at <https://www.iowapublicradio.org/ipr-news/2021-04-22/des-moines-water-works-advances-plans-to-build-new-wells-in-light-of-river-pollutants>.

⁶⁰ “National Primary Drinking Water Regulations,” U.S. EPA (last updated Jan. 5, 2021), available at <https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations>.

⁶¹ “Recreational Water Quality Criteria,” U.S. EPA (2012), at 12, available at <https://www.epa.gov/sites/default/files/2015-10/documents/rwqc2012.pdf>.

⁶² Iowa Environmental Council and Environmental Working Group, “Iowa’s Private Wells Contaminated by Nitrate and Bacteria,” Apr. 2019, available at https://www.ewg.org/interactive-maps/2019_iowa_wells/.

⁶³ *Id.*

II. THE ENVIRONMENTAL PROTECTION COMMISSION HAS A DUTY TO ADOPT RULES THAT PROTECT AGAINST WATER POLLUTION FROM ANIMAL FEEDING OPERATIONS

The Environmental Protection Commission (EPC) is charged with adopting requirements regarding the construction of AFOs. Iowa Code section 459.103(1) states:

The commission shall establish by rule adopted pursuant to chapter 17A, requirements relating to the construction, including expansion, or operation of animal feeding operations, including related animal feeding operation structures. The requirements shall include but are not limited to minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing.

This statute gives the EPC broad authority to regulate AFO siting and construction requirements.⁶⁴

The EPC is the only commission or department charged with adopting regulations to protect ambient water quality. It has broad statutory authority to “Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.”⁶⁵ The EPC has adopted a range of rules addressing water quality, including regulations for AFOs. In adopting rules regulating AFOs, the EPC must ensure that “Manure from an animal feeding operation shall be disposed of in a manner which will not cause surface water or groundwater pollution.”⁶⁶

However, as described in the previous section, the existing regulations are failing to prevent, control, and abate water pollution. Manure is polluting Iowa’s waters. Water quality in Iowa is poor and is getting worse. Particularly for vulnerable locations, the EPC must take action to ensure that Iowans have access to safe, clean water.

III. EPC MUST REVISE RULES TO PROTECT KARST TOPOGRAPHY

One of the most pollution-sensitive features in Iowa is karst terrain, where surface water and groundwater interact. Additional nitrate and phosphorus in karst topography have a higher likelihood of degrading clean waters and harming their designated uses.

⁶⁴ See also IOWA CODE § 455B.173(12) (providing the EPC authority to “Adopt, modify, or repeal rules relating to the construction or operation of animal feeding operations, as provided in sections relating to animal feeding operations provided in chapter 459, subchapter III”).

⁶⁵ IOWA CODE § 455B.173.

⁶⁶ IOWA CODE § 459.311(3).

A. Karst Terrain

Karst is a landscape formation created by dissolving bedrock that may be comprised of sinkholes, sinking streams, caves, springs, and other features.⁶⁷ Karst is associated with soluble rock types such as limestone, marble, dolomite, and gypsum.⁶⁸ A typical karst landscape forms when much of the water falling on the surface interacts with and enters the subsurface through cracks, fractures, and holes that have been dissolved into the bedrock.⁶⁹

Karst is an ideal aquifer, but because it is porous, water travels quickly through it while receiving little filtration.⁷⁰ Therefore, contaminants that enter a karst aquifer are rapidly transported and create water quality problems.⁷¹ About 20% of the United States is underlain by karst landscapes and 40% of groundwater used for drinking comes from karst aquifers.⁷²

Most of the karst terrain in Iowa is in the northeast portion of the state, known as the Driftless area that was not subject to glaciation.⁷³ The porous rock is sometimes very close to the soil surface, reducing the potential for the soil to filter pollutants from water before it reaches an aquifer. Manure spills or other releases of pollutants on karst topography can quickly enter groundwater and pollute surface water. In July 2021, a leak from an underground storage system managed to cause a fish kill in surface water before the stream “disappeared underground just upstream of the Turkey River.”⁷⁴ A study of drinking water wells in fractured bedrock in Wisconsin found that livestock manure was the most likely source for contaminated drinking water that would result in gastrointestinal illness.⁷⁵

The majority of the waters that the Department of Natural Resources has designated as Outstanding Iowa Waters are in the area of karst terrain in Northeast Iowa.⁷⁶ The fact that these high-quality waters are located in karst terrain and are more vulnerable to pollution further necessitates preventing CAFO siting in these areas. The DNR’s recent approval of a large CAFO in the area led to widespread public outcry and poses a threat to multiple Outstanding Iowa Waters.⁷⁷

⁶⁷ NATIONAL PARK SERVICE, *Karst Landscapes*, <https://www.nps.gov/subjects/caves/karst-landscapes.htm> (last visited July 9, 2021).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ See “NE Iowa Watershed and Karst Map,” Iowa DNR (Nov. 2010), available at <https://www.iowadnr.gov/Portals/idnr/uploads/water/wells/IGWS%20Karst%20Map.pdf>.

⁷⁴ “DNR investigated fish kill in Winneshiek County over weekend,” Iowa DNR News Release, July 12, 2021.

⁷⁵ Coburn Dukehart, “Cow Manure Predicted To Cause Most Sickness From Contaminated Wells In Kewaunee County,” Wisconsin Public Radio (June 24, 2021) available at <https://www.wpr.org/cow-manure-predicted-cause-most-sickness-contaminated-wells-kewaunee-county>.

⁷⁶ See “Iowa’s Outstanding Iowa Waters Map,” Iowa DNR, available at https://www.iowadnr.gov/Portals/idnr/uploads/water/standards/outstanding_iowa_waters.pdf.

⁷⁷ See “Summary of Comments Received by the Iowa Department of Natural Resources,” Iowa DNR, April 2, 2021; Clay Masters, “The Battle Over Bloody Run Creek,” Iowa Public Radio (July 1, 2021), available at <https://www.iowapublicradio.org/environment/2021-07-01/the-battle-over-bloody-run-creek>.

B. Protections Necessary to Preserve Karst Terrain

Iowa Code prohibits unformed (i.e., earthen) CAFO manure structures above karst terrain.⁷⁸ Formed concrete structures are allowed with certain protections in place.⁷⁹ However, scholarship on karst shows that there is risk in building CAFOs on karst terrain even with those protections, and the rules must address that risk.⁸⁰ The rules should require greater vertical separation distance from karst terrain and existing recommendations in the rule should become requirements.⁸¹

All construction above karst is dangerous for water quality due to the potential for sinkholes and groundwater contamination.⁸² Because of this risk, experts have concluded it is safest to assess CAFO construction above karst on a site-by-site basis.⁸³ These experts also propose a more holistic process of handling construction above karst where scientists and farmers are more involved in the regulatory process.⁸⁴

Current rules require a five-foot separation from karst geology.⁸⁵ This is not adequate to ensure water will not be contaminated when manure structures are built in karst terrain, as required by statute.⁸⁶ This should be modified to require a 25-foot vertical separation, which is already in effect for unformed CAFO structures above karst.⁸⁷ Iowa rules contain an exception in chapter 567, section 65.15 for situations where the Natural Resources Conservation Service designs a structure that can be used for terrain less than 25 feet above karst based on the site-by-site data and external professional input.⁸⁸ That exception could remain in place to allow site-specific alternatives.

The proposed rule change would not prevent all CAFOs in karst terrain. Most karst terrain in Iowa is more than 25 feet below the surface, so this extension would not act as a blanket prohibition.⁸⁹ It would also allow more room for site-by-site approval of construction less than 25 feet above karst where conditions show risks are lower.

In addition, the rules should require that construction above less than five feet of karst, whether formed or unformed, is uniformly banned without exception. The EPC could accomplish this by

⁷⁸ IOWA CODE § 459.311.

⁷⁹ *Id.*; Iowa Admin. Code r. 567-65.15.

⁸⁰ See Van Brahana et al., *CAFOs on Karst—Meaningful Data Collection to Adequately Define Environmental Risk, with a Specific Application from the Southern Ozarks of Northern Arkansas*, US GEOL. SURVEY SCI. INVEST. REP. 5035, 97.

⁸¹ *See id.*

⁸² See Katarina Kotic et al., *Proposals for integrating karst aquifer evaluation methodologies into national environmental legislations*, 1 SUSTAIN. WATER RESOUR. MANAG. 373 (2015).

⁸³ *Id.*

⁸⁴ Katarina Kotic & Ira D. Sasowsky, *An interdisciplinary framework for the protection of karst aquifers*, 89 ENV. SCI. & POL'Y 41 (2018).

⁸⁵ Iowa Admin. Code r. 567-65.2(10)(b).

⁸⁶ Iowa Code § 459.311(3).

⁸⁷ Iowa Admin. Code r. 567-65.15.

⁸⁸ *Id.*

⁸⁹ David J. Weary & Daniel H. Doctor, *Karst in the United States: A digital map compilation and database*, USGS (2014), <https://pubs.usgs.gov/of/2014/1156/>.

turning the language of a recommendation in section 65.15 into a requirement.⁹⁰ This change would avoid the worst potential impacts in karst topography.

IV. EPC MUST REVISE RULES TO PROTECT DRINKING WATER SOURCES AND GROUNDWATER

A. General Protections

Iowa law currently imposes few protections to limit the siting of animal feeding operations in areas that pose a great risk to polluting Iowa’s drinking water sources.⁹¹ Allowing CAFOs to be placed in these high-risk areas results in pollution from nutrients such as nitrogen and phosphorus, pathogens such as *E. coli*, growth hormones, antibiotics, chemicals, and other pollutants connected to CAFOs.⁹²

To protect Iowa’s drinking water, the EPC must adopt rules requiring water pollution monitoring systems, the consideration of environmental factors in the DNR’s review process, and the adoption of additional minimum requirements for the approval of new construction. Doing so will protect Iowa’s waters and provide clearer requirements for owners and operators attempting to construct or expand a CAFO. This is consistent with the EPC’s legal obligation to “Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.”⁹³ Moreover, clear requirements will provide greater transparency for the public in understanding how CAFOs are sited.

The construction, expansion, and location of CAFOs is at the discretion of the DNR and its director. As a result, 97 percent of requested CAFO permits are approved.⁹⁴ Providing clear guidelines and standard criteria in place of the Department’s near-total discretion will ensure that each proposed CAFO is carefully considered in a fair and equal manner in compliance with established requirements.

Additional direction in rule is necessary because Iowa’s lax CAFO laws and rules have created a serious public health problem by contaminating groundwater and surface water, including communities’ drinking water. The ongoing contamination of drinking water sources by nitrate, microcystins, and bacteria result in a wide range of health problems. Providing clean drinking water to Iowans must be a public health priority. The EPC must fulfill its duty to prevent these harms to Iowans.

⁹⁰ Iowa Admin. Code r. 567-65.15.

⁹¹ See generally Iowa Code 2021, Chapter 459 and Iowa Administrative Code 65.

⁹² Merchant, James, and David Osterberg. “The Explosion of CAFOs in Iowa and Its Impact on Water Quality and Public Health.” Iowa Policy Project, Jan. 2018, www.iowapolicyproject.org/2018docs/180125-CAFO.pdf.

⁹³ IOWA CODE § 455B.173.

⁹⁴ Merchant, James, and David Osterberg. “The Explosion of CAFOs in Iowa and Its Impact on Water Quality and Public Health.” Iowa Policy Project, Jan. 2018, www.iowapolicyproject.org/2018docs/180125-CAFO.pdf.

B. CAFO Rules Should Prevent and Abate Pollution.

To mitigate the public health risks and the immense costs of CAFO pollution to Iowa’s drinking water sources, the proposed rules in the petition to protect drinking water must be adopted. Each rule will help to minimize the potential for nitrate and other pollutants to enter water sources to begin with, which will save money and the health of Iowans.

The petition proposes to require water pollution monitoring for all confinements with unformed manure storage areas. Iowa Code expressly allows DNR to require water quality monitoring for unformed manure structures.⁹⁵ This monitoring is necessary to address the high frequency of nitrate contamination in private wells. As described above, the degree of contamination in private wells has increased over time, to the point that there are potential health risks for many Iowans. In addition, many Iowans who rely on private wells have not tested their wells for nitrate – they may not even know of the risk of contamination.⁹⁶ Because the Safe Drinking Water Act does not apply to private wells, it is especially important to prevent pollution of private wells at the source. Earthen manure containment systems have a potential to leach nitrate into groundwater⁹⁷ and should be responsible for ensuring that there is no downgradient contamination. This requirement is similar to requirements imposed in Wisconsin, which already requires monitoring around manure storage structures.⁹⁸

The second proposed change requires the DNR to evaluate environmental impacts in siting new AFOs. These considerations are necessary to ensure the regulatory structure for CAFOs appropriately prevents and abates pollution, fulfilling the EPC’s mandate in Iowa Code section 455B.173. Iowa Code expressly allows DNR to consider this in the master matrix.⁹⁹ Adopting the language as a requirement in rule is necessary to ensure AFOs do not cause undue environmental harm to drinking water sources or groundwater.

The third proposed change would require DNR to evaluate environmental factors in the permitting of new facilities. Like the other proposed revisions, this is necessary to fulfill the EPC’s duty to prevent and abate water pollution and to prevent disposal manure from causing water pollution.¹⁰⁰

Clear guidelines in the proposed rules will give feedlot operators notice of what is expected for construction and pollution mitigation. Setting standard criteria, such as those addressed in part *iii*. for the evaluation of the siting of CAFOs and feedlots, will not only make the process more transparent to the operators and public, but will immensely diminish the amount of polluted runoff entering water sources.

⁹⁵ IOWA CODE § 459.303(6).

⁹⁶ Iowa Environmental Council and Environmental Working Group, “Iowa’s Private Wells Contaminated by Nitrate and Bacteria,” Apr. 2019, available at https://www.ewg.org/interactive-maps/2019_iowa_wells/.

⁹⁷ Iowa Admin. Code r. 567-65.3(5)(a) (referencing actions to minimize leaching); *see, e.g.*, “Effects of Liquid Manure Storage Systems on Ground Water Quality,” Minnesota Pollution Control Agency (Apr. 2001), available at <https://www.pca.state.mn.us/sites/default/files/rpt-liquidmanurestorage.pdf> (finding increased nitrate and phosphorus downgradient of unlined and earthen basins).

⁹⁸ *Clean Wisconsin, Inc., v. Wisconsin Department of Natural Resources*, 2021 WI 71 (Case No.: 2016AP1688, decided July 8, 2021).

⁹⁹ IOWA CODE § 459.305(2).

¹⁰⁰ IOWA CODE §§ 455.173, 459.311(3).

All of the proposed rule changes to protect groundwater and drinking water sources are necessary to protect Iowa's water sources from contamination that will harm human health and impose severe economic costs.

V. **CONCLUSION**

The combination of lax regulations and rapid expansion of CAFOs in Iowa have led to significant water quality problems. The EPC must act to protect Iowa's sensitive landscapes, including areas of karst and drinking water sources. Failure to protect these resources will increase costs for Iowans and degrades the state's public resources. Adopting rules to increase separation distance from karst and protecting groundwater and drinking water sources will protect Iowans from CAFOs that pose the highest risk. Doing so will comply with the statute while reducing environmental harm and economic losses.

The Iowa Environmental Council and Environmental Law & Policy Center request EPC adopt the rules proposed in the petition to protect water quality across the state of Iowa.



IOWA DEPARTMENT OF NATURAL RESOURCES

LEADING IOWANS IN CARING FOR OUR NATURAL RESOURCES

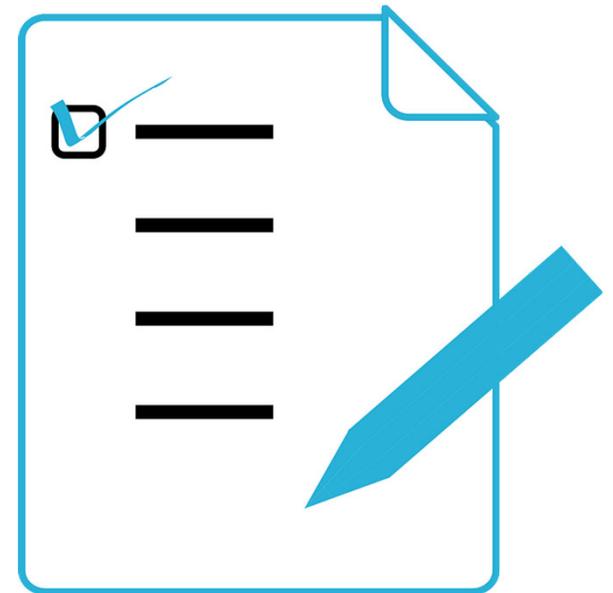
Budget Overview

Environmental Protection Commission Meeting

August 17, 2021

Agenda

- State Budget Process and Timeline
- FY 23 Budget Development
- Department Funding Sources
 - Where does the Money come from
- Department Expenditures
 - What is the Money spent on
- Questions/Comments



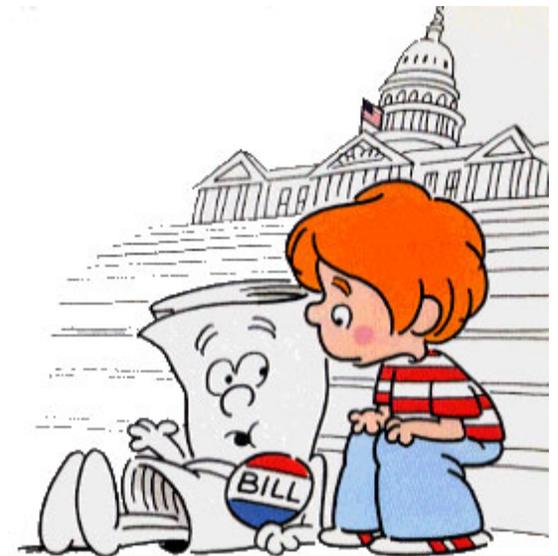
State Budget Process and Timeline

State Budget Process

- The budget process plays a critical role in the fiscal management of state government and in the implementation of legislative policy. The budget process begins with development of Department Requests during the Summer of each year and culminates in the development of Spending Plans in May/June the following year.

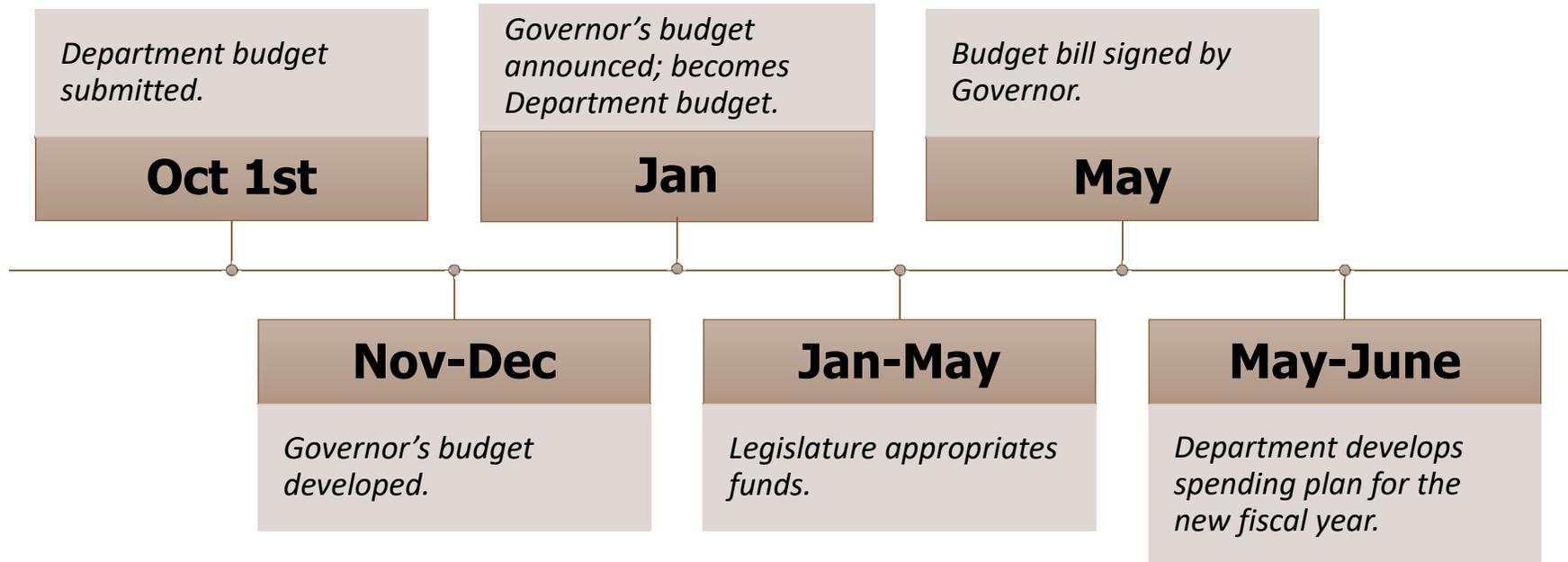
- Iowa Code Section 8.23 Section 1:

“On or before October 1, prior to each legislative session, all departments and establishments of the government shall transmit to the director (Department of Management) estimates of their expenditure requirements...”



