

**MINUTES OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING**

May 18, 2021

Video and Teleconference

Approved by the Commission June 15, 2021

RECORD COPY

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Table of Contents

| | |
|--|---|
| Call to Order | 2 |
| Commissioners Present | 2 |
| Commissioners Absent | 2 |
| Approval of Agenda | 2 |
| Agenda Approved as Presented | 2 |
| Oath of Office | 3 |
| Election of Officers | 3 |
| Ralph Lents, Chair | 3 |
| Harold Hommes, Vice-Chair | 3 |
| Stephanie Dykshorn, Secretary | 3 |
| Approval of Minutes | 3 |
| Approved as Presented | 3 |
| Monthly Reports | 3 |
| Information | 3 |
| Director’s Remarks | 4 |
| Information | 4 |
| 2021 Groundwater Status Report | 4 |
| Approved as Presented | 4 |
| Contract with Iowa Department of Agriculture and Land Stewardship (IDALS) for Protect Rathbun Lake Project . | 4 |
| Approved as Presented | 4 |
| Contract with The Office of the State Archeologist at the University of Iowa | 4 |
| Approved as Presented | 5 |
| Rathbun Lake Watershed Improvement and Source Water Protection | 5 |
| Information | 5 |
| Adopted and Filed Rules – Chapter 61 – Water Quality Standards (Section 401 Water Quality Certification) | 5 |
| Approved as Presented | 5 |
| Contract with The University of Iowa | 5 |
| Approved as Presented | 5 |
| Derelict Building Grant Program Overview | 5 |
| Information | 5 |
| Derelict Building Grant Program – Grant Recommendations | 6 |
| Approved as Presented | 6 |
| Notice of Intended Action – 567 IAC Chapter 215 - Mercury-Added Switch Recovery from End of Life Vehicles ... | 6 |
| Approved as Presented | 6 |
| Iowa Waste Exchange Program Overview | 6 |
| Information | 6 |
| Grant Agreement Amendment with Region XII Council of Governments (COG) | 6 |
| Approved as Presented | 6 |
| Contract with the University of Northern Iowa (UNI), Iowa Waste Reduction Center (IWRC) | 6 |
| Approved as Presented | 7 |
| Notice of Intended Action - Chapter 70-73 – Dam Safety Rules Update | 7 |
| Approved as Presented | 7 |
| Notice of Intended Action: Air Quality Rules Update - Chapters 20, 22, 23, and 25 | 7 |
| Approved as Presented | 7 |
| General Discussion | 7 |
| Adjourn7 | |
| Adjourned | 7 |

Meeting Minutes

CALL TO ORDER

The meeting of the Environmental Protection Commission (Commission or EPC) was called to order by Chairperson Ralph Lents at 10:30 a.m. on May 18, 2021, via a combination of in-person and video/teleconference attendees. A verbal roll call 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
- 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 Rebecca Dostal. The Chairperson asked for the Commissioners to approve the agenda by saying aye. There were no nay votes. Motion passes.

AGENDA APPROVED AS PRESENTED

OATH OF OFFICE

Director Kayla Lyon swore in Mark Stutsman, Patricia Foley, Brad Bleam, Harold Hommes, and Lisa Gochenour to the Commission. Chairperson Lents provided an opportunity for each Commissioner to provide introductions.

ELECTION OF OFFICERS

CHAIR

Harold Hommes nominated Ralph Lents to be Chair. No other nominations were provided. Harold Hommes made a motion for a unanimous ballot. The Chairperson asked for the Commissions to approve a unanimous ballot by saying aye. There were no nay votes.

RALPH LENTS, CHAIR

VICE – CHAIR

Ralph Lents nominated Harold Hommes to be Vice- Chair. No other nominations were provided. Stephanie Dykshorn made a motion for a unanimous ballot. Seconded by Amy Echard. The Chairperson asked for the Commissions to approve a unanimous ballot by saying aye. There were no nay votes.

HAROLD HOMMES, VICE-CHAIR

SECRETARY

Harold Hommes nominated Stephanie Dykshorn to be Secretary. No other nominations were provided. Ralph Lents made a motion for a unanimous ballot. Seconded by Amy Echard. The Chairperson asked for the Commissions to approve a unanimous ballot by saying aye. There were no nay votes.

STEPHANIE DYKSHORN, SECRETARY

APPROVAL OF MINUTES

*Motion was made by Lisa Gochenour to approve the April 20, 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 welcomed the new Commissioners. He summarized staff’s approach for submitting monthly reports. He explained that the reports’ subject matter may vary month to month and encouraged the Commissioners to use the reports as an opportunity to ask questions. He explained that one burning variance request was denied due to the location’s proximity to the interstate. He also made note that the Air Quality fees have not changed so the team will not be presenting any further information to the Commission on the topic this month.
- Tim Hall, DNR Hydrology Resources Coordinator, provided a summary of the past, current, and projected moisture for the State of Iowa in relation to flooding and drought. He also invited interested parties to the May 26, 2021 webinar for Iowa Drought Conditions with additional details on the website <https://www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Summary-Update>.
- 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 provided a summary of the legislature’s current activity, including projected budget appropriations and the projected date to adjourn. She highlighted a visit to and tour of Iowa industries by EPA Administrator Regan and Secretary of Agriculture Vilsack.

INFORMATION

2021 GROUNDWATER STATUS REPORT

Chad Fields presented a report for the Commission’s approval. Commissioner Hommes disussed whether the report should include a summary page for the legislative audience on trends, comparisons, and regional topics. Further discussions concluded that the report was sufficient as written.

Public Comments – None

Written Comments – None

*Motion was made by Harold Hommes to approve the agenda item as presented. Secoded 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

Marty Braster, Rathbun Lake Watershed, had technical difficulties with his presentation. The Chairperson entertained subsequent agenda items until the connectivity issues were resolved.

CONTRACT WITH IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP (IDALS) FOR PROTECT RATHBUN LAKE PROJECT

Steve Konrady presented a contract with IDALS. He summarized how the timing of these contracts allows for continued funding of coordinators, gives confidence to land owners for cost share opportunities, and expands watershed improvement practices.

Public Comments – None

Written Comments – None

*Motion was made by Harold Hommes to approve the agenda item as presented. Secoded 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 THE OFFICE OF THE STATE ARCHEOLOGIST AT THE UNIVERSITY OF IOWA

Steve Konrady presented a contract with the University of Iowa. He noted that the use of these services by multiple programs requires approval of this contract by both the Natural Resource Commission and Environmental Protection Commission.

Public Comments – None

Written Comments – None

Motion was made by Rebecca Dostal to approve the agenda item as presented. Secoded by Harold Hommes.

*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

RATHBUN LAKE WATERSHED IMPROVEMENT AND SOURCE WATER PROTECTION

Marty Braster and Brian DeMoss presented an educational summary of the Rathbun Lake Watershed Improvement history, approaches, successes, and projected work.

INFORMATION

Chairperson Lents called for a 10-minute break.

ADOPTED AND FILED RULES – CHAPTER 61 – WATER QUALITY STANDARDS (SECTION 401 WATER QUALITY CERTIFICATION)

Roger Bruner presented a rule package to the Commission.

Public Comments – He summarized how staff review public comments and the procedural history of this rulemaking.

Written Comments – At the meeting Iowa Environmental Council staff asking for clarification regarding the scope of DNR’s water quality certification. Mr. Bruner explained the federal requirements for considering the comments specific only to Water Quality Criteria.

*Motion was made by Amy Echard to approve the agenda item 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

CONTRACT WITH THE UNIVERSITY OF IOWA

Roger Bruner presented a contract with the University of Iowa. He shared with the Commission the DNR’s relationship with the University of Iowa’s environmental laboratory. He also highlighted the sampling approach when weather conditions are not conducive to collecting a representative snapshot.

Public Comments – None

Written Comments – None

*Motion was made by Stephanie Dykshorn to approve the agenda item as presented. Seconded by Harold Hommes. 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

DERELICT BUILDING GRANT PROGRAM OVERVIEW

Reid Bermel presented an educational summary of the Derelict Building grant program. Chairperson Lents recognized past Commission tours of communities that have redeveloped a location in their town. He recalled the appreciation the community had for the opportunity.

INFORMATION

DERELICT BUILDING GRANT PROGRAM – GRANT RECOMMENDATIONS

Reid Bermel presented proposals for grant funding. He summarized for the Commission how staff provide coaching to unsuccessful applicants to help them improve their application when they reapply in a future funding cycle.

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

NOTICE OF INTENDED ACTION – 567 IAC CHAPTER 215 - MERCURY-ADDED SWITCH RECOVERY FROM END OF LIFE VEHICLES

Theresa Stiner presented a Notice of Intended Action that proposed to rescind administrative rules due to the expiration of authority in the Iowa Code.

Public Comments – None

Written Comments – None

*Motion was made by Harold Hommes 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

IOWA WASTE EXCHANGE PROGRAM OVERVIEW

Bill Blum presented an educational summary of the Iowa Waste Exchange Program. The overview included year-to-date achievements, districts of the state, and examples of unique alternatives for disposal other than in a landfill.

INFORMATION

GRANT AGREEMENT AMENDMENT WITH REGION XII COUNCIL OF GOVERNMENTS (COG)

Bill Blum presented a contract amendment with the Region XII COG. He summarized tasks accomplished are reimbursed to the contractor. Funds from projects not completed can be rolled into a future agreement.

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 WITH THE UNIVERSITY OF NORTHERN IOWA (UNI), IOWA WASTE REDUCTION CENTER (IWRC)

Bill Blum presented a contract with UNI.

Public Comments – None

Written Comments – None

Motion was made by Rebecca Dostal 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

NOTICE OF INTENDED ACTION - CHAPTER 70-73 – DAM SAFETY RULES UPDATE

Jon Garton presented a Notice of Intended Action that proposes a significant steamlining and consolidation of the dam safety program. He summarized how staff assist with writing and reviewing emergency action plans with a dam owner.

Public Comments – None

Written Comments – None

Motion was made by Stephanie Dykshorn to approve the agenda item 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

NOTICE OF INTENDED ACTION: AIR QUALITY RULES UPDATE - CHAPTERS 20, 22, 23, AND 25

Christine Paulson presented a Notice of Intended Action that proposed to adopt existing federal rules. The rules will be identical to the federal rules. Staff do not anticipate substantive public comments.

Public Comments – None

Written Comments – None

Motion was made by Rebecca Dostal 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

GENERAL DISCUSSION

- Jerah Sheets provided logistic details for the upcoming EPC business meetings.
- Commissioners discussed options for the start time of future EPC meetings.
- Tamara McIntosh summarized the in-person meeting requirements and when virtual meeting options would be applicable.

ADJOURN

Chairperson Lents thanked the Commission and DNR.

The Chairperson adjourned the Environmental Protection Commission meeting at 1:45 pm on May 18, 2021.

ADJOURNED

Agenda

Environmental Protection Commission

Tuesday, May 18, 2021

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

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

Tuesday, May 18, 2021

10:30 AM – EPC Business Meeting

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.

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| 1 | Approval of Agenda | |
| | Oath of Office | |
| | Welcome & Introductions | |
| | Election of Officers | |
| 2 | Approval of the Minutes (Packet Page 3) | |
| 3 | Monthly Reports (Packet Page 9) | Ed Tormey (Information) |
| 4 | Director's Remarks | Kayla Lyon (Information) |
| 5 | 2021 Groundwater Status Report (Packet Page 17) | Chad Fields (Decision) |
| 6 | Rathbun Lake Watershed Improvement and Source Water Protection (Packet Page 22) | Marty Braster (Information) |
| 7 | Contract with Iowa Department of Agriculture and Land Stewardship (Protect Rathbun Lake Project) (Packet Page 38) | Steve Konrady (Decision) |
| 8 | Contract with The Office of the State Archeologist at the University of Iowa (Packet Page 40) | Steve Konrady (Decision) |
| 9 | Adopted and Filed Rules – Chapter 61 – Water Quality Standards (Section 401 Water Quality Certification) (Packet Page 41) | Roger Bruner (Decision) |
| 10 | Contract with The University of Iowa (Packet Page 78) | Roger Bruner (Decision) |
| 11 | Derelict Building Grant Program Overview (Packet Page 88) | Reid Bermel (Information) |
| 12 | Derelict Building Grant Program – Grant Recommendations (Packet Page 102) | Reid Bermel (Decision) |
| 13 | Notice of Intended Action – 567 IAC Chapter 215 - Mercury-Added Switch Recovery from End of Life Vehicles (Packet Page 105) | Theresa Stiner (Decision) |
| 14 | Grant Agreement Amendment with Region XII Council of Governments (Packet Page 111) | Bill Blum (Decision) |

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| 15 | Iowa Waste Exchange Program Overview (Packet Page 115) | Bill Blum (Information) |
| 16 | Contract with the University of Northern Iowa, Iowa Waste Reduction Center (IWRC) (Packet Page 121) | Bill Blum (Decision) |
| 17 | Notice of Intended Action - Chapter 70-73 – Dam Safety Rules Update (Packet Page 123) | Jon Garton (Decision) |
| 18 | Notice of Intended Action: Air Quality Rules Update - Chapters 20, 22, 23, and 25 (Packet Page 164) | Christine Paulson (Decision) |
| 19 | General Discussion | |
| 20 | Items for Next Month’s Meeting <ul style="list-style-type: none"> • Tuesday, June 15, 2021 – EPC Business Meeting • Wednesday, July 7, 2021 – EPC Business Meeting & Joint NRC/EPC Meeting | |

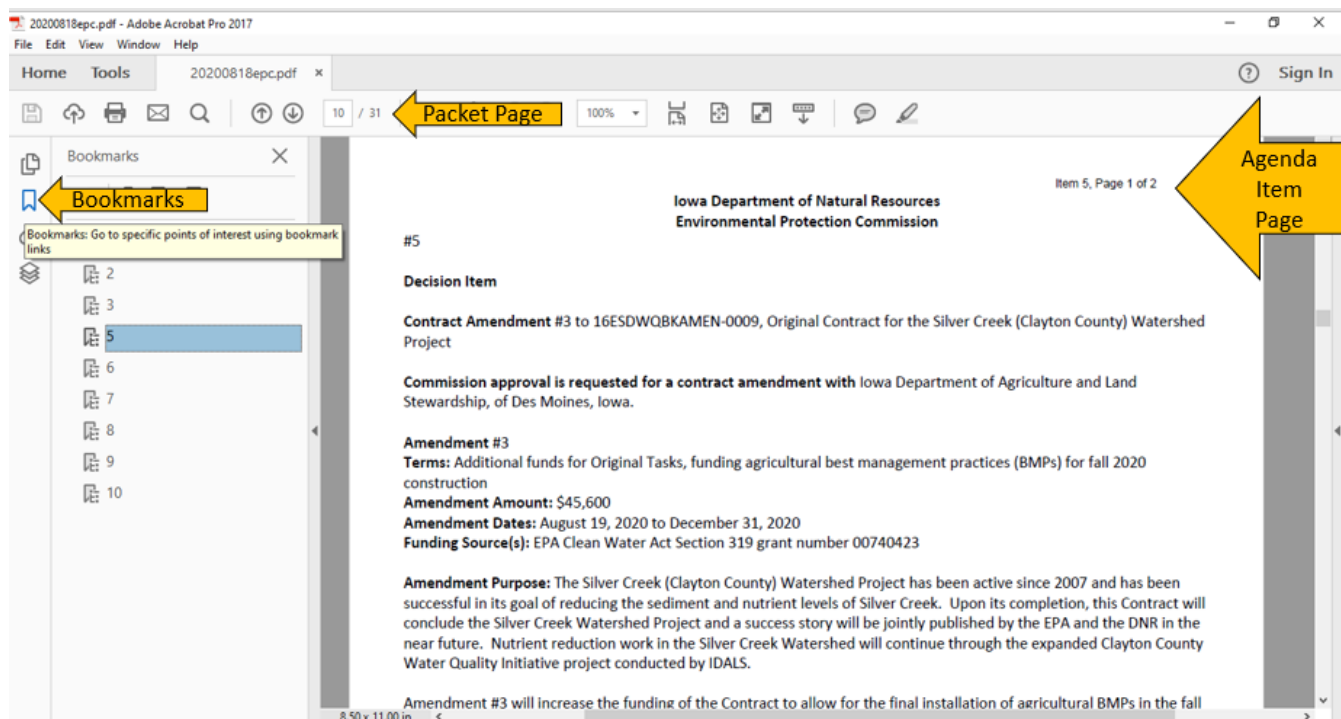
For details on the EPC meeting schedule, visit <http://www.iowadnr.gov/About-DNR/Boards-Commissions>

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**

April 20, 2021

Video and Teleconference

Approved by the Commission TBD

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| RECORD COPY |
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| Sender's Initials <u>jzs</u> |

Table of Contents

| | |
|---|---|
| Call to Order | 2 |
| Commissioners Present | 2 |
| Commissioners Absent | 2 |
| Approval of Agenda | 2 |
| Agenda Approved as Presented | 2 |
| Approval of Minutes | 3 |
| Approved as Presented | 3 |
| Monthly Reports | 3 |
| Information | 3 |
| Director’s Remarks | 3 |
| Information | 3 |
| Contract with The University of Iowa – Beach Monitoring | 3 |
| Approved as Presented | 3 |
| Solid Waste Environmental Management System Program – Designation of Applicant | 3 |
| Approved as Presented | 4 |
| Contract with Iowa Department of Agriculture and Land Stewardship (IDALS) – Easter Lake Watershed Project .. | 4 |
| Approved as Presented | 4 |
| Contract with Iowa Department of Agriculture and Land Stewardship (IDALS) – Black Hawk Lake Watershed Project | 4 |
| Approved as Presented | 4 |
| Adopted and Filed – Chapter 134 Underground Storage Tank Licensing and Certification Programs, Chapter 135 Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, and Chapter 136 Financial Responsibility for Underground Storage Tanks | 4 |
| Approved as Presented | 5 |
| General Discussion | 5 |
| Adjourn | |
| Adjourned | 5 |

Meeting Minutes

CALL TO ORDER

The meeting of the Environmental Protection Commission (Commission or EPC) was called to order by Chairperson Ralph Lents at 9:30 a.m. on April 20, 2021, via a combination of in-person and video/teleconference attendees. A verbal roll call 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

- Rebecca Dostal
- Stephanie Dykshorn
- Amy Echard
- Lisa Gochenour
- Howard Hill
- Harold Hommes
- Ralph Lents
- Bob Sinclair

COMMISSIONERS ABSENT

- Rebecca Guinn

David Scott, DNR Attorney, 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 Bob Sinclair to approve the agenda as presented. Seconded by Lisa Gochenour. 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 Amy Echard to approve the March 16, 2021, EPC minutes as presented. Seconded by Rebecca Dostal.
 Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-absent, 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 yesterday’s educational tours in relation to newer Iowa Code provisions for the facilities (e.g., fish confinement and animal truck wash facilities). The PFAS stakeholder engagement sessions have begun with public drinking water supplies.
- 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 recognized the importance of the Commissioners’ role for rulemaking, appeals, budgetary matters, and more. The Director recognized Rebecca Guinn, Howard Hill, and Bob Sinclair for their contributions to Iowa. Ed Tormey expressed his appreciation for the Commission’s work and their investment in Iowa’s air, land, and water quality. Howard Hill expressed his appreciation for the dedication and professionalism of DNR staff and particularly DNR’s field staff. Bob Sinclair praised the DNR for being able to do more with less, for the continuous improvement projects to make work simpler or more efficient, and for assisting companies to locate and grow in Iowa.

INFORMATION

CONTRACT WITH THE UNIVERSITY OF IOWA – BEACH MONITORING

Roger Bruner presented a contract with the University of Iowa. He summarized the reporting requirements for the EPA funding and evolution of the monitoring program approach since 2006.

Public Comments – None

Written Comments – None

*Motion was made by Harold Hommes to approve the agenda item as presented. Seconded by Stephanie Dykshorn.
 Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-absent, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
 Motion passes.*

APPROVED AS PRESENTED

SOLID WASTE ENVIRONMENTAL MANAGEMENT SYSTEM PROGRAM – DESIGNATION OF APPLICANT

Laurie Rasmus presented recommendations for the Solid Waste Environmental Management System (EMS) Program. Currently there are 14 EMS participants out of the 44 planning areas. The application would add the Mahaska County Solid Waste Management Commission as a participant in the Solid Waste EMS Program.

Public Comments – None

Written Comments – None

*Motion was made by Stephanie Dykshorn to approve the agenda item as presented. Seconded by Rebecca Dostal.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-absent, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.*

APPROVED AS PRESENTED

CONTRACT WITH IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP (IDALS) – EASTER LAKE WATERSHED PROJECT

Kyle Ament presented a contract for Easter Lake Watershed. He summarized the contracting approach for overlapping agreements with grant funding cycles, longer time frame projects, and working with unpredictable weather.

Public Comments – None

Written Comments – None

*Motion was made by Harold Hommes to approve the agenda item as presented. Seconded by Stephanie Dykshorn.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-absent, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.*

APPROVED AS PRESENTED

CONTRACT WITH IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP (IDALS) – BLACK HAWK LAKE WATERSHED PROJECT

Kyle Ament presented a contract for Black Hawk Lake Watershed. This Contract will provide funding and support for the ongoing Black Hawk Lake Watershed Project (Project). The Project is contracted through IDALS and carried out by the Sac County Soil and Water Conservation District.

Public Comments – None

Written Comments – None

*Motion was made by Bob Sinclair to approve the agenda item as presented. Seconded by Rebecca Dostal.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-absent, 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 134 UNDERGROUND STORAGE TANK LICENSING AND CERTIFICATION PROGRAMS, CHAPTER 135 TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS, AND CHAPTER 136 FINANCIAL RESPONSIBILITY FOR UNDERGROUND STORAGE TANKS

James Gastineau presented the Underground Storage Tanks proposed final rules. He summarized the multiple revisions completed since the original NOIA was presented to the Commission. These revisions were made at the request of various stakeholders and primarily focused on training requirements for inspectors. Also, Mr. Gastineau noted that the proposed rule was necessary to make the DNR program consistent with recent federal regulation changes which will allow the DNR to maintain its State Program Approval (SPA) from the US EPA. Mr. Gastineau answered questions from Commissioners concerning the walk-through inspection form revisions, whether above-ground storage tanks (ASTs) are subject to these rules, and whether the DNR was concerned about unknown, unregistered underground storage tanks operating in the state.

Public Comments – Brian Wiegert of PMMIC Insurance requested a revision to the commencement date for regulated entities to conduct certain walk-through inspections.

Written Comments – Freedom Malik asked for tank owners to have insurance plans to handle incidents rather than taxing the consumer.

*Motion was made by Howard Hill to approve the agenda item as presented. Seconded by Stephanie Dykshorn.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-absent, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.*

APPROVED AS PRESENTED

GENERAL DISCUSSION

- Commissioners were reminded of the Personal Financial Disclosure Reporting deadline of April 30.
- Commissioners were reminded of the Election of Officers during the May 2021 meeting.
- Jerah Sheets provided logistic details for the upcoming EPC business meetings and received feedback from Commissioners for improvements.

ADJOURN

Chairperson Lents thanked the Commission and DNR for the educational tour. The Chairperson adjourned the Environmental Protection Commission meeting at 11:05 am on April 20, 2021.

*Motion was made by Harold Hommes to adjourn. Seconded by Stephanie Dykshorn. The Chairperson asked for the Commissioners to approve the agenda by saying aye. There were no nay votes.
Motion passes.*

ADJOURNED

**Monthly Waiver Report
April 2021**

| Item # | DNR Reviewer | Facility/City | Program | Subject | Decision | Date | Agency |
|--------|------------------|-------------------------------------|--|--|----------|---------|----------|
| 1 | Larry Bryant | City of Rockwell City | CP (Wastewater) | Variance from Iowa Wastewater Facilities Design Standards Section 13.4.2 which requires screening protection for all pumping stations handling raw wastewater. The City is proposing to omit screening from a retrofit of the Old Highway 20 Lift Station. | Approved | 3.26.21 | 21cpv057 |
| 2 | Rachel Quill | Simmons Pet Food, Inc. | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 3.29.21 | 21aqv058 |
| 3 | John Curtin | American Wood Fibers | Air Quality Construction Permits | Modification to equipment used to process wood waste and handling equipment. | Approved | 3.30.21 | 21aqv059 |
| 4 | Matt Phoenix | Des Moines Water Works | Water Supply Construction (WC) | A variance from requirements to construct conflicting storm or sanitary sewers of water main material and provide 18" of separation by instead constructing water main of DIP w/ nitrile gaskets or placing the water main in a sealed casing pipe. | Approved | 3.31.21 | 21wcv060 |
| 5 | Matt Phoenix | Norwalk Water Supply | Water Supply Construction (WC) | A variance from requirements to construct conflicting storm sewers of water main material where horizontal and crossing separations cannot be obtained by instead constructing the storm sewers of RCP or HDPE pipe with gaskets. | Approved | 3.31.21 | 21wcv061 |
| 6 | Chad Billings | City of Norwalk | Flood Plain Management and Dam Safety (FP) | A Q50 freeboard criteria waiver/variance to Iowa Administrative Code 567—72.1(2)(b) for bridges and roadway embankments. The proposed (new) bridge does not meet the 3.0 feet Q50 freeboard requirement. | Approved | 3.30.21 | 21fpv062 |
| 7 | Karen Kuhn | Flint Hills Resources Shell Rock | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.2.21 | 21aqv063 |
| 8 | Mark Fields | J Pettiecord Inc. | AQ | The facility requested 90 days to open burn a large amount of tree debris collected from the Derecho storm in August 2020. | Denied | 3.30.21 | 21aqv064 |
| 9 | Priyanka Painuly | Stewart Memorial Community Hospital | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.6.21 | 21aqv065 |

| | | | | | | | |
|----|-----------------|--|----------------------------------|--|----------|--------|----------|
| 10 | Matt Phoenix | Guthrie Center Municipal Water Works | Water Supply Construction (WC) | Waiver from requirements to construct conflicting storm or sanitary sewers of water main material and provide 10' of horizontal or 18" of vertical separation by using water main of DIP w/ nitrile gaskets or placing water main in sealed casing pipe. | Approved | 4.7.21 | 21wcv066 |
| 11 | Rachel Quill | HawkeyePdershaab Concrete Technologies | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.7.21 | 21aqv067 |
| 12 | Karen Kuhn | Hansen Concrete Co | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.7.21 | 21aqv068 |
| 13 | Michael Hermsen | Donaldson Company Inc. | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.7.21 | 21aqv069 |
| 14 | Nate Tatar | Rock Industries, Inc. | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.8.21 | 21aqv070 |
| 15 | Marty Jacobs | City of Sheldon | CP (Wastewater) | The City of Sheldon is requesting variance from the Design Standards Chapter 13 – Wastewater Pumping Stations and Force Mains – 13.4.3 (Pump Openings) for installing two lift stations with pump that does not have the capability to pass 3-inch solids. | Approved | 4.7.21 | 21cpv071 |
| 16 | AJ Montefuso | Council Bluffs | Wastewater Construction | IWFDS Chapter 18C.7.2.3 requires inner and outer dike slope not to be steeper than 3 horizontal to 1 vertical (3:1). Request to construct dike slope no steeper than 2:1. | Approved | 4.2.21 | 21cpv072 |
| 17 | AJ Montefuso | Council Bluffs | Wastewater Construction | IWFDS Chapter 18C.7.3.4 requires the pond bottom to be level as possible at all points and not vary from the average bottom elevation +/- 3 inches. Request to construct bottom sloped at 1.57% to 1.87% | Approved | 4.2.21 | 21cpv073 |
| 18 | AJ Montefuso | Council Bluffs | Wastewater Construction | IWFDS Chapter 18C.2.5 requires a minimum of three soil borings to be installed for lagoons 0.5 acres or less. Request is to utilize one boring within footprint of lagoon and zero in another. Two additional borings outside of footprint where provided. | Approved | 4.2.21 | 21cpv074 |

| | | | | | | | |
|----|-----------------|--|----------------------------------|--|----------|---------|----------|
| 19 | Mark Fields | JBS USA LLC | AQ | Due to Boiler 3A failure JBS Marshalltown, IA facility requests to install and operate a 41.8 MMBtu/hr temporary boiler without obtaining a construction permit. | Approved | 4.8.21 | 21aqv075 |
| 20 | Mark Fields | Shine Brothers Corporation | AQ | Shine Bros. requested an extension of the deadline to perform stack testing for the Turbo Line, EP 9, Construction Permit #20-A-179. | Approved | 4.5.21 | 21aqv076 |
| 21 | Fei Guo | City of Peosta | CP (Wastewater) | The City of Peosta is requesting variance from the Design Standards Chapter 12 - Iowa Standards for Sewer Systems - 12.6 (Details of Construction) for the installation of 412 linear feet of 12-inch gravity sewers by horizontal directional drilling. | Approved | 4.7.21 | 21cpv077 |
| 22 | Mark Fields | Microsoft Corporation | AQ | Microsoft Corp has requested to begin construction on the foundation for generators at the facility prior to construction permit issuance. | Approved | 4.8.21 | 21aqv078 |
| 23 | Matt Phoenix | Center Point Water Supply | Water Supply Construction (WC) | A variance from requirements to construct conflicting storm sewers of water main material by placing the water main in a sealed casing pipe. | Approved | 4.13.21 | 21wcv079 |
| 24 | Michael Hermsen | Donaldson Company Inc. | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.13.21 | 21aqv080 |
| 25 | Ashley Dvorak | Cemstone Concrete Materials - Sac City | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.15.21 | 21aqv081 |
| 26 | Julie Duke | CF Industries Nitrogen | AQ | Request to utilize alternative fuel source for flare pilots during plant shutdown while natural gas is not available | Approved | 4.14.21 | 21aqv082 |
| 27 | Sara Smith | Rathbun Regional Water Association | Water Supply Construction (WC) | Instead of obtaining 2 bacteriological samples every 1,200 feet, for rural water mains (WM) after pigging, flushing and disinfecting the WM, obtain bacteriological samples with equivalent volumes of the 1,200 feet of WM. | Approved | 4.15.21 | 21wcv083 |
| 28 | A.J. Montefusco | City of Tiffin | CP(Wastewater) | Variance from IWFDS Ch. 12.6 for the installation of gravity sewers by directional drilling. | Approved | 4.15.21 | 21cpv084 |

| | | | | | | | |
|----|------------------|----------------------------------|----------------------------------|---|----------|---------|----------|
| 29 | Larry Bryant | City of Waverly | CP(Wastewater) | Variance from Iowa Wastewater Facilities Design Standards Section 16.3.1 which requires a minimum sidewater depth of 12' for activated sludge final clarifiers. The City is proposing reuse of existing clarifiers with shallower depths. | Approved | 4.16.21 | 21cpv085 |
| 30 | Karen Kuhn | Tyson Fresh Meats | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.19.21 | 21aqv086 |
| 31 | Nathaniel Tatar | Procter & Gamble Hair Care LLC | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.21.21 | 21aqv087 |
| 32 | Ashley Dvorak | Gold Eagle Cooperative - 69 Mill | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.22.21 | 21aqv088 |
| 33 | Brian Hutchins | Grain Processing Corporation | AQ | GPC is requesting a variance to start construction prior to permit issuance on a burner replacement on the maltodextrin dryer #6, EP186.0 & 187.0, Permits 94-A-055-S2 and 94-A-061-S2. | Approved | 4.22.21 | 21aqv089 |
| 34 | Julie Duke | LSCP | AQ | Request to install and operate temp boiler while permitted boiler is repaired. Temp boiler has low nox and flue gas recirculation | Approved | 4.19.21 | 21aqv090 |
| 35 | Michael Hermsen | Morse Rubber, LLC | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.22.21 | 21aqv091 |
| 36 | Priyanka Painuly | Hagie Manufacturing Co. | Air Quality Construction Permits | Waiver of Initial Stack Test Requirement. | Approved | 4.23.21 | 21aqv092 |