State Budget Timeline

Appropriated Funds



FY 23 Budget Development

FY 23 Budget Development

- Per guidance from the Department of Management, Executive Branch departments and agencies shall submit a status quo budget request by September 24, 2021.
- Any requests that are above status quo can be submitted to IGOV/DOM by November 1, but will not be part of the Department's official budget request.
- The Department's FY 23 budget request will be on the agendas of the Natural Resource Commission and Environmental Protection Commission meetings for approval in September.

Department Funding Sources



Department Funding Sources

The Department has over 250 unique funding sources from 3 major categories. Each funding source has a restricted purpose and can only be used for eligible activities.

– *Appropriated from the Legislature*

- General Fund Operations, Floodplain Management, Water Quality Monitoring, Animal Feeding Operations, Water Supply, GIS activities, UST fund, Lake Restoration, State Park Operations and Maintenance, State Park Infrastructure, REAP, Water Tails, Forest Health, Fish and Wildlife Trust Fund operations.

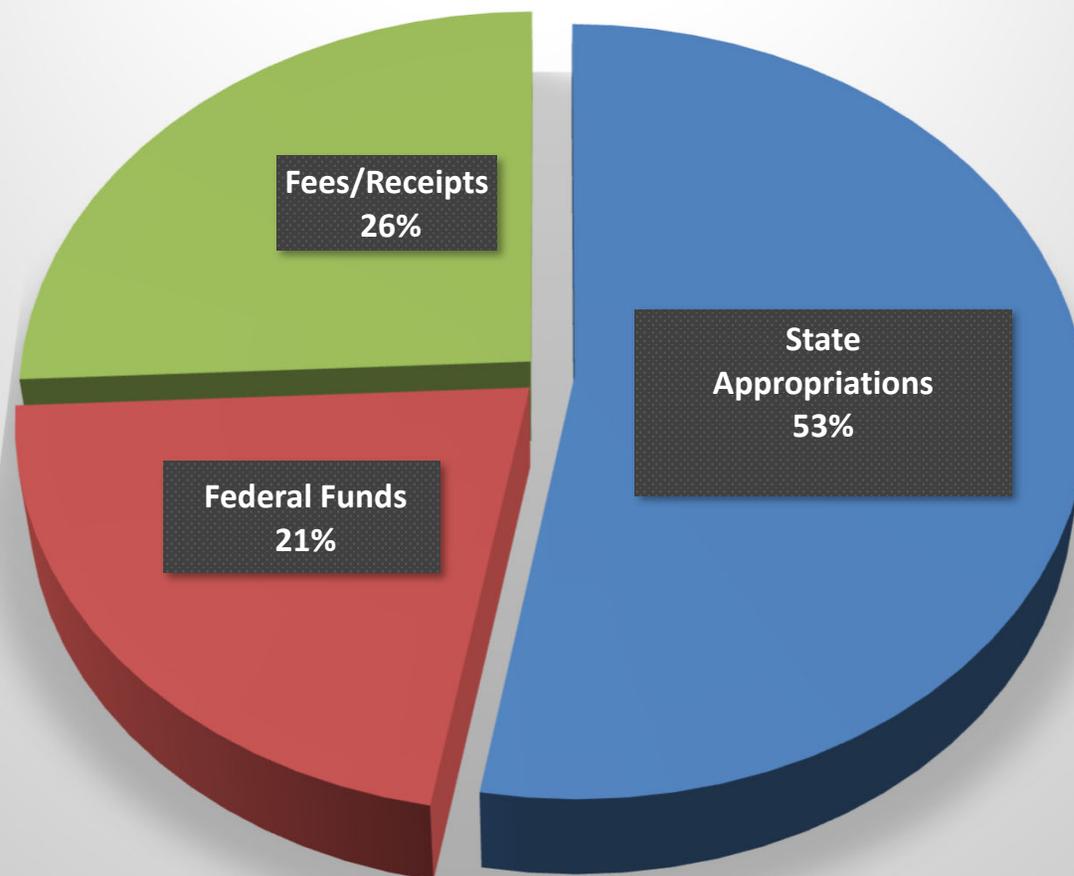
– *Fees/Receipts*

- Environmental permits and fees (Groundwater receipts, air quality fees, Water Use permits, stormwater permits, animal compliance fees, construction permits). Camping receipts, Nursery sales, land management income, hunting and fishing license dollars (also appropriated), snow/ATV, boat registrations, Marine Fuel Tax.

– *Federal Funds*

- Grants from the Environmental Protection Agency, Federal Emergency Management Agency, U.S. Fish and Wildlife Service, U.S. Forest Service, U.S. Park Service.

Funding Sources by Category



Department Expenditures



Expenditure Categories

Department expenditures are also classified in 3 major categories:

– ***Operational Expenditures***

- Day to day activities: Salaries/benefits, contractual/outside services, travel, supplies, vehicles, phones/data, uniforms, equipment.

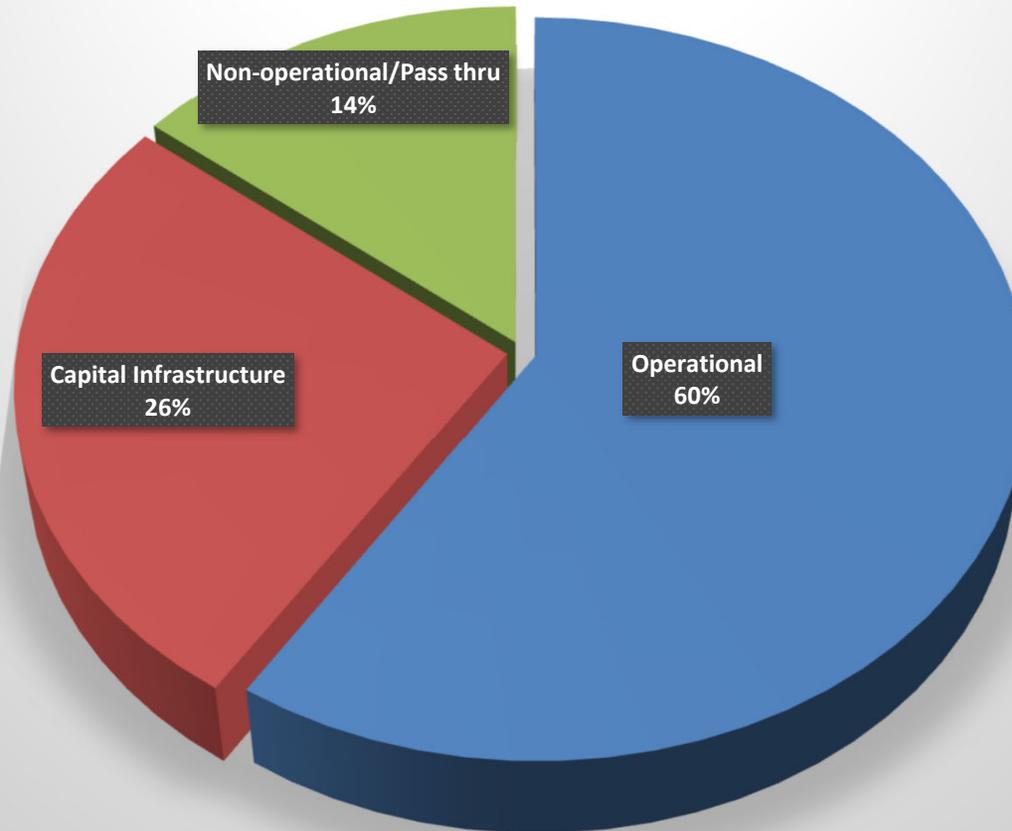
– ***Capital Infrastructure Expenditures***

- New infrastructure, public improvements on Department owned buildings and land, lake restoration, water trail improvements, habitat development, land acquisition, easements, property taxes.

– ***Non-operational/Pass thru Expenditures***

- Majority of expenditures in the category include legislatively mandated pass thru from the Groundwater, Resource Enhancement and Protection, Snowmobile and ATV funds.

Expenditures by Category





Agenda

Environmental Protection Commission

Tuesday, August 17, 2021

Teleconference: (240) 794-2779 PIN: 934 190 235#

Video Conference: <https://meet.google.com/pcd-ryjg-uoa>

Tuesday, August 17, 2021

10:00 AM – EPC Business Meeting

1-4 PM – Optional EPC Educational Tour of Drinking Water Facility – registration required by Mon, August 9th at 4 pm to Jerah Sheets at jerah.sheets@dnr.iowa.gov or 515-313-8909

If you are unable to attend the business meeting, comments may be submitted to Jerah Sheets at Jerah.Sheets@dnr.iowa.gov or 502 East 9th St, Des Moines IA 50319 up to one day prior to the business meeting for the public record.

- | | | |
|----|---|---------------------------------|
| 1 | Approval of Agenda | |
| 2 | Approval of the Minutes (Packet Page 3) | |
| 3 | Monthly Reports (Packet Page 10) | Ed Tormey
(Information) |
| 4 | Director's Remarks | Kayla Lyon
(Information) |
| 5 | Adopted and Filed – 567 IAC Chapter 215 - Mercury-Added Switch Recovery from End of Life Vehicles (Packet Page 16) | Theresa Stiner
(Decision) |
| 6 | Adopted and Filed - Chapters 20, 22, 23, and 25 – Air Quality (Packet Page 19) | Christine Paulson
(Decision) |
| 7 | Adopted and Filed - Chapter 50-52, 70-73 – Dam Safety Rules Update (Packet Page 40) | Jonathan Garton
(Decision) |
| 8 | Notice of Intended Action – Amend 567 IAC Chapters 117 and 116 – Waste Tire Management and Waste Tire Haulers (Packet Page 73) | Mel Pins
(Decision) |
| 9 | Contract with Beaver Creek Watershed Management Authority (Packet Page 82) | Kyle Ament
(Decision) |
| 10 | Contract with Eastern Iowa Regional Utility Services System (EIRUSS) (Packet Page 84) | Theresa Enright
(Decision) |
| 11 | Contract Amendment with Iowa Department of Agriculture and Land Stewardship (IDALS) for Iowa Great Lakes Targeted Watershed Project (Packet Page 86) | Steve Konrady
(Decision) |
| 12 | Contract with Eurofins Eaton Analytical, LLC (Packet Page 88) | Roger Bruner
(Decision) |
| 13 | General Discussion <ul style="list-style-type: none">• Budget Overview | |
| 14 | Items for Next Month's Meeting <ul style="list-style-type: none">• Monday, September 20, 2021 – Option EPC Educational Tour• Tuesday, September 21, 2021 – EPC Business Meeting• Tuesday, October 19, 2021 – EPC Business Meeting• Tuesday, November 16, 2021 – EPC Business Meeting & Optional SHL Tour | |

For details on the EPC meeting schedule, visit <http://www.iowadnr.gov/About-DNR/Boards-Commissions>

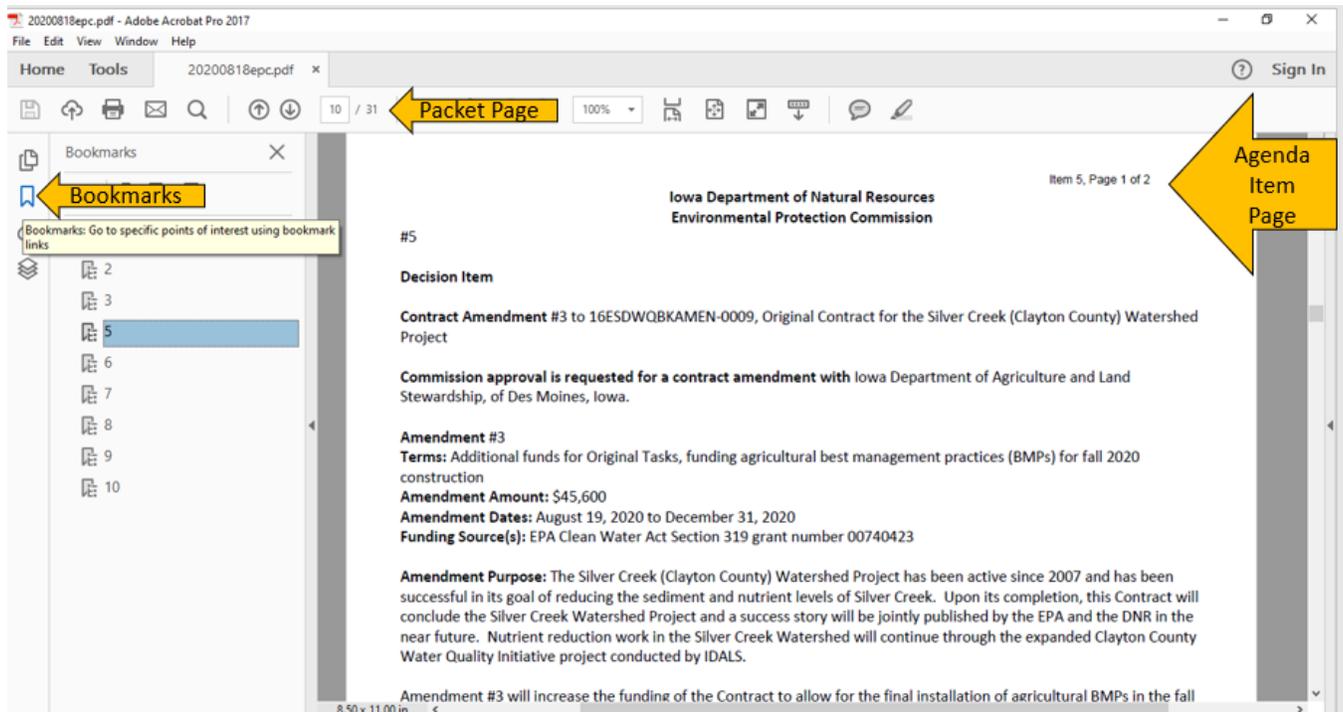
Updated 07/29/21

¹Comments 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 participating in 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.

Utilize bookmarks to transition between agenda items or progress forwards and backwards in the packet page by page with the Packet Page number on the agenda.

The upper right-hand corner will indicate the Agenda Item Number and the page of the agenda item.



**MINUTES OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING**

July 7, 2021

Video and Teleconference

Approved by the Commission **TBD**

DRAFT

RECORD COPY

File Name Admin 01-05

Sender's Initials jzs

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DRAFT

Meeting Minutes

CALL TO ORDER

The meeting of the Environmental Protection Commission (Commission or EPC) was called to order by Chairperson Ralph Lents at 10:00 a.m. on July 7, 2021, via a combination of in-person and video/teleconference attendees. A verbal attendance list was conducted for Commissioners, Department of Natural Resources (DNR) staff, and members of the public. Jerah Sheets, Board Administrator, provided a tutorial of the Google Meet features.

COMMISSIONERS PRESENT

- Brad Bleam
- Rebecca Dostal
- Stephanie Dykshorn
- Amy Echard
- Patricia Foley
- Lisa Gochenour – video conference
- Harold Hommes
- Ralph Lents
- Mark Stutsman

COMMISSIONERS ABSENT

None

Tamara McIntosh, DNR General Counsel, stated that the Commission was hosting this meeting via teleconference consistent with Iowa Code section 21.8, which authorizes electronic meetings when meeting in person is impossible or impractical. The impractical standard was satisfied due to COVID-19-based medical directives to physically distance.

OFFICIAL MEETINGS OPEN TO PUBLIC (OPEN MEETINGS), § 21.8

Electronic meetings. 1. A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following: a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible. b. The governmental body complies with section 21.4. For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation. c. Minutes are kept of the meeting. The minutes shall include a statement explaining why a meeting in person was impossible or impractical. 2. A meeting conducted in compliance with this section shall not be considered in violation of this chapter. 3. A meeting by electronic means may be conducted without complying with paragraph “a” of subsection 1 if conducted in accordance with all of the requirements for a closed session contained in section 21.5.

APPROVAL OF AGENDA

Motion was made by Amy Echard to approve the agenda as presented. Seconded by Stephanie Dykshorn. The Chairperson asked for the Commissioners to approve the agenda by saying aye. There were no nay votes. Rebecca Dostal was noted as absent for the vote. Motion passes.

AGENDA APPROVED AS PRESENTED

APPROVAL OF MINUTES

*Motion was made by Mark Stutsman to approve the June 15, 2021, EPC minutes as presented. Seconded by Amy Achard.
Brad Bleam-aye, Lisa Gochenour-aye, Patricia Foley-aye, Mark Stutsman-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-absent, and Ralph Lents-aye.
Motion passes.*

APPROVED AS PRESENTED

Rebecca Dostal arrived during the Monthly Reports presentation.

MONTHLY REPORTS

- Division Administrator Ed Tormey provided the monthly waiver report and received no questions from the Commission.
- Mike Schueller, Associate Director of the Environmental Health Division at the State Hygienic Laboratory (SHL), provided the Commission an overview of the legal authority for the state’s laboratory services, a summary of contracts from the past three years, and answered questions about the other business units of SHL. He also extended an invitation to tour the Ankeny SHL facilities in October or November.
- The monthly reports have been posted on the DNR’s website under the appropriate meeting month: <http://www.iowadnr.gov/About-DNR/Boards-Commissions>

INFORMATION

DIRECTOR’S REMARKS

- Director Kayla Lyon deferred remarks until the Joint NRC/EPC meeting later in the day.

INFORMATION

NOTICE OF INTENDED ACTION - CHAPTER 81 – UPDATE TO REVOCATION RATIONALE

Noah Poppelreiter presented the proposed rulemaking, which will make the rules consistent with Iowa Code.

Public Comments – None

Written Comments – None

*Motion was made by Harold Hommes to approve the agenda item as presented. Seconded by Amy Echard.
Brad Bleam-aye, Lisa Gochenour-aye, Patricia Foley-aye, Mark Stutsman-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.*

APPROVED AS PRESENTED

REFERRAL TO THE ATTORNEY GENERAL

Chairperson Lents began the referral by seeking those in attendance representing the parties. Global Fiberglass Solutions, Inc. (GFS) did not have any representatives present.

David Scott, DNR Attorney, requested the Commission to refer GFS and its responsible corporate officers to the Iowa Attorney General’s Office for violations of Iowa’s legitimate recycling and solid waste disposal regulations.

He reminded the Commission the referral was not a vote on the company's guilt or innocence; rather, it was a request to allow the Attorney General's office to pursue the matter. GFS would still be afforded all of its due process rights and would be able to negotiate settlement with the Attorney General's staff. The difference would be that the matter may be addressed in court rather than as an administrative enforcement matter.

Mr. Scott summarized the GFS' operational and enforcement history in Iowa. GFS deposited approximately 1,300 wind turbine blades at three locations in the state (Newton, Atlantic, and Ellsworth) with the intent to recycle the blades. The DNR and GFS agreed to an administrative consent order and to a binding compliance plan for processing the blades, consistent with Iowa's recycling and solid waste regulations. The law prohibits a party from accumulating materials without a means to actually recycle them.

The agreed upon compliance plan also included a requirement for GFS to provide financial assurance in the form of a bond payable to the state of Iowa. The bond would cover disposal costs at a landfill in the event that GFS was unable to recycle the material.

GFS has not adhered to the compliance plan for disposal of the blades or secured any financial assurance. Consequently, the DNR issued an administrative order that was not appealed. The DNR requested the matter be referred to Attorney General's Office in an attempt to require GFS and its corporate officers to take responsibility for the blades discarded around the state.

Chairperson Lents asked for representatives of GFS and received none.

Public Comments

Jody Rhone, Public Works Director for the City of Newton, provided the below statement:

Global Fiberglass obtained conditional use permits from the Newton Zoning Board of Adjustment in April and October of 2018, which was after they began initial accumulation of wind turbine blades at 1300 East 8th Street North. Said permits authorized the exterior storage and a cutting/recycling operation at the property. The conditions placed on these uses required screened and secured fencing, an entrance gate to restrict access, and limits to the location of blade cutting operations.

Just prior the Derecho storm in August 2020, the property owner was contacted by city staff about the condition of the required screened/secured fencing around the storage yard. An extension for compliance was then granted considering the severe property damage caused by the storm, but no action on the part of Global Fiberglass Solutions occurred. The fencing remained out of compliance with the approved conditional use permits for more than 3 months thereafter, a site visits also revealed improper property maintenance as tall grass, weeds, and garbage was prevalent throughout the storage areas.

Newton Zoning Board of Adjustment met on November 18, 2020, to review and evaluate the status of the conditional uses at this property. At this meeting, the Board voted unanimously to establish a 30-day deadline for Global Fiberglass to bring the temporary chain-link fencing into compliance by ensuring it was repaired to a safe and secure condition, as well as a 6-month deadline to replace the temporary fencing with permanent screened and secured fencing around the entire property.

The Board reconvened on December 22, 2020, to confirm that the temporary fencing was repaired. Staff sent a reminder email to Global Fiberglass on May 4, 2021, for the construction of the permanent fencing. The Board once again reconvened on May 19, 2021, to evaluate the conditional uses which revealed that no progress had been made and that the temporary fencing was in a state of disrepair once again. At the May 19, 2021 meeting, the Board voted unanimously to revoke the conditional use permits held by Global Fiberglass Solutions for the exterior storage and blade cutting operations at 1300 East 8th Street North. The deadline to remove all exterior storage of blades, the temporary fencing, garbage, etc. from the property was June 11, 2021, which was reflective of the Iowa Department of Natural Resources Administrative Order issued to Global Fiberglass dated April 12, 2021. That deadline has passed and the property remains out of compliance, including the condition of the fencing around the property.

The City of Newton supports the Iowa Department of Natural Resources recommendation to refer Global Fiberglass Solutions to the Attorney General's Office.

Frank Liebl, Executive Director fo the Newton Development Corporation provided the below statement:

I was first introduced to Global Fiberglass in early 2017 when I showed them sites in Newton to start their operation. In May of 2017 I assisted them in filing an application for assistance from the Iowa Economic Development Authority for the High Quality Jobs Act. In that application they said they would create 17 full-time jobs. They had 3 full years to create those jobs. On February 19th, 2021 IEDA terminated the contract with Global Fiberglass for failure to move forward.

Numerous times over the years I talked to Global Fiberglass representatives asking them when they would have their Newton operation up and running. Always basically getting the same answer "soon." Initially there was great excitement to land a company such as Global Fiberglass. The process they described would keep these wind blades out of Iowa landfills. I was contacted by several publications throughout the United States wanting updates on how Global Fiberglass was coming with their Newton Plant. In one publication, in a story that ran in March of 2020, I was quoted as saying, "there are wind blades all over the place and we've got to do something with them. While I endorsed the concept I said I was worried about the delays in the project." That comment caught the attention of Don Lilly, CEO of Global Fiberglass, because he called me, and in our conversation he said things are moving forward, and he said if I EVER had a question about anything relating to Global Fiberglass here is my direct line and mobile number, and I'll always respond to your call. Well a couple of weeks later I had a question, left a message and never received a call back. I had another question a few weeks later, and still never got a call back.

Over the past 3 years I called the Economic Development Director 4 or 5 times at Sweetwater, Texas where Global Fiberglass had an operation that was similar to one being proposed in Newton. At one time they supposedly did grind some blades, but that didn't last long. As of yesterday, (July 6, 2021) I confirmed their operation in Sweetwater has shut down.

James Pray, Attorney for Phoenix Newton Industrial Investros LLC provided the following statement:

My name is James Pray. I am an attorney with the BrownWinick Law firm in Des Moines, Iowa. I am speaking on behalf of my client, Phoenix Newton Industrial Investors LLC (Phoenix). Phoenix is the landlord where the 868 wind turbine blades have been dumped. Phoenix is very interested in getting the 868 wind turbine blades off of its property. Phoenix has not been paid

rent from Global Fiberglass and is owed more than one million dollars in unpaid rent. Phoenix sent default notices to Global Fiberglass in October and November of 2020, followed with a Notice of Lease Termination in November of 2020. Phoenix considers the lease to have been abandoned by Global Fiberglass. Global Fiberglass has no equipment on site that would allow it to grind this volume of blades and has in fact removed at least some personal property from the site that would be of an industrial nature. Global Fiberglass has not communicated with Phoenix for quite some time. Blades are fairly light in weight but they total more than 10 million pounds. We support the referral.

Written Comments – None

Jacob Larson, Assistant Attorney General, summarized the potential actions and steps the Attorney General’s Office would take and the tools they might use to find a good and effective solution to the problem.

Commissioners engaged with all parties.

Theresa Stiner, DNR Land Quaity Bureau, and Jessica Montana, DNR Field Services and Compliance Bureau, fielded questions regarding the Atlantic and Ellsworth locations.

James Pray clarified there has been no litigation currently between GFS and Phoenix. Phoenix considers the blades as abandoned on their property.

It is believed that there are interested 3rd parties who could properly dispose of the blades.

Motion was made by Amy Achard to refer the matter to the Attorney General. Seconded by Rebecca Dostal. Brad Bleam-aye, Lisa Gochenour-aye, Patricia Foley-aye, Mark Stutsman-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye. Motion passes.

REFERRED

GENERAL DISCUSSION

- Jerah Sheets provided logistic details for the upcoming EPC business meetings and educational tours.

ADJOURN

Chairperson Lents thanked the Commission and DNR.

The Chairperson adjourned the Environmental Protection Commission meeting at 11:05 pm on July 7, 2021.

ADJOURNED

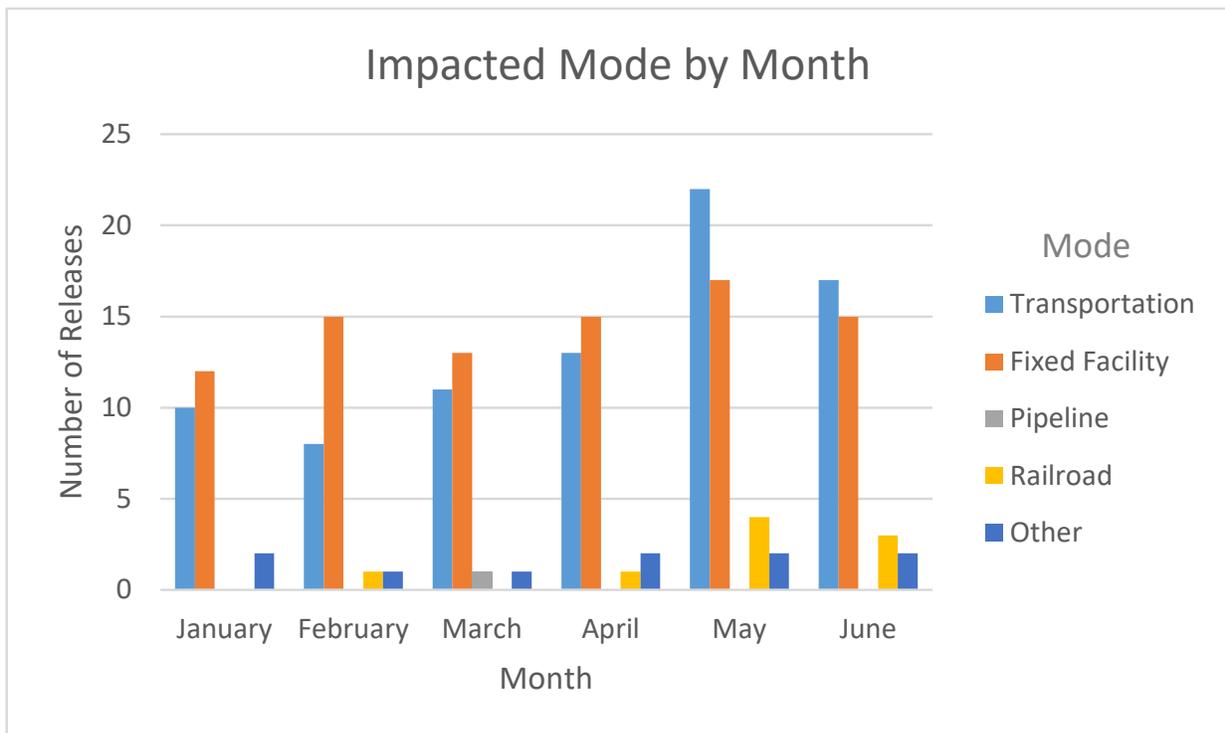
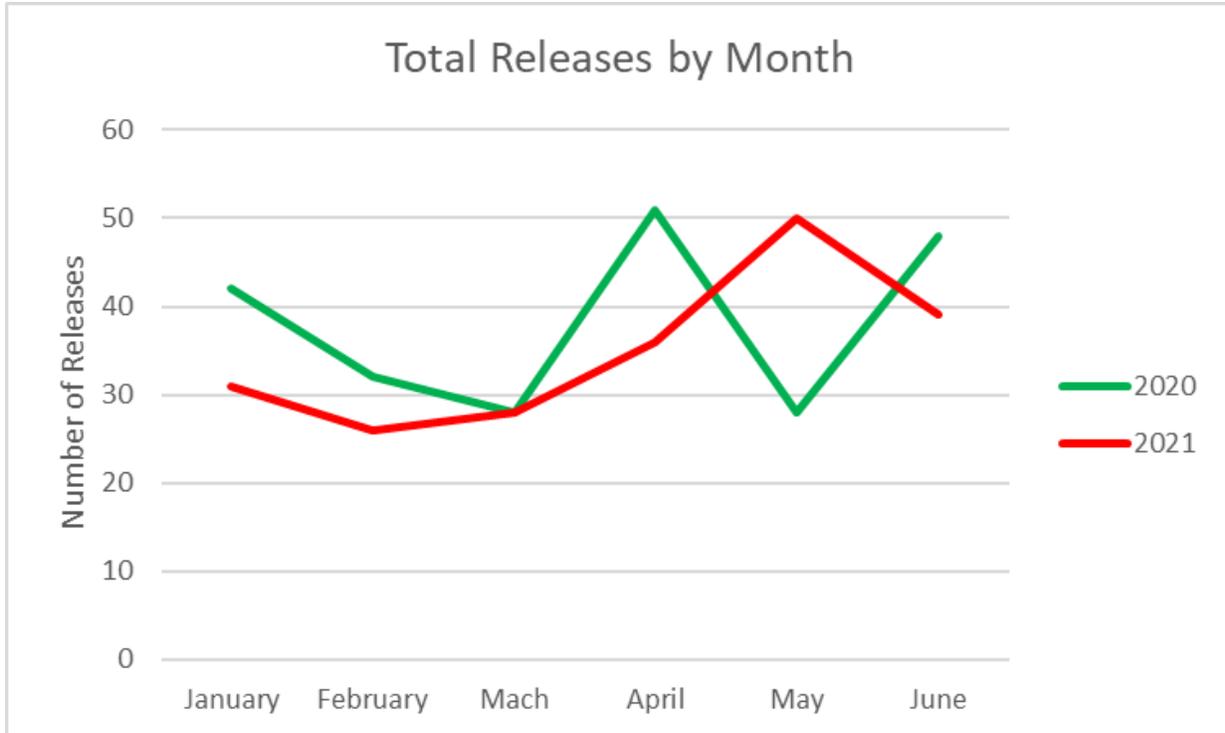
Monthly Waiver Report

July 2021

Item #	DNR Reviewer	Facility/City	Program	Subject	Decision	Date	Agency
1	John Curtin	Riley Industrial Painting	Air Quality Construction Permits	Modification to permits for a paint spray booth to correct error in original permits.	Approved	6.28.21	21aqv164
2	Sara Smith	Webster City	Water Supply Construction (WC)	Water mains (WM) under a storm sewer (STS) or within 10 ft horizontally from a STS, must be constructed of Ductile Iron (DI) pipe with nitrile gaskets and maintain 18" vertical clearance or not less than 3 ft horizontal distance to a STS.	Approved	6.25.21	21wcv165
3	Rachel Quill	Cemstone Concrete Materials	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	6.30.21	21aqv166
4	Michael Hermsen	Cerne Calcium Company	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	6.30.21	21aqv167
5	Ashley Dvorak	Absolute Energy, LLC	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	7.1.21	21aqv168
6	Danjin Zulic	Cargill, Inc - Eddyville	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	6.29.21	21aqv169
7	Ashley Dvorak	Ag Partners, LLC - Hartley	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	7.1.21	21aqv170
8	Marty Jacobs	Iowa Great lakes Sanitary District	CP (Wastewater)	Iowa Great Lakes Sanitary District is requesting a waiver from the Iowa Wastewater Facilities Design Standards Chapter 12 – Iowa Standards for Sewer Systems – 12.6 for the installation of gravity sewers by Pilot-Tube Microtunneling.	Approved	7.2.21	21cpv171
9	Nate Tatar	Procter & Gamble Hair Care, LLC	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	7.6.21	21aqv172
10	Terry Kirschenman	Oxford Junction	CP Wastewater	Rather than 500 feet, waiver request is for a manhole spacing of 520 feet.	Approved	6.22.21	21cpv173
11	Martin Jacobs	Cedar Rapids	Wastewater (CP)	Hightower Development is requesting variance from the Design Standards Chapter 13 – 13.4.3 (Pump Openings) for installing a submersible lift station with pumps that do not have the capability to pass a 3-inch spherical solid.	Approved	7.9.21	21cpv174
12	AJ Montefusco	Frytown Properties LLC	Wastewater Construction	Variance from IWFDS, Chapter 18C.7.1.3, which requires aerated lagoons to have a minimum length to width ratio of 2:1 for the first two cells.	Approved	7.8.21	21cpv175
13	AJ Montefusco	Frytown Properties LLC	Wastewater Construction	18C.7.1.1, ...requires individual cells to be separated by earthen dikes... Allow a floating baffle to be used to separate cell 1 from cell 2 in the north aerated lagoon pond.	Approved	7.8.21	21cpv176
14	Mark Fields	New Heaven Chemicals of Iowa, LLC	AQ	NHC has requested to install fixed roofs on tanks at their facility prior to permit issuance.	Approved	7.12.21	21aqv177
15	Mark Fields	Elite Octane LLC	AQ	Elite Octane LLC has requested to reduce water and chemical rates to the fermentation scrubber during June 2021 engineering testing.	Approved	6.17.21	21aqv178
16	Nate Tatar	ADM Clinton Corn Processing	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	7.16.21	21aqv179

17	Michael Hermsen	Wacker Chemical Corporation	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	7.19.21	21aqv180
18	Tara Naber	Chariton Municipal Water Works	WC - Water Supply Construction	Construct water main within steel casing pipe instead of replacing storm sewers with water main material where water main crosses 18-inches below storm sewer (WSE project W2021-0357).	Approved	7.19.21	21wcv181
19	Mark Fields	Natural Gas Pipeline of America	AQ	Warm weather prevents testing at max capacity so NGPL has requested an extension of the 8/24/21 test deadline.	Approved	7.8.21	21aqv182
20	Rachel Quill	New Heaven Chemicals Iowa, LLC	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	7.20.21	21aqv183
21	Michael Hermsen	Ajinomoto Health and Nutrition North Ame	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	7.21.21	21aqv184
22	Ashley Dvorak	OSI Industries	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	7.23.21	21aqv185

Second Quarter 2021 Summary Charts



- Transportation includes releases from material being transported by means other than pipeline or railroad.
- Fixed Facility includes releases at a fixed facility including transformer releases.
- Other includes releases from dumping, theft, vandalism, fire and unknown causes.
- Pipeline includes releases from a pipeline or the transmission side of a pipeline facility.
- Railroad includes releases from railcars and locomotives.

**Iowa Department of Natural Resources
Environmental Services Division
Second Quarter 2021 Report of Wastewater By-passes**

During the period April 1, 2021 through June 30, 2021, 40 reports of a wastewater by-pass were received. A general summary and count by field office is presented below. This does not include by-passes resulting from precipitation events (including flood water infiltration) or by-passes resulting in basement backups.

Quarter	Total	Avg. Length (days)	Avg. Volume (MGD)	Sampling Required	Fish Kill
1 ST Quarter '21	36 (40)	0.836	0.056	1	0(0)
2 ND Quarter '21	40 (38)	0.204	0.159	3	0(0)
3 RD Quarter '20	34 (46)	0.937	0.056	2	0(1)
4 TH Quarter '20	28 (39)	0.440	0.510	2	0(0)

(numbers in parentheses are for same period last year)

Total Number of Incidents per Field Office This Quarter:

Field Office	1	2	3	4	5	6
Reports	5	3	6	8	4	14



**Iowa Department of Natural Resources
Environmental Services Division
Second Quarter Report of Manure Releases**

During the period April 1, 2021, through June 30, 2021, 4 reports of manure releases were forwarded to the central office. A general summary and count by field office is presented below.

		Total Incidents		Surface Water Impacts		Feedlot		Confinement		Land Application		Transport		Hog		Cattle		Poultry		Other	
Month	Year	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago
Jan	2021	0	2	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2	0	0
Feb	2021	1	1	0	1	0	0	1	1	0	0	0	0	1	1	0	0	0	0	0	0
Mar	2021	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Apr	2021	4	4	4	2	1	0	2	4	1	0	0	0	1	4	3	0	0	0	0	0
May	2021	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Jun	2021	0	1	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Total		5	8	4	3	1	1	3	5	1	1	0	1	2	6	3	0	0	2	0	0

Total Number of Incidents per Field Office for the Selected Period	Field Office 1		Field Office 2		Field Office 3		Field Office 4		Field Office 5		Field Office 6	
	Current	Previous										
Total	1	2	1	1	2	0	0	1	0	0	0	1



Iowa Department of Natural Resources
 Environmental Services Division
 Second Quarter Report of Hazardous Conditions

During the period April 1, 2021, through June 30, 2021, 125 reports of hazardous conditions were forwarded to the central office. A general summary and count by field office is presented below. This does not include releases from underground storage tanks, which are reported separately.

		Substance								Mode													
		Total Incidents		Agrichemical		Petroleum Products		Other Chemicals		Transport		Fixed Facility		Pipeline		Railroad		Fire		Other*		CR-ERNS	
Month	Year	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago	Cur	Yr Ago
Jan	2021	31	42	5	6	18	26	10	11	10	13	12	22	0	0	0	2	0	0	2	0	7	5
Feb	2021	26	32	1	0	16	26	9	8	8	14	15	12	0	0	1	1	0	0	1	4	1	1
Mar	2021	28	28	3	3	22	20	5	7	11	12	13	13	1	1	0	1	0	0	1	0	2	1
Apr	2021	36	51	8	12	19	33	12	11	13	19	15	20	0	0	1	4	0	1	2	2	5	5
May	2021	50	28	4	8	31	14	16	6	22	13	17	11	0	0	4	0	0	0	2	4	5	0
Jun	2021	39	48	5	7	23	29	18	16	17	12	15	31	0	1	3	2	0	0	2	2	2	0
Total		210	229	26	36	129	148	70	59	81	83	87	109	1	2	9	10	0	1	10	12	22	12

*Other includes dumping, theft, vandalism and unknown

** CR-ERNS incidents are ongoing releases as defined by Federal regulations. These reports are included in "Total Incidents" and "Substance" counts but not in "Mode" counts.