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

During the period January 1, 2021 through March 31, 2021, 36 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 '20 | 38 (74) | 0.422 | 0.183 | 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 | 7 | 8 | 4 | 3 | 4 | 10 |



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

During the period January 1, 2021, through March 31, 2021, 1 report of manure release was 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 |
| Total | | 1 | 3 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 1 | 0 | 1 | 1 | 1 | 0 | 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 | Current | Previous | Current | Previous | Current | Previous | Current | Previous | Current | Previous |
| Total | 0 | 0 | 0 | 0 | 1 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |



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

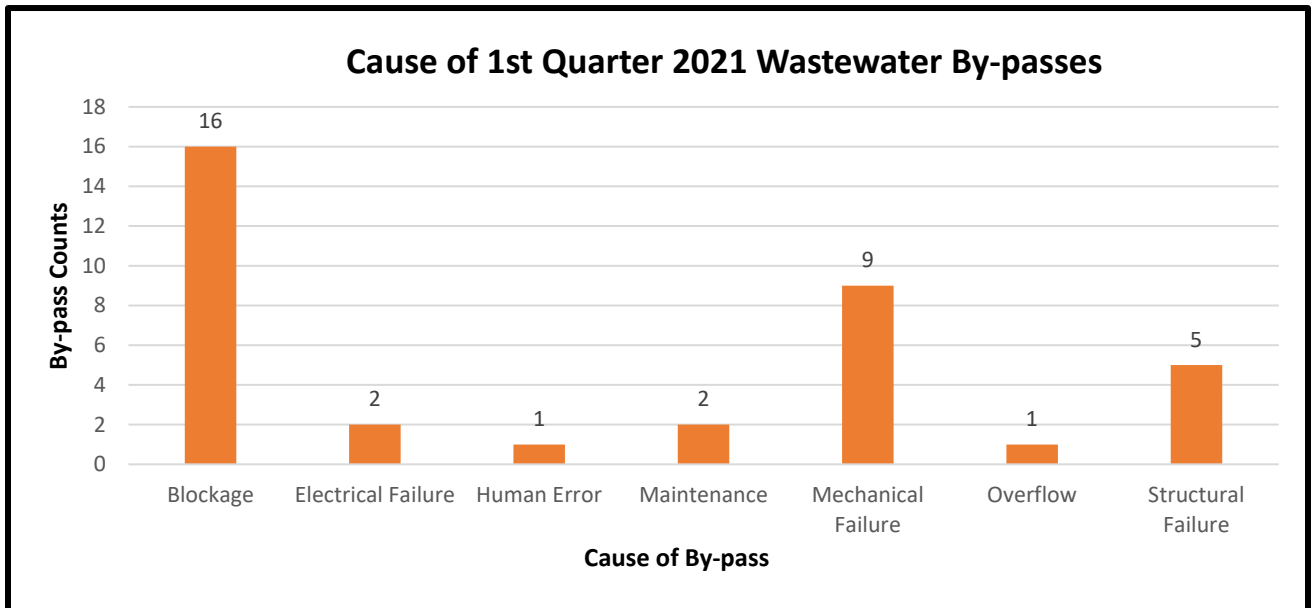
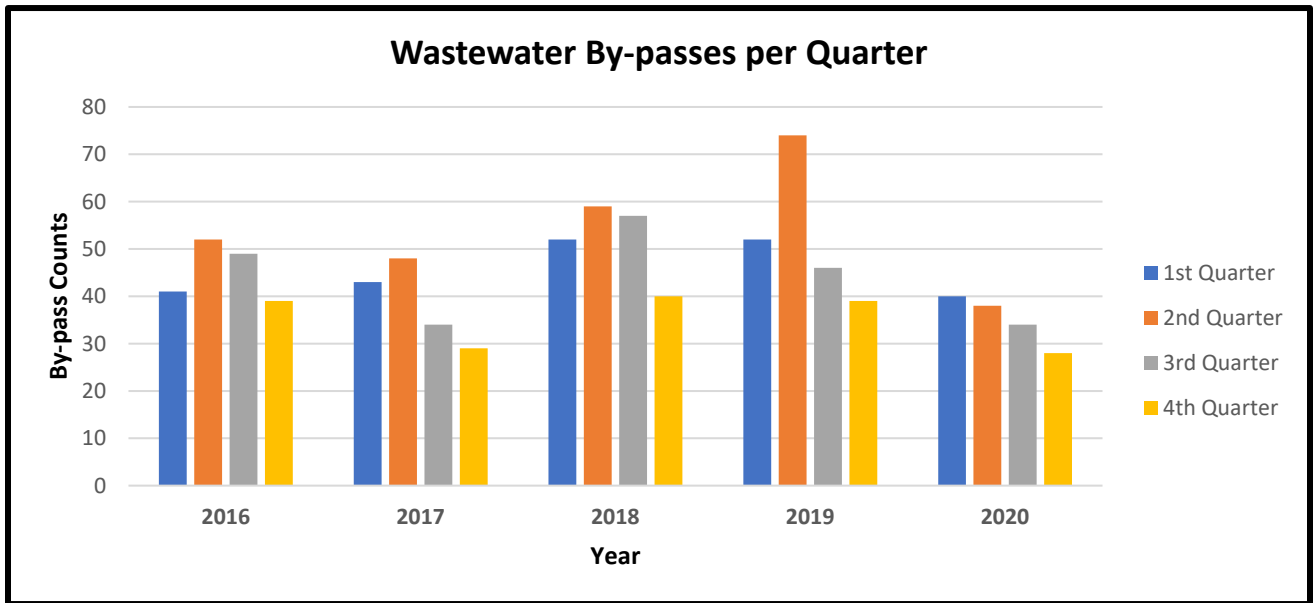
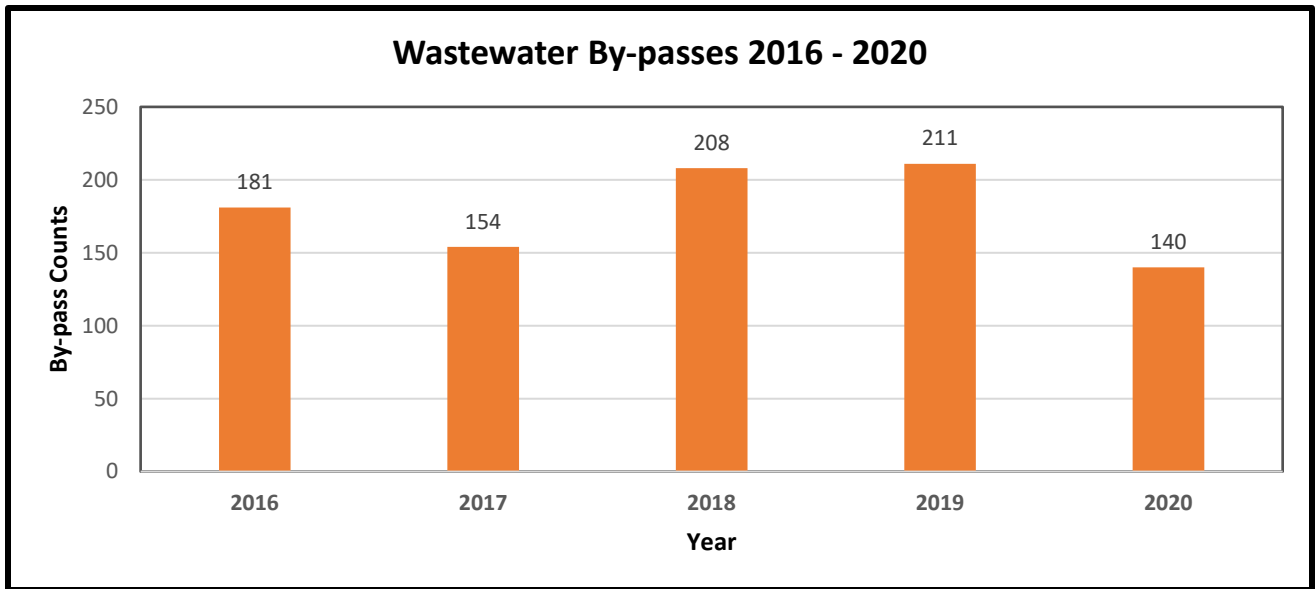
During the period January 1, 2021, through March 31, 2021, 85 reports of hazardous conditions were forwarded to the central office. A general summary and count by field office is presented below. This does not include releases from underground storage tanks, which are reported separately.

| | | | | 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 | 21 | 0 | 0 | 0 | 2 | 0 | 0 | 2 | 1 | 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 |
| Total | | 85 | 102 | 9 | 9 | 56 | 72 | 24 | 26 | 29 | 39 | 40 | 46 | 1 | 1 | 1 | 4 | 0 | 0 | 4 | 5 | 10 | 7 |

* 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 Selected Period | Field Office 1 | | Field Office 2 | | Field Office 3 | | Field Office 4 | | Field Office 5 | | Field Office 6 | |
|---|----------------|----------|----------------|----------|----------------|----------|----------------|----------|----------------|----------|----------------|----------|
| | Current | Year Ago | Current | Year Ago | Current | Year Ago | Current | Year Ago | Current | Year Ago | Current | Year Ago |
| Total | 9 | 18 | 13 | 8 | 5 | 4 | 20 | 20 | 17 | 27 | 21 | 25 |



2021 GROUNDWATER STATUS REPORT

The Iowa Department of Natural Resources (DNR) is providing this report in fulfillment of Section 455B.263(1) of the Iowa Code, which states:

*“The commission shall deliver to the general assembly by January 15, 1987, a plan embodying a general groundwater protection strategy for this state which considers the effects of potential sources of groundwater contaminations on groundwater quality. The plan shall evaluate the ability of existing laws and programs to protect groundwater quality and recommend any necessary additional or alternative laws and programs. The department shall develop the plan with the assistance of and in consultation with representatives of agriculture, industry, and public and other interests. **The commission shall report to the general assembly on the status and implementation of the plan on a biennial basis.** This section does not preclude the implementation of existing or new laws or programs which may protect groundwater quality.”*

This report is intended to serve as the current report on the status of groundwater in Iowa. It focuses on water quality projects and water quantity or water supply work of the DNR and its partners, and briefly summarizes the status of Iowa’s groundwater supplies. Groundwater quantity and quality overlap and are dependent on one another. A community without both high quality and adequate quantity of water supply will not be able to provide drinking water to its citizens, nor water for its businesses.

GROUNDWATER QUALITY PROJECTS AND PROGRAMS

The DNR continues to create, update and disseminate Iowa’s groundwater quality information through multiple projects, programs, and online applications. Major projects and updates to programs regarding Iowa’s groundwater quality are highlighted below.

2021 PFAS Monitoring Project. Upcoming Iowa groundwater quality monitoring projects include monitoring from a class of chemicals of emerging concern known as per- and polyfluoroalkyl substances (commonly referred to as PFAS). The DNR PFAS monitoring project includes sampling from 20 selected public water supply wells and 33 public water supply intakes located near a known potential PFAS source (see Figure 1). These specifically selected wells and intakes are planned to be the beginning of a larger effort to track PFAS in public drinking water wells and intakes in Iowa. The results from this study will be used as a guide for future PFAS studies, which will be larger and more comprehensive in design and scope.

PFAS are a group of synthetic chemicals that includes PFOA, PFOS, GenX, and many other chemicals. PFAS chemicals are found in such products as non-stick coatings, carpet, clothing, fabrics for furniture, paper packaging for food, chrome plating, and some firefighting foams.

The DNR takes the risks from PFAS to human health and the environment seriously. The existing body of scientific literature suggests that exposure to these compounds may result in certain types of cancer and developmental defects in fetuses and infants. The initial round of

sampling for PFAS for this project will begin in 2021. More information can be found on the department's PFAS web page - <https://www.iowadnr.gov/Environmental-Protection/PFAS>

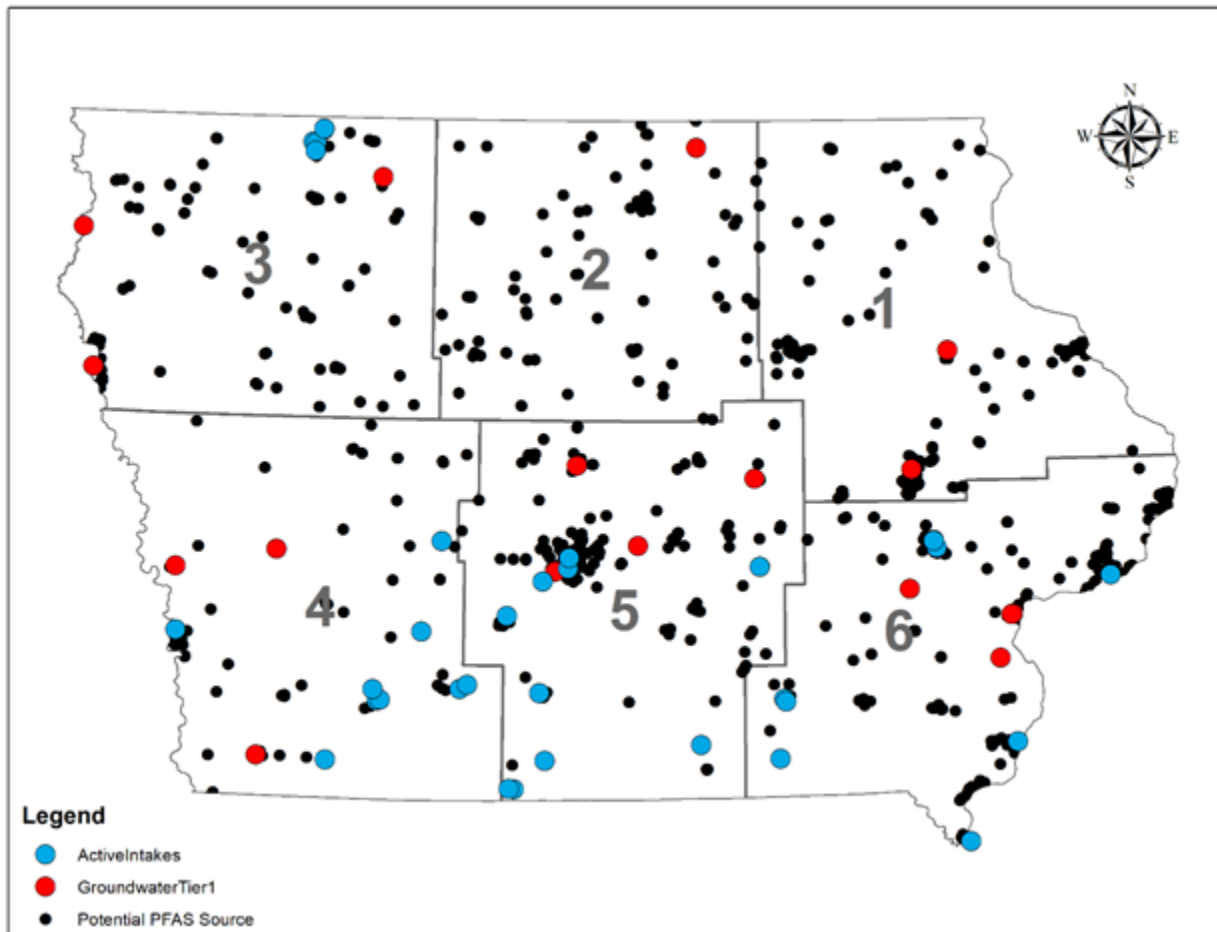


Figure 1. Selected public water supply intakes and wells for the 2021 PFAS monitoring project.

New Public Well Water Quality Samples Program. There are roughly 30-50 new public wells drilled each year in Iowa. The DNR Water Supply Operations Section manages a source water quality sampling program for all new public water supply wells drilled in Iowa. Under most circumstances, new public wells must have water quality samples submitted to the state before the well is put into production by the public water supply. Results from these sampling efforts are available on Drinking Water Watch (<https://programs.iowadnr.gov/drinkingwaterwatch/>).

In 2020 a total of 18 new public wells were sampled for water quality in Iowa.

Updated Well Water Quality Geospatial Database. A digital geospatial database of historic well water quality samples was updated in 2020. Currently the database has 17,743 records, with groundwater quality samples dating from 1903 to 2019. Water quality results are compiled from multiple sources, both historic and current. Water quality results include samples from all of Iowa's major bedrock and unconsolidated aquifers. Chemical categories in the database include general water quality, heavy metals, nutrients, common pesticides, and radionuclides. Recent additions to the geospatial database include over 700 new public water supply wells with

thousands of additional water quality samples. All of Iowa's major source aquifers are included in the update, including alluvial (233 samples), buried sand and gravel (62 samples), Dakota (69 samples), Silurian/Devonian (205 samples), and Cambrian-Ordovician (108 samples), with many other multi-aquifer wells. See Figure 2 for a full map of the new wells and existing wells.

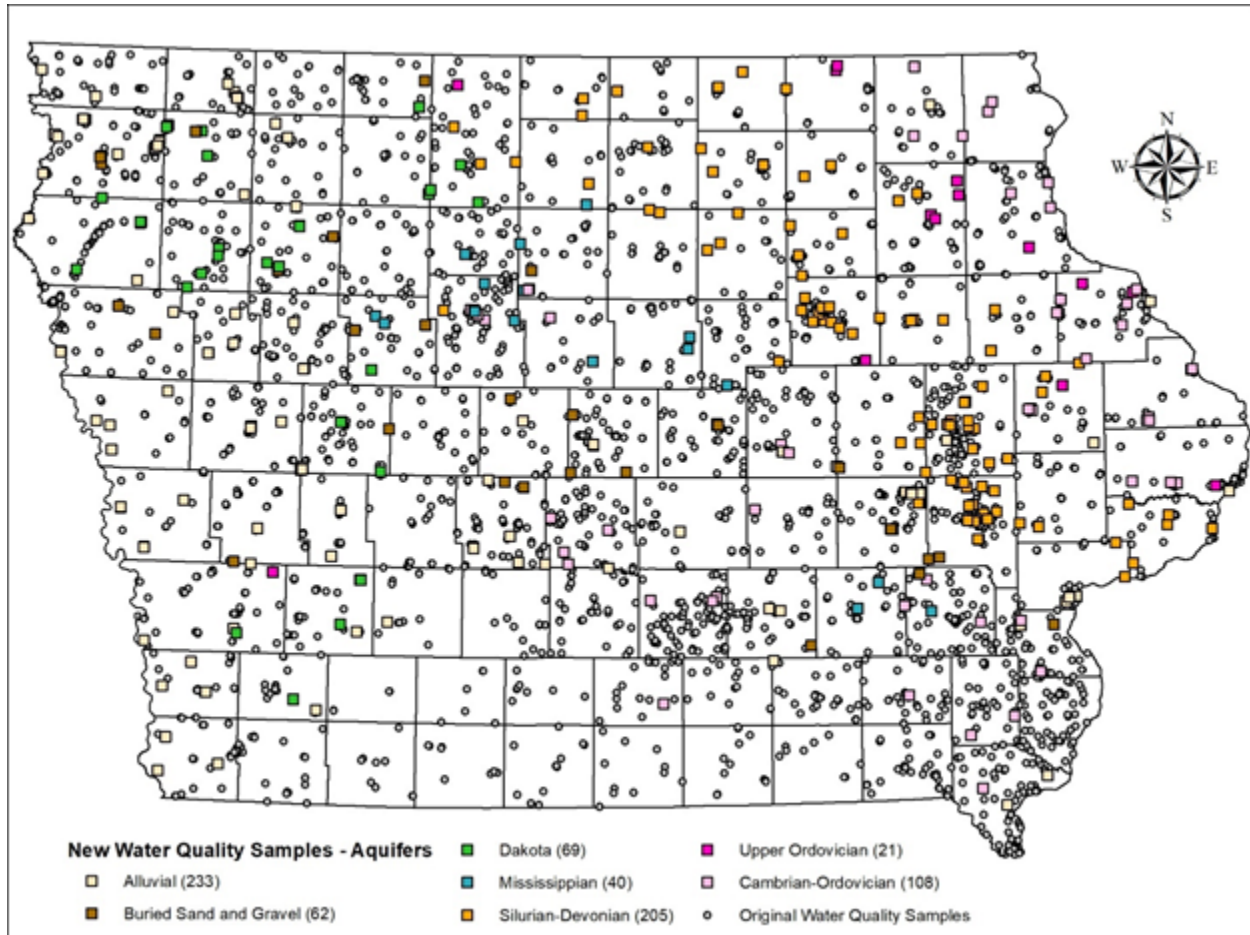


Figure 2. Iowa Well Water Quality database and recent updates to sampled wells.

Ambient Groundwater Quality Monitoring Program. Select public water supply wells are monitored annually through the DNR's ambient well water quality program. Since 2002, this continuous well water quality monitoring program documents the quality of water in Iowa's major aquifers through selected public wells. Between 30 and 70 public wells are selected each year to be sampled for various water quality constituents. Wells are indicative of the major aquifers, depths, and use types of Iowa's public well population. Results from this annual ambient study help the DNR understand general water chemistry in various aquifers, which contaminants are present, and how water quality concentrations vary spatially and temporally. This program is in place to better understand the relationships between water quality, geology, well construction, pumping rates, and land-use practices.

Grants to Counties Private Well Water Quality Samples. Private well water quality can be monitored statewide through the grants to counties program. In 2018, water quality sampling

through the grants to counties program was expanded to include nearly any contaminant, including arsenic, manganese, iron, and common pesticides, among many others. Data from these samples are stored in the Private Well Tracking System online database (<https://programs.iowadnr.gov/pwts/>) and can be used to discover aquifers and areas of concern for both natural and man-made pollutants.

In 2020, Iowa's grants to counties program funded over 2,814 arsenic samples, 1,868 manganese samples, 6,783 nitrate samples, and 6,708 fecal coliform bacteria samples, among many other water quality samples taken from Iowa's private wells. This information is used by owners of private wells to drill new wells and help find treatment options for drinking water. Data from these water quality samples are stored in the Private Well Tracking System online application.

GROUNDWATER QUANTITY PROJECTS AND PROGRAMS

Water Allocation and Use Program. The Water Use Program has invested time in resources in an update to its online database application, called Water Allocation Compliance and Online Permitting, or WACOP. WACOP is used to organize, track and report water use information from permittees of the Water Use Program. Current permittee online data entry into WACOP is still less than 15% of the ~3,360 permittees in the state, and has not increased substantially in recent years. Due to the low occurrence of self-reporting, Water Use staff and/or interns must enter the remaining 85% of records using mailed-in paper forms. There are many other problems due to problems in the current database application: instability of WACOP with GIS, orphaned database tables that have no connection to the application, separation of written permits with the application, lost quarries, wells, water use records, etc.

Many of these issues with the current version of WACOP are being addressed with the update, which is expected to be completed in early 2022.

GROUNDWATER INTEGRATION EFFORTS

Iowa Well Linker. In 2018, a groundwater well integration project was initiated to integrate (match) all groundwater well information from different programs in Iowa. This project aimed to establish the essential foundation needed for future integration of the well information stored in Iowa's groundwater databases. These basic components of the project were:

- 1) Complete well-matching for Iowa's four major groundwater well programs.
- 2) Develop a simple web interface for various program staff to 'link' wells currently residing in those four different databases.

As of this report, the database and online application is complete, called "Iowa Well Linker" and is available online (<https://programs.iowadnr.gov/iawells/>). Program well-matching efforts are underway with source water and water use programs. Progress includes 100% matches between SDWIS (public wells), WACOP (water use), and GeoSam (geology and aquifer characterization). There are currently 30% matches made between non-public water use (WACOP) wells and GeoSam.

SUMMARY

This report briefly summarizes the current status of the DNR groundwater quality and quantity projects and programs. The Water Supply and Water Use and Allocation Programs will continue to refine projects, programs, and databases, and will continue to integrate groundwater information with other state programs.

Protect Rathbun Lake

Watershed Improvement and Source Water Protection



Iowa's Environmental Protection Commission
May 18, 2021

Why Protect Rathbun Lake?