Total Number of Incidents per Field Office This Period	Field Office 1		Field Office 2		Field Office 3		Field Office 4		Field Office 5		Field Office 6	
	Current	Year Ago										
Total	22	22	11	11	6	11	26	32	30	18	30	33

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

ITEM

5

DECISION

TOPIC

Adopted and Filed – 567 IAC Chapter 215 - Mercury-Added Switch Recovery from End of Life Vehicles

The Commission is requested to approve this Adopted and Filed rule to rescind and reserve 567 Iowa Administrative Code chapter 215, “Mercury-Added Switch Recovery from End of Life Vehicles.”

No public comments were received and no changes were made to what was published in the Notice of Intended Action.

The Mercury-Free Recycling Act, passed in 2006, required auto manufacturers to implement and fund a system to recover mercury switches from scrap vehicles before they were crushed or shredded for recycling. If the mercury switches are not removed when the vehicle is retired, the mercury is released to the environment when the metal is recycled. Mercury switches were used in convenience lighting (hood and trunk lights) in vehicles as recently as 2002.

Iowa Code section 455B.803(2)“e” directs the Commission to cease programmatic enforcement on July 1, 2020. This legislative sunset was not extended. As such, there is no longer authority to enforce this program. Accordingly, the implementation rules must be rescinded.

Timeline for rulemaking

- A Proposed Rule was approved by the Commission as a Notice of Intended Action on May 18, 2021.
- A public hearing was not held.
- The Notice of Intended Action was published on June 16, 2021.
- Written comments were accepted through July 7, 2021. No comments were received.
- Return to the Commission for a decision on the proposed Adopted and Filed Rule on August 17, 2021.
- The anticipated effective date would be October 13, 2021.

Theresa Stiner, Environmental Specialist Senior
Solid Waste and Contaminated Sites, Land Quality Bureau
Environmental Services Division

July 27, 2021

Adopted and Filed Attachments – Final Rule

ENVIRONMENTAL PROTECTION COMMISSION[567]**Adopted and Filed**

The Environmental Protection Commission (Commission) hereby rescinds Chapter 215, “Mercury-Added Switch Recovery from End-of-Life Vehicles,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 455B.806.

State or Federal Law Implemented

This rule making implements, in whole or in part, 455B.801 to 455B.809.

Purpose and Summary

This proposed rule making rescinds and reserves Chapter 215. The Mercury-Free Recycling Act, passed in 2006, required auto manufacturers to implement and fund a system to recover mercury switches from scrap vehicles before they were crushed or shredded for recycling. Mercury switches were used in convenience lighting (hood and trunk lights) in vehicles as recently as 2002. The Mercury-Free Recycling Act included a sunset date of July 1, 2020, based on the expectation that the vast majority of vehicles containing the switches would be scrapped by then. The sunset deadline was not extended by the Legislature. As such, the Commission no longer has the authority to enforce this program. Accordingly, the rules must be rescinded.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 17, 2021, as **ARC 5676C**.

No public comments were received.

The rescission is identical as to what was published under notice.

Adoption of Rule Making

This rule making was adopted by the Commission on August 17, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department of Natural Resources (Department) upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the fiscal impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561 – Chapter 10

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on October 13, 2021.

The following rule-making action is adopted:

Rescind and reserve **567—Chapter 215**.

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

ITEM

6

DECISION

TOPIC

Adopted and Filed - Chapters 20, 22, 23, and 25 – Air Quality

The Commission is requested to approve this Adopted and Filed rule making to amend Chapter 20, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 22 “Controlling Pollution,” Chapter 23, “Emission Standards for Contaminants,” and Chapter 25, “Measurement of Emissions,” of the Iowa Administrative Code (IAC).

Purpose of Rule Changes

The rule making adopts several new federal air quality standards. The amendments are identical to the federal regulations, and do not impose any regulations on Iowa businesses not already required by federal law. The rule making will ensure that Iowa is consistent with federal law and not any more stringent.

Additionally, the updates allow the Department, rather than the EPA, to be the primary agency to implement the air quality requirements in Iowa, and to provide compliance assistance and outreach to affected facilities.

The rule making will also implement a portion of the Department’s 5-year rules review plan to accomplish the requirements of Iowa Code section 17A.7(2).

Summary of Rule Changes

The rule making adopts amendments to EPA methods for measuring air pollutant emissions (stack testing and continuous monitoring). The rule changes also adopt updated federal new source performance standards (NSPS) and air toxics standards, also known as National Emissions Standards for Hazardous Air Pollutants (NESHAP). Adopting EPA’s amendments allows state rules to be consistent with federal regulations and provides certainty to affected businesses and other interested stakeholders.

The Department is also recommending that several recent federal NSPS and NESHAP amendments **not** be adopted at this time due to active legal challenges of the federal regulations.

Please refer to Table 1 and Table 2 in the attached Adopted and Filed rule making (numbered pages 5 and 7) for more information on the specific NESHAP standards.

Public Comments and Public Hearing

The Department received no public comments on the Notice of Intended action at the public hearing held on July 19, 2021, and did not receive any written comments before the July 19 public comment deadline. The Department is not proposing any changes to the final rules from what was published in the Notice of Intended Action.

If the Commission approves the final rules, the Adopted and Filed rules will be published on September 8, 2021, and will become effective on October 13, 2021

The Adopted and Filed rule making, Jobs Impact Statement, and Fiscal Impact Statement are attached.

Christine Paulson, Environmental Specialist Senior
Program Development and Support Section, Air Quality Bureau
Environment Services Division

Memo date: August 17, 2021

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby amends Chapter 20, “Scope of Title—Definitions,” Chapter 22, “Controlling Pollution,” Chapter 23, “Emission Standards for Contaminants,” and Chapter 25, “Measurement of Emissions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.133 and 455B.134.

Purpose and Summary

This rule making adopts several new mandatory federal air quality standards. The amendments are identical to the federal regulations and the amendments do not impose any regulations on Iowa businesses not already required by federal law. Additionally, the adoption of these amendments will ensure that Iowa is consistent with federal law and not any more stringent.

More specifically, the amendments adopt updated federal new source performance standards (NSPS) and air toxics standards, also known as National Emissions Standards for Hazardous Air Pollutants (NESHAP). These standards apply whether they are adopted into state regulation or not; however, by incorporating these terms into the State’s rules, the Department of Natural Resources (Department) can continue to be a delegated authority under the Clean Air Act (CAA). This allows the Department, rather than the U.S. Environmental Protection Agency (EPA), to be the primary compliance and implementation agency in Iowa.

In more detail, this rule making adopts the following six amendments:

Item 1 amends rule 567—20.2(455B), definition of “EPA reference method,” to adopt the most current EPA methods for measuring air pollutant emissions, performance testing (sometimes called “stack testing”), and continuous monitoring. EPA’s revisions to 40 Code of Federal Regulations (CFR) Parts 51, 60, 61, and 63 to correct and update regulations for source testing of emissions were published in the Federal Register on October

7, 2020. See 85 Fed. Reg. 63394–63422 (Oct. 7, 2020) (a correction to Part 63 was subsequently published in 85 Fed. Reg. 77384 (Dec. 2, 2020)). EPA states in the final regulations that these revisions include corrections to inaccurate testing provisions, updates to outdated procedures, and approved alternative procedures that will provide flexibility to testers. EPA also states that the updates will improve the quality of data and will not impose any new substantive requirements on source owners or operators. Adopting EPA’s updates ensures that state reference testing methods match current federal reference methods and are no more stringent than the federal methods.

The amendment in **Item 2** is adopted concurrently with the amendment in Item 1. It revises the definition of “EPA reference method” in rule 567—22.100(455B) to similarly reflect updates to EPA testing and monitoring methods, which are the methods that apply to the Title V Operating Permit rules in Chapter 22.

The amendments in **Items 3, 4, and 5** adopt changes to the federal NSPS and NESHAP. The CAA obligates EPA to issue standards to control air pollution. The NSPS and NESHAP set federal standards and deadlines for industrial, commercial or institutional facilities to meet uniform standards for equipment operation and air pollutant emissions.

Because the NSPS and NESHAP adopted by reference are federal regulations, affected sources are subject to the federal requirements regardless of whether the Commission adopts the standards into the State’s rules. However, the CAA allows a state or local agency to implement NSPS and NESHAP as a delegated authority. Upon state adoption of the standards, the Department becomes the delegated authority for the specific NSPS or NESHAP and is the primary implementation agency in Iowa. Two local agencies, those in Polk County and Linn County, implement these standards within their counties.

The Commission’s rules, including all compliance deadlines, are identical to the federal NSPS and NESHAP as of a specific federal publication date. With delegation authority and adoption of the federal standards into the State’s rules and the rules of Polk County and Linn County, the State and local agencies have the ability to make applicability determinations for facilities, rather than referring these decisions to EPA.

Stakeholders affected by NSPS and NESHAP typically prefer for the Department, rather than EPA, to be the primary implementation agency in Iowa. Upon adoption of the new and amended standards, the Department will work with affected facilities to provide any needed compliance assistance. Additionally, affected area sources that are small businesses are eligible for free assistance from the small business technical assistance program.

Notably, the Commission is excluding from adoption the recent changes that EPA made to the NSPS for Kraft Pulp Mills (40 CFR 60, Subpart BB) due to active litigation of the federal regulation. This is described in more specificity below. An additional proposed amendment to subrule 23.1(2) indicates the previous date for which Subpart BB was adopted by reference, which will exclude the recent federal amendments from being adopted.

Finally, **Item 6** amends subrule 25.1(9) to adopt the changes EPA made to the federal test methods for measuring emissions, as explained above for Item 1.

Risk and Technology Review

Most of EPA's amendments adopted in subrule 23.1(4) address the risk and technology reviews required under the CAA. The CAA requires EPA to address air toxic emissions from large industrial facilities (major sources) in two phases.

The first phase is "technology-based," where EPA develops standards for controlling the emissions of air toxics from sources in an industry group or "source category" (for example, industrial boilers). These maximum achievable control technology (MACT) standards are based on emissions levels that controlled and low-emitting sources in an industry are already achieving. Typically, MACT affects only a "major source" of air toxics (a source with a potential to emit at least 10 tons per year of any one hazardous air pollutant (HAP) or 25 tons per year of any combination of HAPs).

The second phase is a "risk-based" approach called residual risk. In this step, EPA must determine whether more health-protective standards are necessary. Within eight years of setting the MACT standards, the CAA requires EPA to assess the remaining health risks from each source category to determine whether the MACT

standards protect public health with an ample margin of safety and protect against adverse environmental effects. On this same schedule, the CAA also requires EPA to review the standards and, if necessary, revise them to account for improvements in air pollution controls or prevention. The combined review of public health risk and air pollution control is called the “risk and technology review” (RTR).

Impact of the NESHAP Amendments

For most of the recent NESHAP RTR updates, EPA has determined that the risks from emissions from affected source categories are acceptable and that there are no new cost-effective controls available. However, the updates do include revisions to the requirements for periods of startup, shutdown, and malfunction (SSM) and require electronic reporting of performance test results and compliance reports.

In some cases, EPA made minor amendments to correct errors, clarify requirements, and provide technical amendments. EPA also provided additional flexibilities in several of the final NESHAP RTRs, such as alternative testing methods or reduced monitoring. A few of the recent and upcoming NESHAP RTRs do include more substantive requirements for pollution control and monitoring.

Table 1 below identifies the amendments to the NESHAP source categories adopted by reference. The standards are identified by source category and are listed in order of publication date in the Federal Register. The table also indicates the subpart in 40 CFR Part 63, as well as the associated paragraph in subrule 23.1(4). Additionally, the table indicates the number of facilities that the Department estimates are currently affected by the specific standard. The Commission is adopting standards that currently do not affect any Iowa sources in case a new facility of that type is constructed in the future.

Table 1
Adopted NESHAP Amendments

NESHAP: Affected Source Category (Note: “Mfg” is the abbreviation for “manufacturing”)	Date Published in Federal Register	40 CFR 63 Subpart/Subrule 23.1(4) Paragraph	Estimated Iowa Facilities Affected
Surface Coating of Metal Cans	2/25/2020	KKKK/“ck”	0
Surface Coating of Metal Coil	2/25/2020	SSSS/“cs”	0
Asphalt Processing	3/12/2020	LLLLL/“dl”	0
Vegetable Oil Production	3/18/2020	GGGG/“cg”	17
Boat Mfg	3/20/2020	VVVV/“cv”	0
Reinforced Plastics	3/20/2020	WWWW/“cw”	15
HCl Acid Production	4/15/2020	NNNNN/“dn”	0
Engine Test Cells	6/3/2020	PPPPP/“dp”	1
Cellulose Products	7/2/2020	UUUU/“cu”	0
Automobiles and Light Duty Trucks	7/8/2020	IIII/“ci”	0
Miscellaneous Metal Parts	7/8/2020	MMMM/“cm”	31
Plastic Parts	7/8/2020	PPPP/“cp”	12
Paper and Other Web Coatings	7/9/2020	JJJJ/“cj”	2
Rubber Tire Mfg	7/24/2020	XXXX/“cx”	1
Miscellaneous Coating Mfg	8/14/2020	HHHHH/“dh”	1
Iron and Steel Foundries	9/10/2020	EEEE/“de”	4
Phosphoric Acid Mfg	11/3/2020	AA/“aa”	0

There are several recent NESHAP amendments that the Commission excluded from adoption at this time due to active legal challenges of the federal regulations. Additional amendments to subrule 23.1(4) indicate the previous dates for which the specific NESHAP were adopted by reference, which excludes the recent federal amendments from being adopted. Table 2 below indicates the NESHAP amendments being excluded from adoption. Affected sources remain subject to these federal requirements regardless of whether the Commission adopts the standards into the State's rules.

Table 2
NESHAP Amendments Excluded from Adoption Due to Legal Challenges

NESHAP: Affected Source Category (Note: “Mfg” is the abbreviation for “manufacturing”)	Date Published in Federal Register	40 CFR 63 Subpart/Sub rule 23.1(4) paragraph and the previous adoption date	Estimated Iowa Facilities Affected by the NESHAP
Combustion Turbines	3/9/2020	YYYY/“cy” 4/20/2006	2
Municipal Solid Waste Landfills	3/26/2020	AAAA/“ca” 4/20/2006	5
Ethylene Production	7/6/2020	YY/“ay” 10/8/2014	1
Organic Liquids (Non-Gasoline) Distribution	7/7/2020	EEEE/“ce” 7/17/2008	3
Site Remediation	7/10/2020	GGGGG/“dg” ” 11/29/2006	0
Integrated Steel Mfg	7/13/2020	FFFFF/“df” 7/13/2006	0
Lime Mfg	7/24/2020	AAAAA/“da” ” 4/20/2006	0
Miscellaneous Organic Chemical Mfg (MON)	8/12/2020	FFFF/“cf” 7/14/2006	19
Plywood & Composites Mfg	8/13/2020	DDDD/“cd” 10/29/2007	2
Pulp Mills	11/5/2020	MM/“am” 10/11/2017	0

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5678C**.

A public hearing was held by virtual meeting/teleconference on July 19, 2021, at 1:00 p.m. No one attended the hearing and no written public comments were received.

The adopted amendments are identical to those proposed in the Notice of Intended Action.

Adoption of Rule Making

This rule making was adopted by the Commission on August 17, 2021.

Fiscal Impact

After analysis and review of this rule making, these amendments will have no fiscal impact to either the State of Iowa or to regulated facilities, the general public, or county or local governments. Some of the amendments may benefit the private sector because they streamline current air quality programs. Affected businesses and the public benefit from up-to-date air quality requirements and increased effectiveness. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, the amendments will have an overall neutral impact on private-sector jobs. Some of the amendments may benefit the private sector because they streamline current air quality programs. For the amendments specified in Items 3, 4, and 5, the Commission has determined that there may be jobs impacts to Iowa businesses. However, the amendments are only implementing federally mandated regulations, thus any resulting impact originates at the federal level. The amendments are identical to the federal regulations and will not impose any regulations on Iowa businesses not already required by federal law. In some cases, the revised federal standards being adopted provide more flexibility and potential cost savings for affected businesses, offering a positive impact on private-sector jobs. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on October 13, 2021.

The following rule-making action is adopted:

ITEM 1. Amend rule **567—20.2(455B)**, definition of “EPA reference method,” as follows:

“*EPA reference method*” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 61, Appendix B (as amended or corrected through ~~August 30, 2016~~ October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through ~~November 14, 2018~~ December 2, 2020).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix F (as

amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016).

ITEM 2. Amend rule ~~567—22.100(455B)~~, definition of “EPA reference method,” as follows:

“*EPA reference method*” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 61, Appendix B (as amended or corrected through ~~August 30, 2016~~ October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through ~~November 14, 2018~~ December 2, 2020).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix F (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016).

ITEM 3. Amend subrule 23.1(2) as follows:

23.1(2) *New source performance standards.* The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~November 14, 2018~~ October 7, 2020, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in

parentheses. ~~An earlier~~ A different date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. to w. No change.

x. Kraft pulp mills. Any of the following in a kraft pulp mill: digester system; brown stock washer system; multiple effect evaporator system; black liquor oxidation system; recovery furnace; smelt dissolving tank; lime kiln; and condensate stripper system. In pulp mills where kraft pulping is combined with neutral sulfite semichemical pulping, the provisions of the standard of performance are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation. (Subpart BB as amended or corrected through February 27, 2014)

y. to cccc. No change.