- 💧 Water supply for Rathbun Regional Water Association
- 💧 Recreation for one million visitors annually
- 💧 Fish and wildlife habitat
- 💧 Flood damage reduction
- 💧 Water for the Iowa DNR's Rathbun fish hatchery
- 💧 Storage to supplement navigational flows



Rathbun Regional Water Association

- 💧 Largest rural water system in Iowa and one of largest in US
- 💧 90,000+ customers in 57 communities and 18 counties
- 💧 Two water plants with conventional surface water treatment
- 💧 7,000 miles of mains, 36 towers, and 39 pump stations
- 💧 Rathbun Lake is the raw water source for RRWA's two plants

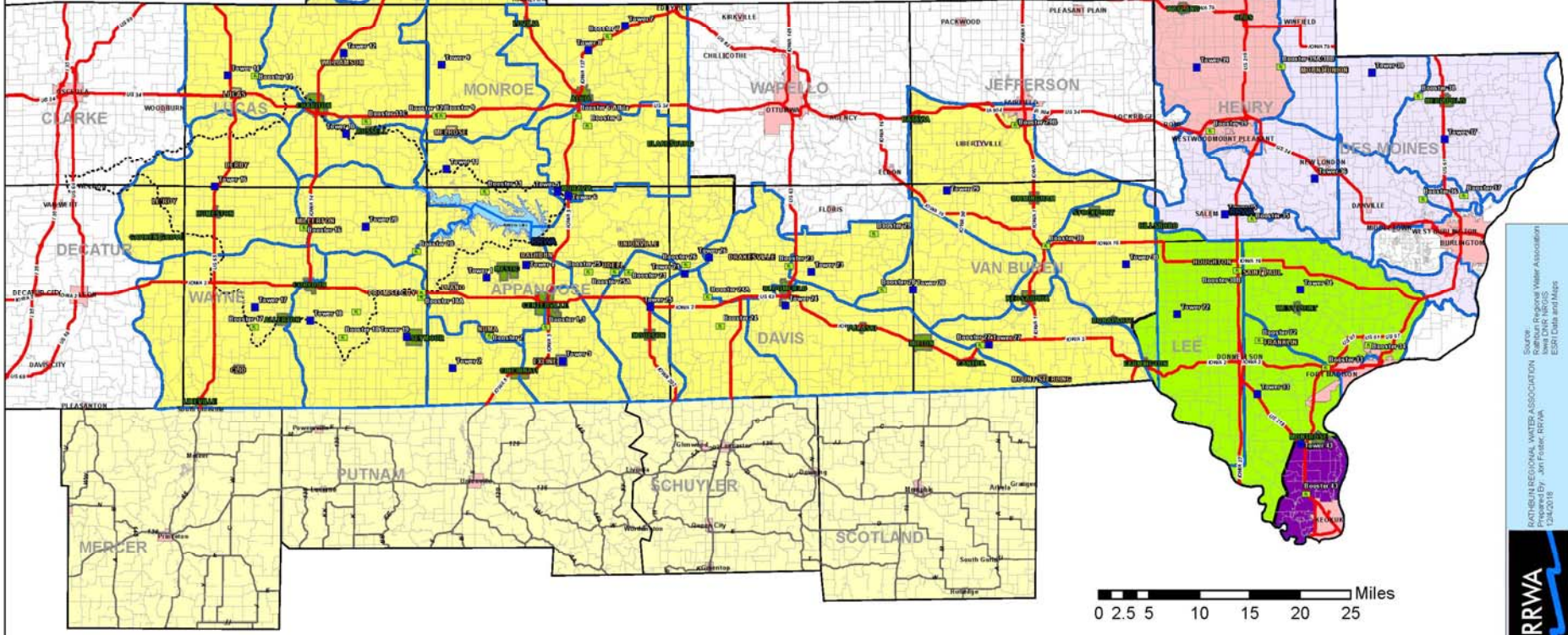


RATHBUN REGIONAL WATER ASSOCIATION Service Area Map



Legend

| | |
|---|--|
| <p>RRWA Towers and Boosters</p> <ul style="list-style-type: none"> ■ RRWA Water Tower ■ Distribution Booster — Iowa Primary Roads — Missouri Primary Roads - - - Rathbun Lake Watershed Boundary □ Rathbun Service Area Counties — Rathbun Lake — Road Data <p>Incorporated City/Town (Current RRWA Status)</p> <ul style="list-style-type: none"> ■ RRWA Bulk ■ RRWA Franchise ■ None | <p>RRWA Service Area Boundaries (Distribution)</p> <ul style="list-style-type: none"> □ Burlington System ■ Ft. Madison System ■ Keokuk ■ Mt. Pleasant System ■ Rathbun System |
|---|--|



Source: Rathbun Water Association
 Iowa DNR, NRCS
 ESRI Data and Maps
 Prepared By: JMT/FAK: RRWA
 04/2018

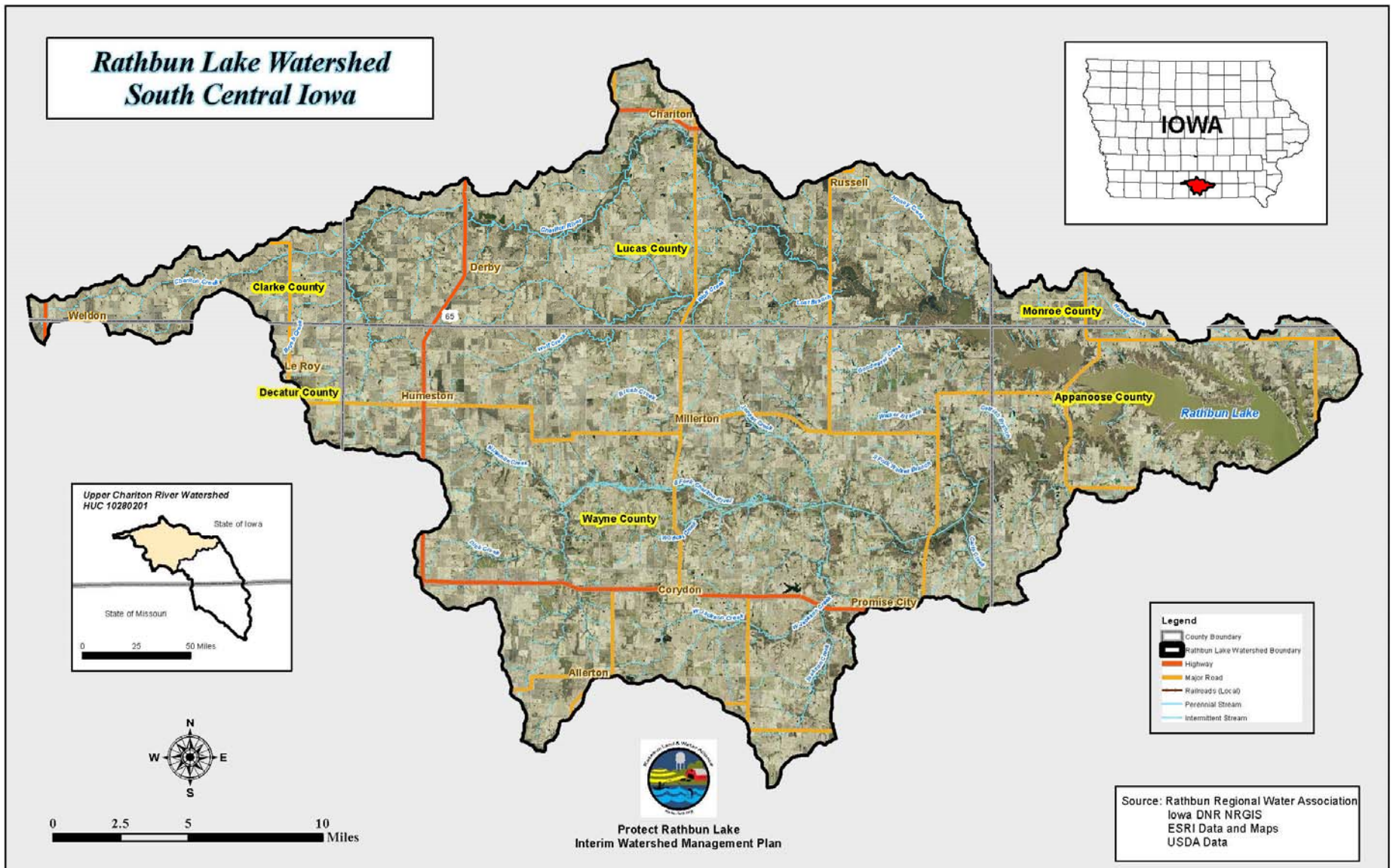


Rathbun Lake and Watershed

- 💧 354,000 acre watershed
- 💧 Land use 47% cropland, 31% grassland, 16% woodland
- 💧 15,000 residents, 820 farms, and 10 communities
- 💧 11,000 acre lake and 21,000 acres of adjacent public land
- 💧 Developed and managed by US Army Corps of Engineers



Protect Rathbun Lake

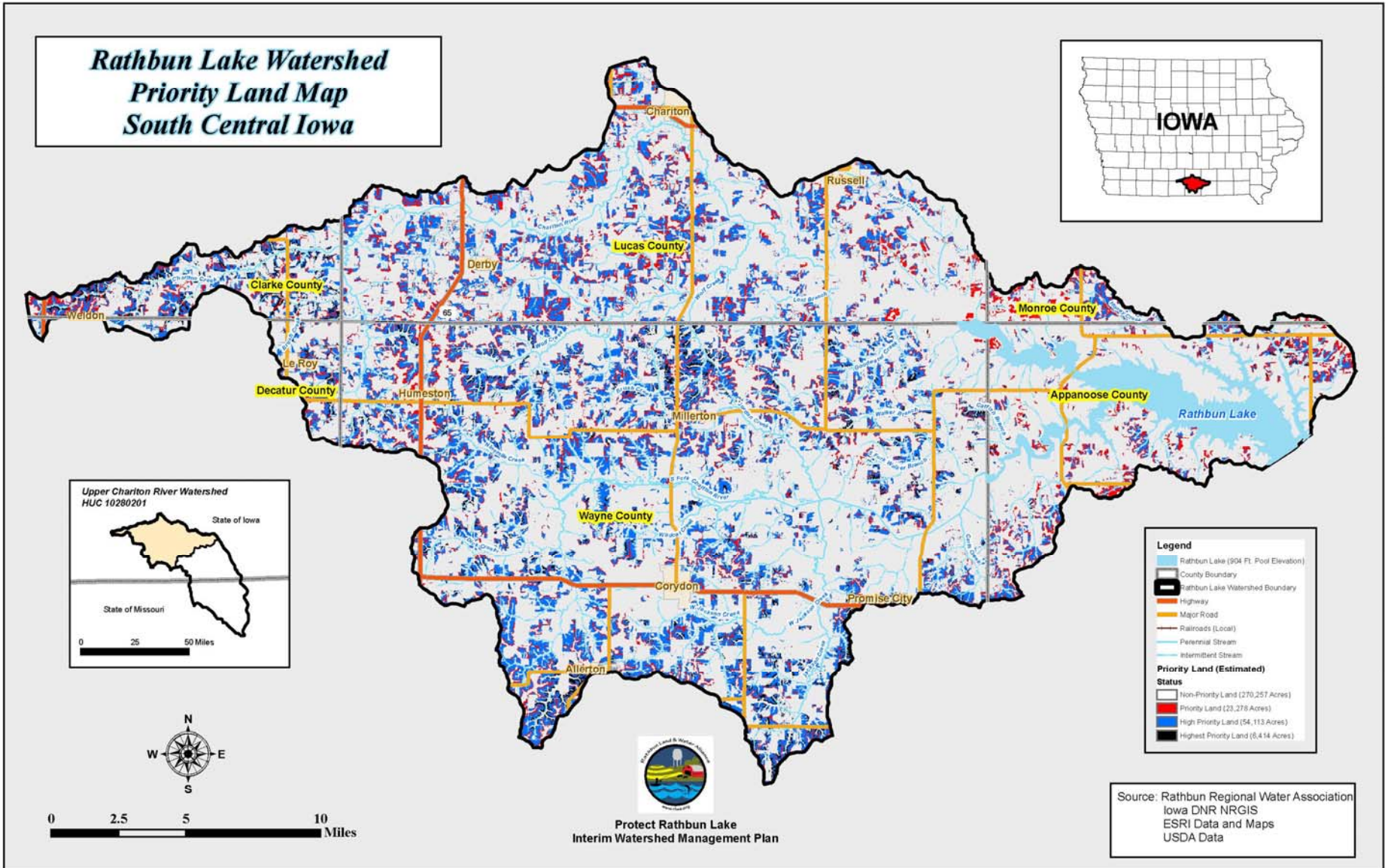


Protecting Rathbun Lake

- 💧 Determine water quality impairment of primary concern
 - Water quality monitoring
 - Algal and non-algal turbidity
- 💧 Identify principal source of impairment
 - Row crop production
 - Priority land



Protect Rathbun Lake



Protecting Rathbun Lake

- 💧 Determine cost effective way to address source of impairment
 - Landowner adoption
 - Structural best management practices
- 💧 Local leadership and partnerships
 - Rathbun Land and Water Alliance
 - Public and private partners



Protect Rathbun Lake**Protecting Rathbun Lake**

| Alliance Members and Partners | Support * | Principal Uses of Support |
|--|---------------------|---|
| NRCS Special and Regular Program Support | \$7,807,489 | BMP cost share: EQIP, AWEF, and NWQI. |
| NRCS Special WRP | 2,440,000 | Wetland restoration and easement costs. |
| IDALS DSC WPF and WSPF | 4,162,788 | Field staff support and BMP cost share. |
| EPA/DNR Section 319 Program | 5,493,502 | Field staff support and BMP cost share. |
| EPA Targeted Watershed Program | 600,000 | Field staff support and BMP cost share. |
| DNR Lake Restoration Program | 500,000 | BMP cost share. |
| Participating Landowners | 5,501,027 | BMP cost share. |
| Iowa WIRB | 2,327,932 | BMP cost share. |
| RRWA | 226,020 | Field staff support and BMP cost share. |
| SWCDs IFIP | 374,333 | BMP cost share. |
| ISU | 25,500 | Value of ISU Extension staff support. |
| Iowa DNR, ACOE, SIDCA | 5,500,000 | Shoreline and wetland restoration. |
| RRWA, Iowa DNR, ISU, SHL, ACOE | 875,000 | Water quality monitoring program. |
| RRWA, Farm Bureau, CoBank, Iowa DNR, SWCDs, NRCS | 340,500 | Rathbun Lake Protectors watershed outreach program. |
| Total | \$36,174,091 | |

* Includes support since 2004

Protecting Rathbun Lake

💧 Outreach Activities

- Rathbun Lake Protectors recognition program
- Farm-to-Faucet events

💧 One-on-One Technical Assistance

- On-farm
- Dedicated, hard-working, qualified, and credible



Insight from the Field

- 💧 Experienced NRCS and IDALS technicians in field offices
 - Expertise with best management practices
 - Knowledge of state and federal programs
- 💧 Field office staff live and involved in watershed communities
- 💧 Farm background and experience of field office staff



Insight from the Field

- 💧 Important roles of conservation contractors
 - Promotion of watershed protection efforts
 - Timely implementation of practices as required
- 💧 Working relationship and trust between landowners and staff
- 💧 Levels of cost share for practice implementation



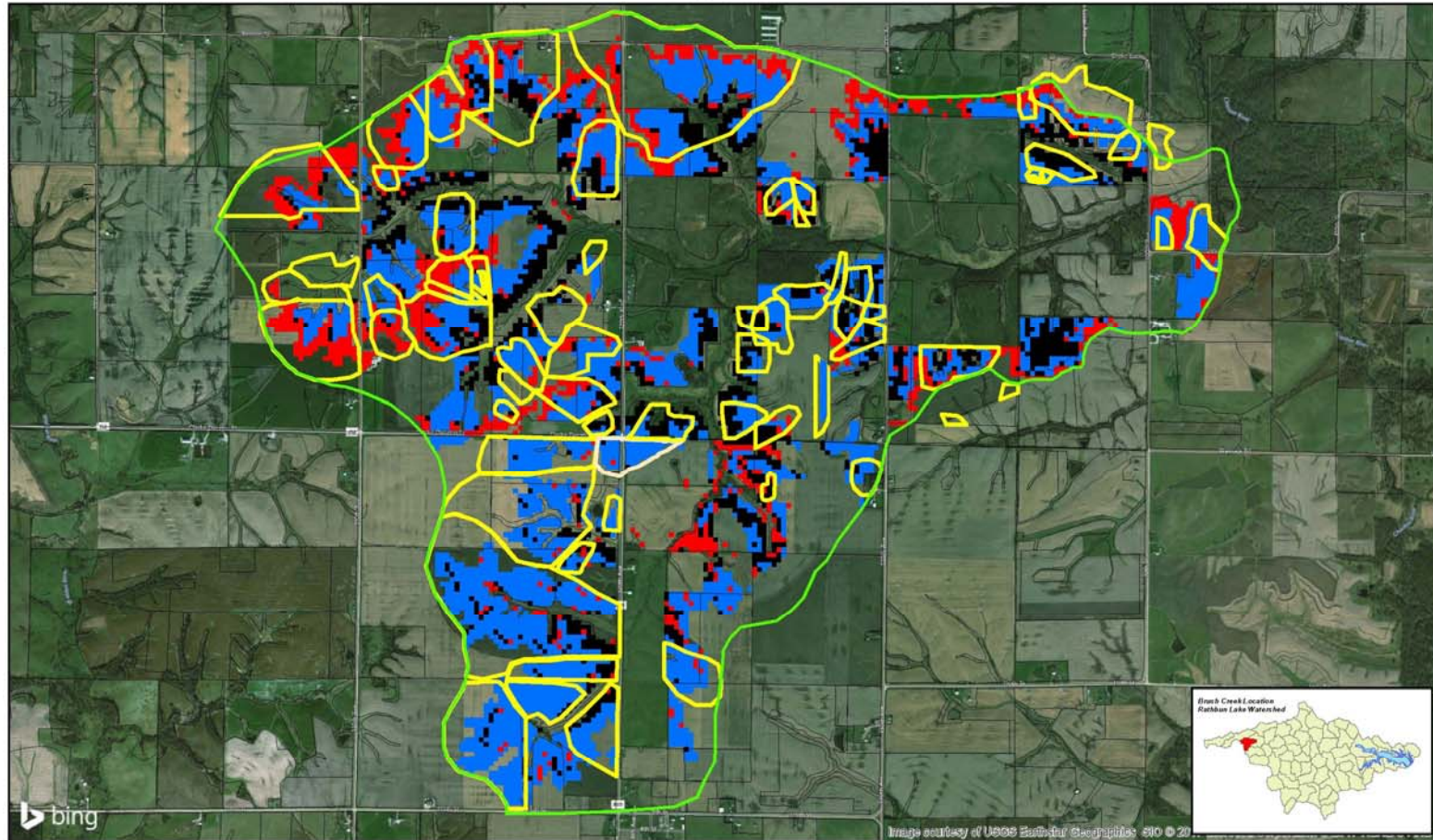
Protecting Rathbun Lake

- 💧 600+ landowners assisted
- 💧 1,100+ practices applied
- 💧 34,000+ acres addressed
- 💧 66,000+ tns/yr sediment reduced
- 💧 279,000+ lbs/yr phosphorus reduced
- 💧 Stable trend in water quality



Protect Rathbun Lake

Brush Creek Sub-Watershed Priority Land Work



Legend

- Watershed Boundary
- Priority Area
- Project
- Non-Priority
- Priority
- High Priority
- Highest Priority

| | Applied N/16 | Applied Concomitant P/F/DA/11 |
|-------------------------------|--------------|-------------------------------|
| Initial Erosion Before | 165.0 | 692.7 Tons/yr |
| Initial Erosion After | 36.0 | 492.5 Tons/yr |
| Initial Erosion Reduction | 129.0 | 200.2 Tons/yr |
| Sediment Delivery Before | 74.0 | 3028.7 Tons/yr |
| Sediment Delivery After | 1.0 | 230.3 Tons/yr |
| Sediment Delivery Reduction | 73.0 | 2798.4 Tons/yr |
| Phosphorus Delivery Before | 266.4 | 11765.3 lbs/year |
| Phosphorus Delivery After | 3.9 | 321.8 lbs/year |
| Phosphorus Delivery Reduction | 262.5 | 11443.5 lbs/year |
| Total Acres Benefitted | 36.0 | 1489.2 ac/yr |
| Priority Acres Benefitted | 15 | 602 ac/yr |

Watershed Statistics (Completed + Planned)

Size: 4,066 Acres
 Priority Acres: 1,670 Acres
 Acres Benefiting: 1,478 Acres
 Priority Acres Benefiting: 873 Acres
 Approx. Sediment Del. Before Projects (Watershed): 6,364 Tons
 Approx. Sediment Del. After Projects (Watershed): 3,549 Tons

Approx. Sediment Del. Reduction (Watershed): 2,815 Tons
 Average Sediment Del. Reduction Per Acre: 1.92 T/Acre/Year
 Approximate Phosphorus Del. Before Projects (Watershed): 25,278 Lbs.
 Approximate Phosphorus Del. After Projects (Watershed): 14,053 Lbs.
 Approximate Phosphorus Del. Reduction (Watershed): 11,225 Lbs.
 Average Phosphorus Del. Reduction Per Acre: 7.60 Lbs./Acre



Source: Rathbun Land and Water Alliance
 GIS: DDC
 Map Work:
 UCC&P
 Prepared By: Tyler J. Jackson, Rathbun Regional Water Association

Protect Rathbun Lake



Questions

Learn More

www.rlwa.org



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

7

Decision Item

Contract with Iowa Department of Agriculture and Land Stewardship (Protect Rathbun Lake Project)

Commission approval is requested for a contract with Iowa Department of Agriculture and Land Stewardship, of Des Moines, IA.

Contract Terms:

Amount: Not to exceed \$427,620

Dates: June 1, 2021 to June 30, 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): U. S. Environmental Protection Agency (EPA) Clean Water Act (CWA) Section 319 funds.

Statutory Authority: EPA Section 319 and Iowa Code section 455B.103.

Contract Background: This contract will continue to support an ongoing water quality and watershed improvement project, the Protect Rathbun Lake Project, administered by IDALS and carried out by the Wayne SWCD.

Contract Purpose: The overall goal of the Protect Rathbun Lake Project is to reduce sediment and phosphorus delivery to Rathbun Lake and the lake's tributaries. The original project objective in pursuit of this goal is the application of conservation best management practices (BMPs) to treat 30,000 acres of priority agricultural land in the Rathbun Lake watershed. Priority land is identified based on an estimated annual rate of sediment delivery of at least one ton per acre. Accomplishment of this objective will reduce annual sediment and phosphorus delivery to the lake by an estimated 90,000 tons and an estimated 360,000 pounds, respectively. Protect Rathbun Lake Project activities are currently underway in 53 targeted subwatersheds. Project activities to date have resulted in BMPs being applied for 30,000 total acres, including more than 15,000 acres of priority land (50% of the project's original objective), which will reduce the annual delivery of sediment and phosphorus to Rathbun Lake by 57,300 tons and 248,800 pounds, respectively (64% and 69% of the project's original objectives).

The activities proposed in the contract work plan for this phase of the Protect Rathbun Lake Interim Watershed Management Plan will result in the installation of BMPs treating 1,640 acres. At least 820 acres addressed with BMPs will be priority land with the remaining acres considered associate priority land. These BMPs will reduce the annual delivery of sediment and phosphorus to Rathbun Lake by an estimated 3,775 tons and 5,085 pounds, respectively. Proposed activities will include the application of BMPs in the 54 targeted sub-watersheds in which Protect Rathbun Lake efforts are currently underway as well as the installation of practices with landowners in one additional targeted sub-watershed, the newly targeted Lower Jackson Creek sub-watershed.

This contract will provide funding for project coordinators' salaries, watershed outreach, and for BMPs implemented through the Protect Rathbun Lake Project. The BMPs to be implemented through this project include: 100,000 feet of terraces, 1 large sediment debris basin, 12 grade stabilization structures, and 48 water and sediment control basins. Additionally, the contract will allow the implementation of forage and biomass plantings on 50 acres and improved grazing practices on 20 acres.

Statement of Work/Task:

Task 1: Provide Project Coordinator

Task 2: Submit to DNR the Annual Work Plan and Budget

Task 3: Carry Out Project Activities in the Project Workplan

Task 4: Provide Quarterly Financial Report

Task 5: Provide Quarterly Progress Report

Task 6: Submit Annual Report

Task 7: Submit Final Project Report**Selection Process Summary:**

Statute or federal grant contracting with IDALS is authorized by 11 IAC 117.5(5) and 118.7, which allows for agreements with entities without competition when the law or federal grant requires them. In addition, intergovernmental contracting with IDALS is authorized under 11 IAC 118.4. Also contracts with 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:

The DNR has contracted with IDALS to administer Section 319-funded watershed projects since the early 1990s. The purpose of the contracts with IDALS is to provide funds and project management support to IDALS, which then enters into subsequent agreements with soil and water conservation districts to implement the specific watershed implementation project activities.

Contracts for watershed projects overlap to enable project work to continue without interruption, as new contracts are executed with each new Section 319 grant award. In this manner, project coordinators who work with farmers and landowners to implement conservation practices within watersheds can do so continuously between contracts. Projects typically spend their oldest contract dollars first before utilizing new contract funds.

Below is a list of contracts with IDALS over the previous five years that support the Protect Rathbun Lake Project:

Contract #1: Timeframe: August 15, 2015 to June 30, 2018; Amount \$833,044

Contract #2: Timeframe: July 1, 2017 to June 30, 2019; Amount \$256,508

Contract #3: Timeframe: July 1, 2018 to June 30, 2021; Amount \$250,000

Contract #4: Timeframe: July 16, 2019 to June 30, 2022; Amount \$407,706

Contract #5: Timeframe: July 21, 2020 to June 30, 2022; Amount \$140,874

Partnerships Summary:

The DNR's primary partnerships for this contract include:

- Iowa Department of Agriculture and Land Stewardship Division of Soil Conservation and Water Quality
- Rathbun Regional Water Association
- Appanoose, Clarke, Decatur, Lucas, Monroe, and Wayne (lead) County Soil and Water Conservation Districts
- Appanoose, Clarke, Decatur, Lucas, Monroe, and Wayne Counties
- US Department of Agriculture Farm Service Agency and Natural Resources Conservation Service
- US Army Corps of Engineers
- US Environmental Protection Agency
- Iowa Farm Bureau Federation, state and local
- And participating landowners of the Rathbun Lake Watershed

Steve Konrady, Western Iowa Basin Coordinator, Watershed Improvement Section
Environmental Services Division
May 18, 2021

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

#8

Decision Item**Contract with The Office of the State Archeologist at the University of Iowa**

Commission approval is requested for a contract with The Office of the State Archeologist (OSA) at the University of Iowa, of Iowa City, Iowa.

Contract Terms:

Amount: Not to exceed \$650,000.00

Dates: June 1, 2021, to June 30, 2023.

Funding Source(s): Funding sources will be project related; potential sources include, but are not limited to: Lake Restoration, USFWS Wildlife and Sport Fish Restoration Program, USFWS North American Wetland Conservation Act, State Duck Stamp, REAP Land Management and Open Spaces, Marine Fuel Tax, Watershed Improvement Section (Section 319 funds of the Clean Water Act), Drinking Water State Revolving Fund (SRF), and the Clean Water SRF.

Contract Purpose: Archeological and architectural investigations are required for many construction and improvement projects completed on public land, including those associated with SRF and Section 319 sponsored projects for water quality improvement, lake restoration projects, wildlife and fisheries capital projects, and parks improvement/capital projects. For the majority of projects associated with this Contract, a phase 1 survey will be completed by OSA for each work order. A phase 1 is an archeological survey that determines the presence or absence of archeological resources within a project area. Additional surveys may need to be completed if cultural resources are located within the project area.

The purpose of this 2-year contract is to allow DNR staff across both divisions (CRD and ESD) ready access to contract with OSA to complete archeological and architectural investigations by issuing work orders for individual projects under this master agreement. Issuing work orders for archeological and architectural work will improve efficiency by reducing staff time drafting and preparing contracts for each individual project. The previous 2-year contract with OSA was very successful in serving the needs of the DNR project officers, allowing for timely, efficient, and economical investigations of cultural and historical resource concerns at all project construction sites.

Selection Process Summary: Intergovernmental contracting with the University of Iowa is authorized under 11 IAC 118.4. Also 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).

Travis Baker, Engineering, Land and Waters Bureau
Conservation and Recreation Division
May 13, 2021

Steve Konrady, Water Quality Bureau
Environmental Services Division
May 18, 2021

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

ITEM

9

DECISION

TOPIC

Adopted and Filed Rules – Chapter 61 – Water Quality Standards (Section 401 Water Quality Certification)

The Commission is requested to approve the Adopted and Final rule amending Chapter 60, “Scope of Title—Definitions—Forms—Rules of Practice,” and Chapter 61, “Water Quality Standards” of the 567 Iowa Administrative Code.

Summary of amendments and process

The final rule streamlines the process by which the Department of Natural Resources (Department) certifies that each United States Army Corps of Engineers (Corps) nationwide or regional Federal Water Pollution Control Act (the Act) Section 404 permit, or other federal permit or license, meets Iowa’s water quality requirements.

More specifically, the final rule removes the requirement that the Department certify through rule making that each nationwide and regional permit meets Iowa’s water quality standards. Such certification is required by Section 401 of the Act, but certification via rule making is not required. Rule making is unnecessarily burdensome and can delay the applicability of the benefits of the nationwide and regional permits to the regulated community.

In addition, the rule reorganizes and clarifies the list of potential conditions that may be included by the Department in certification of individual Corps permits for state water quality certification. This reorganization places the conditions together in one portion of the rule. Despite the removal of required rule making, the procedure for certifying nationwide and regional permits will continue to provide opportunity for public comments.

Other changes align with recent changes to the federal rules found at 40 C.F.R. Part 121. The Commission approved these in an amended NOIA on February 16, 2021: (1) a “pre-filing meeting request” must be made 30 days before a certification request; (2) the decertification process contained in the original NOIA was removed because the federal rules do not contemplate decertification; (3) all references to an “application” are now a “certification request”; (4) all references to US Army Corps have been replaced with a broader “federal agency” or “federal permits and licenses” to clarify that this rule is actually applicable to all federal permits and licenses that require state water quality certifications; and, finally, (5) all references to “water quality standards” are now “water quality requirements.” This new term is being added to the applicable list of definitions in 567 Iowa Administrative Code 60.2. The definition adopts in full the corresponding federal definition.

Additionally, three other changes to the original NOIA were approved by the Commission in the Amended NOIA. Two substantive changes were in response to comments received during the original NOIA’s public comment period: (1) clarifications to the public notice and comment process in response to a comment by the Iowa Environmental Council; and (2) clarifications on the lumber materials that may be included in a permit condition in response to a comment by

the Treated Wood Council.

Public Comments and Public Hearing

A virtual public hearing was held on March 30, 2021, at 3:00pm. One oral comment was received during the virtual hearing and one written comment was received during the public comment period. Both comments were from the Iowa Environmental Council. The comments requested changes beyond the scope of federal rules on water quality certification.

Adopted and Final Rule

No changes have been made from the Amended NOIA.

Roger Bruner, Supervisor
Water Quality Bureau
Environmental Services Division

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Rule making related to water quality certification requests

The Environmental Protection Commission (Commission) hereby amends Chapter 60, “Scope of Title—Definitions—Forms—Rules of Practice,” and Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 455B.105 and 455B.173.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.105 and 455B.173.

Purpose and Summary

The rule making streamlines the process by which the Department of Natural Resources (Department) certifies that each United States Army Corps of Engineers (Corps) nationwide or regional Federal Water Pollution Control Act (the Act) Section 404 permit (Corps’s nationwide or regional permit), or other federal permit or license, meets Iowa’s water quality requirements. The rule making achieves this by removing the requirement that the Department certify via rule making that each Corps’s nationwide or regional permit meets Iowa’s water quality requirements. Such certification is required by Section 401 of the Act, but certification via rule making is not. Certification by rule making is unnecessarily burdensome and can delay the applicability of the benefits of the Corps’s nationwide or regional permits to the regulated community.

In addition, the rule making reorganizes and clarifies the list of potential conditions that may be included by the Department in state water quality certification of federal permits and licenses. This reorganization places the conditions together in one portion of the rule. Despite the removal of required rule making, the procedure for certifying the Corps’s federal permits will continue to provide opportunity for public comments.

Finally, other amendments reflect recently-promulgated federal rules found in 40 CFR part 121. These changes include substantive edits to the chapter as well as semantic changes. Specifically, the following amendments are adopted: (1) a “prefiling meeting request” must be made 30 days before a certification request; (2) the decertification process contained in the original NOIA was removed because the federal rules do not contemplate decertification; (3) all references to an “application” now refer to a “certification request”; (4) all references to the Corps have been replaced with a broader “federal agency” or “federal permits and licenses” to clarify that the rule is actually applicable to all federal permits and licenses that require state water quality certifications; and, finally, (5) all references to “water quality standards” now refer to “water quality requirements.” The new term “water quality requirement” is being added to the applicable list of definitions in rule 567—60.2(455B,17A). “Water quality requirement” is defined by reference to the corresponding federal definition.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 12, 2020, as **ARC 5134C**.

An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5508C**.

A virtual public hearing was held on March 30, 2021, at 3:00pm. One oral comment was received during the virtual hearing, and one written comment was received during the public comment period. Both comments were from the Iowa Environmental Council. The comments requested changes beyond the scope of federal rules on water quality certification.

No changes have been made from the amended Notice.

Adoption of Rule Making

This rule making was adopted by the Commission on May 18, 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

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 July 21, 2021.

The following rule-making action is adopted:

ITEM 1. Adopt the following **new** definition of “Water quality requirement” in rule **567—60.2(455B)**:

“*Water quality requirement*” means the same as defined in 40 CFR §121.1(n).

ITEM 2. Amend paragraph **61.2(2)“g”** as follows:

g. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will

be subject to 567—Chapters 70, 71, and 72 and this policy. ~~United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, and 52 as well as Corps regional permits 7, 27, 33, and 34 as revised through July 16, 2014, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:~~

~~(1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.~~

~~(2) Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and may also require the permittee to provide proof of that recording to the Corps.~~

~~(3) Mitigation shall be scheduled prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States.~~

~~(4) For newly constructed channels through areas that are unvegetated, native grass filter strips, or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of the bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable species shall be achieved within three years of establishment of the buffer strip.~~

~~(5) For single family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.~~

~~(6) For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.~~

~~(7) For projects that impact an outstanding national resource water, outstanding Iowa water, fens, bogs, seeps, or sedge meadows, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).~~

~~(8) For nationwide permits when the Corps' district engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).~~

~~(9) Heavy equipment shall not be used or operated within the stream channel. If in-stream work is unavoidable, it shall be performed in such a manner as to minimize the duration of the disturbance, turbidity increases, substrate disturbance, bank disturbance, and disturbance to riparian vegetation. This condition does not further restrict otherwise authorized drainage ditch maintenance activities (Iowa Section 401 Water Quality Certification condition).~~

~~Written verification by the Corps or 401 certification by the state is required for activities covered by these permits as required by the nationwide permits or the Corps, and the activities are allowed subject to the terms and conditions of the nationwide and regional permits. The department will maintain and periodically update a guidance document listing special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require a preconstruction notice under nationwide permit conditions.~~

ITEM 3. Adopt the following **new** subrule 61.2(6):

61.2(6) State water quality certification. This subrule describes the procedures the department will follow when processing certification requests for state water quality certification (certification) of federally issued licenses and permits pursuant to Section 401 of the Act, including but not limited to permits issued by the United States Corps of Engineers (Corps) pursuant to Section 404 of the Act.

a. General. The department shall receive, consider, and process certification requests in accordance with Section 401 of the Act.

b. Certification requests. Certification requests shall be made on the department's Section 401

Water Quality Certification Request form. This form is available on the department's website. Individual permits or licenses issued by federal agencies require submission of a prefilings meeting request and certification request to obtain certification. The prefilings meeting request must be submitted to the department at least 30 days prior to submitting the certification request.

c. Public notice. The department shall issue a public notice of a certification request. The public notice may be a joint public notice issued by a federal agency on behalf of the department. When there is no joint public notice issued by the federal agency, a public notice issued by the department will be provided on its website. The public notice shall solicit comments from the public regarding whether the proposed project complies with state water quality requirements in accordance with Section 401 of the Act. The public notice shall specify the procedure and time frame for submitting comments on the proposed project.

d. Public notice for new or renewed nationwide or regional permits. The department shall provide additional notice to the public of certification of new or renewed nationwide or regional permits issued by the Corps pursuant to Section 404 of the Act. The department shall provide such notice on its website. The public notice shall solicit comments from the public regarding whether the proposed permit complies with state water quality requirements in accordance with Section 401 of the Act. The public notice shall specify the procedure and time frame for submitting comments on the proposed certification.

e. Department action on certification request. After the close of the public comment period and consideration of comments received, the department may issue a certification letter which may include conditions necessary to ensure compliance with state water quality requirements, waive issuance of the certification, or deny certification in accordance with Section 401 of the Act.

f. Certification of federal permits or licenses may require conditions, which may include one or more of the following, to ensure water quality requirements are met:

(1) During construction and upon completion of the project, actions must be taken to prevent pollution affecting public health, fish, shellfish, wildlife, and recreation due to turbidity, pH, nutrients, suspended solids, floating debris, visible oil and grease, or other pollutants entering waters of the state;

(2) Equipment used in waters of the state shall be cleaned of all hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, or other construction-related, potentially hazardous substances before arriving on site. Wash water shall not be discharged into a water of the state;

(3) All cleared vegetative material shall be properly managed in such a manner that it cannot enter a water of the state and cause a violation of water quality requirements;

(4) All construction debris shall be properly managed in such a manner that it cannot enter a water of the state;

(5) Erosion shall be managed so that sediment is not discharged to a water of the state in a manner that causes a violation of water quality requirements;

(6) Riprap, treated lumber products, and temporary structures shall consist of clean material free of coatings of potentially hazardous substances. No asphalt or petroleum-based material shall be used as or included in material placed in any water of the state or within the high-water table;

(7) Stockpiled dredged materials on the shore shall be managed so that sediment is not discharged in a manner that causes a violation of water quality requirements;

(8) Water quality monitoring will be required for Federal Energy Regulatory Commission hydropower projects at the baseline, construction and operational phases of the project;

(9) Hydraulically dredged material shall be managed to ensure the return water meets water quality requirements.

g. Duration of certification. The department's certification shall remain in effect until the expiration date of the applicable permit or license.

PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY
FOR
RULEMAKING ON 567 IAC 61.2(2)g & 61.2(6)
Section 401 Water Quality Certification

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL SERVICES DIVISION
WATER QUALITY BUREAU

April 22, 2021

Table of Contents

| | |
|--|----|
| INTRODUCTION | 4 |
| COMMENTER: Iowa Environmental Council (IEC), April 2, 2021 letter | 5 |
| 1. New Federal Rule Scope | 5 |
| IEC Comment | 5 |
| DNR Response | 6 |
| 2. Differences between Proposed and Existing Conditions | 7 |
| IEC Comment | 7 |
| DNR Response | 8 |
| Heavy Equipment | 8 |
| Vegetative Buffer Zone | 9 |
| Outstanding Iowa Waters (OIWs) | 9 |
| Specific Types of Wetlands | 9 |
| Waiver | 9 |
| Side Slopes | 10 |
| Wetland Loss Restrictions | 10 |
| 3. Conditions for All Nationwide Permits | 10 |
| IEC Comment | 10 |
| DNR Response | 11 |
| 4. Different Standards for Each Certification | 12 |
| IEC Comment | 12 |
| DNR Response | 12 |
| COMMENTER: IEC, March 30, 2021 oral comment | 13 |
| 1. New Federal Rule Scope | 13 |
| IEC Comment | 13 |
| DNR Response | 13 |
| 2. Differences between Proposed and Existing Conditions | 13 |
| IEC Comment | 13 |
| DNR Response | 14 |
| 3. Conditions for All Permits | 14 |
| IEC Comment | 14 |
| DNR Response | 14 |
| COMMENTER: IEC, September 11, 2020 letter | 15 |
| 1. New Federal Rule Scope | 15 |
| IEC Comment | 15 |

*Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 3 of 31**April 22, 2021*

| | |
|---|-----------|
| DNR Response | 15 |
| 2. Differences between Proposed and Existing Conditions | 16 |
| IEC Comment | 16 |
| DNR Response | 16 |
| 3. Conditions for All Nationwide Permits | 16 |
| IEC Comment | 16 |
| DNR Response | 17 |
| DNR Response | 18 |
| 5. Public Notice Process | 18 |
| IEC Comment | 18 |
| DNR Response | 19 |
| Attachment 1 - IEC's April 2, 2021 Comment Letter | 20 |
| Attachment 2 - IEC's September 11, 2020 Comment Letter | 26 |

Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 4 of 31
April 22, 2021

INTRODUCTION

This is a summary of the Iowa Department of Natural Resources' (DNR) response to comments received regarding 567 IAC 61.2(2)“g” and 61.2(6) proposed rulemaking on Water Quality Standards, Section 401 Water Quality Certification (certification). Amended notice of the proposed rulemaking was released for public review and comments following approval of the Amended Notice of Intended Action (NOIA) at the February 16, 2021 Environmental Protection Commission (EPC) meeting. The EPC meeting minutes which include the amended NOIA are available online at:

[https://www.iowadnr.gov/Portals/idnr/uploads/epc/20210216epc.pdf?ver=1-](https://www.iowadnr.gov/Portals/idnr/uploads/epc/20210216epc.pdf?ver=1-BO1NoPHcgbvAPT2xl96w%3d%3d)

[BO1NoPHcgbvAPT2xl96w%3d%3d](https://www.iowadnr.gov/Portals/idnr/uploads/epc/20210216epc.pdf?ver=1-BO1NoPHcgbvAPT2xl96w%3d%3d). In addition, the proposed rulemaking was published March 10, 2021, in the Iowa Administrative Bulletin (Amended NOIA ARC 5508C,

<https://rules.iowa.gov/Notice/Details/5508C>). The proposed rulemaking was also emailed to the antidegradation email list and published on the DNR webpage:

(<https://www.iowadnr.gov/Environmental-Protection/Water-Quality/Wetlands-Permitting>) on March 8, 2021, and published on March 11, 2021 in the DNR EcoNewsWire. Public comments were accepted from February 16, 2021 through April 2, 2021, with a virtual public meeting held on March 30, 2021.

The proposed rulemaking is intended to streamline and clarify the process by which the DNR certifies that federal permits and licenses, including each United States Army Corps of Engineers (Corps) nationwide and regional Federal Water Pollution Control Act (Act) Section 404 permit (nationwide and regional permit), meet Iowa's water quality requirements. The rulemaking ensures the process for certification is consistent with 40 C.F.R. § Part 121 (effective September 11, 2020).

This responsiveness summary provides a discussion of the issues raised by the comments received and how the comments were incorporated into the development of DNR's final rule for certification.

*Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 5 of 31
April 22, 2021*

COMMENTER: Iowa Environmental Council (IEC), April 2, 2021 letter

The original April 2, 2021 comment letter from Iowa Environmental Council (IEC) is attached (Attachment 1). Below, specific sections of the comment letter are quoted, followed by DNR's response. Please note, references from the original comment letter are not included in the quotes for the sake of concisely providing responses, but the complete letter, including references, is available as Attachment 1.

1. New Federal Rule Scope

IEC Comment

"The Current 401 Certification Requirements Do Not Infringe on the New Federal Rule Regarding Scope.

The existing rule's requirements do not infringe on the scope of 401 Certification as described in the July 2020 Federal Register publication of EPA's new rule. The EPA rule defines the scope of 401 Certification as being "limited to assuring that a discharge from a Federally licensed or permitted activity will comply with water quality requirements."² The rule clarifies the use of the term discharge and "water of the United States" to provide consistency and clarity across the statute. Furthermore, the rule requires for each condition a statement explaining the necessity of the condition and a citation to federal, state or tribal law that authorizes the condition. IDNR could easily trace several of the existing conditions in state requirements regarding water quality.

The proposed rule language states IDNR "may require conditions, which may include" any of a list of nine items. This permissive language creates unnecessary ambiguity: the list of conditions in rule could be interpreted as the universe of certification conditions available to IDNR. This would be extremely problematic because it preemptively restricts IDNR's authority to determine conditions that might be necessary for any project requesting certification. Because IDNR did not provide a written response to IEC's prior comments on this issue, it is unclear how IDNR plans to interpret and implement the rule, creating increased risk for litigation. IEC again urges IDNR to resolve any ambiguity by rephrasing the language in proposed rule 61.2(6)(f) as follows:

f. Certification of federal permits or licenses may require conditions to ensure compliance with water quality requirements, ~~which~~ These may include, but are not limited to, one or more of the following, to ensure water quality requirements are met:

*Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 6 of 31
April 22, 2021*

The rephrasing makes clear that IDNR can impose any condition necessary to ensure compliance with water quality standards, consistent with the Clean Water Act and its implementing regulations.³

DNR Response

On August 14, 2018, the DNR held a stakeholders meeting to answer questions and collect comments on proposed revisions to Iowa administrative rules which implement the certification. Revisions were proposed to better describe the certification procedure for the regulated public.

During this meeting, stakeholders sought clarification of conditions applied in certifications. To address this, the DNR developed a list of conditions which assure compliance with Iowa's water quality standards (567 IAC 61). This list is also compliant with changes to 40 C.F.R. Part 121 which became final on September 11, 2020. Specifically, 40 C.F.R. § 121.2 was revised to state that "[c]ertification is required for any license or permit that authorizes an activity that may result in a discharge." The revision to 40 C.F.R. § 121.3 limits the scope of certifications to "assuring a discharge from a Federally licensed or permitted activity will comply with water quality requirements."

The list of proposed conditions was developed to assure protection of water quality standards for a wide variety of permitted activities. In particular, the proposed rule section 61.2(6)"f"(1) states that "[d]uring construction and upon completion of the project, actions must be taken to prevent pollution affecting public health, fish, shellfish, wildlife, and recreation due to turbidity, pH, nutrients, suspended solids, floating debris, visible oil and grease, or other pollutants entering waters of the state." While all methods of compliance with water quality standards for all potential projects may not be defined in the list of proposed conditions, those conditions listed do assure compliance with water quality standards. By limiting the conditions to those which assure compliance with water quality requirements, the proposed conditions are justifiable (40 C.F.R. § 121.7(d)(1)(i) and 40 C.F.R. § 121.7(d)(2)(i)), authorized by state law (40 C.F.R. § 121.7(d)(1)(ii) and 40 C.F.R. § 121.7(d)(2)(ii)), not subject to being waived upon review by the federal agency (40 C.F.R. § 121.9(b)), and enforceable by the federal agency (40 C.F.R. § 121.11(c)). Moreover, 567 IAC 61.3(2) general water quality criteria are applicable; thus, any violations of those criteria are also enforceable. Therefore, should any of the listed conditions in the certification not be enough to eliminate narrative water quality standards violations, additional steps need to be taken by the project proponent to comply with narrative water quality standards.

Therefore, in response to this comment, no changes are proposed.

2. Differences between Proposed and Existing Conditions

IEC Comment

“The “Clarification” of the Certification Conditions Fails to Justify Substantial Differences Between the Proposed and Existing Conditions.

IEC described the differences between the conditions in the existing and proposed rule in its comments dated September 11, 2020. Although the reissued rule proposal continues to claim that the proposed rule merely “clarifies the list of potential conditions that may be included,”⁴ in fact the proposed rule significantly changes the conditions. The reissued proposal still provides no justification for the substantive changes, nor does it demonstrate how changing the substance of the conditions would streamline the process or better protect water quality. These changes affect numerous conditions that IDNR has historically imposed:

- *The existing rules do not allow heavy equipment in the waterway; the proposed rule would allow use of any equipment in the waterway as long as it has been thoroughly cleaned.⁵ This condition is needed to ensure compliance with IAC 61.3(2) (a)-(f).*
- *The proposed conditions remove vegetative buffer zone requirements complying with IAC 61.3(2)(b)(f).*
- *The proposed conditions remove requirements for individual certification of projects impacting outstanding national resource waters, Outstanding Iowa Waters, and specific types of wetlands under IAC 61.2(2).⁶*
- *The proposed rule removes a requirement for individual certification of projects receiving special waivers to exceed the limits of nationwide permits, which could lead to violation of IAC 61.2(2).⁷*
- *The proposed rule removes additional construction requirements for side slopes leading to possible violations of IAC 61.3(2)(a)(f).⁸*
- *The proposed rule removes permanent wetland loss restrictions for single family residences authorized under nationwide permit 29 and nationwide permit 46, creating potential violations of IAC 61.2(2).⁹*

The existing rule requires individual certifications for Outstanding National Resource Waters and Outstanding Iowa Waters. This implements IAC Section 61.2(2) regarding antidegradation of Iowa’s outstanding waters, where new or expanded sources of pollutants is limited. The antidegradation standards are water quality requirements. The rule should ensure protection of these waters by incorporating the individual certification requirement. Because the condition ensures compliance with water quality requirements, the provision should be retained as a condition in Chapter 61.

The proposed rule does not provide any justification for modifying and removing these requirements.¹⁰ The proposed changes would reduce protections for Iowa’s waters and would

*Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 8 of 31
April 22, 2021*

not ensure protection with the state's water quality standards adopted under the Clean Water Act, 33 U.S.C. § 1313. The Commission must revise the rule to fulfill its legal obligation to ensure compliance with the state's water quality standards."

DNR Response

This proposed rulemaking streamlines the certification process in the following ways: (1) certifications will not be required to undergo rulemaking; (2) all conditions are based in Iowa's water quality standards; thus, "the scope ... [of the] certification is limited to assuring that a discharge from a Federally licensed or permitted activity will comply with water quality requirements." 40 C.F.R. § 121.3.; and (3) the section has been reorganized. Thus, timely certifications will be issued as required by 40 C.F.R. § 121.6.

Conditions in certifications must be necessary to comply with Iowa's water quality standards. Prior to this rulemaking, some conditions in certifications may have been beyond this scope. While all methods of compliance with water quality standards for all potential projects may not be defined in the list of proposed conditions, the proposed conditions do assure compliance with water quality standards. The DNR recommends engaging with the Corps and federal agencies during public comment periods for concerns beyond the scope of Iowa's water quality standards. Moreover, 567 IAC 61.3(2) general water quality criteria are applicable; thus, any violations of those criteria are enforceable.

Each bulleted condition listed in the comment letter is addressed below.

Heavy Equipment

The described condition does not completely prohibit the use of heavy equipment in the stream channel. It states "[i]f in-stream work is unavoidable, it shall be performed in such a manner as to minimize the duration of the disturbance, turbidity increases, substrate disturbance, bank disturbance, and disturbance to riparian vegetation." Proposed conditions 1 and 2, as shown below, remain protective water quality standards when compared with the previous "heavy equipment" condition.

"(1) During construction and upon completion of the project, actions must be taken to prevent pollution affecting public health, fish, shellfish, wildlife, and recreation due to turbidity, pH, nutrients, suspended solids, floating debris, visible oil and grease, or other pollutants entering waters of the state;

(2) Equipment used in waters of the state shall be cleaned of all hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, or other construction-related, potentially hazardous substances before arriving on site. Wash water shall not be discharged into a water of the state"

*Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 9 of 31
April 22, 2021*

These proposed conditions ensure compliance with general water quality standards in 567 IAC 61.3(2).

Vegetative Buffer Zone

The buffer requirement condition was not included in the proposed list of conditions because there are many ways to prevent sediment from entering a water body, and Iowa's rules do not require a buffer.

Outstanding Iowa Waters (OIWs)

Outstanding Iowa Waters (OIWs) are in rule as part of antidegradation and the implementation policy which states "Outstanding State Resource Water will require an individual NPDES permit or individual Section 401 certification to ensure that impacts will be temporary and limited and that the public can participate in the decision." See 567 IAC 61.2(2) and Iowa Antidegradation Implementation Procedure § 6, pg. 22 (2010 and 2016). Therefore, individual certifications of projects impacting OIWs are not eliminated by this rulemaking.

Specific Types of Wetlands

Protection of wetlands is a requirement of Section 404 of the Act. For Section 404 permits, the Corps considers "special aquatic sites," defined as "geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region." 40 C.F.R. § 230.3(m). The Corps designates wetlands in their rules, and concerns over specific types of wetlands can be addressed in Corps rules and/or permits.

Section 404 permits may include conditions related to protection of wetlands and provide a platform for public engagement. The DNR recommends engaging with the Corps during public comment periods for Section 404 permits for concerns beyond the scope of Iowa's water quality standards.

Waiver

While the proposed rulemaking does not require certification for projects authorized using a nationwide permit with a waiver proposed by the Corps, the DNR maintains the ability to review and comment on such projects. The Corps is required to contact the DNR,

*Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 10 of 31
April 22, 2021*

Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and other relevant federal and state agencies for comment prior to issuing permits when waivers are used.

Side Slopes

The side slope condition was not included in the proposed list of conditions because it is not a water quality requirement. It is one of many ways to stabilize a stream bank.

Wetland Loss Restrictions

The existing condition relating to restricting the use of nationwide permits 29 and 46 was a Corps' regional condition for the Rock Island District, and is not a water quality requirement.

Therefore, in response to this comment, no changes are proposed.

3. Conditions for All Nationwide Permits

IEC Comment

“The Rules Should Require Conditions for All Nationwide Permits.

Many of the existing and proposed conditions would provide assurance of meeting water quality standards in any permit. IEC recommends these be mandatory conditions.

Proposed rule 61.2(6)(f), items (1)-(7) would be the easiest to require for each permit.¹¹ Item (1), requiring actions taken to prevent pollution affecting public health, should be required for each permit because it will require each certification applicant to protect public health and wildlife in accordance with the state antidegradation policy outlined in 61.2(2).¹² At minimum this requirement protects existing surface water uses for Tier 1 protection, but it further covers Tier 2 protected waters where the quality of water exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreational uses of the water.¹³

Item (2), requiring all equipment to be cleaned of hazardous material prior to use, is less stringent than the existing requirement under 61.2(2)(g)(9), which prohibits the use of heavy equipment in streams unless the equipment is used in a manner that minimizes the duration of the disturbance, the increase in turbidity, substrate disturbance, bank disturbance and disturbance of riparian vegetation.¹⁴ However, if the rule lists proposed items (4), (5), and (6) as

*Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 11 of 31
April 22, 2021*

mandatory requirements, it will effectively retain the same protection as existing item 61.2(2)(g)(9) while providing greater specificity.¹⁵

Items (3) and (7) relate to sediment and pollutant discharge like items (4)-(6).¹⁶ Item (3) prevents the certification applicant from discharging cleared vegetation into the waters of the state.¹⁷ The discharge of cleared vegetation would increase turbidity in the waters of the state and should be properly managed for each certification application.¹⁸ Similarly, item (7) regulates stockpiled dredged materials management to prevent discharge of sediment that would violate water quality standards.¹⁹ Both subsections focus on regulating the potential discharges to the state waters and maintaining the current water quality so it remains available for public use, fish, and wildlife management.²⁰

By maintaining similar standards as requirements, the rule fulfills the streamlining goal as well as provides clarity for both certification applicants and parties affected by the permits. The approach would also ensure that Iowa's water quality standards are met and considered by the permit applicants.

If the Commission does not agree that certain requirements should be mandatory to ensure compliance with state water quality standards, it should justify the changes to the conditions currently in effect.”

DNR Response

As discussed above, 40 C.F.R. § 121.3 requires certifications to be limited to “assuring that a discharge from a Federally licensed or permitted activity will comply with water quality requirements.” Thus, any condition beyond that scope cannot be included in a certification. Also, as discussed above, any violation of a narrative water quality standard is enforceable. For a Section 404 permit, certification conditions are incorporated into the Section 404 permit. See, 40 C.F.R. § 121.10. Therefore, the DNR does not need to duplicate conditions already in the federal permit.

The DNR will review all requests for certification of federal permits and licenses to determine if the permit or license already includes the conditions necessary to protect Iowa's water quality standards. When those conditions are not included or are not sufficiently protective of water quality standards, the DNR will issue a certification with additional required conditions. While conditions may be included to assure compliance with water quality standards, any violation of a narrative water quality standard remains enforceable. Therefore, no changes are proposed.

4. Different Standards for Each Certification

IEC Comment

“The New Optional Conditions Will Create Different Standards for Each 401 Certification.

The proposed rule 61.2(6)(f) allows the IDNR to include conditions in the permits based on a list provided in 61.2(6)(f)(1-10).²¹ The original rule required certain conditions to be met by each request for certification.²² This change will affect the clarity for both permit applicants and interested parties affected by the proposed permit.

For federal permits and projects that span several states the change could lead to confusion about what the permit applicant is required to provide to meet state water quality standards. The federal permit applicant could for one permit be required to provide information on actions to mitigate pollution, manage areas lacking vegetative material and construction debris but not manage erosion or clean their equipment of hazardous materials prior to using equipment in the waters of the state.²³”

DNR Response

For projects spanning more than one state, a certification from each state, where a discharge originates, will be required. Each state’s certification will be specific to that state’s water quality requirements, which may vary from state to state. For projects that only have a discharge in one state, but may have impacts to another state, the new Section 401 Water Quality Certification rule addresses the steps involved in allowing the adjacent state (neighboring jurisdiction) to comment on “whether it has determined that the discharge will violate any of its water quality requirements, to object to the issuance of the federal license or permit, and to request a public hearing from the Federal agency.” 40 CFR § 121.12(c)(1).

The proposed rulemaking will ensure consistency without redundancy in certified permits. Repetition will be avoided to ensure that when certification adds conditions to a permit, these are noticed by permittees/permitting agencies and enforced. Therefore, no changes are proposed.

*Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 13 of 31
April 22, 2021*

COMMENTER: IEC, March 30, 2021 oral comment

Below sections of the transcript are shown, followed by DNR's response.