ITEM 4. Amend subrule 23.1(3), introductory paragraph, as follows:

23.1(3) *Emission standards for hazardous air pollutants.* The federal standards for emissions of hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended or corrected through ~~August 30, 2016~~ October 7, 2020, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except 40 CFR §61.20 to §61.26, §61.90 to §61.97, §61.100 to §61.108, §61.120 to §61.127, §61.190 to §61.193, §61.200 to §61.205, §61.220 to §61.225, and §61.250 to §61.256, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 CFR Part 61 subpart designation is in parentheses. A different date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

ITEM 5. Amend subrule 23.1(4) as follows:

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~March 15, 2019~~ November 3, 2020, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. ~~An earlier~~ A different date for adoption by reference may be included with the subpart designation in parentheses or as indicated in this introductory paragraph. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A as amended or corrected through December 2, 2020), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (Fbio) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in rule 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4)“a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

a. to al. No change.

am. *Emission standards for hazardous air pollutants for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills.* (Part 63, Subpart MM as amended or corrected through October 11, 2017)

an. to *ax.* No change.

ay. *Emission standards for hazardous air pollutants: generic maximum achievable control technology (Generic MACT).* These standards apply to new and existing major sources of acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, polycarbonate (PC) production, carbon black production, cyanide chemicals manufacturing, ethylene production, and Spandex production. Affected processes include, but are not limited to, producers of homopolymers and copolymers of alternating oxymethylene units, acrylic fiber, modacrylic fiber synthetics composed of acrylonitrile (AN) units, hydrogen fluoride and polycarbonate. (Subpart YY as amended or corrected through October 8, 2014)

az. to *bz.* No change.

ca. *Emission standards for hazardous air pollutants: municipal solid waste landfills.* This standard applies to existing and new municipal solid waste (MSW) landfills. (Part 63, Subpart AAAA as amended or corrected through April 20, 2006)

cb. Reserved.

cc. *Emission standards for hazardous air pollutants for the manufacturing of nutritional yeast.* (Part 63, Subpart CCCC)

cd. *Emission standards for hazardous air pollutants for plywood and composite wood products (formerly plywood and particle board manufacturing).* These standards apply to new and existing major sources with equipment used to manufacture plywood and composite wood products. This equipment includes dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing process. This also includes coating operations, on-site storage and wastewater treatment. However, only certain process units (defined in the federal rule) are subject to control or work practice requirements. (Part 63, Subpart DDDD as amended or corrected through October 29, 2007)

ce. *Emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline).* These standards apply to new and existing major source organic liquids distribution (non-gasoline) operations,

which are carried out at storage terminals, refineries, crude oil pipeline stations, and various manufacturing facilities. (Part 63, Subpart EEEE, as amended or corrected through July 17, 2008)

cf. *Emission standards for hazardous air pollutants for miscellaneous organic chemical manufacturing (MON).* These standards establish emission limits and work practice standards for new and existing major sources with miscellaneous organic chemical manufacturing process units, wastewater treatment and conveyance systems, transfer operations, and associated ancillary equipment. (Part 63, Subpart FFFF, as amended or corrected through July 14, 2006)

cg. to *cx.* No change.

cy. *Emission standards for hazardous air pollutants for stationary combustion turbines.* These standards apply to stationary combustion turbines which are located at a major source of hazardous air pollutant emissions. Several subcategories have been defined within the stationary combustion turbine source category. Each subcategory has distinct requirements as specified in the standards. These standards do not apply to stationary combustion turbines located at an area source of hazardous air pollutant emissions. (Part 63, Subpart YYYY, as amended or corrected through April 20, 2006)

cz. No change.

da. *Emission standards for hazardous air pollutants for lime manufacturing plants.* These standards regulate hazardous air pollutant emissions from new and existing lime manufacturing plants that are major sources, are colocated with major sources, or are part of major sources. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart AAAAA, as amended or corrected through April 20, 2006)

db. to *de.* No change.

df. *Emission standards for hazardous air pollutants for integrated iron and steel manufacturing.* These standards apply to affected sources at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. The affected sources are each new or existing sinter plant,

blast furnace, and basic oxygen process furnace (BOPF) shop at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. (Part 63, Subpart FFFFFF, as amended or corrected through July 13, 2006)

dg. Emission standards for hazardous air pollutants: site remediation. These standards apply to new and existing major sources with certain types of site remediation activity on the source's property or on a contiguous property. These standards control hazardous air pollutant (HAP) emissions at major sources where remediation technologies and practices are used at the site to clean up contaminated environmental media (e.g., soil, groundwater, or surface water) or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media.

Some site remediations already regulated by rules established under the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) are not subject to these standards, as specified in Subpart GGGGG. There are also exemptions for short-term remediation and for certain leaking underground storage tanks, as specified in Subpart GGGGG. (Part 63, Subpart GGGGG, as amended or corrected through November 29, 2006)

dh. to fd. No change.

ITEM 6. Amend subrule 25.1(9) as follows:

25.1(9) *Methods and procedures.* Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are as follows:

a. Performance test (stack test). A stack test shall be conducted according to EPA reference methods as specified in 40 CFR 51, Appendix M (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 61, Appendix B (as amended or corrected through ~~August 30, 2016~~ October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through ~~November 14, 2018~~ December 2, 2020). The owner of the equipment or the

owner's authorized agent may use an alternative methodology if the methodology is approved by the department in writing before testing. Each test shall consist of at least three separate test runs. Unless otherwise specified by the department, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs.

b. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix F (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology for continuous monitoring systems if the methodology is approved by the department in writing before the minimum performance specifications and quality assurance procedures are conducted.

c. No change.

Date

Kayla Lyon, Director

**Administrative Rules
JOBS IMPACT STATEMENT**

1. BACKGROUND INFORMATION

Agency:	Environmental Protection Commission (Commission)/ Department of Natural Resources (Department)
IAC Citation:	567 IAC Chapters 20, 22, 23, and 25
Agency Contact:	Christine Paulson (515) 725-9510; christine.paulson@dnr.iowa.gov
Statutory Authority:	Iowa Code sections 455B.133 and 455B.134; and United States Clean Air Act Sections 110 (42 USC § 7410), 111 (42 USC § 7411), 112 (42 USC § 7412) and 501-507 (42 USC § 7661 - §7661f).
Objective:	Ensure Iowa's air quality rules are clear, effective, and consistent with federal law and not any more stringent, all of which provides important regulatory certainty to industry and other interested stakeholders
Summary:	The proposed rulemaking adopts updated federal new source performance standards (NSPS) and air toxics standards (NESHAP) to ensure that the Department continues to be a delegated authority under the federal Clean Air Act. This allows the Department, rather than the EPA, to be the primary compliance and implementation agency in this state.

2. JOB IMPACT ANALYSIS

<input type="checkbox"/> <i>Fill in this box if impact meets these criteria:</i>
<input checked="" type="checkbox"/> No Job Impact on private sector jobs and employment opportunities in the State. <i>(If you make this determination, you must include the following statement in the preamble to the rule: "After analysis and review of this rulemaking, no impact on jobs has been found.")</i>
Explanation: After analysis and review, it has been determined that the proposed amendments will have an overall neutral impact on private sector jobs and employment opportunities. Some of the rules may ultimately benefit the private sector because they streamline current air quality programs. Others may result in an unquantifiable jobs impact; however, because these are mandatory federal standards, any such impact would originate at the federal level.

<input type="checkbox"/> <i>Fill in this box if impact meets either of these criteria:</i>
<input type="checkbox"/> Positive Job Impact on private sector jobs and employment opportunities in the State.
<input type="checkbox"/> Negative Job Impact on private sector jobs and employment opportunities in the State.
<i>Description and quantification of the nature of the impact the proposed rule will have on private sector jobs and employment opportunities:</i>
<i>Categories of jobs and employment opportunities that are affected by the proposed rule:</i>
<i>Number of jobs or potential job opportunities:</i>
<i>Regions of the state affected:</i>
<i>Additional costs to the employer per employee due to the proposed rule: (if not possible to determine, write "Not Possible to Determine.")</i>

3. COST-BENEFIT ANALYSIS

The Agency has taken steps to minimize the adverse impact on jobs and the development of new employment opportunities before proposing a rule. See the following Cost-Benefit Analysis:

No other less intrusive or less expensive method exists for achieving the purpose of the proposed rules. The rule updates are identical to the federal regulations, and do not impose any regulations on Iowa businesses not already required by federal law.

4. FISCAL IMPACT

Please see the Fiscal Impact Statement for an identification and description of costs the Department anticipates state agencies, local governments, the public, and the regulated entities, including regulated businesses and self-employed individuals, will incur from implementing and complying with the proposed rule.

5. PREAMBLE

The information collected and included in this Jobs Impact Statement must be included in the preamble of the proposed rule, written in paragraph form. For rules that have no impact on jobs (see the first box in number 2 above), the following statement must be included in the preamble: "After analysis and review of this rulemaking, no impact on jobs has been found."

Administrative Rule Fiscal Impact Statement

Agency: Environmental Protection Commission (Commission) / Department of Natural Resources (Department)

IAC Citation: 567 IAC Chapters 20, 22, 23, and 25

Agency Contact: Christine Paulson, 515-725-9510; christine.paulson@dnr.iowa.gov

Summary of the Rule: The proposed rulemaking adopts updated and mandatory federal new source performance standards (NSPS) and air toxics standards (NESHAP) to ensure that the Department continues to be a delegated authority under the federal Clean Air Act. This allows the Department, rather than the EPA, to be the primary compliance and implantation agency in this state.

Fill in this box if impact meets these criteria:

No Fiscal Impact to the State.

Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.

Fiscal Impact cannot be determined.

Brief Explanation: The Department will use existing budget and resources to implement the rule.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	Year 1 (FY)	Year 2 (FY)
Revenue by Each Source:		
GENERAL FUND	\$0	\$0
FEDERAL FUNDS	\$0	\$0
Other (specify)	\$0	\$0
TOTAL REVENUE	\$0	\$0
Expenditures:		
GENERAL FUND	\$0	\$0
FEDERAL FUNDS	\$0	\$0
Other (specify) Air Contaminant Fee	\$0	\$0
TOTAL EXPENDITURES	\$0	\$0

NET IMPACT

This rule is required by State law or Federal mandate.

Please identify the state or federal law: The changes will implement Iowa Code sections 455B.133 and 455B.134, as well as the United States Clean Air Act sections 110 (42 USC § 7410), 111 (42 USC § 7411), 112 (42 USC § 7412), and 501-507 (42 USC § 7661 - § 7661f).

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change: The Department will use existing resources to implement the proposed rules.

Fiscal impact to persons affected by the rule: After analysis and review, the Department has determined that the proposed amendments will have an overall neutral fiscal impact on the private sector. Some of the rules may ultimately benefit the private sector because they streamline current air quality programs and allow for more operational flexibility. Affected businesses and the public benefit from up-to-date air quality requirements and increased effectiveness. Other rules may result in an unquantifiable fiscal impact; however, because these are mandatory federal standards, and any such impact would originate at the federal level. Please refer to Table 1 and Table 2 in the attached Notice of Intended Action for more information on the specific NESHAP proposed for adoption.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6): Linn County and Polk County have state-approved local air quality programs, and would likely adopt changes to their ordinances and procedures that match any changes to state rules. If a city or county government were subject to the air quality rules being amended, the local governments would be affected in the same manner as described above for industries and businesses.

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

ITEM 7 DECISION

TOPIC **Adopted and Filed - Chapter 50-52, 70-73 – Dam Safety Rules Update**

The Commission is requested to approve this Adopted and Filed rule to update 567 Iowa Administrative Code Chapters 70-73 and Chapters 50-52 in regards to the implementation of the state’s dam safety program.

This Adopted and Filed rule updates Iowa’s nearly 30-year-old dam safety rules and consolidates regulations governing dam approval, construction, maintenance, and inspections. These were formerly scattered across four administrative code chapters (567—70, 71, 72, and 73), as well as in one rule-referenced technical bulletin. They will now be mostly housed together in new 567—Chp. 73.

The Adopted and Filed rule will also streamline water storage permits involving the use of a dam (*i.e.*, to establish a new pond or lake). Previously, this required two separate permit applications to two different programs (water supply and floodplains), and touched on four different administrative code chapters (567—50, 51, 52, and former Chp. 73). The Adopted and Filed rule consolidates this process into one administrative code chapter (new 567--Chp. 73), and will require only one application and one approval process for both permits.

Strategic rule rescissions and amendments are included in this consolidation effort. For example, dam size thresholds subject to the Department’s oversight are being simplified to make it easier to know when permits are required. Formerly prescriptive design standards are being relaxed. Dams designated as “high hazard,” which are those likely to cause loss of life in the event of a failure, will now be required to have an Emergency Action Plan to mitigate risk. Finally, certain updates to the inflow design storm requirements have also been made. These two changes in particular bring Iowa’s dam regulations up to national standards and reflect best management practices.

Public comments were received regarding providing dam owners notice before inspections and allowing an exception to the requirement that designs be certified by engineers licensed in Iowa for engineers working for the United States government (*i.e.* NRCS engineers). Both of these suggestions were incorporated into the rules. More details of the comments and rule changes are provided under the *Public Comment and Changes to Rule Making* section.

Timeline:

- Starting in 2017, program staff convened a Technical Advisory Committee to discuss rules and proposed improvements to existing rules. This group met 4 times between 2017 and 2018.
- A draft of these proposed rule changes was distributed for stakeholder input on August of 2018.
- Feedback and review progressed until October of 2020, when the draft rules were sent to the Governor’s office for preapproval.
- The Notice of Intended Action was approved by the EPC on May 18, 2021, and was published on June 16, 2021.
- Written comments were accepted through July 13, 2021 with a public hearing held on July 12, 2021.
- The anticipated effective date will be September 29, 2021.

Jonathan Garton, Supervisor
Flood Plain and Dam Safety Section, Land Quality Bureau
Environmental Services Division

July 27, 2021

Adopted and Filed Attachments – Final Rule

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Rule making related to dams and water storage permitting

The Environmental Protection Commission (Commission) hereby amends Chapter 50, “Scope of Division—Definitions—Forms—Rules of Practice,” Chapter 51, “Water Permit or Registration—When Required,” Chapter 52, “Criteria and Conditions for Authorizing Withdrawal, Diversion and Storage of Water,” Chapter 70, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 71, “Flood Plain or Floodway Development—When Approval Is Required,” and Chapter 72, “Criteria for Approval,” rescinds existing Chapter 73, “Use, Maintenance, Removal, Inspections, and Safety of Dams,” and adopts a new Chapter 73, “Approval, Construction, Use, Maintenance, Removal, Inspections, and Safety of Dams,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 455B.275(9), 455B.276(1) and 455B.278.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.262, 455B.264, 455B.265, 455B.267, 455B.268, 455B.270, 455B.271, 455B.275 and 455B.278.

Purpose and Summary

Until adoption of these rules, the regulation of dams was located in seven different Iowa Administrative Code chapters. This rule making reduces and consolidates these administrative rules to ease administrative and regulatory burdens on dam owners and consultants.

Simultaneously, this rule making updates the rules to make them consistent with national standards and best management practices.

More specifically, this rule making consolidates rules governing dam approval, construction, maintenance, and inspections. Formerly, these rules were scattered across four Iowa Administrative Code chapters (Chapters 70, 71, 72, and 73), as well as included in one rule-referenced technical bulletin. The rules are now located in large part in new Chapter 73, and almost all rules regarding dam safety from the previous seven Iowa Administrative Code chapters are now in new Chapter 73.

This rule making also streamlines water storage permits involving the use of a dam (i.e., to establish a new pond or lake). Previously, this process required two separate permit applications to two different programs (water supply and floodplains) and touched on four different Iowa Administrative Code chapters (Chapters 50, 51, 52, and 73). The rule making consolidates this process into one chapter (new Chapter 73) and requires only one application and one approval process to obtain both permits.

Strategic rule rescissions and amendments are included in this consolidation effort. For example, dam size thresholds subject to the Department of Natural Resources' (Department's) oversight are being simplified to make it easier to know when permits are required. Prescriptive design standards have been relaxed. Dams designated as "high hazard," which are those likely to cause loss of life in the event of a failure, will now be required to have an emergency action plan to mitigate risk. Finally, certain updates to the inflow design storm requirements have been made. These two changes in particular bring Iowa's administrative rules on dams up to national standards and reflect best management practices.

Public Comment and Changes to Rule Making

The Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5677C**.

A public hearing was held on July 12, 2021, at 2pm via teleconference. A representative of the Iowa Farm Bureau Federation (IFBF) attended but did not provide oral comments.

Written comments were received by the IFBF. Two revisions to the rules were requested, both of which have been addressed as explained below.

First, IFBF stated that “proposed rule 73.10(8)(i) requires the department to include a permit condition which gives the department access to the dam site for inspections. The rule does not set any limitations on government access to private property.” The commenter requested that reasonable limitations be placed on dam site access.

Second, IFBF stated “subrule 73.10(2) requires the preliminary application packet to be prepared by or under the supervision of an Iowa licensed profession engineer. Subrule 73.10(4) requires the final submittal of engineering plans to be certified by a professional engineer licensed in the state of Iowa. Many conservation structures, such as channel stabilization, constructed wetlands, sediment control basins and farm ponds, are designed by the Natural Resources Conservation Service (NRCS) each year. The NRCS employees assisting with the design and permit application may or may not be professional engineers licensed in the state of Iowa, but these federal employees are working from NRCS design standards. We recommend that the rules allow for the preliminary and final submission to be prepared by an NRCS qualified staff person or an Iowa licensed professional engineer.”

Based on the above comments, the Commission has modified the following rules:

73.10(2) *Preliminary application packet.* The preliminary application packet includes the joint application form and requires submittal of preliminary design data prepared by or under

supervision of a professional engineer licensed in the state of Iowa or by an engineer working for the United States government. The preliminary design data packet shall contain a report summarizing the preliminary design, hydrologic data and reservoir routing, a hazard potential analysis, preliminary design drawings, the soils and geotechnical engineering analysis, and a list of the engineering references used as the basis for design and construction.

73.10(4) *Final submittal*. After the department's review of and concurrence with the preliminary submittal, the engineering plans and other engineering information shall be certified by a professional engineer licensed in the state of Iowa unless prepared by an engineer working for the United States government and submitted with the following information:

73.10(8)(i) i. *Postconstruction department inspections*. A department approval which authorizes construction or modification, operation, and maintenance of a dam for which ongoing inspections are required by these rules shall include a condition stating that the department shall have access to the dam site for such inspections at a reasonable time after notification of the dam owner.

Adoption of Rule Making

This rule making was adopted by the Commission on August 17, 2021.

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

This rule is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on September 29, 2021.

The following rule making action is adopted:

ITEM 1. Amend paragraph **50.4(1)“a”** as follows:

a. Application for approval of a new withdrawal, diversion or storage of water unrelated to the use of an agricultural drainage well. For withdrawals ~~;~~ or diversions ~~;~~ or storage of water unrelated to the use of an agricultural drainage well, a request for a new permit as distinguished from modification or renewal of an existing permit shall be made on Form ~~16 (542-3106)~~ 542-3106. An application form must be submitted by or on behalf of the owner, lessee, easement holder or option holder of the area where the water is to be withdrawn, diverted ~~or stored~~, and used. An application must be accompanied by a map portraying the points of withdrawal or diversion ~~and storage~~, and the land on which water is to be used oriented as to section, township, and range. One application normally will be adequate for all uses on contiguous tracts of land. Tracts of land involved in the same operation separated only by roads or railroads will be deemed contiguous

tracts. For water storage permits, applications will be made in conjunction with dam construction permits as required in rule 567—73.10(455B).

ITEM 2. Rescind and reserve rule **567—51.2(455B)**.

ITEM 3. Rescind and reserve rule **567—52.20(455B)**.

ITEM 4. Amend rule **567—70.2(455B,481A)**, definition of “Dam,” as follows:

“*Dam*” means ~~a barrier which impounds or stores water~~ the same as defined in rule 567—73.2(455B).

ITEM 5. Rescind the definitions of “Height of dam,” “Low head dam” and “Major dam structure” in rule **567—70.2(455B,481A)**.

ITEM 6. Amend rule 567—71.3(455B) as follows:

567—71.3(455B) Dams. Approval by the department for construction, ~~operation, or maintenance~~ of a dam in the floodway or flood plain of any water source shall be required when the dimensions and effects of such dam exceed the thresholds established by this rule repair, or modification of any dam shall be required when the dam exceeds the thresholds under rule 567—73.3(455B). Other structures across a stream may require approval under rule 567—71.12(455B). ~~EXCEPTION: Public road embankments with culverts which impound water only in temporary storage are exempt from the requirements of this rule and shall be reviewed under rules 567—71.1(455B) and 567—72.1(455B).~~ Approval required by this rule shall be coordinated with approval for storage of water required by 567—Chapter 51. Approval by the department shall be required in the following instances:

71.3(1) Rural areas. In rural areas:

~~a. Any dam designed to provide a sum of permanent and temporary storage exceeding 50~~

~~acre-foot at the top of dam elevation, or 25 acre-feet if the dam does not have an emergency spillway, and which has a height of 5 feet or more.~~

~~*b.* Any dam designed to provide permanent storage in excess of 18 acre-feet and which has a height of 5 feet or more.~~

~~*c.* Any dam across a stream draining more than 10 square miles.~~

~~*d.* Any dam located within 1 mile of an incorporated municipality, if the dam has a height of 10 feet or more, stores 10 acre-feet or more at the top of dam elevation, and is situated such that the discharge from the dam will flow through the incorporated area.~~

~~**71.3(2) Urban areas.** Any dam which exceeds the thresholds in 71.3(1) “a,” “b” or “d.”~~

~~**71.3(3) Low head dams.** Any low head dam on a stream draining 2 or more square miles in an urban area, or 10 or more square miles in a rural area.~~

~~**71.3(4) Modifications to existing dams.** Modification or alteration of any dam or appurtenant structure beyond the scope of ordinary maintenance or repair, or any change in operating procedures, if the dimensions or effects of the dam exceed the applicable thresholds in this rule. Changes in the spillway height or dimensions of the dam or spillway are examples of modifications for which approval is required.~~

~~**71.3(5) Mill dams.** Rescinded IAB 2/20/91, effective 3/27/91.~~

~~**71.3(6) Maintenance of preexisting dams.** Approval shall be required to maintain a preexisting dam as described in 567—Chapter 73 only if the department determines that the dam poses a significant threat to the well-being of the public or environment and should therefore be removed or repaired and safely maintained. Preexisting dams are subject to the water, air and waste management dam safety inspection program as set forth in 567—Chapter 73.~~

This rule is intended to implement Iowa Code sections 455B.262, 455B.264, 455B.267,

455B.275 and 455B.277.