1. New Federal Rule Scope

IEC Comment

"First, the existing rules conditions do not infringe on the scope of 401 certifications as described in the July 2020 Federal Register publication of EPA's new rule. The EPA rule defines the scope of 401 certification as being limited to ensuring that a discharge from a Federally licensed or permitted activity will comply with water quality requirements. Instead of retaining or addressing these existing rules language for the conditions to meet the new requirement, the proposed rule limits possible conditions to a fixed list of nine items. This is a fundamental flaw in the rule. DNR cannot predict every possible future scenario and cannot ensure the maintenance of water quality standards by restricting its authority in advance. DNR should list these as examples, not the complete set of potential conditions. "

DNR Response

See [response to IEC April 2 comment Section 1](#) above.

2. Differences between Proposed and Existing Conditions

IEC Comment

"A significant deficiency exemplifies this flaw in the protection of high quality waters. The US Army Corps issues general permits, each of which applies to many projects. In contrast the DNR issues single certification for each general permit. DNR's existing rule requires individual project certifications for the discharges to outstanding national water resources and outstanding Iowa waters. This implements rules regarding antidegradation of Iowa's outstanding waters for new or expanded sources of pollutants are limited. The antidegradation standards are water quality requirements, but it is not clear how DNR could implement them for general permits affecting high quality waters under the proposed rule. DNR did not list individual certifications for high quality waters as a possible condition in the draft rule.

Second, although the proposal claims that the, sorry, proposed rule clarifies the list of potential conditions that may be included, in fact the proposed rule significantly changes the conditions. The proposal does not justify the substantial changes, nor does it demonstrate how changing the substance of the conditions would streamline the process or better protect water quality. The proposed conditions would also remove some existing conditions without explaining how

*Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 14 of 31
April 22, 2021*

they cannot meet the federal rule. This proposed rule offers significant change to the certification requirements but has provided little, little support to them, even though some proposed conditions show little clear correlation to the current rule. In some cases, such as the waivers granted to nation-wide permits, DNR would have no opportunities to evaluate the effects of waiving permit conditions.”

DNR Response

See [response to IEC April 2 comment Section 2](#) above.

3. Conditions for All Permits

IEC Comment

“Lastly, the rule does not require any conditions to be applied to all permits. The first seven conditions in the proposed rule would be the easiest required for each permit. Many of the existing and proposed conditions would provide assurance of meeting water quality standards in any permit, which is why they are conditions for all general permits under the existing rule. DNR should not remove them. If these problems affected just a few permits IEC might not be concerned, but DNR certifies permit authorizing hundreds of projects per year and thousands over the lifetime of general permits being certified. Cumulatively the deficiencies in the proposed rule will unnecessarily worsen Iowa’s water quality.”

DNR Response

See [response to IEC April 2 comment Section 3](#) above.

COMMENTER: IEC, September 11, 2020 letter

The original September 11, 2020 comment letter from Iowa Environmental Council (IEC) is attached (Attachment 2). Below specific sections of the comment letter are shown, followed by corresponding DNR responses. This comment was submitted for the original NOIA and was not formally responded to by the DNR before the NOIA was amended due to new federal rules. IEC's comment related to the public notice process was addressed in the amended NOIA, as described below. Please note, references from the original comment letter are not included in the quotes for the sake of concisely providing responses.

1. New Federal Rule Scope

IEC Comment

“The Commission Cannot Restrict Conditions Placed on a 401 Certification Application to the List in the Proposed Rule.

The proposed rules significantly change the previous requirements of the certification process. The Commission stated the purpose of the rule change is to “streamline the process” the IDNR uses to certify certain federal 404 permits.¹ The Commission’s proposed change to list all possible conditions is more restrictive than the existing rule, thereby limiting IDNR’s ability to condition the section 404 permits to protect water quality standards.

The proposed rules state that IDNR “may require conditions, which may include one or more of the following, to ensure water quality standards are met.”² IDNR could interpret the language to mean the agency is limited to imposing the set of conditions listed in the rule. This interpretation restricts IDNR’s authority in a way that is inconsistent with the Clean Water Act’s requirement for states to impose the conditions necessary to ensure compliance with the state’s water quality standards.³ Because the rule applies to federal permits that have not yet been issued, the Commission cannot be certain that the proposed conditions will ensure compliance with water quality standards. To avoid the restrictive interpretation, the Commission should revise the rule at 61.2(6)(f) to read as follows: f. Certification of federal permits or licenses may require conditions to ensure water quality standards are met. These may include, but are not limited to, one or more of the following: The rephrasing makes clear that IDNR can impose any condition necessary to ensure compliance with water quality standards, consistent with the Clean Water Act and its implementing regulations.⁴”

DNR Response

See [response to IEC April 2 comment Section 1](#) above.

2. Differences between Proposed and Existing Conditions

IEC Comment

“The “Clarification” of the Certification Conditions Fails to Justify Substantial Differences Between the Proposed and Existing Conditions.

“Although the proposal claims that the proposed rule merely “clarifies” the conditions that it can impose,⁵ in fact the proposed rule significantly changes the conditions. The proposal provides no justification for the substantive changes, nor does it demonstrate how changing the substance of the conditions would streamline the process or better protect water quality. These changes affect numerous conditions that IDNR has historically imposed:

- *The existing rules do not allow heavy equipment in the waterway; the proposed rule would allow use of any equipment in the waterway as long as it has been thoroughly cleaned.⁶*
- *The proposed conditions remove vegetative buffer zone requirements.*
- *The proposed conditions remove requirements for individual certification of projects impacting outstanding national resource waters, outstanding Iowa waters, and specific types of wetlands.⁷*
- *The proposed rule removes a requirement for individual certification of projects receiving special waivers to exceed the limits of nationwide permits.⁸*
- *The proposed rule removes additional construction requirements for side slopes.⁹*
- *The proposed rule removes permanent wetland loss restrictions for single family residences authorized under nationwide permit 29 and nationwide permit 46.¹⁰*

The proposal does not provide any justification for removing these requirements.¹¹ Thus, the proposed rule offers significant changes to the certification requirements but has provided little to support them, even though some conditions show little clear correlation to the current rule.¹² In some cases, such as the waivers granted to nationwide permits, IDNR would have no opportunity to evaluate the effects of waiving permit conditions. The proposed changes would reduce protections for Iowa’s waters and would not ensure protection with the state’s water quality standards adopted under the Clean Water Act, 33 U.S.C. § 1313. IDNR must revise the rule to fulfill its legal obligation to ensure compliance with the state’s water quality standards.”

DNR Response

See [response to IEC April 2 comment Section 2](#) above.

3. Conditions for All Nationwide Permits

IEC Comment

“The Rules Should Require Certain Conditions for All Nationwide Permits.

“The Commission proposes to add requirements specific to hydropower dams, adds language similar to Iowa’s water quality narrative standard, and changes riparian buffers to riprap and temporary crossing. Many of the existing and proposed conditions would provide assurance of meeting water quality standards in any permit. IEC recommends these be mandatory conditions. Proposed rule 61.2(6)(f), items (1)-(7) would be the easiest to require for each permit.¹³ Item (1), requiring actions taken to prevent pollution affecting public health, should be required for each permit because it will require each certification applicant to protect public health and wildlife in accordance with the state antidegradation policy outlined in 61.2(2).¹⁴ At minimum this requirement protects existing surface water uses for Tier 1 protection, but it further covers Tier 2 protected waters where the quality of water exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreational uses of the water.¹⁵

Item (2), requiring all equipment to be cleaned of hazardous material prior to use, is less stringent than the existing requirement under 61.2(2)(g)(9), which prohibits the use of heavy equipment in streams unless the equipment is used in a manner that minimizes the duration of the disturbance, the increase in turbidity, substrate disturbance, bank disturbance and disturbance of riparian vegetation.¹⁶ However, if the rule lists proposed items (4), (5), and (6) as mandatory requirements, it will effectively retain the same protection as existing item 61.2(2)(g)(9) while providing greater specificity.¹⁷

Items (3) and (7) relate to sediment and pollutant discharge like items (4)-(6).¹⁸ Item (3) prevents the certification applicant from discharging cleared vegetation into the waters of the state.¹⁹ The discharge of cleared vegetation would increase turbidity in the waters of the state and should be properly managed for each certification application.²⁰ Similarly, item (7) regulates stockpiled dredged materials management to prevent discharge of sediment that would violate water quality standards.²¹ Both subsections focus on regulating the potential discharges to the state waters and maintaining the current water quality so it remains available for public use, fish, and wildlife management.²² By maintaining similar standards as requirements, the rule fulfills the streamlining goal as well as provides clarity for both certification applicants and parties affected by the permits. The approach would also ensure that Iowa’s water quality standards are met and considered by the permit applicants. If the Commission does not agree that certain requirements should be mandatory to ensure compliance with state water quality standards, it should justify the changes to the conditions currently in effect.”

DNR Response

See [response to IEC April 2 comment Section 3](#) above.

Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 18 of 31
April 22, 2021

4. Different Standards for each 401 Certification

IEC Comment

“The New Optional Conditions Will Create Different Standards for Each 401 Certification.

The proposed rule 61.2(6)(f) allows the IDNR to include conditions in the permits based on a list provided in 61.2(6)(f)(1-10).²³ The original rule required certain conditions to be met by each request for certification.²⁴ This change will affect the clarity for both permit applicants and interested parties affected by the proposed permit.

For federal permits and projects that span several states the change could lead to confusion about what the permit applicant is required to provide to meet state water quality standards.²⁵ The federal permit applicant could for one permit be required to provide information on actions to mitigate pollution, manage areas lacking vegetative material and construction debris but not manage erosion or clean their equipment of hazardous materials prior to using equipment in the waters of the state.²⁶”

DNR Response

See [response to IEC April 2 comment Section 4](#) above.

5. Public Notice Process

IEC Comment

“The Proposed Rules Should Define the Public Notice Process.

The proposed changes to the rule fail to define a method of providing public notice for 401 certifications. The proposed changes provide that new or amended permits or certifications be posted electronically to provide public notice.²⁷ However, the proposed section 61.2(6)(c) provides no guidance as to where the public notice of certification applications will be posted. Other permits and notifications similar to 401 certifications allow for the public to sign up for email notifications either through newsletters like EcoNewsWire for air permits or an email notification issued through the Wastewater Permit Information Exchange system for new draft wastewater permits.²⁸ The rules governing other types of permits require some public notice electronically either on the IDNR’s website or an email subscriber list.²⁹

IEC recommends that the Commission revise the proposed rule to include a method of electronic notice similar to the permits referenced above. IDNR could add the notice of application to a current newsletter, such as EcoNewsWire, publish the notice of application to the department’s webpage with an option for subscription notification, or create a database similar to the Wastewater Permit Information Exchange system that tracks 401 certification applications.”

DNR Response

The public comment process was clarified in the amended NOIA (ARC 5508C) in response to this comment. The proposed rule in the amended NOIA states “[w]hen there is no joint public notice issued by the federal agency, a public notice issued by the department will be provided on its website.”

Specifically for Section 404 permits requiring certification, the links to the Corps’s public notice websites for both the Rock Island District and Omaha District are posted on the DNR’s website. The Omaha District currently does not have a subscription service to send notification of new public notices. However, the notices can be viewed online (<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nebraska/Public-Notices/>). The DNR plans to add the following information to the website, explaining how people can subscribe to the Rock Island District Corps’s public notices:

Rock Island District: The public currently can subscribe to receive an electronic mailing (email) notification from the Corps Rock Island District Regulatory Section of new public notices added to the website by sending an email request to the District contact. Please include:

- The subject line "Request To Be Added To Regulatory PUBLIC NOTICE Mailing List"
- The email address the notice should be sent to
- State(s) of interest: Iowa, Illinois, and/or Missouri

Send Request to: Charlene.Cole@usace.army.mil or CEMVR-ODPublicNotice@usace.army.mil

At this time, when no joint public notice is posted by the federal agency, the public notice will be posted on the DNR [website](#).

Currently, the EcoNewsWire is used to let the public know about requests for comments that have been added to the DNR website for certification of the nationwide and regional permits. The DNR will consider implementation of a subscriber listserv with email notifications.

Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 20 of 31

April 22, 2021

Attachment 1 - IEC's April 2, 2021 Comment Letter



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April 2, 2021

Christine Schwake
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502 East 9th Street
Des Moines, Iowa 50319
Fax: 515.725.8201
Email: christine.schwake@IDNR.iowa.gov

RE: Amended Notice of Intended Action for Chapter 61 401 Certifications

Dear Ms. Schwake:

The Iowa Environmental Council (IEC) offers the following comments on the Amended Notice of Intended Action Proposing Rule Making Related to Water Quality Certification Applications and Providing an Opportunity for Public Comment published in the Iowa Administrative Bulletin on March 10, 2021, by the Environmental Protection Commission (“Commission”). The rule making would revise the processes for the Iowa Department of Natural Resources (“IDNR”) when certifying nationwide and regional permits under section 404 of the Clean Water Act or other federal licenses and permits. These comments represent the views of the Iowa Environmental Council, an alliance of 80 organizations, at-large board members from business, farming, the sciences and education, and over 500 individual members. IEC’s members hike, fish, paddle, swim, and recreate in and around lakes, rivers, and streams throughout the state. IEC tracks section 401 certification permits to keep their members apprised of how permitted projects will affect local recreation and enjoyment of Iowa’s lakes, rivers, and streams. These certifications apply to more than 800 projects per year,¹ magnifying the impact of any deficiency in the rule or certification requirements.

We wish to reiterate our previous comments, submitted September 11, 2020, regarding the proposed changes to 401 Certification. IEC met with IDNR on December 9, 2020. At the meeting, IDNR stated the new federal rule would impact the rule proposed in August 2020 and that a new rule would be issued in response. IEC did not receive a written response to its comments. IEC agrees that 401 certification rule needs to comply with the rule promulgated by the EPA. However, IEC still retains the concerns previously described regarding the new language and reiterates the concerns below.

¹ Memo from Christine Schwake, IDNR, “Rationale for Section 401 Water Quality Certification of the 2020 Nationwide Permits,” (Nov. 10, 2020) at 2 (citing estimates of nationwide permit coverage at 804 instances per year).

Ms. Christine Schwake

April 2, 2021

Page 2

The Current 401 Certification Requirements Do Not Infringe on the New Federal Rule Regarding Scope.

The existing rule's requirements do not infringe on the scope of 401 Certification as described in the July 2020 Federal Register publication of EPA's new rule. The EPA rule defines the scope of 401 Certification as being "limited to assuring that a discharge from a Federally licensed or permitted activity will comply with water quality requirements."² The rule clarifies the use of the term discharge and "water of the United States" to provide consistency and clarity across the statute. Furthermore, the rule requires for each condition a statement explaining the necessity of the condition and a citation to federal, state or tribal law that authorizes the condition. IDNR could easily trace several of the existing conditions in state requirements regarding water quality.

The proposed rule language states IDNR "may require conditions, which may include" any of a list of nine items. This permissive language creates unnecessary ambiguity: the list of conditions in rule could be interpreted as the universe of certification conditions available to IDNR. This would be extremely problematic because it preemptively restricts IDNR's authority to determine conditions that might be necessary for any project requesting certification. Because IDNR did not provide a written response to IEC's prior comments on this issue, it is unclear how IDNR plans to interpret and implement the rule, creating increased risk for litigation. IEC again urges IDNR to resolve any ambiguity by rephrasing the language in proposed rule 61.2(6)(f) as follows:

f. Certification of federal permits or licenses may require conditions to ensure compliance with water quality requirements. ~~which~~ These may include, but are not limited to, one or more of the following, to ensure water quality requirements are met:

The rephrasing makes clear that IDNR can impose any condition necessary to ensure compliance with water quality standards, consistent with the Clean Water Act and its implementing regulations.³

I. The "Clarification" of the Certification Conditions Fails to Justify Substantial Differences Between the Proposed and Existing Conditions.

IEC described the differences between the conditions in the existing and proposed rule in its comments dated September 11, 2020. Although the reissued rule proposal continues to claim that the proposed rule merely "clarifies the list of potential conditions that may be included,"⁴ in fact the proposed rule significantly changes the conditions. The reissued proposal still provides no justification for the substantive changes, nor does it demonstrate how changing the substance of the conditions would streamline the process or better protect water quality. These changes affect numerous conditions that IDNR has historically imposed:

² 85 Fed. Reg. 134 (July 2020) at 42250.

³ See 33 U.S.C. § 1341(a)(1); 40 C.F.R. § 121.2(4); 33 C.F.R. § 325.4(a)(1).

⁴ XLIII Iowa Admin. Bull. at 2022 (Mar. 10, 2021).

Ms. Christine Schwake

April 2, 2021

Page 3

- The existing rules do not allow heavy equipment in the waterway; the proposed rule would allow use of any equipment in the waterway as long as it has been thoroughly cleaned.⁵ This condition is needed to ensure compliance with IAC 61.3(2) (a)-(f).
- The proposed conditions remove vegetative buffer zone requirements complying with IAC 61.3(2)(b)(f).
- The proposed conditions remove requirements for individual certification of projects impacting outstanding national resource waters, Outstanding Iowa Waters, and specific types of wetlands under IAC 61.2(2).⁶
- The proposed rule removes a requirement for individual certification of projects receiving special waivers to exceed the limits of nationwide permits, which could lead to violation of IAC 61.2(2).⁷
- The proposed rule removes additional construction requirements for side slopes leading to possible violations of IAC 61.3(2)(a)(f).⁸
- The proposed rule removes permanent wetland loss restrictions for single family residences authorized under nationwide permit 29 and nationwide permit 46, creating potential violations of IAC 61.2(2).⁹

The existing rule requires individual certifications for Outstanding National Resource Waters and Outstanding Iowa Waters. This implements IAC Section 61.2(2) regarding antidegradation of Iowa's outstanding waters, where new or expanded sources of pollutants is limited. The antidegradation standards are water quality requirements. The rule should ensure protection of these waters by incorporating the individual certification requirement. Because the condition ensures compliance with water quality requirements, the provision should be retained as a condition in Chapter 61.

The proposed rule does not provide any justification for modifying and removing these requirements.¹⁰ The proposed changes would reduce protections for Iowa's waters and would not ensure protection with the state's water quality standards adopted under the Clean Water Act, 33 U.S.C. § 1313. The Commission must revise the rule to fulfill its legal obligation to ensure compliance with the state's water quality standards.

II. The Rules Should Require Conditions for All Nationwide Permits.

Many of the existing and proposed conditions would provide assurance of meeting water quality standards in any permit. IEC recommends these be mandatory conditions.

⁵ Iowa Admin. Code r. 567-61.2(2)(g) (2020).

⁶ XLIII Iowa Admin. Bull. at 2024 (Mar. 10, 2021).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *See id.* at 2022 (“the rule making reorganizes and clarifies the list of potential conditions”).

Ms. Christine Schwake

April 2, 2021

Page 4

Proposed rule 61.2(6)(f), items (1)-(7) would be the easiest to require for each permit.¹¹ Item (1), requiring actions taken to prevent pollution affecting public health, should be required for each permit because it will require each certification applicant to protect public health and wildlife in accordance with the state antidegradation policy outlined in 61.2(2).¹² At minimum this requirement protects existing surface water uses for Tier 1 protection, but it further covers Tier 2 protected waters where the quality of water exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreational uses of the water.¹³

Item (2), requiring all equipment to be cleaned of hazardous material prior to use, is less stringent than the existing requirement under 61.2(2)(g)(9), which prohibits the use of heavy equipment in streams unless the equipment is used in a manner that minimizes the duration of the disturbance, the increase in turbidity, substrate disturbance, bank disturbance and disturbance of riparian vegetation.¹⁴ However, if the rule lists proposed items (4), (5), and (6) as mandatory requirements, it will effectively retain the same protection as existing item 61.2(2)(g)(9) while providing greater specificity.¹⁵

Items (3) and (7) relate to sediment and pollutant discharge like items (4)-(6).¹⁶ Item (3) prevents the certification applicant from discharging cleared vegetation into the waters of the state.¹⁷ The discharge of cleared vegetation would increase turbidity in the waters of the state and should be properly managed for each certification application.¹⁸ Similarly, item (7) regulates stockpiled dredged materials management to prevent discharge of sediment that would violate water quality standards.¹⁹ Both subsections focus on regulating the potential discharges to the state waters and maintaining the current water quality so it remains available for public use, fish, and wildlife management.²⁰

By maintaining similar standards as requirements, the rule fulfills the streamlining goal as well as provides clarity for both certification applicants and parties affected by the permits. The approach would also ensure that Iowa's water quality standards are met and considered by the permit applicants.

If the Commission does not agree that certain requirements should be mandatory to ensure compliance with state water quality standards, it should justify the changes to the conditions currently in effect.

¹¹ *Id.* at 2025.

¹² *Id.*; Iowa Admin. Code r. 567-61.2(2) (2020).

¹³ Iowa Admin. Code r. 567-61.2(2) (2020).

¹⁴ XLIII Iowa Admin. Bull. at 2025 (Mar. 10, 2021).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

Ms. Christine Schwake

April 2, 2021

Page 5

III. The New Optional Conditions Will Create Different Standards for Each 401 Certification.

The proposed rule 61.2(6)(f) allows the IDNR to include conditions in the permits based on a list provided in 61.2(6)(f)(1-10).²¹ The original rule required certain conditions to be met by each request for certification.²² This change will affect the clarity for both permit applicants and interested parties affected by the proposed permit.

For federal permits and projects that span several states the change could lead to confusion about what the permit applicant is required to provide to meet state water quality standards. The federal permit applicant could for one permit be required to provide information on actions to mitigate pollution, manage areas lacking vegetative material and construction debris but not manage erosion or clean their equipment of hazardous materials prior to using equipment in the waters of the state.²³

IV. Conclusion

IEC is concerned with the significant changes proposed to the certification conditions. While we understand the need for clarity and ease of process, providing a predefined list of potential conditions will not adequately protect Iowa's water quality. IEC urges the Commission to mandate the requirements in the proposed rule that are applicable to all permits and provide an allowance for special cases where stricter or more site-specific requirements are needed.

Sincerely,

/s/ Michael R. Schmidt

Michael R. Schmidt
Staff Attorney
Iowa Environmental Council

/s/ Katie Luzier

Katie Luzier
Legal Intern
Iowa Environmental Council

²¹ *Id.*

²² *Id.* at 2024.

²³ *Id.* at 2025.

Rulemaking on Water Quality Criteria for Section 401 Water Quality Certification Page 26 of 31

April 22, 2021

Attachment 2 - IEC's September 11, 2020 Comment Letter



505 Fifth Ave Suite 850
Des Moines IA 50309
515.244.1194
iaenvironment.org

September 11, 2020

Christine Schwake
Iowa Department of Natural Resources Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: christine.schwake@dnr.iowa.gov

RE: Proposing Rule Making Related to Water Quality Certification Applications and Providing an Opportunity for Public Comment

Dear Ms. Schwake:

The Iowa Environmental Council (IEC) offers the following comments on the Proposing Rule Making Related to Water Quality Certification Applications and Providing an Opportunity for Public Comment published in the Iowa Administrative Bulletin on August 12, 2020, by the Environmental Protection Commission (Commission). The rule making would revise the processes for the Iowa Department of Natural Resources (IDNR) in certifying nationwide and regional permits under section 404 of the Clean Water Act. These comments represent the views of the Iowa Environmental Council, an alliance of 75 organizations, at-large board members from business, farming, the sciences and education, and over 500 individual members. IEC's members hike, fish, paddle, swim, and recreate in and around lakes, rivers, and streams throughout the state. IEC tracks section 401 certification permits to keep their members apprised of how permitted projects will affect local recreation and enjoyment of Iowa's lakes, rivers, and streams.

I. The Commission Cannot Restrict Conditions Placed on a 401 Certification Application to the List in the Proposed Rule.

The proposed rules significantly change the previous requirements of the certification process. The Commission stated the purpose of the rule change is to "streamline the process" the IDNR uses to certify certain federal 404 permits.¹ The Commission's proposed change to list all possible conditions is more restrictive than the existing rule, thereby limiting IDNR's ability to condition the section 404 permits to protect water quality standards.

The proposed rules state that IDNR "may require conditions, which may include one or more of the following, to ensure water quality standards are met."² IDNR could interpret the language to

¹ XLIII Iowa Admin. Bull. p. 264 (Aug. 12, 2020).

² *Id.* at 267.

Ms. Christine Schwake

September 11, 2020

Page 2

mean the agency is limited to imposing the set of conditions listed in the rule. This interpretation restricts IDNR’s authority in a way that is inconsistent with the Clean Water Act’s requirement for states to impose the conditions necessary to ensure compliance with the state’s water quality standards.³ Because the rule applies to federal permits that have not yet been issued, the Commission cannot be certain that the proposed conditions will ensure compliance with water quality standards.

To avoid the restrictive interpretation, the Commission should revise the rule at 61.2(6)(f) to read as follows:

- f. Certification of federal permits or licenses may require conditions to ensure water quality standards are met. These may include, but are not limited to, one or more of the following:

The rephrasing makes clear that IDNR can impose any condition necessary to ensure compliance with water quality standards, consistent with the Clean Water Act and its implementing regulations.⁴

II. The “Clarification” of the Certification Conditions Fails to Justify Substantial Differences Between the Proposed and Existing Conditions.

Although the proposal claims that the proposed rule merely “clarifies” the conditions that it can impose,⁵ in fact the proposed rule significantly changes the conditions. The proposal provides no justification for the substantive changes, nor does it demonstrate how changing the substance of the conditions would streamline the process or better protect water quality. These changes affect numerous conditions that IDNR has historically imposed:

- The existing rules do not allow heavy equipment in the waterway; the proposed rule would allow use of any equipment in the waterway as long as it has been thoroughly cleaned.⁶
- The proposed conditions remove vegetative buffer zone requirements.
- The proposed conditions remove requirements for individual certification of projects impacting outstanding national resource waters, outstanding Iowa waters, and specific types of wetlands.⁷
- The proposed rule removes a requirement for individual certification of projects receiving special waivers to exceed the limits of nationwide permits.⁸
- The proposed rule removes additional construction requirements for side slopes.⁹
- The proposed rule removes permanent wetland loss restrictions for single family residences authorized under nationwide permit 29 and nationwide permit 46.¹⁰

³ 33 U.S.C. § 1341(a)(1); 40 C.F.R. § 121.2(4); 33 C.F.R. § 325.4(a)(1).

⁴ See 33 U.S.C. § 1341(a)(1); 40 C.F.R. § 121.2(4); 33 C.F.R. § 325.4(a)(1).

⁵ XLIII Iowa Admin. Bull. P. at 264 (Aug. 12, 2020).

⁶ *Id.*

⁷ *Id.* at 266, 267.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Ms. Christine Schwake

September 11, 2020

Page 3

The proposal does not provide any justification for removing these requirements.¹¹ Thus, the proposed rule offers significant changes to the certification requirements but has provided little to support them, even though some conditions show little clear correlation to the current rule.¹² In some cases, such as the waivers granted to nationwide permits, IDNR would have no opportunity to evaluate the effects of waiving permit conditions.

The proposed changes would reduce protections for Iowa's waters and would not ensure protection with the state's water quality standards adopted under the Clean Water Act, 33 U.S.C. § 1313. IDNR must revise the rule to fulfill its legal obligation to ensure compliance with the state's water quality standards.

III. The Rules Should Require Certain Conditions for All Nationwide Permits.

The Commission proposes to add requirements specific to hydropower dams, adds language similar to Iowa's water quality narrative standard, and changes riparian buffers to riprap and temporary crossing. Many of the existing and proposed conditions would provide assurance of meeting water quality standards in any permit. IEC recommends these be mandatory conditions.

Proposed rule 61.2(6)(f), items (1)-(7) would be the easiest to require for each permit.¹³ Item (1), requiring actions taken to prevent pollution affecting public health, should be required for each permit because it will require each certification applicant to protect public health and wildlife in accordance with the state antidegradation policy outlined in 61.2(2).¹⁴ At minimum this requirement protects existing surface water uses for Tier 1 protection, but it further covers Tier 2 protected waters where the quality of water exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreational uses of the water.¹⁵

Item (2), requiring all equipment to be cleaned of hazardous material prior to use, is less stringent than the existing requirement under 61.2(2)(g)(9), which prohibits the use of heavy equipment in streams unless the equipment is used in a manner that minimizes the duration of the disturbance, the increase in turbidity, substrate disturbance, bank disturbance and disturbance of riparian vegetation.¹⁶ However, if the rule lists proposed items (4), (5), and (6) as mandatory requirements, it will effectively retain the same protection as existing item 61.2(2)(g)(9) while providing greater specificity.¹⁷

Items (3) and (7) relate to sediment and pollutant discharge like items (4)-(6).¹⁸ Item (3) prevents the certification applicant from discharging cleared vegetation into the waters of the state.¹⁹ The discharge of cleared vegetation would increase turbidity in the waters of the state and should be

¹¹ See *id.* at 264 (“the rule making reorganizes and clarifies the list of potential conditions”).

¹² *Id.* at 266, 267.

¹³ *Id.* at 267.

¹⁴ *Id.*; Iowa Admin. Code r. 567-61.2(2) (2020).

¹⁵ Iowa Admin. Code r. 567-61.2(2) (2020).

¹⁶ XLIII Iowa Admin. Bull. P. at 266, 267 (Aug. 12, 2020).

¹⁷ *Id.*

¹⁸ *Id.* at 266.

¹⁹ *Id.*

Ms. Christine Schwake

September 11, 2020

Page 4

properly managed for each certification application.²⁰ Similarly, item (7) regulates stockpiled dredged materials management to prevent discharge of sediment that would violate water quality standards.²¹ Both subsections focus on regulating the potential discharges to the state waters and maintaining the current water quality so it remains available for public use, fish, and wildlife management.²²

By maintaining similar standards as requirements, the rule fulfills the streamlining goal as well as provides clarity for both certification applicants and parties affected by the permits. The approach would also ensure that Iowa's water quality standards are met and considered by the permit applicants.

If the Commission does not agree that certain requirements should be mandatory to ensure compliance with state water quality standards, it should justify the changes to the conditions currently in effect.

IV. The New Optional Conditions Will Create Different Standards for Each 401 Certification.

The proposed rule 61.2(6)(f) allows the IDNR to include conditions in the permits based on a list provided in 61.2(6)(f)(1-10).²³ The original rule required certain conditions to be met by each request for certification.²⁴ This change will affect the clarity for both permit applicants and interested parties affected by the proposed permit.

For federal permits and projects that span several states the change could lead to confusion about what the permit applicant is required to provide to meet state water quality standards.²⁵ The federal permit applicant could for one permit be required to provide information on actions to mitigate pollution, manage areas lacking vegetative material and construction debris but not manage erosion or clean their equipment of hazardous materials prior to using equipment in the waters of the state.²⁶

V. The Proposed Rules Should Define the Public Notice Process.

The proposed changes to the rule fail to define a method of providing public notice for 401 certifications. The proposed changes provide that new or amended permits or certifications be posted electronically to provide public notice.²⁷ However, the proposed section 61.2(6)(c) provides no guidance as to where the public notice of certification applications will be posted.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at 266, 267.

²⁴ *Id.* at 267.

²⁵ *Id.*

²⁶ *Id.* at 266.

²⁷ *Id.* at 266-67.

Ms. Christine Schwake

September 11, 2020

Page 5

Other permits and notifications similar to 401 certifications allow for the public to sign up for email notifications either through newsletters like EcoNewsWire for air permits or an email notification issued through the Wastewater Permit Information Exchange system for new draft wastewater permits.²⁸ The rules governing other types of permits require some public notice electronically either on the IDNR's website or an email subscriber list.²⁹

IEC recommends that the Commission revise the proposed rule to include a method of electronic notice similar to the permits referenced above. IDNR could add the notice of application to a current newsletter, such as EcoNewsWire, publish the notice of application to the department's webpage with an option for subscription notification, or create a database similar to the Wastewater Permit Information Exchange system that tracks 401 certification applications.

VI. Conclusion

IEC is concerned with the significant changes proposed to the certification conditions. While we understand the need for clarity and ease of process, providing a predefined list of potential conditions will not adequately protect Iowa's water quality. IEC urges the Commission to mandate the requirements in the proposed rule that are applicable to all permits and continue provide an allowance for special cases where stricter or more site-specific requirements are needed.

IEC understands the difficulty in issuing 401 certifications when each certification requires rule making. At the same time, the permits can have widespread application and impact around the state. To ensure adequate public notice, IEC requests that the application for 401 certification, new and renewed permits be added to a newsletter or a subscription service to make public notice more readily available.

Sincerely,

/s/ Michael R. Schmidt

Michael R. Schmidt
Staff Attorney
Iowa Environmental Council

/s/ Katie Luzier

Katie Luzier
Legal Intern
Iowa Environmental Council

²⁸ See Iowa Admin. Code r. 567-33.3(17)(b)(3) (2020); Iowa Admin. Code r. 567-42.1(1) (2020); IDNR's NPDES Wastewater Permitting; Major Components of a Permit, <https://www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting>; DNR News Release, *DNR Air Quality to provide streamlined public notice* (2018), <https://www.iowadnr.gov/About-DNR/DNR-News-Releases/ArticleID/1831/DNR-Air-Quality-to-provide-streamlined-public-notice>.

²⁹ See Iowa Admin. Code r. 567-33.3(17)(b)(3) (2020); Iowa Admin. Code r. 567-42.1(1) (2020).

Iowa Department of Natural Resources
Environmental Protection Commission

ITEM 10

DECISION

Contract with THE UNIVERSITY OF IOWA**Recommendation:**

Commission approval is requested for a service contract with the State Hygienic Laboratory at the University of Iowa.

Contract Terms:

Amount: Not to exceed \$701,732.16

Dates: July 1, 2021 to September 30, 2022

Funding Source(s): Environment First Funds

Statutory Authority: Iowa Code section 455B.103(3)

Contract Background:

The Clean Water Act requires states to monitor and report on the condition of the waters of the state. This Contract is a continuation of DNR's long-standing partnership with the State Hygienic Laboratory at the University of Iowa (SHL) to collect and analyze samples from Iowa's streams and rivers. Since 1994, the DNR has conducted biological assessments of Iowa streams to determine the ecological status and health of these waterbodies. The protocol primarily consists of sampling water quality, fish, benthic macroinvertebrates and physical habitat during the summer low-flow index period (July through October).

Contract Purpose:

The parties propose to enter into this Contract to retain the Contractor to provide sampling and analytical services for the ambient biological monitoring and assessment program.

Contractor Selection Process:

SHL was chosen for this project because of its ability to provide the necessary analytical services. The authority to enter into this Contract is found in Iowa Code section 455B.103(3).

Contract History:

The FY21 Ambient Stream Biological Monitoring and Laboratory Services (AMBIO) contract was \$714,975.12

The FY20 AMBIO contract was \$617,896.62.

The FY19 AMBIO contract was \$567,455.22.

The FY18 AMBIO contract was \$543,021.30.

The FY17 AMBIO contract was \$663,278.76.

Roger Bruner, Supervisor, Water Quality Monitoring and Assessment Section
Water Quality Bureau
Environmental Services Division
April 21, 2021

Statement of Work

| Obligation | Task Milestone Date |
|---|--|
| <p>Task 1: Calibrated Wadeable Stream Reference Site Sample Collection and Biological Analysis</p> <p>Description: One full biocriteria (IBI) sampling event shall be completed by the Contractor at each of the 28 Calibrated Wadeable Stream Reference sites identified in Exhibit A, which is attached to and by this reference made a part of this Contract. All biological and physical habitat data shall be entered by the Contractor directly into the DNR's online BioNet database. All other recorded observations shall be reported to the DNR in a DNR-approved electronic format.</p> <p>Contractor shall provide the following Deliverables to DNR for each of the 28 sites listed in Exhibit A:</p> <ul style="list-style-type: none"> a) <u>Calibrated wadeable stream reference site sample collection</u>: benthic macroinvertebrates and fish (2015 revised DNR IBI protocols, 2015 revised DNR field forms); quantitative transect-based habitat survey (2015 revised DNR intensive habitat protocol; 2015 revised DNR intensive habitat field forms); benthic chlorophyll, water quality grab sample and field analytes (aquatic life parameter suite, as set out in Table 1, page 16). b) <u>Analysis of fish and benthic macroinvertebrate samples collected under Task 1a</u>: field form submittal; and fish, benthic macroinvertebrate, physical habitat and field form data entry. c) <u>QA/QC of data</u>: Contractor shall conduct QA/QC of all data entered into the BioNet database under Task 1b. | <p>Tasks shall occur by no later than the dates listed below:</p> <ul style="list-style-type: none"> a) October 15, 2021 b) April 1, 2022 c) May 1, 2022 <p>Any deviation from this schedule shall be approved in writing by the DNR prior to the change.</p> |
| <p>Task 2: New Random Survey Site Sample Collection and Biological Analysis</p> <p>Description: One full biocriteria (IBI) sampling event shall be completed by the Contractor at each of the 21 sites identified and described in Exhibit A. All biological and physical habitat data shall be entered by the Contractor directly into the DNR's online BioNet database. All other recorded observations shall be reported to the DNR in a DNR-approved electronic format.</p> <p>Contractor shall provide the following Deliverables to DNR for each of the 21 sites listed in Exhibit A:</p> <ul style="list-style-type: none"> a) <u>New random survey site sample collection</u>: benthic macroinvertebrates and fish (2015 revised DNR IBI protocols, 2015 revised DNR field forms); quantitative transect-based habitat survey (2015 revised DNR intensive habitat protocol; 2015 revised DNR intensive habitat field forms); benthic chlorophyll, water quality grab sample and field analytes (aquatic life parameter suite; as set out in Table 1, page 16). b) <u>Analysis of fish and benthic macroinvertebrate samples collected under Task 2a</u>: field form submittal; and fish, benthic macroinvertebrate, physical habitat and field form data entry. | <p>Tasks shall occur by no later than the dates listed below:</p> <ul style="list-style-type: none"> a) October 15, 2021 b) April 1, 2022 |

| | |
|---|---|
| <p>c) <u>QA/QC of Data</u>: Contractor shall conduct QA/QC of all data entered into the BioNet database under Task 2b.</p> | <p>c) May 1, 2022</p> <p>Any deviation from this schedule shall be approved in writing by the DNR prior to the change.</p> |
| <p>Task 3: Repeat Random Survey Site Sample Collection and Biological Analysis</p> <p>Description: One full biocriteria (IBI) sampling event shall be completed by the Contractor at each of the 22 sites identified in Exhibit A. All biological and physical habitat data shall be entered by the Contractor directly into the DNR's online BioNet database. All other recorded observations shall be reported to the DNR in a DNR-approved electronic format.</p> <p>Contractor shall provide the following Deliverables to DNR for each of the 22 sites listed in Exhibit A:</p> <p>a) <u>Repeat random survey site sample collection</u>: benthic macroinvertebrates and fish (2015 revised DNR IBI protocols, 2015 revised DNR field forms); quantitative transect-based habitat survey (2015 revised DNR intensive habitat protocol; 2015 revised DNR intensive habitat field forms); benthic chlorophyll, water quality grab sample and field analytes (aquatic life parameter suite, as set out in Table 1, page 16).</p> <p>b) <u>Data logger deployment</u>: A data logger shall be deployed at each site listed in Exhibit A for a two-week period. For sites with less than 200 mi² drainage, the two-week period shall be directly preceding the biological sampling. For sites with greater than 200 mi² drainage, the two-week period directly preceding the biological sampling is preferred; however, the two-week period can be any two consecutive weeks from July 1 until October 15. The instruments shall be programmed to record dissolved oxygen and water temperature at 10-minute intervals continuously throughout the deployment period. A flow measurement and two mini-flow measurements shall be taken at both deployment and retrieval visits.</p> <p>c) <u>Field form submittal, submission (electronic) of current velocity</u>: measurements, data logger readings and flow measurements.</p> <p>d) <u>Analysis of fish and benthic macroinvertebrate samples collected under Task 3a</u>: field form submittal; and fish, benthic macroinvertebrate, physical habitat and field form data entry.</p> <p>e) <u>QA/QC of Data</u>: Contractor shall conduct QA/QC of all data entered into the BioNet database under Task 3c and 3d.</p> | <p>Tasks shall occur by no later than the dates listed below:</p> <p>a) October 15, 2021</p> <p>b) July 1-October 15, 2021</p> <p>c) December 31, 2021</p> <p>d) April 1, 2022</p> <p>e) May 1, 2022</p> <p>Any deviation from this schedule shall be approved in writing by the DNR prior to the change.</p> |
| <p>Task 4: Coldwater Stream Reference Site Sample Collection and Biological Analysis</p> <p>Description: One full biocriteria (IBI) sampling event shall be completed by the Contractor at each of the three sites identified in Exhibit A. A water temperature</p> | <p>Tasks shall occur by no later than the dates listed below:</p> |

| | |
|---|--|
| <p>logger shall be deployed at each stream site in this Task for the duration of the biological index period. All biological and physical habitat data shall be entered by the Contractor directly into the DNR’s online BioNet database. All other recorded observations shall be reported to the DNR in a DNR-approved electronic format.</p> <p>Contractor shall provide the following Deliverables to DNR for each of the three sites listed in Exhibit A:</p> <ul style="list-style-type: none"> a) <u>Coldwater stream reference site sample collection</u>: benthic macroinvertebrates and fish (2015 revised DNR IBI protocols, 2015 revised DNR field forms); quantitative transect-based habitat survey (2015 revised DNR intensive habitat protocol; 2015 revised DNR intensive habitat field forms); benthic chlorophyll, water quality grab sample and field analytes (aquatic life parameter suite, as set out in Table 1, page 16). b) <u>Temperature logger deployment</u>: A temperature logger shall be deployed at each site listed in Exhibit A for the duration of the index period defined as July 1 through October 15, 2021. The instruments shall be programmed to record water temperature at 15 minute intervals continuously throughout the deployment period. c) <u>Analysis of fish and benthic macroinvertebrate samples collected under Task 4a</u>: Contractor shall conduct field form submittal; submission (electronic) of temperature logger data, fish, benthic macroinvertebrate, physical habitat, field form data entry. d) <u>QA/QC of Data</u>: Contractor shall conduct QA/QC of all data entered into the BioNet database under Task 4c. | <ul style="list-style-type: none"> a) October 15, 2021 b) July 1 – October 15, 2021 c) April 1, 2022 d) May 1, 2022 <p>Any deviation from this schedule shall be approved in writing by the DNR prior to the change.</p> |
| <p>Task 5: Watershed Improvement Section (WIS) Survey Site Sample Collection and Biological Analysis</p> <p>Description: One full biocriteria (IBI) sampling event shall be completed by the Contractor at each of the two sites identified in Exhibit A. All biological and physical habitat data shall be entered by the Contractor directly into the DNR’s online BioNet database. All other recorded observations shall be reported to the DNR in a DNR-approved electronic format. The Contractor must be certified for each parameter listed in Table 1 prior to analyses.</p> <p>Contractor shall provide the following Deliverables to DNR for each of the two sites listed in Exhibit A:</p> <ul style="list-style-type: none"> a) <u>Watershed Improvement Section (WIS) survey site sample collection</u>: fish and benthic macroinvertebrates (2015 revised DNR IBI protocols, 2015 revised DNR field forms); quantitative transect-based habitat survey (2015 revised DNR intensive habitat protocol; 2015 revised DNR intensive habitat field forms); benthic chlorophyll, water quality grab sample and field analytes (aquatic life parameter suite, as set out in Table 1, page 16). | <p>Tasks shall occur by no later than the dates listed below:</p> <ul style="list-style-type: none"> a) October 15, 2021 |

| | |
|--|--|
| <p>b) <u>Analysis of fish, benthic macroinvertebrate, benthic chlorophyll, and water quality samples collected under Task 5:</u> field form submittal; fish, benthic macroinvertebrate, physical habitat, field form data entry; and benthic chlorophyll and water sample submission (electronic) of samples collected under Task 5a.</p> <p>c) <u>QA/QC of Data:</u> Contractor shall conduct QA/QC of all <u>data</u> entered into the BioNet database under Task 5b.</p> | <p>b) December 31, 2021; or 15 calendar days following the end of the month of collection for benthic chlorophyll and WQ samples (see Task 13).</p> <p>c) January 31, 2022</p> <p>Any deviation from this schedule shall be approved in writing by the DNR prior to the change.</p> |
| <p>Task 6: Stream Nutrient Criteria Sample Collection and Analysis</p> <p>Description: One full biocriteria (IBI) sampling event shall be completed by the Contractor at each of the four sites identified in Exhibit A. All biological and physical habitat data shall be entered by the Contractor directly into the DNR’s online BioNet database. All other recorded observations shall be reported to the DNR in a DNR-approved electronic format.</p> <p>Contractor shall provide the following Deliverables to DNR:</p> <p>a) <u>Substrates:</u> Contractor shall construct 24 standard artificial substrates and construct 16 floating artificial substrates.</p> <p>b) <u>Stream Nutrient Criteria Biological Sample Collection:</u> fish and benthic macroinvertebrates (2015 revised DNR IBI protocols, 2015 revised DNR field forms); quantitative transect-based habitat survey (2015 revised DNR intensive habitat protocol; 2015 revised DNR intensive habitat field forms); benthic chlorophyll, water quality grab sample and field analytes (aquatic life parameter suite, as set out in Table 1, page 16).</p> <p>c) <u>Analysis of fish and benthic macroinvertebrate samples collected under Task 6b:</u> field form submittal; and fish, benthic macroinvertebrate, physical habitat and field form data entry.</p> <p>d) <u>Analysis and data entry of 14 sets of benthic macroinvertebrate samples (64 samples total)</u> that will be collected by DNR staff and submitted to SHL by October 15, 2021.</p> <p>e) <u>QA/QC of Data:</u> Contractor shall conduct QA/QC of all data entered into the BioNet database under Task 6c and 6d.</p> | <p>Tasks shall occur by no later than the dates listed below:</p> <p>a) July 15, 2021</p> <p>b) October 15, 2021</p> <p>c) December 31, 2021</p> <p>d) December 31, 2021</p> <p>e) January 31, 2022</p> <p>Any deviation from this schedule shall be approved in writing by DNR prior to the change.</p> |
| <p>Task 7: Ambient WQ Site Biological Sample Collection and Analysis</p> <p>Description: The Contractor shall perform sample collection and analysis to support development of a benthic macroinvertebrate index for large wadeable and non-wadeable streams and for biological status monitoring.</p> | <p>Tasks shall occur by no later than the dates listed below:</p> |

| | |
|--|---|
| <p>Contractor shall provide the following Deliverables to DNR for each of the 15 sites listed in Exhibit A:</p> <ul style="list-style-type: none"> a) <u>Benthic macroinvertebrate and phytoplankton sample collection</u>: One benthic macroinvertebrate sample consisting of three semi-quantitative subsamples, and one qualitative sample (2015 DNR IBI protocols; 2015 revised DNR field forms), and one phytoplankton composition sample shall be collected at 15 DNR/SHL monthly stream monitoring locations as described in Exhibit A. Semi-quantitative samples shall be collected using either a Hess sampler or multi-plate (Hester-Dendy type) artificial substrates to be determined by the Contractor. The artificial substrate deployment and benthic macroinvertebrate sampling visits shall coincide with scheduled ambient monthly monitoring visits or other nearby sampling visits, whenever possible. A rapid habitat assessment form shall be completed at each site on the benthic macroinvertebrate sampling occasion. b) <u>Benthic macroinvertebrate sample analysis of samples collected under Task 7a; field form and benthic macroinvertebrate data entry</u>: Identification of benthic macroinvertebrates shall be completed to the lowest practical taxonomic level. In all of the semi-quantitative subsamples, the target level for organisms belonging to the aquatic Dipteran family of Chironomidae shall be genus or species. All biological and physical habitat data shall be entered by the Contractor directly into the DNR's online BioNet database. All other recorded observations shall be reported to the DNR in a DNR-approved electronic format. c) <u>Phytoplankton sample analysis of samples collected under Task 7a and data entry</u>: Identification of phytoplankton taxa shall be completed to the genus taxonomic level whenever feasible. Results shall be reported to DNR in a standardized electronic spreadsheet format approved by DNR. d) <u>QA/QC of Data</u>: Contractor shall conduct QA/QC of all data entered into the BioNet database under Tasks 7b and 7c. | <ul style="list-style-type: none"> a) October 15, 2021 b) September 30, 2022 c) September 30, 2022 d) September 30, 2022 <p>Any deviation from this schedule shall be approved in writing by DNR prior to the change.</p> |
| <p>Task 8: Biological Trend Monitoring and Biological Analysis</p> <p>Description: The Contractor shall perform field work and sample collection to support biological trend monitoring. One full biocriteria (IBI) sampling event shall be completed by the Contractor at each of the nine sites identified in Exhibit A. The Contractor shall install and maintain continuous temperature and water level recording equipment at each site throughout the Contract period. All biological and physical habitat data shall be entered by the Contractor directly into the DNR's online BioNet database. All other recorded observations shall be reported to the DNR in a DNR-approved electronic format.</p> <p>Contractor shall provide the following Deliverables to DNR for each of the nine sites listed in Exhibit A:</p> <ul style="list-style-type: none"> a) <u>Trend site full biocriteria sample collection</u>: benthic macroinvertebrates and fish (2015 revised DNR IBI protocols, 2015 revised DNR field forms); quantitative transect-based habitat survey (2015 revised DNR intensive habitat | <p>Tasks shall occur by no later than the dates listed below:</p> <ul style="list-style-type: none"> a) October 15, 2021 |

| | |
|--|---|
| <p>protocol; 2015 revised DNR intensive habitat field forms); benthic chlorophyll, water quality grab sample and field analytes (aquatic life parameter suite; as set out in Table 1, page 16).</p> <p>b) <u>A flow measurement shall be taken on each of the three maintenance visits:</u> The three maintenance visits shall be once during the full biological sampling visit, once in the fall prior to freeze up and once in spring after ice out.</p> <p>c) <u>Analysis of fish and benthic macroinvertebrate samples collected under Task 8a:</u> field form submittal; and fish, benthic macroinvertebrate, physical habitat and field form data entry.</p> <p>d) <u>Field form submittal:</u> submission (electronic) of data logger readings and flow measurements collected under Task 8b.</p> <p>e) <u>QA/QC of Data:</u> Contractor shall conduct QA/QC of all data entered into the BioNet database under Task 8c and 8d.</p> | <p>b) July 1, 2021 – April 30, 2022</p> <p>c) May 31, 2022</p> <p>d) May 31, 2022</p> <p>e) May 31, 2022</p> <p>Any deviation from this schedule shall be approved in writing by DNR prior to the change.</p> |
| <p>Task 9: Water Quality Sample Analysis and Data Submission</p> <p>Description: The Contractor shall perform the analyses on the water quality and chlorophyll samples collected in Tasks 1-4, Task 6, and Task 8. The Contractor shall be certified for each parameter listed in Table 1 prior to analyses.</p> <p>Contractor shall provide the following Deliverables to DNR:</p> <p>a) Benthic chlorophyll and water sample analysis and submission (electronic) of samples collected under Task 1a, 2a, 3a, 4a, 6b, and 8a (as set out in Table 1, page 16).</p> | <p>Tasks shall occur by no later than the dates listed below:</p> <p>a) December 31, 2021; 15 calendar days following the end of the month of collection for benthic chlorophyll and WQ samples.</p> <p>Any deviation from this schedule shall be approved in writing by the DNR prior to the change.</p> |
| <p>Task 10: Supplemental Monitoring</p> <p>Description: Contractor shall collect, analyze and report biological, water quality or fish tissue samples as part of follow-up monitoring or to investigate other water quality issues not covered elsewhere in this Contract. Samples collected under this Task shall be specified, and approved in writing, by the DNR Contract Manager prior to collection.</p> <p>a) All sample analysis and submission (electronic) of samples collected under Task 10.</p> | <p>Tasks shall occur by no later than the dates listed below:</p> <p>a) September 30, 2022</p> <p>Any deviation from this schedule shall be approved in writing by the DNR prior to the change.</p> |

| | |
|--|--|
| <p>Task 11: Site Reconnaissance and Landowner Contacts</p> <p>Description: SHL shall provide assistance to DNR for completing desktop review, field reconnaissance of sites and contacting landowners for the SFY2022 field season.</p> | <p>No later than:</p> <p>September 30, 2022</p> <p>Any deviation from this schedule shall be approved in writing by the DNR prior to the change.</p> |
| <p>Task 12: Professional Services</p> <p>Description: SHL shall provide professional assistance to DNR in regard to the development of the large river and headwater stream IBIs. This assistance shall include researching the IBIs and data analysis. SHL shall provide a report to DNR, detailing all work completed under this Task, by the end of the Contract period. DNR reserves the right to change the research and data analysis direction of this Task at its discretion.</p> | <p>No later than:</p> <p>September 30, 2022</p> <p>Any deviation from this schedule shall be approved in writing by the DNR prior to the change.</p> |
| <p>Task 13: Data Transfer</p> <p>Description: SHL shall make the data generated pursuant to this Contract available to DNR electronically through the State Hygienic Laboratory OpenELIS database web portal. Data shall be available for download by DNR staff in a mutually agreeable format. The available sample information shall include the STORET station identification number, which will be provided by DNR for all station locations. Data shall be retrievable via the web portal by DNR staff.</p> <p>Analytical reports may be retrieved electronically by DNR staff having the appropriate authorization. SHL shall assist DNR staff in obtaining appropriate authorization when requested.</p> <p>When accessing electronic data, the following information is required:</p> <ul style="list-style-type: none"> • SHL OpenELIS/Telcor Organization ID number: 3051 (DNR AMBIO) • SHL Project Code: AMBBIO | <p>SHL shall make completed data and results available to DNR via the SHL OpenELIS web portal not later than 15 calendar days after the end of each month.</p> <p>If SHL determines that extra time for analysis should be allowed in specific cases, then a written notification shall be made to the DNR Project Manager, stating that analytical results from a sample will be delayed and the reasons for the delay. This notification shall occur as soon as possible but not later than 15 days following receipt of the sample.</p> |
| <p>Task 14: Sampling Equipment Replacement as Needed</p> <p>Description: Contractor shall purchase equipment and supplies as needed for Tasks listed above.</p> | <p>This Task shall be performed throughout the term of the Contract.</p> |
| <p>Task 15: Equipment Maintenance and Repair as Needed</p> <p>Description: Contractor shall repair existing equipment, as needed for Tasks listed above.</p> | <p>This Task shall be performed throughout the term of the Contract.</p> |
| <p>Task 16: Shipping Samples</p> <p>Description: Contractor shall ship samples as needed for Tasks listed above.</p> | <p>This Task shall be performed throughout the term of the Contract.</p> |

Water quality sampling breakdown for Tasks 1-6 and 8-9.

| Parameter | Analytical Method | Reporting Limit ¹ | Holding Time | Preservation | Test Fee | # of Samples | Total Fee |
|---|--|------------------------------|--|---|---------------------------|--------------|--------------------|
| Ammonia Nitrogen as N | LAC 10-107-06 1J or EPA 350.1 | 0.05 mg/L or 0.1 mg/L | 28 days | Cool to 4° C, H ₂ SO ₄ to pH <2 | \$15.00 | 87 | \$1,305.00 |
| BOD, Carbonaceous 5 Day | SM 5210 B | 2 mg/L | 48 Hours | Cool to 4° C | \$38.00 | 87 | \$3,306.00 |
| Chloride | EPA 300.0 | 0.2 mg/L | 28 days | Cool to 4° C | \$15.00 | 87 | \$1,305.00 |
| Chlorophyll <i>a</i> Analysis in Coarse Substrate | EPA 445.0 Rev 1.2 or SM 10200 H | 1 ug/L | 24 hours to filter, 21 days frozen filter | Cool to 4° C | \$43.50 | 87 | \$3,784.50 |
| Chlorophyll <i>a</i> Analysis in Fine Substrate | EPA 445.0 Rev 1.2 or SM 10200 H | 1 ug/L | 24 hours to filter, 21 days frozen filter | Cool to 4° C | \$43.50 | 87 | \$3,784.50 |
| Chlorophyll <i>a</i> Analysis of Water | EPA 445.0 Rev 1.2 or SM 10200 H | 1 ug/L | 24 hours to filter, 21 days frozen filter | Cool to 4° C | \$43.50 | 87 | \$3,784.50 |
| Field Dissolved Oxygen | ASTM D 888-09 or SM 4500 - O | 0.1 mg/L | n/a | none | \$7.50 | 87 | \$652.50 |
| Field pH | SM 4500 H | 0.1 | n/a | none | \$7.50 | 87 | \$652.50 |
| Field Temperature | SM 2550 | 0.1° C | n/a | none | \$7.50 | 87 | \$652.50 |
| Nitrite + Nitrate as N | LAC 10-107-04 1J or EPA 353.2 | 0.1 mg/L or 0.05 mg/L | 28 days | Cool to 4° C, H ₂ SO ₄ to pH <2 | \$15.00 | 87 | \$1,305.00 |
| Orthophosphate as P ² | LAC 10-115-01 1A or EPA 365.1 | 0.02 mg/L | 48 hours | Field Filtered, Cool to 4° C | \$15.00 | 87 | \$1,305.00 |
| Stream Flow | Flow-stream manual | 0.1 cfs | n/a | none | \$18.00 | 87 | \$1,566.00 |
| Sulfate | EPA 300.0 | 0.2 mg/L | 28 days | Cool to 4° C | \$15.00 | 87 | \$1,305.00 |
| Total Dissolved Solids | SM 2540 C | 1 mg/L | 7 days | Cool to 4° C | \$15.00 | 87 | \$1,305.00 |
| Total Hardness as CaCO ₃ | SM 2340 C | 1 mg/L | 28 days | Cool to 4° C | \$15.00 | 87 | \$1,305.00 |
| Total Kjeldahl Nitrogen | LAC 10-107-06 2M or EPA 351.2 | 0.1 mg/L or 0.5 mg/L | 28 days | Cool to 4° C, H ₂ SO ₄ to pH <2 | \$38.00 | 87 | \$3,306.00 |
| Total Phosphate as P | LAC 10-115-01 1E or LAC 10-115-01-1F or EPA 365.1 | 0.1 mg/L or 0.02 mg/L | 28 days | Cool to 4° C, H ₂ SO ₄ to pH <2 | \$15.00 | 87 | \$1,305.00 |
| Total Suspended Solids | USGS I-3765-85 or SM 2540 D | 1 mg/L | 7 days | Cool to 4° C | \$15.00 | 87 | \$1,305.00 |
| Total Volatile Suspended Solids ³ | EPA 160.4 TVSS | 1 mg/L | 7 days | Cool to 4° C | \$0.00 | 87 | \$0.00 |
| Turbidity | SM 2130 B | 1 NTU | 48 hours | Cool to 4° C | \$14.00 | 87 | \$1,218.00 |
| | | | | | Overall Total Fee: | | \$34,452.00 |

¹Reporting limits can vary.