ITEM 7. Rescind and reserve rule **567—72.3(455B)**.

ITEM 8. Adopt the following **new** subrule 72.11(3):

72.11(3) *Structures or materials across a channel.* The following criteria shall apply to structures or materials such as riprap that span the channel of a stream or river and do not meet the thresholds of rule 567—73.3(455B):

a. The location and design of the structure shall not adversely affect the fisheries or recreational use of the stream.

b. The pool created by the structure shall not adversely affect drainage on lands not owned or under easements by the applicant.

c. The structure shall be hydraulically designed to submerge before bankfull stage is reached in the stream channel in order that increased or premature overbank flooding does not occur. Where this cannot be reasonably accomplished in order for the structure to fulfill its intended purpose, the applicant shall demonstrate that any increased flooding will affect only lands owned or controlled by the applicant.

d. For projects that include significant appurtenant structures or works outside the stream channel, the combined effect of the total project shall not create more than one foot of backwater during floods which exceed the flow capacity of the channel, unless the proper lands, easements, or rights-of-way are obtained.

e. The structure shall be capable of withstanding the effects of normal and flood flows across its crest and against the abutments with erosion protection added as required to prevent failure of the structure during flood events.

ITEM 9. Rescind 567—Chapter 73 and adopt the following **new** chapter in lieu thereof:

CHAPTER 73

APPROVAL, CONSTRUCTION, USE, MAINTENANCE, REMOVAL, INSPECTIONS, AND
SAFETY OF DAMS

DIVISION I

SCOPE AND DEFINITIONS

567—73.1(455B) Scope and applicability. The department regulates the storage of water and the construction and maintenance of dams. Any person who desires to construct, repair, modify, abandon, or remove a dam has a responsibility to determine whether approval is required from the department prior to undertaking any such work.

567—73.2(455B) Definitions.

“Abandonment” means to render a dam nonimpounding by dewatering and filling the reservoir created by that dam with solid materials and by diverting the natural drainage around the site.

“Acre-foot” means a volume of water that would cover one acre of land one foot deep, equal to 43,560 cubic feet of water.

“Adverse consequences” means negative impacts that may occur upstream, downstream, or at locations remote from the dam. The primary concerns are loss of human life, economic loss including but not limited to property damage, public damages, disruption of public utilities, and environmental impact.

“Appurtenant structures” means structures such as spillways, either in the dam or separate therefrom; the reservoir and its rim; low-level outlet works; and water conduits such as tunnels, pipelines, or penstocks, occurring through either the dam or its abutments.

“Auxiliary spillway” means any secondary spillway that is designed to be operated

infrequently.

“*Confinement feeding operation*” means the same as defined in rule 567—65.1(459,459B).

“*Dam*” means a barrier that impounds or stores water.

“*Dam owner*” means any person who owns, controls, operates, maintains, or manages a dam.

“*Hazard potential*” means a classification based on the possible incremental adverse consequences that result from the release of water or stored contents due to a failure or misoperation of the dam or appurtenances. The hazard potential classification of a dam does not reflect in any way on the current condition of the dam and its appurtenant structures (e.g., safety, structural integrity, or flood routing capacity).

“*Height of dam*” means the vertical distance from the top of the dam to the natural bed of the stream or water source measured at the downstream toe of the dam or to the lowest elevation of the outside limit of the dam if it is not across a water source.

“*Incremental consequence*” means the difference, under the same conditions (e.g., flood, earthquake, or other event), between the consequences that are likely to occur from the failure or misoperation of the dam and appurtenances as compared to the consequences that are likely to occur without such failure or misoperation.

“*Probable*” means more likely than not to occur; reasonably expected; realistic.

“*Probable maximum flood*” means as defined in rule 567—70.2(455B,481A).

“*Public damages*” means as defined in rule 567—70.2(455B,481A).

“*Q100,*” “*Q50,*” “*Q25,*” “*Q15,*” “*Q10,*” et cetera, means the same as defined in rule 567—70.2(455B,481A).

567—73.3(455B) Regulated dams.

73.3(1) Thresholds. Dams meeting any of the following thresholds shall be regulated by the

department:

a. A dam with a height of at least 25 feet and a storage of 15 acre-feet or more at the top of the dam elevation; or

b. A dam with a storage of 50 acre-feet or more at the top of the dam elevation and a height of at least 6 feet; or

c. A dam that is assigned a hazard potential of high hazard.

73.3(2) Exceptions. Road embankments or driveways with culverts are exempt unless such structure serves, either primarily or secondarily, a purpose commonly associated with dams, such as the temporary storage of water for flood control.

73.3(3) New construction. Before construction begins, approval is required for construction of any dam meeting the thresholds of a regulated dam. The proposed dam must meet the criteria outlined in this chapter.

73.3(4) Existing dams.

a. Approval is required for:

(1) Modification, repair, alteration, breach, abandonment, or removal of any existing dam or appurtenant structure beyond the scope of ordinary maintenance if the height of the dam or storage of the dam exceeds the applicable thresholds in this rule.

(2) Any change in operating procedures if the height of the dam or storage of the dam exceeds the applicable thresholds in this rule.

b. Spillway reconstruction, changes in normal water level, and modification of the dam embankment or spillway are examples of modifications that require approval. The dam must meet the criteria outlined in this chapter. Dams found to be unsafe according to rule 567—73.33(455B) shall be repaired or removed.

73.3(5) Required upgrades. Improvements may be required for existing dams in order to reduce the risk of a dam failure.

a. Existing dams assigned a high hazard potential or significant hazard potential that have been inspected or analyzed and found not to meet the criteria in this chapter will be required to meet the requirements outlined in this chapter for their appropriate hazard potential.

b. Existing dams assigned a low hazard potential that have been inspected or analyzed and found to have a significant hazard potential or high hazard potential shall be required to be upgraded to meet the requirements outlined in this chapter for the appropriate hazard potential.

567—73.4(455B) Assignment of hazard potential. All existing and proposed dams reviewed by the department shall be assigned a hazard potential. Anticipated future land and impoundment use shall be considered in the determination of hazard potential. The hazard potential shall be determined using the following criteria:

73.4(1) Low hazard. A dam shall be classified as “low hazard” if failure of the dam would result in no probable loss of human life, low economic losses, and low public damages.

73.4(2) Significant hazard. A dam shall be classified as “significant hazard” if failure of the dam would result in no probable loss of human life but may damage residential structures or industrial, commercial, or public buildings; may negatively impact important public utilities or moderately traveled roads or railroads; or may result in significant economic losses or significant public damages.

73.4(3) High hazard. A dam shall be classified as “high hazard” if located in an area where failure would result in probable loss of human life.

73.4(4) Consideration of changes affecting hazard potential. In locating the site of a dam and in obtaining easements and rights-of-way, the applicant shall consider the impacts to the hazard

potential of a dam from anticipated changes in land use downstream or adjacent to the impoundment, the operation of the dam, and the potential liability of the dam owner.

73.4(5) *Changes in hazard potential.* Any future changes in downstream land use, development, impoundment use, or critical hydraulic structures shall require a reevaluation of the hazard potential of the dam. If the hazard potential of the dam changes, the dam shall be required to meet all applicable criteria for that hazard potential. This may require additional increases in spillway capacity for the dam. The owner and any other persons responsible for the construction and operation of the dam shall assume all risks for future costs to upgrade a dam in the event there is a change in hazard potential.

567—73.5 to 73.9 Reserved.

DIVISION II

APPROVAL PROCESS

567—73.10(455B) **Review and approval process for dam construction, modification, abandonment, or removal.**

73.10(1) *Application process.* Application materials are provided by the department. The application shall be submitted by or on behalf of the person or persons who will be the future dam owner or owners. The application shall be signed by the applicant or a duly authorized agent. Completed applications along with supporting information shall be submitted to the department through an online application system or mailed to Iowa Department of Natural Resources, Attn: Joint Application, 502 East 9th Street, Des Moines, Iowa 50319. For dam repairs, abandonment, or removal, the department may waive the requirements of the application process outlined in this rule if the requirements are unnecessary for the application approval or if the dam has been

designated as unsafe and immediate temporary emergency stabilization repairs are required to prevent failure of the dam. Permanent repairs or modifications will require review and approval.

73.10(2) *Preliminary application packet.* The preliminary application packet includes the joint application form and requires submittal of preliminary design data prepared by or under supervision of a professional engineer licensed in the state of Iowa or by an engineer working for the United States government. The preliminary design data packet shall contain a report summarizing the preliminary design, hydrologic data and reservoir routing, a hazard potential analysis, preliminary design drawings, the soils and geotechnical engineering analysis, and a list of the engineering references used as the basis for design and construction.

73.10(3) *Project review.* The department shall review a preliminary application packet and provide feedback or concurrence on the initial design and assumptions. After concurrence with the preliminary application packet and upon reception of the final submittal as required by subrule 73.10(4), the department will review the final submittal and issue a decision based on if the project meets criteria for approval outlined in this chapter.

73.10(4) *Final submittal.* After the department's review of and concurrence with the preliminary submittal, the engineering plans and other engineering information shall be certified by a professional engineer licensed in the state of Iowa unless prepared by an engineer working for the United States government and submitted with the following information:

- a. One complete set of certified construction plans;
- b. One complete set of construction specifications;
- c. An operating plan, if required;
- d. Easements, if required;
- e. For high hazard dams, an emergency action plan; and

f. An engineering design report documenting all aspects of the design of the dam and how the design of the dam meets the criteria outlined in this chapter. The engineering design report shall include the following: hazard potential analysis; hydrology and hydraulic calculations; embankment design and foundation analysis; and structural calculations, where applicable.

73.10(5) *Public notice.* Public notice shall be issued by the department to inform persons who may experience adverse consequences by the permitted project. Adverse consequences may occur through maintenance of the dam and appurtenant structures, spillway discharges, temporary ponding of floodwater behind the dam, or failure of the dam. It is the applicant's responsibility to submit sufficient information with the preliminary application packet and on request to enable the department to accurately identify the owners, occupants, and addresses of affected lands.

73.10(6) *Project approval or disapproval.*

a. Approval. Issuance of a dam construction permit shall constitute approval of a project. The permit may include one or more special conditions when reasonably necessary to implement relevant criteria.

b. Disapproval. A letter to the applicant denying the application shall constitute disapproval of a project.

c. Notice of decision. Copies of the decision shall be mailed or electronically transmitted to the applicant and any person who commented.

73.10(7) *Appeal of decision.* Any person aggrieved by a decision issued under these rules may file a notice of appeal as governed by 567—Chapter 7.

73.10(8) *General conditions.* Department approvals of a project shall be subject to the following conditions:

a. Change in ownership. The dam owner and any successor in interest to the real estate on

which the project or activity is located shall be responsible for notifying the department of change in ownership.

b. Maintenance. The dam owner has a responsibility to maintain the dam and appurtenant structures in a safe condition. Maintenance shall include keeping earthen portions of the dam well vegetated, keeping trees and brush off the dam, preventing and repairing erosion, keeping the spillway free of obstructions, repairing deteriorated structural elements, and performing required maintenance on mechanical appurtenances such as gates.

c. Responsibility. No legal or financial responsibility arising from the construction or maintenance of the approved works shall attach to the state of Iowa or the department due to the issuance of an approval or administrative waiver.

d. Lands. The applicant shall be responsible for obtaining such government licenses, permits, and approvals, and lands, easements, and rights-of-way which are required for the construction, operation, and maintenance of the authorized work.

e. Change in plans. No material change from the plans and specifications approved by the department shall be made unless authorized in writing by the department.

f. Revocation of permit. A department permit may be revoked if construction is not completed within the period of time specified in the department permit.

g. Performance bond. A performance bond may be required when necessary to secure the construction, operation, and maintenance of approved projects and activities in a manner that does not create a hazard to the public's health, welfare, and safety. The amount and conditions of the bond shall be specified as special conditions in the department permit.

h. Construction inspection. For high hazard and significant hazard dams, construction shall be inspected by or under the supervision of a professional licensed engineer in the state of Iowa.

The engineer shall prepare and certify as-built plans after completion and a report documenting that the dam was constructed in general conformance with the approved plans (or approved changes) and outlining unusual circumstances encountered during construction. The water storage permit shall not be issued until the department accepts the as-built plans and report.

i. Postconstruction department inspections. A department approval which authorizes construction or modification, operation, and maintenance of a dam for which ongoing inspections are required by these rules shall include a condition stating that the department shall have access to the dam site for such inspections at a reasonable time after notification of the dam owner.

j. Owner inspections. For high hazard and significant hazard dams, the owner is responsible for annual inspections and submission of written inspection reports to the department as required in subrule 73.30(4).

567—73.11(455B) Water storage permits.

73.11(1) A water storage permit shall be required for all regulated dams in order to legally impound water. No water shall be impounded by a dam or reservoir prior to issuance of a water storage permit.

73.11(2) Application for a dam construction permit shall constitute application for a water storage permit if the appropriate fee (as stated in 567—subrule 50.4(2)) is received with the application.

73.11(3) A water storage permit shall be issued upon a finding by the department that the dam and reservoir are safe to impound water within the conditions prescribed in the dam construction permit and the project meets the following conditions:

a. The proposed storage is for a specified beneficial use such as human or livestock water supply, flood control, water quality, recreation, aesthetic value, erosion control, or low-flow

augmentation.

b. The impounding structure can be operated in a manner which will not adversely affect any applicable protected flow in the impounded stream. Protected flows are listed in 567—Chapter 52.

c. For high hazard and significant hazard dams, the water storage permit will not be issued until as-built plans and a construction report have been submitted documenting that the dam has been constructed in general conformance with the approved plans and conditions of the dam construction permit and until the department has conducted an inspection of the dam.

73.11(4) A water storage permit may be modified, canceled, or suspended pursuant to Iowa Code section 455B.271. Conditions of cancellation or suspension of water storage permits shall include draining the lake with any available low-level drain and may include dewatering with other methods or breaching of the dam.

567—73.12 to 73.14 Reserved.

DIVISION III

CRITERIA FOR APPROVAL

567—73.15(455B) General criteria.

73.15(1) *Required findings.* The department shall approve the construction, repair, modification, abandonment, or removal of a dam only after finding that the project is designed in accordance with accepted engineering practice and methods, and in a manner consistent with the applicable department criteria in this rule.

73.15(2) *Waiver.* A request for a waiver to this chapter shall be submitted in writing pursuant to 561—Chapter 10. The contents of a petition for waiver shall include information pursuant to rule 561—10.9(17A,455A).

567—73.16(455B) Lands, easements, and rights-of-way. An application for approval of a dam project shall include information showing the nature and extent of lands, easements, and rights-of-way that the applicant has acquired or proposes to acquire to satisfy the following criteria:

73.16(1) Ownership or perpetual easements shall be obtained for the area to be occupied by the dam embankment, spillways, and appurtenant structures, and the permanent or maximum normal pool.

73.16(2) Ownership or easements shall be obtained for temporary flooding of areas that would be inundated by the flood pool up to the top of dam elevation and for spillway discharge areas.

73.16(3) Easements covering areas affected by temporary flooding or spillway discharges shall include provisions prohibiting the erection and usage of structures for human habitation or commercial purposes without prior approval by the department.

73.16(4) As a condition of granting approval of a dam rated less than high hazard, the applicant may be required to acquire control over lands downstream from the dam as necessary to prevent downstream development which would affect the hazard classification of the dam.

567—73.17(455B) Emergency action plans for high hazard dams.

73.17(1) *Emergency action plan required.* All high hazard rated dams shall be required to have an approved emergency action plan on file with the department. The plan shall include the following:

- a. A statement of purpose;
- b. A project description;
- c. An emergency response process;
- d. An emergency notification plan with flowchart;
- e. Responsibilities of all parties;

- f. A list of emergency preparedness and plan maintenance activities; and
- g. Inundation maps or another acceptable description of the inundated area.

73.17(2) *Emergency action plan maintenance.* The owner of the dam shall keep the emergency action plan up to date. Contact information shall be verified in the plan at least once a year, and an exercise shall be performed at least every five years. The owner of the dam shall keep an up-to-date copy of the emergency action plan on file with the department and with the local county emergency manager.

567—73.18(455B) Encroachment on a confinement feeding operation structure. A dam shall not be constructed or modified so that the ordinary high water of the lake, pond, or reservoir created by the dam is closer than the following distances from a confinement feeding operation structure unless a secondary containment barrier according to 567—subrule 65.15(17) is in place. Measurement shall be from the closest point of the confinement feeding operation structure to the water edge of the lake, pond, or reservoir for a pool level at the elevation of the crest of the auxiliary spillway or at the top of dam elevation if the dam does not have an auxiliary spillway.

73.18(1) The minimum separation between a water source other than a major water source and a confinement feeding operation structure is 500 feet.

73.18(2) The minimum separation between a major water source and a confinement feeding operation structure is 1,000 feet or such distance that the structure is not located on land that would be inundated by Q100, whichever is greater.

567—73.19(455B) Hydrologic and hydraulic criteria.

73.19(1) *Hydrology and hydraulic calculations.* Hydrology and hydraulic calculations shall be submitted in the design report documenting the methods and analysis followed in modeling software selection, inflow design hydrograph determination, and reservoir routing. The hydrology

and hydraulics section of the design report shall include design references, inflow hydrograph, reservoir stage storage, and stage discharge curves and clearly identify peak inflows, peak discharges, and reservoir elevations for the design floods.

73.19(2) Design floods. The specified freeboard design floods in the table below shall be passed without overtopping of the dam or the dam shall be designed to withstand such overflow. The specified spillway design flood in the table below shall be passed by the principal spillway without need for operation of an auxiliary spillway unless the auxiliary spillway is designed such that erosion is not expected during operation.

Hazard Potential	Freeboard Design Flood	Spillway Design Flood
Low Hazard	Q100	Q10
Significant Hazard	Q1000	Q50
High Hazard	Probable Maximum Flood	Q100

73.19(3) Precipitation amounts. The National Oceanic and Atmospheric Administration's NOAA Atlas 14, Precipitation-Frequency Atlas of the United States, Volume 8, Version 2.0, dated 2013, shall be used for the Q10–Q1000 frequency storm events. NOAA Hydrometeorological Report No. 51, Probable Maximum Precipitation Estimates, United States, East of the 105th Meridian, dated 1978, shall be used for the probable maximum precipitation.

73.19(4) Spatial and temporal rainfall distributions and storm durations. The design report shall document the sources and methodologies for inflow hydrograph development. Distributions and durations that produce the highest impoundment water level shall be used for design.

73.19(5) Spillway discharge capacity. The spillway discharge capacity shall be sufficient to evacuate at least 80 percent of the volume of water temporarily stored during the principal spillway

design flood within ten days. If this cannot be accomplished, the auxiliary spillway and freeboard design flood routings shall be made beginning with the impoundment level at the ten-day drawdown elevation.