²Samples for orthophosphate analysis should be filtered in the field as soon as possible after collection.

³For this contract, the fee for TVSS is included in the TSS test fee. (If TSS is not included, the TVSS fee is \$30.)



IOWA DEPARTMENT OF NATURAL RESOURCES

LEADING IOWANS IN CARING FOR OUR NATURAL RESOURCES

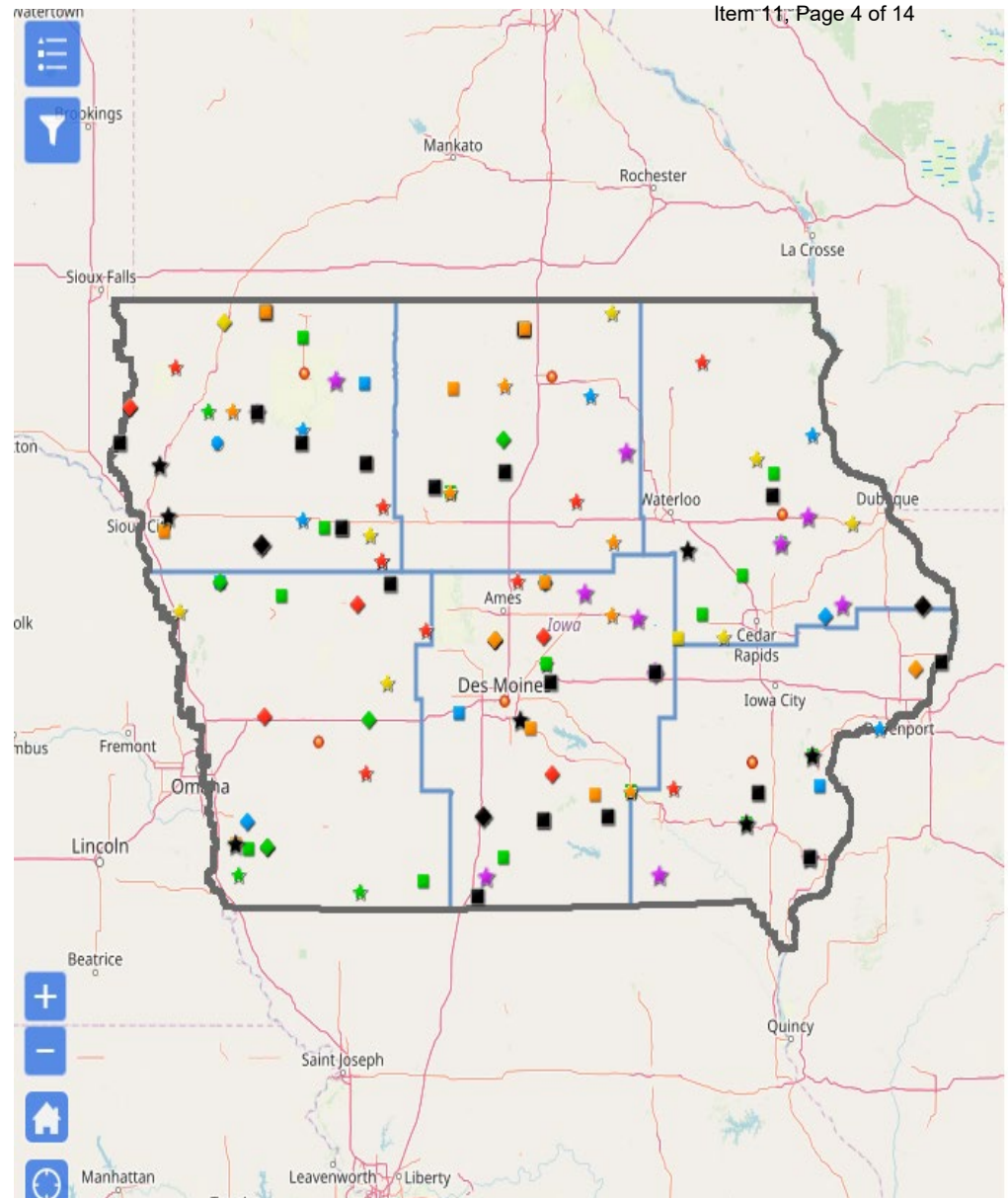


THIS PROGRAM WORKS WITH RURAL COMMUNITIES OF 5,000 OR FEWER TO ADDRESS THE ISSUES POSED BY ABANDONED COMMERCIAL BUILDINGS.

- \$400,000.00 available per grant round (Each FY)
- We reimburse in areas to remove environmental hazards, minimize budget issues and improve community appearance.
 - ✓ Environmental Studies
 - ✓ Deconstruction vs. Demolition
 - ✓ Renovation
- The priority of the program is to increase landfill diversion through the recycling and reuse of building materials by providing funding for renovation of an existing structure or removal through deconstruction.

Outreach & Assistance

- The program started in 2011. Since then 165 projects have received funding in 118 different communities.
- \$10.8 million has been requested with almost \$3.2 being reimbursed over that time.
- Each project utilizes skills & resources unique to these communities. A variety of people come together to find reuse markets for building materials and/or to provide technical assistance when needed to address these blighted structures.



Application & Eligibility

Building Ownership

- Must be owned by the City or be in the process of owning
- Building must be abandoned for at least 6 months
- Nuisance buildings welcome
- Building can not reside on the National Historic Register
- Applicants can partner with local non-profits

Applicant Requirements

- Cash match only
- Insurance coverage
- Identify reuse markets for building materials
- History of building
- Plan for deconstruction or renovation activities
- Support letters
- Color photos of outside/inside (if possible)

Reuse of Site

- Address the environmental, health and safety hazards for the community
- Renovating or deconstruction of the building
- Commercial Development
- Green Space
- Applicant uses site

Case Study - Oxford Junction



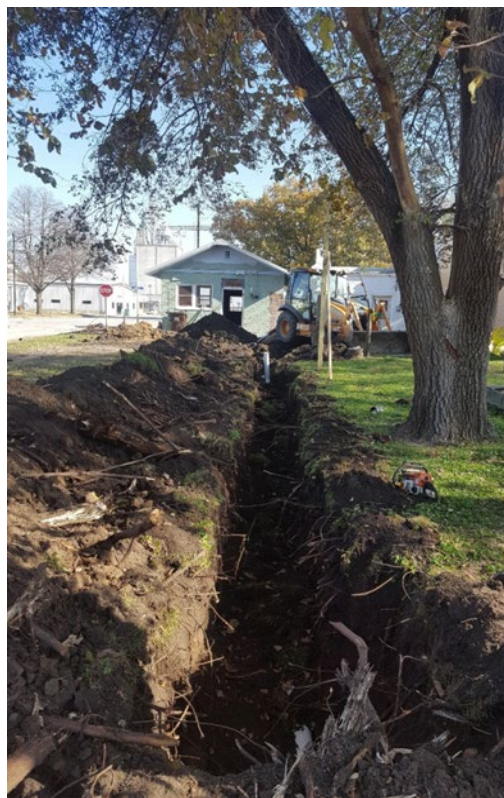
Case Study – Oxford Junction



Case Study - Afton



Case Study – Afton



Case Study - Afton



Case Study - Mediapolis



Case Study - Mediapolis



Case Study - Mediapolis



Achievements

- \$3.2 Million Reimbursed to participating communities
- \$2.7 Million Landfill disposal savings for participating communities
- 72,849 Tons C & D materials diverted from the landfill
- 1,211 Tons Asbestos containing materials properly managed & disposed. 123 of the 165 projects had an asbestos component.

Iowa Department of Natural Resources Environmental Protection Commission

ITEM

12

DECISION

TOPIC

Derelict Building Grant Program – Grant Recommendations

The Derelict Building Grant Program is a program established by 2011 Legislation for purposes of providing funding assistance to eligible communities to address abandoned buildings by promoting public and environmental health through asbestos abatement and landfill diversion with deconstruction of building components for reuse and recycling.

Eligible communities include a city with a population of 5,000 or fewer. Eligible costs for program assistance include but are not limited to asbestos and other hazardous material abatement and removal, the recovery of recyclable or reusable material through the selective deconstruction of abandoned buildings, and reimbursement for purchased recycled content materials used in the renovation of buildings.

The Department received 18 applications, requesting \$848,911.00 in financial assistance, for consideration during the February 2021 round of funding. Nine (9) projects were selected for funding with a total recommended award amount not exceed \$400,000.00 based on all deconstruction achieving maximum landfill diversion. Five (5) of the 9 project award recommendations exceed \$25,000.00 and are presented to the Commission for approval.

The review committee is comprised of 5 people representing: DNR Land Quality Bureau, Iowa Economic Development Authority, Iowa Society of Solid Waste Operations, Iowa Recycling Association, and Keep Iowa Beautiful. Four (4) of the representatives scored the applications.

A description of the recommended projects, and the amount and type of funding assistance is attached.

At this time, the Department is requesting Commission approval to enter into agreements with selected applicants whose recommended awards are in excess of \$25,000.

Reid Bermel, Environmental Specialist Senior, Land Quality Bureau
Environmental Services Division
May 18, 2021

Attachment

- a) Recommended Project Descriptions

DERELICT BUILDING GRANT PROGRAM

PROPOSAL RECOMMENDATIONS

The following provides a description of each project for which Commission approval is requested.

| | |
|--|---------------------------------|
| City of Wapello | Award: \$73,450.00 |
| | Cash Match: \$25,600.00 |
| Contact: Shawn Maine | Total Project Cost: \$99,050.00 |
| wapellom@louisacomm.net | |
| 319-527-7637 | |

Description: The City of Wapello has targeted the use of grant funds towards the following:

- Inspection, abatement, and proper disposal of any asbestos along with other hazardous material.
- Building renovations to replace roofing system.
- Divert usable materials for reuse: metal and wood.

The city plans to have commercial space on ground level with housing on the second level.

| | |
|--|---------------------------------|
| City of Fremont | Award: \$66,000.00 |
| | Cash Match: \$23,500.00 |
| Contact: Sherri Baxter | Total Project Cost: \$89,500.00 |
| nereed@windstream.net | |
| 641-933-4317 | |

Description: The City of Fremont has targeted the use of these grant funds toward the following:

- Abatement and proper disposal of any identified asbestos and other hazardous material.
- Deconstruction of the existing structure with concrete and brick separated for reuse and recycling.

The city plans to redevelop the site for commercial use resale to generate revenue through job creation and property taxes.

| | |
|--|---------------------------------|
| City of Rake | Award: \$69,000.00 |
| | Cash Match: \$23,000.00 |
| Contact: Louisa Hagedorn | Total Project Cost: \$92,000.00 |
| hagedornl@wctatel.net | |
| 641-590-3892 | |

Description: The City of Rake has targeted the use of these grant funds toward the following:

- Deconstruction of the existing structure with concrete, brick, wood and metal separated for reuse and recycling.

After deconstruction activities, the City will develop a green space and pocket park as a central location where people may gather near downtown businesses and enjoy the new park.

City of Wall Lake

Award: \$121,700.00

Cash Match: \$63,550.00

Total Project Cost: \$185,250.00

Contact: Chris Rodman

citywl@netins.net

712-664-2216

Description: The City of Wall Lake has targeted the use of Derelict Building grant funds toward the following:

- Abatement and proper disposal of any identified asbestos and other hazardous material.
- Deconstruction of the existing structure with concrete, brick, metal, fixtures, doors and windows separated for reuse and recycling.
- Building renovation to replace walls where deconstruction occurs.

The city wants to develop a Recreation and Amusement Center for all ages of the community. Gym equipment for working out, small child care while families use facility, small group rooms, basketball courts, and a teen lounge with various gaming tables.

City of Mapleton

Award: \$31,250.00

Cash Match: \$31,250.00

Total Project Cost: \$62,500.00

Contact: Karla Uhl

kuhlclerk@gmail.com

712-881-1351

Description: The City of Mapleton has targeted the use of these grant funds toward the following:

- Renovation consisting of anchoring main support walls, tuckpointing brick, and filling in windows for structural stabilization.

The City's plan is to undertake renovation of the structure interior and have residential rentals on the second floor with commercial/office space on the main floor.

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

| | | | |
|--------------|--|--|-----------------|
| ITEM | 13 | | DECISION |
| TOPIC | Notice of Intended Action – 567 IAC Chapter 215 - Mercury-Added Switch Recovery from End of Life Vehicles | | |

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

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 will come to the Commission as a Notice of Intended Action for decision, May 18, 2021.
- A public hearing is not scheduled
- Proposed end date for collecting written comments, July 7, 2021
- Estimated responsiveness summary completed, July 14, 2021
- Estimated return to Commission for proposed Adopted and Filed rule August 17, 2021

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

April 27, 2021

NOIA Attachments - NOIA and rulemaking package (includes Fiscal/Jobs impact) as submitted to IGOV for preclearance

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

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

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.801 through 455B.809.

Purpose and Summary

This rule making rescinds and reserves Chapter 215, “Mercury-Added Switch Recovery from End of Life Vehicles.” 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 authority to enforce this program. Accordingly, the implementation rules must be rescinded.

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 July 7, 2021.

Comments should be directed to:

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

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

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 action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 215**.

Administrative Rules
GOVERNOR'S OFFICE PRECLEARANCE FORM

| | | |
|--|---|--|
| Agency: | Environmental Protection Commission (Commission) / Department of Natural Resources (Department) | |
| IAC Citation: | 567 IAC Chapter 215 | |
| Agency Contact: | Theresa Stiner, 515-725-8315; theresa.stiner@dnr.iowa.gov | |
| Statutory Authority: | Iowa Code sections 455B.803(2)“e” and 455B.806 | |
| Preclearance Requested Review Deadline: | May 28, 2021 | |
| <p>Purpose of Proposed Rule: This rule making proposes to rescind and reserve 567 Iowa Administrative Code chapter 215, “Mercury-Added Switch Recovery from End of Life Vehicles.”</p> <p>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. The Mercury-Free Recycling Act included an enforcement 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.</p> | | |
| <p>Need for Proposed Rule:</p> <p>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.</p> | | |
| <p>Summary of Informal Rulemaking Activities related to the Proposed Rule (e.g., stakeholder input):</p> <p>An email explaining this rescission was sent to stakeholders, including End-of-Life Vehicle Solutions (ELVS), Iowa Recycling Association, Iowa Auto Recyclers, and the Iowa Society of Solid Waste Operations. Stakeholders were given two weeks to respond with any comments or concerns. The only comment the Department received was from John Gilkeson with the Minnesota Pollution Control Agency. He is also the state representative to the National Steering Committee for the National Vehicle Mercury Switch Recovery Program. He pointed out that Iowa, along with several other states, is eligible for mercury switch recycling funds from the General Motors’ (GM) 2009 bankruptcy proceedings. The settlement provided a one-time payment to ELVS for the expected costs to recover and manage switches from vehicles manufactured by GM through the end of 2022. Regardless, since the Iowa legislature did not act to change the July 1, 2020 cessation date set in the Code, there is no longer statutory authority for recyclers to receive the switch recycling payments.</p> | | |

**Administrative Rules
JOBS IMPACT STATEMENT**

1. BACKGROUND INFORMATION

| | |
|-----------------------------|--|
| Agency: | Environmental Protection Commission (Commission) / Department of Natural Resources (Department) |
| IAC Citation: | 567 IAC chapter 215 |
| Agency Contact: | Theresa Stiner, 515-725-8315; theresa.stiner@dnr.iowa.gov |
| Statutory Authority: | Iowa Code section 455B.803(2)"e" and 455B.806 |
| Objective: | Rescind and reserve 567 IAC 215 |
| Summary: | This rule making will rescind and reserve 567 IAC 215, "Mercury-Added Switch Recovery from End of Life Vehicles." This rule must be rescinded because the authority to enforce this program has expired. |

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.") |
| Explanation: The Department does not anticipate any jobs impact to private industry from this rule rescission. Vehicle recycling will continue. |

| |
|---|
| <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 rulemaking, no impact on jobs has been found."

Administrative Rule Fiscal Impact Statement

| |
|--|
| Agency: Environmental Protection Commission / Department of Natural Resources |
| IAC Citation: 567 IAC Chapter 215 |
| Agency Contact: Theresa Stiner, 515-725-8315; theresa.stiner@dnr.iowa.gov |
| Summary of the Rule: This rule making will rescind and reserve 567 IAC 215, "Mercury-Added Switch Recovery from End of Life Vehicles." This rule must be rescinded because the authority to enforce this program has expired. |
| <input type="checkbox"/> <i>Fill in this box if impact meets these criteria:</i> |
| <input checked="" type="checkbox"/> No Fiscal Impact to the State. |
| <input type="checkbox"/> Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years. |
| <input type="checkbox"/> Fiscal Impact cannot be determined. |
| Brief Explanation: No fiscal impact to the State is expected from this proposed rescission. The recycling fee was funded by auto manufacturers. The program required minimal staff time to implement and all involved staff have other assigned duties. |

| | | |
|--|----------------------|----------------------|
| Assumptions: | | |
| <i>Describe how estimates were derived:</i> | | |
| Estimated Impact to the State by Fiscal Year | | |
| | Year 1 (FY21) | Year 2 (FY22) |
| 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 | | |
| <input checked="" type="checkbox"/> This rule is required by State law or Federal mandate. <i>Please identify the state or federal law:</i> Iowa Code section 455B.803(2)"e" established an enforcement sunset of July 1, 2020. As such, authority for the implementing rules no longer exists. | | |
| <input type="checkbox"/> Funding has been provided for the rule change. <i>Please identify the amount provided and the funding source:</i> | | |
| <input type="checkbox"/> Funding has not been provided for the rule. <i>Please explain how the agency will pay for the rule change:</i> | | |
| Fiscal impact to persons affected by the rule: None. | | |
| Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6): None. | | |

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

14

Decision Item

Commission approval is requested for a third Grant Agreement Amendment with Region XII Council of Governments, of Carroll, Iowa.

Amendment #3 Terms:

Amendment Amount: An additional \$480,000.

Amendment Dates: July 1, 2021 to June 30, 2022

Funding Source: Iowa Code section 455E.11(2)(a)(2)(c), Groundwater Protection Fund, Solid Waste Account.

Amendment Purpose:

The purpose of the Grant Agreement Amendment is to extend the time allowed to perform the Tasks set out in the Original Grant Agreement, to provide for additional money being paid out by the DNR, and to update other provisions from Amendment #2 (see Attachment A, the Statement of Work Table from section 5 of the original Grant Agreement).

Original Grant Agreement Background: Under Iowa Code section 455E.11, the DNR is to provide competitive grants to Iowa Community Colleges and/or Councils of Governments for a by-products and waste exchange system, which, since 1990, has been the Iowa Waste Exchange (IWE). The IWE is a confidential, non-regulatory program that enables the recycling of used and unwanted materials by matching parties that have those materials with others who look to obtain and add value to these resources. IWE services are delivered at no cost to customers. DNR oversight and support for the IWE is conducted through the Financial and Business Assistance section of the Land Quality Bureau in the DNR's Environmental Services Division.

The DNR entered into the original Grant Agreement to fulfill its statutory duty to award grant-funding for the operation of the IWE. The Grantee is responsible for sub-contracting and supervising the work of regionally-based Resource Specialists, who provide Iowans a range of services for diverting from landfills the most tons of by-products and excess materials possible, as well as for managing and reducing waste streams, and enhancing pollution prevention.

Original Selection Process Summary:

In 2018, a formal competitive process was undertaken to acquire professional services. A Request for Proposals (RFP) was posted on the Dept. of Administrative Services "State of Iowa Bid Opportunities" web-page, and a notification e-mail was sent to the Community Colleges and to the Iowa Association of Regional Councils of Governments. One proposal was received, and a three-person committee reviewed and evaluated it. The committee met to discuss the proposal, and achieved consensus on the selection of Region XII Council of Governments due to the quality of their proposal, their understanding of the DNR's goals for the program, and the experience of their team.

Grant Agreement History:

Original Grant Agreement Terms: Amount: \$468,000; Timeframe: July 1, 2018 to June 30, 2019; Purpose: to fulfill the DNR's statutory duty to award grant-funding for the operation of the IWE.

Amendments: The first amendment to this Grant Agreement added \$416,000 to run from July 1, 2019 to June 30, 2020, and updated other provisions. It was approved by the Environmental Protection Commission on June 18, 2019. The second amendment to this Grant Agreement added \$416,000 to run from July 1, 2020 to June 30, 2021, and updated other provisions. It was approved by the Environmental Protection Commission on June 16, 2020. This is the third requested amendment.

Bill Blum, Program Planner, Land Quality Bureau
Environmental Services Division
May 18, 2021

Attachment A

STATEMENT OF WORK

The Iowa Waste Exchange (IWE) Grantee is principally responsible for the work of regionally-based Resource Specialists who provide to businesses, schools, hospitals, government institutions, industries, and individuals a range of services for diverting by-products and excess materials from Iowa landfills, for managing and reducing waste streams, and enhancing pollution prevention.

The Grantee shall perform the following Tasks by the Task Milestone Dates set out in the following table:

| Deliverables | Task Milestone Dates |
|---|--|
| <p>Task 1: Recruit and subcontract IWE Resource Specialists. Description: IWE program services should be delivered by approximately 4 to 5 Full-Time Equivalent positions operating in approximately 4 to 5 service regions to cover the entire state. IWE services are to be available statewide.</p> <ul style="list-style-type: none"> • Particular attention is to be paid to prospective Resource Specialist’s qualifications related to: technical competence, especially regarding solid waste management, high productivity, being team players, interpersonal skills, and customer focus. • All prospective Resource Specialist’s resumes and pre-interview evaluations are to be submitted to the DNR for review prior to commencing the interview process. • The DNR retains the right of final approval of all IWE Resource Specialist subcontracts. | No later than July 1, 2018, and on-going as vacancies happen |
| <p>Task 2: Direct/oversee IWE Resource Specialists’ work, review/evaluate on-going performance. Description: Assure that IWE Resource Specialists –</p> <ul style="list-style-type: none"> • Actively search for generators and users of excess materials and by-products, and facilitate the matching and transfer of excess materials and by-products between generators and users. • Establish working relationships with generators and users excess materials and by-products by: <ul style="list-style-type: none"> ○ Responding to written or telephone requests for information or technical assistance no more than 2 business days after receiving each request, ○ Conducting ‘walk-throughs of customer facilities to identify opportunities for improving waste management and pollution prevention, ○ Working with solid waste agencies to help them meet their waste diversion goals, and, ○ Identifying client needs and accessing the team of experts including each other, the Iowa Economic Development Authority (IEDA), the Iowa Waste Reduction Center (IWRC), and the DNR to help meet those client needs. • Focus on obtaining the greatest <u>reduction</u> in by-product generation and the landfilling of excess materials. Priorities, in no particular order, are: <ul style="list-style-type: none"> <li style="width: 50%;">•Old corrugated containers and kraft bags <li style="width: 50%;">•Mixed recyclable paper <li style="width: 50%;">•Demolition/renovation/construction debris <li style="width: 50%;">•Non-treated wood <li style="width: 50%;">•Renewable energy by-products <li style="width: 50%;">•Compostable paper <li style="width: 50%;">•Industrial by-products/materials <li style="width: 50%;">•Hazardous materials <li style="width: 50%;">•Food & food processing residuals <li style="width: 50%;">•Plastic film/wrap/bags • Continue to develop the comprehensive Schools Waste Minimization and Recycling Implementation Project. Along with the DNR, IWRC and IEDA, IWE Resource Specialists will: <ul style="list-style-type: none"> ○ Continue to survey and obtain data from as many as possible of the approximately total 1,524 public and private Iowa schools, using a variety of means, including — online correspondence, telephone calls, onsite visits, and through interested third parties (haulers/contractors), ○ Continue to establish waste reduction/sustainability contacts at the schools according to the respective IWE service areas, ○ Continue to compile and document the data, | On-going, over the course of the Grant |

| | |
|--|--|
| <ul style="list-style-type: none"> ○ Analyze and evaluate the data in order to establish school waste reduction focus areas, and, ○ Based on the waste reduction focus areas, continue to plan and implement waste minimization and recycling projects and programs in Iowa's schools. ● Enter performance data and complete bi-weekly updates in the IWE database. | |
| <p>Task 3. Support program communications and on-site contacts. Description: Make available to all IWE Resource Specialists:</p> <ul style="list-style-type: none"> ● A cell phone, ● Internet service, ● A secure wireless laptop computer, tablet computer or other electronic means to maintain contact with other services providers while in the field and to provide timely assistance to program customers, and, ● Compensation for in-Iowa travel. | On-going, over the course of the Grant |
| <p>Task 4. Require attendance of all Resource Specialists at quarterly meetings. Description: Items covered to include:</p> <ul style="list-style-type: none"> ● Progress on quarterly objectives, ● Roundtable discussion of issues concerning excess materials and by-products matches, and, ● Professional development training. | Within 3 weeks of the end of each fiscal quarter |
| <p>Task 5. Meet with the DNR to discuss contractual progress. Description: Items covered to include:</p> <ul style="list-style-type: none"> ● Resource Specialists' performance, ● Budget items, ● Progress on goals, ● Primary duties listed in this RFP and other items as needed, and, ● Coordination and tracked delivery of additional projects &/or programs as new challenges and opportunities develop. | When requested |
| <p>Task 6. Track progress toward program goals. Description: These include:</p> <ul style="list-style-type: none"> ● Diverting at least 100,000 tons of materials and by-products from landfills, ● Completion of a combined minimum of 3,200 IWE client contacts, with tracking each Resource Specialist's both on-site visits to assist clients and in-house client assists, ● On-site visits are in-person site visits to, and tours of, client facilities for purposes of offering assistance. A single client can be counted for multiple on-site visits, as long as each visit counted is a legitimate, new assistance initiative. An on-site visit does not include subsequent follow-ups by telephone, e-mail or letters relating to the initial on-site visit, ● In-house assistance includes calls, e-mails and letters to clients to provide help with a specific market referral or other specific information. A client can be counted as in-house assistance multiple times for legitimate, new assistance initiatives. In-house assistance does not include subsequent assistance via telephone, e-mail or letter relating to the initial in-house assistance, and, ● Submittal to the DNR of at least one IWE success story from each of the Service Areas per year. | On-going, over the course of the Grant |

| | |
|---|---|
| <p>Task 7. Direct the IWE Resource Specialists to use the special allocation in the Grant Award for publicity, promotion and marketing.</p> <p>Description: As part of general program expectations, Grantee(s) and the IWE Resource Specialists will:</p> <ul style="list-style-type: none">• Represent the DNR and its FABA programs in presentations on current waste management and pollution prevention programs and practices,• Share information on excess materials and by-products uses and markets via on-site visits, e-mail, phone calls, and at quarterly IWE meetings,• Advise clients on the services of the Iowa Waste Reduction Center, and provide referrals as appropriate, and,• Complete other special promotion and information projects as directed or approved by the DNR. | On-going, over the course of the Grant |
|---|---|



IOWA DEPARTMENT OF NATURAL RESOURCES



IOWA WASTE EXCHANGE

HISTORY

- Established in 1990 by the State Legislature to divert waste materials & by-products from Iowa's sanitary landfills. (Iowa Code section 455E.11 – Groundwater Protection Fund).
- Funded by a percentage of Landfill tipping fees. Funding has primarily stayed at the same level since program inception. **650-Percent ROI**. Funding is awarded through a competitive RFP process.
- FREE, CONFIDENTIAL AND NON REGULATORY.
- Began as a pilot program at Indian Hills Community College.
- Began with ten In-the-Field IWE Area Resource Specialists, based regionally at Community Colleges and at Councils of Governments. Through attrition and by design there are now five In-the-Field specialists who serve as a statewide collaborative network.
- A program of the Iowa Department of Natural Resources. Formerly co-administered with the Iowa Economic Development Authority until 2006 when responsibilities shifted solely to the Iowa Department of Natural Resources.