73.19(6) Incremental consequence analysis. An inflow design flood based on an incremental consequence analysis may be developed and submitted to the department for review as an alternative to the design floods stated in subrule 73.19(2). The design flood selected using incremental consequence analysis is the flood above which there is a negligible increase in downstream water surface elevation, velocity, and consequences due to failure of the dam when compared to the same flood without failure. If the department concurs with the analysis, the freeboard design storm may be reduced. The minimum design flood for a high hazard dam shall be Q500. The minimum design flood for low hazard and significant hazard dams shall be Q100.

567—73.20(455B) Spillway design requirements.

73.20(1) Spillways shall be designed to operate safely for the life of the structure and at the discharges and pressures that would be experienced under all flow conditions, including the freeboard design flood.

73.20(2) Spillways shall be provided with a means of piping and seepage control (e.g., drainage diaphragms), antivortex devices, trash racks, or other inlet debris control measures, and stable outlets capable of handling design exit flow velocities.

73.20(3) When a conduit is proposed to be used in a high hazard or significant hazard dam, detailed hydraulic, hydrologic, and structural computations supporting selection of the size and type of pipe to be used shall be provided by the applicant.

73.20(4) Detailed drawings and specifications relating to the installation of the pipe shall include, but not be limited to: construction measures that adequately address critical load bedding,

backfill, compaction, joints, and seepage precautions related to installation of the pipe.

73.20(5) Structural computations and drawings shall be submitted for all proposed concrete structures. Drawing details, as necessary, shall be provided showing reinforcement, cutoffs, underdrains/filters, waterstops, construction joints, control joints, and any other details necessary to construct.

73.20(6) If an auxiliary spillway is proposed, it shall be analyzed, designed, and constructed adequately to establish and maintain stability during the passage of design flows without blockage or breaching. Open-channel auxiliary spillways shall have a minimum depth of 2 feet and minimum width of 10 feet and be designed with appropriate curvature and slopes to prevent excessive erosion.

73.20(7) A gated low-level outlet shall be provided for high hazard and significant hazard dams. The gated low-level outlet shall be capable of draining at least 50 percent of the permanent storage behind the dam within ten days. The pipe conduit shall be designed so that negative pressures will not occur at any point.

567—73.21(455B) Embankment design requirements.

73.21(1) The applicant shall document the engineering standards and design references used for dam embankment design. Drawing details, as necessary, shall be provided showing embankment slopes, required additional fill for anticipated settlement, top width, foundation preparation, core trench or cutoff wall, fill materials and methodology, internal seepage controls, and embankment erosion protection.

73.21(2) A geotechnical report shall be submitted for high hazard and significant hazard dams documenting the evaluation of slope stability requirements, anticipated vertical settlement and horizontal elongation, seepage and underseepage potential, whether cathodic protection is needed

for metal pipes, and proper construction practices for the soil types and conditions encountered. A stability evaluation shall include end-of-construction, steady-state seepage and sudden-drawdown conditions.

567—73.22(455B) Operating plan. A written operating plan shall be prepared for any dam with gates or other movable structures that must operate or be operated during times of flood or to provide a minimum downstream release rate. Development of the operating plan is considered part of the design process. An operating plan shall include, at a minimum, the following items:

73.22(1) Responsibility. The operating plan shall outline and identify the necessary personnel who will be present to operate the equipment or, in the case of automatic equipment, to monitor it and ensure it is functioning properly.

73.22(2) Operating circumstances. The circumstances under which operation must occur shall be clearly defined, and a means shall be provided to ensure that operating personnel are present when necessary.

73.22(3) Method of operation. The means and methods by which operation is to be conducted shall be clearly defined and shall include, at a minimum, the following items: rates and sequences for opening or closure of gates, target water levels, and target flow rates.

73.22(4) Flood capacity. The operating plan shall allow for safe passage of all floods up to and including the freeboard design flood. Flood discharges through the dam greater than the design peak flood inflows into the impoundment shall not be permitted.

73.22(5) Low flow. The operating plan shall address low flow situations and shall specify a minimum release rate if required by the department and how the minimum release will be provided and maintained.

73.22(6) Equipment. Consideration shall be given to and allowance made for the possible

failure of or malfunctioning of the equipment.

73.22(7) Discharge measurement. A means shall be provided to determine the discharge through the control structures, especially where operation is to maintain a minimum downstream flow. Stage discharge tables, streamflow gages or other means of obtaining discharge readings shall be provided. The settings of control structures shall be easily read.

567—73.23(455B) Removal and abandonment of dams. Removal is the draining of the impoundment and removal of all or a significant portion of the embankment. A dam may be abandoned by rendering a dam nonimpounding by dewatering and filling the reservoir with solid materials and by diverting the natural drainage around the site.

73.23(1) Removal requirements. A dam removal project shall meet all of the following requirements:

a. The dam removal plan shall clearly show removal limits and will demonstrate how the proposed construction will render the dam height and storage below thresholds in rule 567—73.3(455B);

b. An impoundment dewatering plan shall be submitted that documents how the water will be released in a controlled manner and not cause upstream erosion or pose a flooding risk downstream;

c. A dam breach plan shall be submitted that demonstrates how the breach process will not pose an increased risk compared to the existing structure; and

d. A sediment disposition plan shall be submitted that provides for stabilization, release, or removal of stored sediment and shall demonstrate no significant adverse consequences on fish and wildlife habitat downstream from the proposed construction.

73.23(2) Abandonment requirements. An abandonment plan shall be submitted documenting

the final site stabilization, evidence that the structure will no longer impound water or waterborne materials that would be released in the event of a dam failure, and evidence that the structure will not store water above the thresholds outlined in this chapter.

567—73.24 to 73.29 Reserved.

DIVISION IV

DAM OWNERSHIP, INSPECTIONS, AND ENFORCEMENT

567—73.30(455B) Dam owner responsibilities.

73.30(1) *Operation and maintenance required.* The intent to permanently cease or cause to cease all acts of construction, operation, and maintenance of a dam is prohibited. If any person wishes to be relieved of the responsibilities inherent in the ownership or control of a dam structure, those responsibilities shall be undertaken by another person through sale, transfer, or other means or the dam shall be removed.

73.30(2) *Dam maintenance.* The dam owner shall be required to maintain the dam and appurtenant structures in a safe condition. Maintenance shall include, but not be limited to, keeping earthen portions of the dam well vegetated, keeping trees and brush off the dam, preventing and repairing erosion, keeping spillways and drains free of obstructions, repairing structural deterioration, and performing required maintenance on mechanical appurtenances such as gates. The dam owner shall perform regular inspections to identify potential maintenance problems.

73.30(3) *Dam repairs.* The dam owner shall arrange for performance of engineering investigations when needed to evaluate potential safety problems. The dam owner shall perform any required repairs. When the department determines the need for follow-up inspections, the dam owner may be required to have a qualified person make inspections and prepare written inspection

reports at specified intervals.

73.30(4) *Maintenance inspections by dam owner.* The dam owner of a high hazard or significant hazard structure shall be responsible for annual inspections and submission of written inspection reports. Annual inspection reports are due to the department on or before December 1.

Inspection reports shall include:

- a. Maintenance work done since the previous annual report;
- b. Observed deficiencies on the dam or appurtenant structures;
- c. Remedial measures necessary and the method and schedule the dam owner proposes to correct the deficiencies found; and
- d. Changes in land use downstream of the dam.

567—73.31(455B) Dam safety inspection program.

73.31(1) *Scope of dam safety inspection program.* Dams subject to inspection under these rules are regulated dams as defined in this chapter. The scope of department staff field inspections normally is limited to visually observable features of dams and their appurtenant structures.

73.31(2) *Purpose of dam safety inspection program.* The general purposes of inspections are as follows: to evaluate the construction, operation, and maintenance of dams; to identify observable deficiencies in dams or appurtenant structures; and to identify other floodplain structures or uses which may affect the hazard potential of a dam or use of an associated impoundment. Inspection reports shall be used by the department in determining whether a proposed dam project complies with applicable criteria and to determine whether any of the following conditions exist:

- a. A permit violation;
- b. A violation of law which requires that a permit be obtained; or

c. A condition which constitutes a public nuisance by causing unacceptable risk of injury to the public health, safety or welfare.

73.31(3) *Inspections of significant hazard and high hazard dam structures.*

a. *Inspection prior to construction.* A field inspection may be made by the department to determine the hazard potential of the dam and verify the location and plan information upon receipt of an application for approval of construction or modification of a dam.

b. *Inspection during construction.* Construction or modification of a dam structure shall be inspected by an engineer licensed in the state of Iowa or by a trained inspector under the supervision of the engineer. After completion of construction or modification of a dam structure, the engineer shall prepare and submit a construction report, as-built plans, and a statement that in the engineer's professional opinion the work was conducted in general conformance with the approved plans and specifications.

c. *Acceptance inspections.* When construction of a dam or modifications thereto is completed, and as-built plans and a construction report have been submitted, the department shall make a field inspection to determine whether visually observable features of the dam and appurtenant structures are consistent with the approved plans and the conditions of the dam construction permit. The department shall thereafter issue the water storage permit or a letter stating that additional work is required for acceptance of construction. Closure of the low-level outlet gate shall not begin until the department has issued the water storage permit.

d. *Periodic inspections after acceptance.* High hazard structures shall be inspected at least once every two years by the department. Significant hazard structures shall be inspected at least once every five years by the department. Structures poorly maintained or those that require repairs identified by the department shall be inspected more frequently until required maintenance and

repairs are completed. The department shall notify the dam owner or agent before each inspection. Each inspection shall assess the condition of the dam and appurtenant structures and the adequacy of operation and maintenance practices. The inspection may include reevaluation of the ability of the dam and appurtenant structures to adequately withstand the hydraulic loadings and pass the appropriate design floods.

73.31(4) *Inspections of low hazard dams.*

a. Preliminary site evaluation. The department may evaluate the site of a proposed dam from maps and aerial photographs in lieu of a field inspection.

b. Inspection during construction. The applicant shall be responsible for providing supervision of construction by a person experienced in the type of construction involved.

c. Inspection of dams with operating plans. Low hazard dams with operating plans shall be inspected by the department at least once every five years. Any problems noted shall be reported to the dam owner in writing.

d. General inspections of low hazard dams. Low hazard dams may be periodically inspected by the department to determine their condition. Any serious problems noted shall be reported to the dam owner in writing.

73.31(5) *Special inspections and investigations.* Special inspections and investigations shall be made by department personnel in the following instances:

- a.* Upon notice or evidence of unauthorized construction;
- b.* Upon notice or evidence that a dam has failed or is in a condition where failure appears likely, and public damages would result from such failure; or
- c.* Upon notice or evidence that the hazard classification of a dam may no longer be valid due to changes in downstream conditions.

73.31(6) *Inspections by others.* At the discretion of the department, an inspection report submitted by a qualified individual may be accepted in lieu of an inspection and report by the department.

73.31(7) *Inspection reports.* The department shall prepare a report of each inspection and provide a copy to the dam owner. The report shall state the deficiencies observed during the inspection. If appropriate, the report shall detail the actions required to address the noted deficiencies.

567—73.32(455B) Raising or lowering of impoundment levels.

73.32(1) *When approval is required.* A separate approval is required to temporarily or permanently raise or lower the normal level of water impounded by a regulated dam unless the raising and lowering has been authorized as part of an approved operating plan. Such approval shall be in the form of a letter authorizing the lowering or raising and may be conditioned upon various requirements.

73.32(2) *Information required for approval.* The applicant shall submit the following information:

a. The date when the raising or lowering will be initiated, the level to which the impoundment will be raised or lowered and, if the raising or lowering is temporary, the anticipated date when the normal water level will be restored; and

b. Evidence that the discharge rate during lowering will not exceed the capacity of the stream channel below the dam.

73.32(3) *Criteria for approval.* The department's review of the raising or lowering of the impoundment includes determining the effects on flooding or flood control for any proposed works and adjacent lands and property, on the wise use and protection of water resources, on the quality

of water, on fish, wildlife, and recreational facilities or uses, and on all other public rights and requirements.

73.32(4) Conditions. Conditions of approving the temporary or permanent raising or lowering of water levels may include:

- a. Giving prior notice to the director of the local county conservation board or local enforcement officer for the department;
- b. Publicizing the lowering locally in order to notify downstream users, persons who have boats or docks on the impoundment and other persons whose use of the impoundment might be affected; and
- c. Maintaining a minimum release rate as determined by the department during refilling.

567—73.33(455B) Unsafe dams.

73.33(1) Procedures for designation of a dam as unsafe.

a. *Department report.* If after inspection or other investigation the department determines that a dam is unsafe, a report shall be prepared. Copies of the report shall be provided to the dam owner and any other person whom the report identifies as responsible for the unsafe condition of the dam. The report shall identify the problems which cause the dam to be unsafe and recommend action to remedy the unsafe condition.

b. *Opportunity for comment.* The department shall provide the dam owner or other responsible person with a reasonable opportunity to comment on the department report considering the degree and imminence of hazard identified in the department report.

73.33(2) Criteria for designating a dam as unsafe. Designation of a dam as unsafe shall be based on one or more of the following findings:

- a. The dam has serious deficiencies in its design, construction, use, maintenance, or physical

condition which would contribute to failure or otherwise increase flood damages;

b. A high hazard or significant hazard dam has inadequate spillway capacity for the size and hazard potential of the dam.

73.33(3) *Department action concerning an unsafe dam.* After completion of the procedures for designating an unsafe dam, the department shall issue an initial decision which may order remedial work depending on the degree and imminence of hazard caused by the unsafe condition. Remedial work may include draining of the impoundment or removal of any structure determined to constitute a public nuisance. Procedures for appealing an initial decision are the procedures in 567—Chapter 7. If the initial decision requires emergency remedial work to abate an imminent danger of failure which would cause significant public damages, the director of the department may request the assistance of the attorney general to seek an appropriate judicial order compelling performance of emergency remedial work.

These rules are intended to implement Iowa Code chapter 455B, division III, part 4.

ENVIRONMENTAL PROTECTION COMMISSION[567]**Notice of Intended Action**

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 116, “Registration of Waste Haulers,” and Chapter 117, “Waste Tire Management,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455D.11(7) and 455D.11I(7).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455D.11A(5) and 455D.11I(6), as amended by 2021 Iowa Acts, House File 560.

Purpose and Summary

Chapters 116 and 117 collectively establish standards for the proper management of waste tires. Specifically, the rules set forth requirements for disposal, collection, storage, processing, and the beneficial use of waste tires. They also require permits, the registration of waste tire haulers, and dictate certain industry fees.

The purpose of this rule making is to align Chapters 116 and 117 with their recently-amended authorizing statutes. Iowa Code sections 455D.11A(5) and 11I(6), as amended by 2021 Iowa Acts, House File 560, made several substantive changes to the waste tire program. The following amendments are proposed, consistent with this legislation:

- Remove pre-1998 financial assurance requirements;
- Increase the amount of financial assurance from \$0.85 to \$2.50 for each tire stored by a waste tire collector and for each tire held for more than three days by a waste tire processor; and,
- Change the bond amount required for waste tire haulers from \$10,000.00 to \$150,000.00.

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa. A copy of the fiscal impact statement is available from the Department of Natural Resources (Department) upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561-Chapter 10.

Public Comment

Any interested person may submit comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 28, 2021. Comments should be directed to:

Mr. Mel Pins
Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: Mel.Pins@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally will be held by conference call as follows. Persons who wish to attend the conference call should contact Mel Pins at mel.pins@dnr.iowa.gov. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Mel Pins prior to the hearing to facilitate an orderly hearing.

September 28, 2021
9 to 10 a.m.

Virtual Meeting / Conference call
Wallace State Office Building

Persons who wish to make oral comment at the hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 116.6(1) as follows:

116.6(1) An application for registration or renewal shall not be approved by the department until the waste tire hauler has provided a bond in the sum of a minimum of ~~\$10,000~~ \$150,000 on a form prescribed by the commissioner of insurance.

ITEM 2. Amend subrule 117.7(2) as follows:

117.7(2) Financial assurance amounts required.

a. Waste tire stockpile sites shall have financial assurance coverage equal to ~~35~~ \$2.50 per waste tire collected and stored ~~prior to July 1, 1998, and 85 cents per waste tire collected and stored on or after July 1, 1998.~~

~~*b.* If the owner or operator of a waste tire stockpile does not have adequate records to determine the time frame within which waste tire inventories were initially collected, then financial assurance amounts shall be determined by allocating the number of tires stored proportionally between the time period the facility has operated before and after July 1, 1998.~~

eb. Waste tire processing sites shall have financial assurance coverage equal to ~~85~~ \$2.50 per waste tire stored above the permitted three-day processing capacity, in accordance with 117.6(3) "b."

Administrative Rules
GOVERNOR'S OFFICE PRECLEARANCE FORM

Agency:	Environmental Protection Commission (Commission) / Department of Natural Resources (Department)	
IAC Citation:	567 IAC Chapters 116 and 117	
Agency Contact:	Mel Pins, 515-729-4616; Mel.Pins@dnr.iowa.gov	
Statutory Authority:	Iowa Code sections 455D.11A(5) and 455D.11I(6); see also sections 455D.11(7) and 455D.11I(7)	
Preclearance Requested Review Deadline:	Friday, July 23, 2021	
<p>Purpose of Proposed Rule: Chapters 116 and 117 collectively establish standards for the proper management of waste tires. Specifically, the rules set forth requirements for disposal, collection, storage, processing, and the beneficial use of waste tires. They also require permits, the registration of waste tire haulers, and dictate certain industry fees.</p> <p>The purpose of this rule making is to align Chapters 116 and 117 with their recently-amended authorizing statutes in Iowa Code sections 455D.11A(5) and 11I(6). 2021 Iowa Acts, House File 560 (signed by Governor Reynolds on March 22, 2021) made several substantive changes to the waste tire program. The following amendments are proposed, consistent with this legislation:</p> <ul style="list-style-type: none"> • Removed pre-1998 financial assurance requirements; • Increased the amount of financial assurance from \$0.85 to \$2.50 for each tire stored by a waste tire collector and for each tire held for more than three days by a waste tire processor; and • Changed the bond amount required for waste tire haulers from \$10,000 to \$150,000. 		
<p>Need for Proposed Rule: The proposed rulemaking is necessary to make the administrative rules consistent with authorizing laws in Iowa Code chapter 455D.</p>		
<p>Summary of Informal Rule making Activities related to the Proposed Rule (e.g., stakeholder input): Stakeholders have been notified of this proposed rule making, but no stakeholder input has been formally solicited. This is because this proposed rulemaking is solely to reflect Iowa Code sections 455D.11A and 11I, as amended by House File 560. These new laws will be effective and binding by July 1 regardless of inconsistencies in the administrative rules. This rulemaking is necessary to update the rules to reflect Iowa Code.</p>		

**Administrative Rules
JOBS IMPACT STATEMENT**

1. BACKGROUND INFORMATION

Agency:	Environmental Protection Commission / Department of Natural Resources (Department)
IAC Citation:	567 IAC Chapters 116 and 117
Agency Contact:	Mel Pins, 515-729-4616; Mel.Pins@dnr.iowa.gov
Statutory Authority:	Iowa Code Sections 455D.11(7) and 455D.11I(7)
Objective:	Align Chapters 116 and 117 with their recently-amended authorizing statutes in Iowa Code sections 455D.11A(5) and 11I(6), as amended by House File 560.
Summary:	<p>This proposed rulemaking will make the following changes, consistent with House File 560:</p> <ul style="list-style-type: none"> • Remove pre-1998 financial assurance requirements; • Increase the amount of financial assurance from \$0.85 to \$2.50 for each tire stored by a waste tire collector and for each tire held for more than three days by a waste tire processor; and • Change the bond amount required for waste tire haulers from \$10,000 to \$150,000.