Iowa Waste Exchange

STATISTICS

1990-2021

4,178,000



**TONS OF WASTE
DIVERTED**

119,689,146



**DOLLARS SAVED
BY IOWANS**

Includes \$105,142,116
From Diversion
\$14,547,031 Other Savings

67,197



CLIENTS SERVED

- Agricultural Pursuits
- Business/Industry
- Schools/Colleges
- Governmental Entities
- Municipalities
- Hospitals and Clinics
- Non Profits
- Private Citizens



SERVICES PROVIDED

- Identify Marketable Waste and Revenue Streams
- Administer Waste Sorts
- Locate Markets for Value Added Byproducts
- Locate Byproducts for Production
- Write/Review Grants, Loans, SOPs, Hazardous and Non Hazardous Waste Management Plans
- Present at Conferences, Workshops, Lunch and Learns and Other Public Speaking Events
- Author Guest Articles
- Administer/Organize Special Projects and Collection Events

Iowa Waste Exchange

IOWA WASTE EXCHANGE PRIMARY SERVICE AREAS



Iowa Waste Exchange

IWE handles all materials from tankers of industrial sludge to stuffed animals.



Twelve tons of *Scholastic Readers* from Iowa Schools matched to Southern U.S. Schools affected by hurricanes.



Construction and Demolition assistance. Including Iowa's Derelict Building Program.



Ten tons of lab supplies matched to volunteers in the Gulf to test animals following an oil spill.



Mattresses, furniture and other supplies matched to domestic abuse shelters, homeless shelters and transitional housing agencies.



Food waste is a priority for the IWE. IWE assists food manufacturers, convenience stores, schools and others in diverting food materials.



50,000 square feet of carpeting matched to tornado victims.



Two semi loads of off spec washing machine windows used in an interior art installation.



Occasionally manufacturers and businesses will find some interesting inventory that they need assistance with, like these antique Coke coolers.



Contact Information

Web Link to the Financial & Business Assistance

<https://www.iowadnr.gov/Environmental-Protection/Land-Quality/Waste-Planning-Recycling>

Web link to the Iowa Waste Exchange

<https://www.iowadnr.gov/Environmental-Protection/Land-Quality/Waste-Planning-Recycling/iowa-Waste-Exchange-IWE>

Contact -

Bill Blum-Program Manager

515-240-6048

Bill.Blum@dnr.iowa.gov

Jennifer Wright-Supervisor

515-452-1794

Jennifer.Wright@dnr.iowa.gov

Iowa Department of Natural Resources
Environmental Protection Commission

#16

Decision Item

Contract with the University of Northern Iowa, Iowa Waste Reduction Center (IWRC)

Commission approval is requested for a contract with the University of Northern Iowa, Iowa Waste Reduction Center (IWRC), of Cedar Falls, Iowa.

Contract Terms:

Amount: Not to exceed \$30,000

Dates: July 1, 2021 to June 30, 2022.

Funding Source(s): the Groundwater Protection Fund, Solid Waste Account where monies are received from the tonnage fee levied under Iowa Code section 455B.310.

Statutory Authority: Iowa Code section 455E.11(2)(a)(2)(c)

Contract Background:

Iowa Code section 455E.11(2)(a)(2)(c) Groundwater Protection Fund, says that the DNR shall expend not more than thirty thousand dollars of the moneys appropriated under that subparagraph division to contract with the Iowa Waste Reduction Center (IWRC) at the University of Northern Iowa to provide training and other technical services to the Iowa Waste Exchange program.

Contract Purpose:

The purpose of this contract is for the IWRC to provide technical assistance, database management and training to the Iowa Waste Exchange program and its representatives.

Selection Process Summary:

The selection process in this case was not competitive. This contract with IWRC is mandated by Iowa Code section 455E.11(2)(a)(2)(c), as stated above in the Contract Background.

Contract History:

The DNR has entered into contracts with the IWRC on an annual basis every year since 1990. The purpose of the contracts with the IWRC is to provide technical assistance, database management and training to the Iowa Waste Exchange program and its representatives. The five most recent contracts have been:

Contract #1: Timeframe: 7/2016-6/2017; Amount \$30,000

Contract #2: Timeframe: 7/2017-6/2018; Amount \$30,000

Contract #3: Timeframe: 7/2018-6/2019; Amount \$30,000

Contract #4: Timeframe: 7/2019-6/2020; Amount \$30,000

Contract #5: Timeframe: 7/2020-6/2021; Amount \$30,000

Bill Blum, Program Planner, Land Quality Bureau
Environmental Services Division
May 18, 2021

Attachment: Contract Statement of Work

STATEMENT OF WORK

The DNR's statutorily directed objective is for the Iowa Waste Reduction Center (IWRC) to provide technical assistance, and database maintenance and coordination for the Iowa Waste Exchange (IWE) program as approved by the DNR. The services included below may be amended at any time by the DNR or the IWRC upon prior approval by the DNR.

The IWRC will provide the following tangible products by the Task Milestone Dates set out in the following table:

| Deliverables | Task Milestone Dates |
|---|---|
| <p>Task 1: IWE database management:</p> <ul style="list-style-type: none"> • Conduct database training for all new IWE Resource Specialists • Electronically update and distribute the IWE Handbook to the DNR and all IWE Resource Specialists • Update the IWE database based on requests from IWE Resource Specialists and from the DNR. | On-going, over the course of the Contract |
| <p>Task 2: Coordinate with the DNR and IWE Resource Specialists to provide K-12 schools with food waste audits and cafeteria waste sorts as requested. The IWRC will also coordinate with the DNR in the publishing of data and results from these joint assistance activities.</p> | When requested |
| <p>Task 3. Provide technical assistance regarding hazardous materials/hazardous waste, and complete joint IWRC/IWE visits when requested. The IWRC will also refer clients to IWE Resource Specialists for assistance when applicable.</p> | On-going, over the course of the Contract |
| <p>Task 4. IWE marketing assistance:</p> <ul style="list-style-type: none"> • Assist with development of marketing plans and/or strategies • Collaboratively brainstorm ideas to meet IWE Resource Specialists' marketing goals • Develop contact lists for outreach • Promotion of IWE events, services, and materials through IWRC marketing outlets (website, newsletter, social media) | On-going, over the course of the Contract |
| <p>Task 5. Submit monthly reports that have a narrative discussion of the delivery of the assistance services outlined in Tasks 1 through 4. Monthly reports will also describe any other activities relevant to the DNR and/or IWE Resource Specialists.</p> | Within 3 weeks of the end of each month |

| CATEGORY | DNR FUNDS |
|---|-------------|
| PERSONNEL COSTS | \$27,777.78 |
| INDIRECT COST CHARGES (8% of Personnel Costs) | \$2,222.22 |
| TOTAL PROJECT COSTS | \$30,000.00 |

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

ITEM 17 **DECISION**

TOPIC **Notice of Intended Action - Chapter 70-73 – Dam Safety Rules Update**

The Commission is requested to approve this Notice of Intended Action 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.

The proposed rule is the outcome of input from stakeholders, as well as from a comprehensive five-year rule review pursuant to Iowa Code section 17A.7(2). Iowa’s Dam safety rules have not been significantly amended in 29 years.

Currently, seven different administrative code chapters regulate Dams in the state of Iowa. This proposed rule strategically aims to reduce and consolidate these regulations to ease administrative and regulatory burdens on Dam owners and consultants. Simultaneously, this proposed rule makes updates consistent with national standards and best management practices.

This proposed rule 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 the proposed new 567—Chp. 73. The proposed rule similarly combines almost all regulations regarding Dam safety from seven chapters into this same new chapter.

The proposed rule is also streamlining 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 proposed rule consolidates this process into one administrative code chapter (proposed 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 are also proposed. These two changes in particular bring Iowa’s Dam regulations up to national standards and reflect best management practices.

Timeline:

- Starting in 2017, program staff convened a Technical Advisory Committee to discuss rules and proposed improvements. This group met 4 times between 2017 and 2018
- A draft of these proposed rule changes was sent on in August of 2018 for stakeholder input.
- Feedback and review progressed until October of 2020 when the draft rules were sent to the governor’s office for preapproval.
- Pending Commission approval, the proposed end date for written comments is July 13, 2021, with a public hearing proposed for July 12, 2021.
- Estimated return to Commission for proposed Adopted and Filed rule on August 17, 2021

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

4/27/2021

NOIA Attachments – NOIA for Chapters 50-52, 70-73 for Dam Safety Program
Preclearance package (includes Fiscal/Jobs impact) as submitted to IGOV for preclearance

ENVIRONMENTAL PROTECTION COMMISSION [567]

NOTICE OF INTENDED ACTION

The Environmental Protection Commission (Commission) hereby proposes to amend 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,” Chapter 72, “Criteria For Approval,” and Chapter 73, “Use, Maintenance, Removal, Inspections, And Safety Of Dams, ” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed 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

Currently, seven different administrative code chapters regulate Dams in the state of Iowa. This proposed rule strategically aims to reduce and consolidate these regulations to ease administrative and regulatory burdens on Dam owners and consultants. Simultaneously, this proposed rule makes updates consistent with national standards and best management practices.

More specifically, the proposed rule 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 the proposed new 567—Chp. 73. The proposed rule similarly combines almost all regulations regarding Dam safety from seven chapters into this same new chapter.

The proposed rule is also streamlining 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 proposed rule consolidates this process into one administrative code chapter (proposed 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 of Natural Resources' (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 are also proposed. These two changes in particular bring Iowa's Dam regulations up to national standards and reflect best management practices.

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 567—13. 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 Commission for a waiver of the discretionary provisions.

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 July 13, 2021. Comments should be directed to:

Jonathan Garton
Iowa DNR Floodplain and Dam Safety Section
502 E. 9th Street
Des Moines, IA 50319.
Email: jonathan.garton@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held by conference call as follows. Persons who wish to attend the conference call should contact Jonathan Garton at jonathan.garton@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 Jonathan Garton prior to the hearing to facilitate an orderly hearing.

July 12, 2021
2:00-3:00pm

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 action is proposed:

ITEM 1. Amend rule 567—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 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 567–73.2(455B).

ITEM 5. Rescind the definitions of “Height of dam”, “Major dam structure,” and “Low head dam” 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, repair, or modification of any dam shall be required when the dam exceeds the thresholds under 567–73.3. Other structures across a stream may require approval under 567–71.12. ~~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. 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-feet 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 567—72.11(3)(455B) as follows:

72.11(3) Structures or materials across the 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 567-73.3:

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 1 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 non-impounding 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 as defined in 567—65.1(455B).

“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” a classification based on the possible incremental adverse consequences that result from the release of water or stored contents due to a failure or mis-operation 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, 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 mis-operation of the dam and appurtenances as compared to the consequences that are likely to occur without such failure or mis-operation.

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

“*Probable Maximum Flood*” means as defined in 567-70.2(455B,481A).

“*Q100,*” “*Q50,*” “*Q25,*” “*Q15,*” “*Q10,*” means as defined in 567- 70.2(455B,481A).

“*Public damages*” means as defined in 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 has a storage of 15 acre-feet or more at top of dam elevation; or

b. A dam with a storage of 50 acre-feet or more at top of 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.* Approval is required for construction of any dam meeting the thresholds of a regulated dam before construction begins. The proposed dam must meet the criteria outlined in this chapter.

73.3(4) *Existing dams.* Approval is required for:

a. Modification, repair, alteration, breach, abandonment, or removal of any existing dam or appurtenant structure beyond the scope of ordinary maintenance,

b. Any change in operating procedures if the height or storage of the dam exceed the applicable thresholds in this rule.

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 567-73.33 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 high and significant hazard potential dams 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 rated as low hazard potential dams that have been inspected or analyzed and found to be significant or high hazard potential shall be required to upgrade 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 based on the potential consequences of failure. 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 structure shall be classified as low hazard if failure of the dam results in no probable loss of human life, low economic losses, and low public damages.

73.4(2) Significant hazard. A structure shall be classified as a significant hazard if failure of the dam results in no probable loss of human life but may damage residential structures,

industrial, commercial, or public buildings; may negatively impacts 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 structure shall be classified as high hazard if located in an area where failure results in probable loss of human life.

73.4(4) 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 re-evaluation of the hazard potential. 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; e-mailed to JointApplication@dnr.iowa.gov, or mailed to Iowa DNR, Attn: Joint Application, 502 E 9th Street, Des Moines, IA 50319. For dam repairs, abandonment, or removal, the department may waive the requirements of the application process outlined in this section if the requirements are unnecessary for the application approval, or if the dam has been designated as unsafe and immediate actions are required to protect the public welfare.

73.10(2) *Preliminary application packet.* The preliminary application packet includes the joint application form and preliminary design data prepared by or under supervision of a professional engineer licensed in the State of Iowa. 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) *Final submittal.* After review and concurrence of the preliminary submittal by the department, the engineering plans and other engineering information shall be certified by a professional engineer licensed in the State of Iowa and submitted with the following information:

- a.* One complete set of certified construction plans;
- b.* One complete set of construction specifications;
- c.* Operating plan, if required;
- d.* Easements, if required;
- e.* Emergency Action Plan for High Hazard Dams; 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(4) *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, the department will review the final submittal and issue a decision based on if the project meets criteria for approval outlined in the chapter.

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 the 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 Chapter 567-7.

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 such bond shall be specified as special conditions in the department permit.

h. Construction inspection. For high and significant hazard dams, construction shall be inspected by or under 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 per 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. Post-construction 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 department shall have access to the dam site for such inspections.

j. Owner inspections. For high and significant hazard dams, the owner is responsible for annual inspections and submission of written inspection reports to the department as required in subrule 567-73.30(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 subrule 567-50.4(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 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 Chapter 567-52.

c. For high 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 consistent with the approved plans and conditions of the dam construction permit, and the department has conducted a field inspection.

73.11(4) A water storage permit may be modified, cancelled, 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 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 class 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. emergency notification plan with flowchart;
- b. statement of purpose;
- c. project description;
- d. emergency detection, evaluation, and classification;
- e. general responsibilities;
- f. preparedness; and
- g. inundation maps or other 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 5 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 should the dam not have an auxiliary spillway.

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

73.18(2) 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 documenting the methods and analysis followed in modeling software selection, inflow design hydrograph determination, and reservoir routing. The 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.* NOAA Atlas 14, Precipitation 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% of the volume of water temporarily stored during the principal spillway design flood within 10 days. If this cannot be accomplished, the auxiliary spillway and freeboard design flood routings shall be made beginning with the impoundment level at the 10 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 73.20(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/or 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 potential

dam shall be the 500 year flood. The minimum design flood for low and significant hazard potential dams shall be the 100 year flood.

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), anti-vortex 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 are 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, cut offs, under drains/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 10 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 and significant hazard dams documenting the evaluation of slope stability requirements, anticipated vertical settlement and horizontal elongation, seepage and under-seepage 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) Operation 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 such plan is considered part of the design process. An operation plan shall include, at a minimum, the following items:

73.22(1) *Responsibility* The 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 plan shall address low flow situations and shall specify a minimum release rate if required by the department and how it 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 non-impounding 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 shall render the dam height and storage below thresholds and no longer pose any downstream hazard;

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 does 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 not have significant adverse consequences on fish and wildlife habitat downstream.

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 water borne 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 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 1st. Inspection reports shall include:

- a.* Maintenance work done since the previous annual report;
- b.* Deficiencies observed 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 flood plain 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 and high hazard dam structures.*

a. Inspection prior to construction. A field inspection may be made by the department to determine the hazard potential 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, the engineer shall prepare and submit a construction report, as-built plans, and a statement that in their 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. Dams with approved operation plans shall be inspected by the department at least once every five years. Any problems noted shall be reported to the owner in writing.

d. All other dams which exceed the thresholds may be periodically inspected by the department to determine their condition. Any serious problems noted shall be reported to the 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 changed 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 owner of the dam. The report shall state the deficiencies observed during the inspection. If appropriate, the report shall detail the actions required to improve 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 raising or lowering will be initiated, the level to which the impoundment will be raised or lowered, and, if 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 temporary or permanent raising or lowering of water levels may include: giving prior notice to the director of the local county conservation board or local enforcement officer for the department; 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 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 and other investigation the department determines that a dam is unsafe, a report shall be prepared. Copies of the report shall be provided to the owner of the dam 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 owner or other responsible person with a reasonable opportunity to comment on the staff report considering the degree and imminence of hazard identified in the staff 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 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 567-7. If the initial decision requires emergency remedial work to abate an imminent danger of failure which would cause significant public damages the director 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.

Administrative Rules
GOVERNOR'S OFFICE PRECLEARANCE FORM

| | |
|--|--|
| Agency: | Environmental Protection Commission / Department of Natural Resources (Department) |
| IAC Citation: | 567 IAC Chapters 50, 51, 52, 70, 71, 72 and 73 |
| Agency Contact: | Jonathan Garton, Dam Safety Engineer, 515-725-8360 |
| Statutory Authority: | Iowa Code sections 455B.275(9), 455B.276(1), 455B.278 |
| Preclearance Requested Review Deadline: | January 22, 2021 |
| <p><u>Purpose of Proposed Rule:</u> Currently, seven different administrative code chapters regulate Dams in the state of Iowa. This proposed rule strategically aims to reduce and consolidate these regulations to ease administrative and regulatory burdens on Dam owners and consultants. Simultaneously, this proposed rule includes updates consistent with national standards and best management practices.</p> <p>More specifically, the proposed rule 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 the proposed new 567—Chp. 73. The proposed rule similarly combines almost all regulations regarding Dam safety from seven chapters into this same new chapter.</p> <p>The proposed rule is also streamlining 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 proposed rule consolidates this process into one administrative code chapter (proposed new 567--Chp. 73), and will require only one application and one approval process for both permits.</p> <p>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 are also proposed. These two changes in particular bring Iowa's Dam regulations up to national standards and reflect best management practices.</p> | |
| <p><u>Need for Proposed Rule:</u></p> <p>The proposed rule is the outcome of input from stakeholders, as well as from a comprehensive five-year rule review pursuant to Iowa Code section 17A.7(2). Iowa's Dam safety rules have not been significantly amended in 29 years. The proposed rule is required to bring Iowa's rules in line with current national standards and best management practices.</p> | |

Summary of Informal Rulemaking Activities related to the Proposed Rule (e.g., stakeholder input):

This proposed rulemaking is the result of extensive stakeholder involvement and collaboration.

The Department created a technical advisory committee (TAC) to formally solicit input on changes to the Dam rules from professional engineering consultants. Invitations were sent out to firms that have submitted Dam permit applications in the past and to the Iowa Chapter of the American Society of Engineers. Firms participating on the TAC include Snyder & Associates, HR Green, Terracon, Watersmith Engineering, Shive-Hattery, and USDA-NRCS.

The TAC met a total of four times. The first two meetings were in person on July 12, 2017 and October 4, 2017. The discussions from these first sessions directly resulted in a draft of this proposed rule. The draft was sent out to the TAC for feedback on January 29, 2018 and again on May 2, 2018. Comments and feedback from these two final sessions were incorporated. The industry is supportive of this proposed rule.

The draft of this proposed rule was then shared in August 2018 with known dam owners and with other likely interested stakeholders, such as Iowa Farm Bureau, the Iowa League of Cities, the Iowa State Association of Counties, other engineering firms, soil conservation districts, drainage districts, the Iowa Environmental Council, among others. Comments were solicited through the end of September 2018. Comments received were incorporated into the final draft rule.

As internal reviews and edits were being completed, continued interactions with stakeholders has occurred over the last year, including most recently in October 2020, via email or in-person or virtual engagement.

To date, stakeholders remain supportive.

**Administrative Rules
JOBS IMPACT STATEMENT**

1. BACKGROUND INFORMATION

| | |
|-----------------------------|---|
| Agency: | Environmental Protection Commission / Department of Natural Resources (Department) |
| IAC Citation: | 567 IAC Chapters 50, 51, 52, 70, 71, 72 and 73 |
| Agency Contact: | Jonathan Garton, Dam Safety Engineer 515-725-8360 |
| Statutory Authority: | Iowa Code sections 455B.275(9), 455B.276(1), and 455B.278 |

| | |
|-------------------|---|
| Objective: | Currently, seven different administrative code chapters regulate Dams in the state of Iowa. This proposed rule strategically aims to reduce and consolidate these regulations to ease administrative and regulatory burdens on Dam owners and consultants. Simultaneously, this proposed rule makes updates consistent with national standards and best management practices. |
| Summary: | <p>This proposed rule 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 the proposed new 567—Chp. 73. The proposed rule similarly combines almost all regulations regarding Dam safety from seven chapters into this same new chapter.</p> <p>The proposed rule is also streamlining 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 proposed rule consolidates this process into one administrative code chapter (proposed new 567—Chp. 73), and will require only one application and one approval process for both permits.</p> <p>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 are also proposed. These two changes in particular bring Iowa’s Dam regulations up to national standards and reflect best management practices.</p> |

2. JOB IMPACT ANALYSIS

Fill in this box if impact meets these criteria:

| |
|--|
| <p>✓ <input 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></p> <p>Explanation: The Department has determined that the proposed rule will not impact private sector jobs or employment opportunities in Iowa. The requirements for hiring a qualified licensed engineer to design a Dam is not changing, nor are the requirements to maintain and repair permitted Dams.</p> |
|--|

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

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:

| |
|--|
| <p>The Department has worked closely with stakeholders on the proposed rule. The regulations are being strategically reduced and consolidated so as to ease regulatory and compliance burdens.</p> |
|--|

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 Rules
FISCAL IMPACT STATEMENT**

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

IAC Citation: 567 IAC Chapters 50, 51, 52, 70, 71, 72 and 73

Agency Contact: Jonathan Garton 515-725-8360

Summary of the Rule: This proposed rule 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 the proposed new 567—Chp. 73. The proposed rule similarly combines almost all regulations regarding Dam safety from seven chapters into this same new chapter.

The proposed rule is also streamlining 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 proposed rule consolidates this process into one administrative code chapter (proposed 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 are also proposed. These two changes in particular bring Iowa’s Dam regulations up to national standards and reflect best management practices.

Fill in this box if the impact meets any of 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 proposed rule will not have a fiscal impact on the State. No changes to staffing are required to implement this proposed rule.

Fill in this box if the impact meets this criteria:

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

Assumptions:**Describe how estimates were derived:****Estimated Impact to the State by Fiscal Year**

| | <u>Year 1 (FY)</u> | <u>Year 2 (FY)</u> |
|--------------------------------|--------------------|--------------------|
| 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) | 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:

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 staff to implement the proposed rule.

Fiscal impact to persons affected by the rule:

Dam owners and Dam consultants will be fiscally impacted by the rule, but most likely in a positive way. The regulations are being strategically reduced and consolidated so as to ease regulatory and compliance burdens.

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

The Department does not anticipate any negative fiscal impact to counties or other local governments.

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

ITEM 18 DECISION

TOPIC **Notice of Intended Action: Air Quality Rules Update - Chapters 20, 22, 23, and 25**

The Commission is requested to approve this Notice of Intended Action 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 Proposed Rule Changes

The proposed rulemaking adopts several new federal air quality standards. The proposed amendments are identical to the federal regulations, and do not impose any regulations on Iowa businesses not already required by federal law. The proposed rulemaking 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 proposed rulemaking 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 Proposed Rule Changes

The proposed rulemaking adopts amendments to EPA methods for measuring air pollutant emissions (stack testing and continuous monitoring). The proposed 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 Notice of Intended Action (pages 5-6) for more information on the specific NESHAP standards.

Stakeholder Engagement

The Department distributed ten articles with summaries of the proposed NESHAP amendments and affected source categories using its Air Quality e-newsletter (GovDelivery). This e-newsletter currently has over 20,000 subscribers including industry, businesses associations, trade groups, small businesses, state and federal agencies, and many other organizations and individuals. The articles are available on the DNR News Releases webpage at iowadnr.gov/About-DNR/DNR-News-Releases?Search=air+toxics. The Department has also been contacting facilities that the Department identified as being impacted by the updated NESHAP.

The Department discussed the draft rulemaking with stakeholders at its Air Quality Client Contact meeting held on November 19, 2020. Additionally, informal public input on the draft rulemaking took place from January 12-26, 2021. The Department announced the public input period through the air quality e-newsletter and posted the draft proposal on its air quality public input page (iowadnr.gov/airpublicinput).

Public Comments and Public Hearing

If the Commission approves the proposed rulemaking, the Department will hold a public hearing on Monday, July 19, 2021, at 1:00 p.m., in which participants may participate virtually and by phone. Persons who wish to attend the public hearing should contact Christine Paulson at christine.paulson@dnr.iowa.gov or by phone at 515-725-9510. The public hearing information will be also be provided through the Air Quality e-newsletter (GovDelivery) and on the air quality public input webpage (iowadnr.gov/airpublicinput). The Department will accept written public comments until 4:30 p.m. on July 19, 2021.

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

Memo date: April 26, 2021

ENVIRONMENTAL PROTECTION COMMISSION [567]**Notice of Intended Action****Rule making related to air quality**

The Environmental Protection Commission (Commission) hereby proposes to amend 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

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

More specifically, the proposed 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 state 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 this state.

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

Item 1 amends rule 567—20.2(455B), the 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). Corrections to Part 63, Appendix A, was subsequently published in 85 Fed. Reg. 77384 (Dec. 2, 2020) and 86 Fed. Reg. 15421—15422 (March 23, 2021)). 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 proposed for adoption concurrently with the amendment in Item 1. It revises the definition of “EPA reference method” to similarly reflect updates to EPA testing and monitoring methods, which are the methods that apply to the Title V Operating Permit rules in 567—Chapter 22.

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 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 revision 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.

NESHAP Risk and Technology Review

Most of EPA's amendments proposed for adoption in subrule 23.1(4) (Item 5) address the Risk and Technology Reviews (RTR) 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 that the Commission proposes to adopt 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 including standards for adoption that don’t currently affect any Iowa sources in case a new facility of that type is constructed in the future.

Table 1: NESHAP Amendments Proposed for Adoption

| 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 is proposing to exclude from adoption at this time due to active legal challenges of the federal regulations. Additional proposed revisions to subrule 23.1(4) indicate the previous dates for which the specific NESHAP were adopted by reference, which will exclude 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 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/Subrule 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 |

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.

Public Comment

Any interested person may submit written 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 July 19, 2021. Written comments should be directed to:

Christine Paulson
Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: christine.paulson@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally will be held as follows:

Persons who wish to attend the public hearing should contact Christine Paulson at christine.paulson@dnr.iowa.gov or by phone at 515-725-9510. A virtual meeting link and conference call number will be provided prior to the hearing. The public hearing information will be also be provided through the Air Quality e-newsletter (GovDelivery) and on the air quality public input webpage

(iowadnr.gov/airpublicinput). Persons who wish to make comments at the public hearing must submit a request

to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

Mon. July 19, 2021
1 to 2 p.m.

Virtual hearing / teleconference

Persons who wish to make comments at the public 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 participate in the hearing and have special requirements, such as those related to hearing or vision 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 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~~ March 23, 2021).

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)~~, the 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~~ March 23, 2021).

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), introductory paragraph, 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 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. through 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 through 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. An earlier 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 ~~August 3, 2018~~, 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 March 23, 2021), 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 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. through *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 through *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 through *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. No change. 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 through *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 through *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 FFFFF, 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 April 20, 2006)

dh through 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 March 23, 2021). 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 specification and quality assurance procedure is 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.