2. JOB IMPACT ANALYSIS

<input type="checkbox"/> Fill in this box if impact meets these criteria:
<input checked="" type="checkbox"/> No Job Impact on private sector jobs and employment opportunities in the State. (If you make this determination, you must include the following statement in the preamble to the rule: "After analysis and review of this rulemaking, no impact on jobs has been found.")
<p>Explanation:</p> <p>The Department does not anticipate any jobs impact to private industry from this rule. Because this rule is implementing the amended statutes, any jobs impact would originate with the legislation. Nonetheless, the Department does not anticipate any impact. There are currently 20 registered tire haulers in the state. Each hauler will face an additional \$1,200.00/year in operational costs to maintain a \$150,000.00 bond. However, the Department does not anticipate that expense would result in any business closings or staff reductions.</p>
<input type="checkbox"/> Fill in this box if impact meets either of these criteria:
<input type="checkbox"/> Positive Job Impact on private sector jobs and employment opportunities in the State.
<input type="checkbox"/> Negative Job Impact on private sector jobs and employment opportunities in the State.
Description and quantification of the nature of the impact the proposed rule will have on private sector jobs and employment opportunities:
Categories of jobs and employment opportunities that are affected by the proposed rule:
Number of jobs or potential job opportunities:
Regions of the state affected:
Additional costs to the employer per employee due to the proposed rule: (if not possible to determine, write "Not Possible to Determine.")

3. COST-BENEFIT ANALYSIS

The Agency has taken steps to minimize the adverse impact on jobs and the development of new employment opportunities before proposing a rule. See the following Cost-Benefit Analysis:

No other less intrusive or expensive method exists.

4. FISCAL IMPACT

Please see the Fiscal Impact Statement for an identification and description of costs the Department anticipates state agencies, local governments, the public, and the regulated entities, including regulated businesses and self-employed individuals, will incur from implementing and complying with the proposed rule.

5. PREAMBLE

The information collected and included in this Jobs Impact Statement must be included in the preamble of the proposed rule, written in paragraph form. For rules that have no impact on jobs (see the first box in number 2 above), the following statement must be included in the preamble: "After analysis and review of this rule making, no impact on jobs has been found."

Administrative Rule Fiscal Impact Statement

Agency: Environmental Protection Commission / Department of Natural Resources (Department)

IAC Citation: 567 IAC Chapters 116 and 117

Agency Contact: Mel Pins, 515-729-4616; Mel.Pins@dnr.iowa.gov

Summary of the Rule: This proposed rulemaking will make the following changes, consistent with House File 560:

- Remove pre-1998 financial assurance requirements;
- Increase the amount of financial assurance from \$0.85 to \$2.50 for each tire stored by a waste tire collector and for each tire held for more than three days by a waste tire processor; and
- Change the bond amount required for waste tire haulers from \$10,000 to \$150,000.

Fill in this box if impact meets these criteria:

No Fiscal Impact to the State.

Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.

Fiscal Impact cannot be determined.

Brief Explanation:

No fiscal impact to the State is expected from this proposed rule change. No new staff, equipment, or training are necessary to implement these changes.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	Year 1 (FY)	Year 2 (FY)
Revenue by Each Source:		
GENERAL FUND	\$0	\$0
FEDERAL FUNDS	\$0	\$0
Other (specify)	\$0	\$0
TOTAL REVENUE	\$0	\$0
Expenditures:		
GENERAL FUND	\$0	\$0
FEDERAL FUNDS	\$0	\$0
Other (specify) Air Contaminant Fee	\$0	\$0
TOTAL EXPENDITURES	\$0	\$0

NET IMPACT

This rule is required by State law or Federal mandate.

Please identify the state or federal law: Iowa Code sections 455D.11A(5) and 11I(6), as amended by House File 560 (signed by Governor Reynolds on March 22, 2021).

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change: There will be no additional costs to the state as a result of this rule change.

Fiscal impact to persons affected by the rule:

There are currently 20 registered tire haulers who will have the increased cost of approximately \$1,200.00 annually to maintain a \$150,000.00 bond. However, because this change has already been made to Iowa Code, tire processors will need to maintain a \$150,000.00 bond regardless of the language in the administrative rule. Stated differently, the fiscal impact originates with the legislation, not with this rule making.

There are currently no tire collection facilities in Iowa and the Department does not anticipate any in the future. None of Iowa's tire processors store more than three days' processing capacity so they will not be affected by the legislation's increased costs that apply to longer-term storage.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):

There is no fiscal impact to counties or other local governments.

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

9

Decision Item**Contract with Beaver Creek Watershed Management Authority**

Commission approval is requested for a contract with Beaver Creek Watershed Management Authority, of Jefferson, Iowa.

Contract Terms:

Amount: Not to exceed \$490,425

Dates: August 19, 2021 to June 30, 2024.

DNR shall have the option to extend this contract for up to six years from the beginning date of the original contract by executing a signed amendment prior to the expiration of this contract.

Funding Source(s): U.S. EPA – Gulf of Mexico Program (Federal)

Statutory Authority: Funds are administered by DNR under statutory authority granted by Iowa Code section 455B.103.

Contract Background:

This contract provides funding to Beaver Creek Watershed Management Authority (WMA) to implement a Gulf of Mexico Grant awarded to DNR in July 2021. The DNR and the Beaver Creek WMA will work together to demonstrate innovative approaches to increasing long-term adoption of soil health practices, a team approach to scaling up the installation of edge of field practices, and restoration efforts to improve floodplains. Collectively these efforts take a local approach to tackling Iowa's nutrient reduction strategy in a diverse watershed that affects Iowa's most populated metropolitan area.

The Beaver Creek Watershed covers approximately 280 square miles in central Iowa. The footprint of its watershed includes fifteen communities and unincorporated areas within four counties. Beaver Creek generally drains from north to south, to its confluence with the Des Moines River which provides drinking water to over 500,000 people in the Des Moines metro area.

Contract Purpose: The DNR and Beaver Creek WMA are entering into this contract to create mentoring opportunities to increase the adoption of conservation measures and demonstrate new tactics to be applied across the Beaver Creek Watershed. These efforts will positively impact water quality in Iowa streams and ultimately improve water quality in the Gulf of Mexico. A team of soil health and edge of field experts will facilitate diverse mentoring opportunities between farmers, conservationists, and agricultural businesses. Project results include creating a one-stop shop for edge of field practices in the Beaver Creek floodplain, restoring 100 acres in the Beaver Creek floodplain, and enrolling 15 landowners in a cover crop/no-till system.

Subaward in the amount of \$490,425 awarded to Beaver Creek WMA to do the following work:

Project Coordinator – Staffing Costs (\$54,000/year * 3 years) - \$162,000

Supplies –\$4,200

Travel (Mileage) –\$6,000

Information and Education - \$4,600

Water Quality Demonstration Sites: \$258,125

Cover Crops/No-till Demonstration Sites – (15 sites) =\$90,000

Oxbow Restoration – \$80,000

Saturated Buffers – \$53,125

Bioreactors – \$35,000

Agronomist (Competitive Bid) –Agronomist will provide consultation during the duration of the grant in form of on-site consultation and soil sampling. - \$40,500

Floodplain Restoration – 100 Acres Floodplain Restoration –\$15,000

The partnership between the DNR and the Beaver Creek WMA has aligned goals to achieve Iowa's Nutrient Reduction Strategy goals, along with flood reduction goals. DNR sees opportunities to take its watershed experience and combine it with local watershed knowledge to create an effective project. Environmental results are composed of a diverse grouping of projects that will each be based around focused outreach, simplified programs, and mentoring landowners with subject experts. These goals will be applied to each of the priorities: soil health (15 landowner demonstration projects), edge of field practices (25 saturated buffers and 10 bioreactors), and floodplain restorations (10 oxbow restorations, 100-acre reduction in corn/soybean in 25-year floodplain).

These goals and strategies have each been formulated from years of watershed efforts with the DNR across the state and are directly tied to the Iowa Nutrient Strategy and its approved project types. Most importantly each of the priorities and strategies are based around creative and focused demonstrations that are new to Iowa.

Other key partners that will provide key roles include:

- Iowa Department of Agriculture and Land Stewardship will provide expertise and funding for edge of field practices (saturated buffers and bioreactors)
- Iowa State University Extension and Outreach will provide staff assistance on the soil health committee
- Natural Resources Conservation Service will provide staff assistance on the soil health, edge of field, and floodplain restoration work items
- Polk County will provide staff and expertise on watershed committees

Selection Process Summary: This contract is authorized by 11 Iowa Administrative Code 118.4, which states that if another governmental entity has resources available to supply a service sought by a state agency, the state agency may enter into an intergovernmental agreement with the other governmental entity and is not required to use competitive selection. Iowa Code section 455B.103(3) authorizes contracts with state universities and other public agencies of this state for laboratory work, scientific field measurement, and environmental quality evaluation services that are necessary to implement Iowa Code Chapter 455B.

Contract History:

None

Kyle Ament, Watershed Basin Coordinator, Water Quality Bureau
Environmental Services Division
August 17, 2021

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

#10

Decision Item

Contract with Eastern Iowa Regional Utility Services System (EIRUSS), CONTRACT: 21ESDWQBTEENRI-0001

Commission approval is requested for a contract with Eastern Iowa Regional Utility Services System (EIRUSS)

Contract Terms:

Amount: Not to exceed \$972,950

Dates: August 1, 2020 to April 30, 2023

Funding Source(s):

Federal: U. S. Environmental Protection Agency (EPA) under Section 2104 of the Water Infrastructure Improvements for the Nation Act (WIIN Act) Assistance for Small and Disadvantaged Communities Drinking Water Grant Program

State: Water Quality Protection Fund

Local: US Department of Agriculture – Rural Development loan

Statutory Authority: Safe Drinking Water Act Section 1459A

Contract Background:

Section 1459A of the Safe Drinking Water Act (SDWA), as amended by the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act and the 2018 America's Water Infrastructure Act, authorizes the EPA to award grants to states to assist underserved, small and disadvantaged communities that are unable to finance activities needed to comply with the SDWA.

This subaward (contract) is made by and between the DNR and the Eastern Iowa Regional Utility Service Systems (EIRUSS). EIRUSS is classified as a Code of Iowa 28E public entity, created in 2005 by five east-central Iowa counties with the purpose of providing affordable utilities in those five counties. EIRUSS-Bellevue (IA4910701) is a new, proposed consecutive community public water supply system served by the City of Bellevue (IA4910000). This project, the **EIRUSS-Bellevue project**, is located in Jackson County, and would provide water from the City of Bellevue to the Droessler Subdivision, Petesch's Mobile Home Park (IA4910200), and Spruce Creek Park #5 (IA4910404).

The DNR will utilize the Small and Disadvantaged Communities Drinking Water Grant (SDCDW), provided under Section 1459A of the SDWA, to contribute funding for necessary infrastructure for the **EIRUSS-Bellevue project**. The DNR will provide \$671,000 from the SDCDW Grant, and provide matching funds with \$301,950 from the department's Water Quality Protection Fund. EIRUSS has secured \$536,650 in a USDA-Rural Development Loan to provide the remaining required match. The cost of the entire project is \$1,509,600.

Contract Purpose: The project extends water mains and service lines in the Droessler Subdivision to homes currently served by private wells which are subject to microbial contamination, includes meters to each individual service, and plugs the existing wells. Connections will also be extended to two transient, non-community systems, Petesch's Mobile Home Park and Spruce Creek Campground #5, in the same manner, both of which have had capacity issues due to their very small size, single well, and susceptibility to flooding or contamination. Consolidating all three entities into the new consecutive system will provide safe, reliable drinking water to all service connections. The new system will be a consecutive system served water from the City of Bellevue, and operated by EIRUSS.

In addition to construction costs, the project also includes preparing engineering plans and specifications, bid documents for the listed improvements, as well as providing bidding services, engineering services during construction, and construction observation.

Statement of Work/Task:

Task 1: Submit USDA-RD Application and Environmental Assessment

Task 2: Start of Final Design

Task 3: Submit Final Plans & Specifications to Regulatory Agencies and USDA-RD for review and permitting

Task 4: Completion of work plan activities and submission of disbursement requests

Task 5: Provide Quarterly Financial Report

Task 6: Provide Quarterly Progress Report

Task 7: Submit Final Project Report

Task 8: Submit Final Closeout Documentation

Selection Process Summary:

The WIIN Grant eligibility requirements are very narrow and only communities which meet the definitions of both “underserved” and “small and disadvantaged” are qualified to receive the grant. The DNR searched for potential subgrantees in collaboration with the IEDA Community Development Block Grant (CDBG), United States Department of Agriculture’s Rural Development (USDA-RD) and the DNR’s Drinking Water State Revolving Fund (DWSRF).

The **EIRUSS-Bellevue project** was the only project that was underserved and a small and disadvantaged community with a project that was ready to proceed within the timeframes necessitated by this grant.

Contract History: None

Theresa Enright, SRF Coordinator
Water Quality Bureau
Environmental Services Division
July 26, 2021

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

#11

Decision Item

Contract Amendment with Iowa Department of Agriculture and Land Stewardship (IDALS) for Iowa Great Lakes Targeted Watershed Project (Original Contract approved by EPC May 19, 2020: 20ESDWQBSKONR-0010)

Commission approval is requested for an amendment to a contract with IDALS, of Des Moines, IA.

Contract Amendment Terms:

Additional Amount: Not to exceed \$192,986

Total Amount of Amendment and Original Contract: Not to exceed \$397,361

Dates: August 23, 2021 to August 31, 2023. *DNR shall have the option to extend this Contract for up to six years from the beginning date of the Original Contract by executing a signed amendment prior to the expiration of this Contract. **This amendment extends the time of the Original Contract by 1 year.***

Funding Source(s): U.S. EPA Clean Water Act Section 319 grant to DNR (Grant Numbers 00740425 and 00740427)

Statutory Authority: Funds are administered by DNR under statutory authority granted by Iowa Code section 455B.103.

Contract Background:

The Iowa Great Lakes are an interconnected chain of natural lakes with a watershed of roughly 87,000 acres in northwest Iowa and southwest Minnesota. Approximately 76 percent of the watershed lies within Dickinson County, Iowa and the remainder in Jackson County, Minnesota. The Iowa Great Lakes are a major recreational destination for Iowa residents and visitors from surrounding states. Unfortunately, due to non-point source pollution from various sources, the water quality in the lakes has been negatively impacted.

In 2010 the Iowa Great Lakes Watershed Management Plan was developed for the purpose of removing and preventing impairments in the watershed, guided by Total Maximum Daily Load (TMDL) documents developed for Lower and Upper Gar lakes as well as Milford Creek which is the outlet for all of the Iowa Great Lakes chain. This plan has been updated in 2013 and 2018 to reclassify subwatershed priority and other changes as needed.

Contract Amendment Purpose: The purpose of this Contract Amendment is to designate additional Section 319 funding to support the **Iowa Great Lakes Targeted Watershed Project**. This Contract will work to carry out the goals of the Iowa Great Lakes Watershed Management Plan (2018 rev.) for the stated Contract term and with no changes to the Statement of Work in the Original Contract. The watershed project will be funded by the following partner entities in combination with DNR-administered U.S. EPA 319 grant funds: the Contractor, Dickinson County Soil and Water Conservation District, DNR Lake Restoration Program, Dickinson County Clean Water Alliance, NRCS, and FSA, as well as match funding from landowners. This project has an additional link to a source water protection project funded by NRCS through the Environmental Quality Initiative Program (EQIP) for the Spirit Lake subwatershed.

Selection Process Summary:

Intergovernmental contracting with IDALS is authorized under 11 IAC 118.4. Contracts with state universities and other public agencies for laboratory work, scientific field measurement and environmental quality evaluation services necessary to implement Iowa Code Chapter 455B is authorized under Iowa Code section 455B.103(3).

Contract History:

- Iowa Great Lakes 2009 Grant Planning + Project – ESD7149KAment100208: 3/1/2010 – 6/30/2015, \$215,862*
- Iowa Great Lakes 2012+2013 Grant Project – 13ESDGSBKAMEN-0007: 3/20/2013-8/31/2018, \$435,696**
- Iowa Great Lakes 2018 Grant Project – 19ESDWQBSKONR-0001: 5/21/2019 – 8/31/2020, \$61,000

*This contract had two amendments for time extensions and additional funding, total expenditures were \$215,862

**This contract had four amendments: three for time extensions, and one to add \$61,585 of additional funding and additional time. Grand total of contract expenditures was \$445,696.

Steve Konrady, Water Quality Bureau
Environmental Services Division
August 17, 2021

STATEMENT OF WORK

- Task 1. **Project Coordinator** – Contractor shall hire and maintain a project coordinator position for the duration of the Contract. **Timeframe** - Continuous
- Task 2. **Submit and Carry Out Project Activities** – Contractor shall submit annual Work Plan and Budget consistent with EPA-Approved Project Implementation Plan. **Timeframe** – No later than May 1 of each year
- Task 3. **Quarterly Financial Reports** – Summarize expenses each quarter. **Timeframe** – 10/15, 1/15, 4/15 yearly
- Task 4. **Quarterly Progress Reports** – Summarize activities each quarter. **Timeframe** – 10/15, 1/15, 4/15 yearly
Note: Quarterly reports are superseded by annual reports for the expected 7/15 report as follows
- Task 5. **Annual Progress Report** – Summarize activities, progress, project costs, water monitoring data (if applicable), and water quality improvements (load reductions) made during the previous fiscal period.
Timeframe – No later than August 1 of each year
- Task 6. **Final Project Report** – Total Section 319 funds expended by the project, summary of other funds, summary of accomplishments and objectives, comparison of actual accomplishments to objectives established by annual work plans and project implementation plan, summary of water quality improvements (load reductions), explanation of unmet objectives, and all other reporting requirements in the Section 319 guidance document. **Timeframe** – Due no later than 30 days prior to the expiration of this Contract.

AMENDMENT BUDGET

Budgets are submitted by the Contractor as part of the U.S. EPA-approved Project Implementation Plan (once per Contract) and Work Plan and Budget (annually). The Contractor has submitted the following budget overview with the Project Implementation Plan for 319 funds to be incorporated into the Contract for the full term:

Amendment Budget Item	Amount of 319 Funds
Top Line/Administrative Costs	
Coordinator Salary and Benefits	\$25,594
IDALS Conservation Assistant Support	\$5,000
Travel/Training	\$600
Supplies	\$0
Information/Outreach	\$1,500
Implementation Costs (BMPs)*	
Wetland Restoration	\$80,292
Urban Stormwater Wetland (Francis Sites)	\$50,000
Low Impact Development	\$30,000
AMENDMENT TOTAL:	\$192,986
Original Contract Total:	\$204,375
AMENDED CONTRACT TOTAL:	\$397,361

*BMP Implementation costs will primarily be provided by funding partners.

Iowa Department of Natural Resources
Environmental Protection Commission

#12

Decision Item

Commission approval is requested for a contract with Eurofins Eaton Analytical, LLC, of South Bend, IN.

Contract Terms:

Amount: Not to exceed \$92,700.

Dates: September 1, 2021 to September 1, 2023.

DNR shall have the option to extend this contract for up to six years from the beginning date of the original contract by executing a signed amendment prior to the expiration of this contract.

Funding Source(s): the Superfund Combined Cooperative Agreement (7533-Pre-remedial) 100 % up to \$100,000 and DWSRF Non-Program (7134) as a back-up.

Contract Purpose: This contract will provide specialized analytical service support for implementing the DNR's PFAS Action Plan, focus Area 1. The laboratory is required to hold State certification to run USEPA Method 533.

Information generated from this contract will inform future efforts within the PFAS Action Plan.

Selection Process Summary:

- The competitive process was formal (\$50,000 or more).
- The competitive process was to acquire:
 - Professional Services – laboratory certified by DNR to run USEPA Method 533

Contract History:

This is the first contract of this kind.

Roger Bruner, Supervisor, Water Quality Bureau
Environmental Services Division
August 17, 2021

Unit cost: \$300 per sample for primary finished, primary raw, and replicates.

Estimated total cost of contract is not to exceed \$92,700.

Additional samples for blanks may be added; if so, they will be reflected at the August Commission meeting.