

**MINUTES OF THE MAY 2008 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, May 13, 2008, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Michael Connolly, Chair, Senators Jeff Angelo, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives Marcella Frevert, David Heaton, David Jacoby and Linda Upmeyer.
Representative Philip Wise, Vice Chair, was not present.
- Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Kathleen K. West, Administrative Code Editor; Deborah Svec-Carstens, Assistant Counsel to the Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Sen. Connolly convened the meeting at 9 a.m.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report.
- ENVIRONMENTAL PROTECTION COMMISSION** Wayne Gieselman, Gene Tinker, Randy Clark, David Wornson and Elaine Douskey represented the department. Also present were Commissioners Charlotte Hubbell, Suzanne Morrow, Susan Heathcote, and Henry Marquard. Other interested parties included Patrick Rounds of Petroleum Marketers Management Insurance Company, John North of the Iowa Association of Water Agencies, Scott Scheidel of the Iowa comprehensive underground storage tank fund board, Kellie Paschke of Petroleum Marketers and Convenience Stores of Iowa, and Anita Maher-Lewis of AML Consulting.
- ARC 6704B Amendments to ch 65 limit the application of liquid manure or settled open feedlot effluent on soybean cropland. Mr. Tinker clarified that the amendments apply to confinement operations with manure management plans and open feedlots with nutrient management plans, and that smaller operations are not affected by these amendments. The limitation will become a prohibition by the year 2013 if, based on scientific evidence, EPC so determines and publishes a notice to that effect in the Iowa Administrative Bulletin.
Rep. Heaton and Sen. Courtney asked to review the public comments received. Rep. Upmeyer was advised that the amendments were adopted under the commission's general rule-making authority rather than in response to recent legislation. At the request of Sen. Connolly, Mr. Clark enumerated the following statutes as the basis for the commission's rule-making authority: 459.103, 459.312, 459A.104, 459A.208. Mr. Gieselman commented that commercial fertilizers are also a concern, but the authority to regulate commercial fertilizers lies with the department of agriculture and land stewardship, rather than EPC. Emphasizing that clean water is important to both urban and rural Iowans, Sen. Connolly commended the commission's efforts to protect the water. Mr. Marquard commented that a lot of research and input from the scientific community, as well as from producers, went into these amendments.
- ARC 6596B Mr. Wornson reported that although the stakeholder group has continued discussions and reached consensus in some areas, differences remain. Mr. Wornson suggested that the commission revisit the rules after the new model has been in effect for a couple of years. Mr. Wornson explained that when a groundwater professional employed by an owner-operator determines, based on a "desktop analysis," that a well that lies beyond the model plume is not at risk and the department disagrees with the groundwater professional, the department will share in responsibility for field investigation and analysis. Mr. Wornson noted that transition provisions allow an owner-operator to use the old model or the new model.
Mr. Rounds concurred with the recalibration of the model, but disagreed with the changes that were not initiated by legislation and which may require Tier 1 sites located within 2500 feet of a public water supply to perform costly risk assessment. Mr. North distributed written comments and stated that he is recommending that member agencies support the rules. Mr. Scheidel concurred with the recalibration of the model, but indicated that more time and a funding mechanism are needed to address risk assessments. Ms. Paschke and Ms. Maher-Lewis concurred with Mr. Rounds and Mr. Scheidel and indicated that they believe that work on these rules should continue.
- UTILITIES DIVISION** Mary Whitman represented the division.
- ARC 6707B No action on proposed amendments to implement the board's electronic filing system. Ms. Whitman clarified that the board does not have a system to receive electronic payment of fees.

ECONOMIC DEVELOPMENT DEPARTMENT Alaina Santizo represented the generation Iowa commission.

ARC 6705B No questions on ch 400 regarding the generation Iowa commission.

REVENUE DEPARTMENT Jessica Braunschweig-Norris and Dick Stradley represented the property assessment appeal board. Other interested parties included Dale McCrea of Muscatine County on behalf of the Iowa State Association of Assessors.

ARC 6746B Ms. Braunschweig-Norris stated that these proposed amendments to ch 71, which are in compliance with Iowa Code chapter 17A, the uniform rules of agency procedure and the Iowa rules of civil procedure, clarify practices and procedures for parties appearing before the board. Mr. McCrea offered comments on behalf of the Iowa State Association of Assessors and asked that Item 3 not be adopted. Mr. Stradley distributed a report previously requested by the committee.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department.

ARC 6690B No questions on amendment to ch 11 concerning eligibility for the AIDS drug assistance program.

ARC 6711B No questions on proposed amendments to the radiation rules.

ETHICS AND CAMPAIGN DISCLOSURE BOARD Charlie Smithson represented the board.

ARC 6729B No questions on exemption to the penalty for late filing of campaign reports caused by a malfunction of the board’s electronic filing system.

ARC 6730B No questions on 8.11(1) concerning executive branch lobbyist disclosure reports.

ARC 6731B No questions on the board’s retention of a portion of the civil penalty fee to cover incidental costs.

INSPECTIONS AND APPEALS DEPARTMENT Dean Lerner, Steve Mandernach, and David Werning represented the department. Other interested parties included a representative from ABCM Corporation, Dana Petrowsky of Iowa Association of Homes and Services for Aging, Kelly Meyers of IHCA, Ken Watkins of Davis-Brown Law Firm, Guy Matson of Good Samaritan Society, Jerry Nicholls of Iowa City, and Dee Pyle of Ruthven Community Care Center.

ARC 6708B No action on amendments pertaining to food and consumer safety. Mr. Mandernach reported that the department has addressed the concerns of the regulated industries.

ARC 6710B Proposed rules 50.7 and 56.9 address when health care facilities must notify the department of an occurrence and the factors determining the class of a violation. Interested parties requested clarification in regard to resident-resident assault, the department’s use of the word “wandering” rather than the federally defined term “elopement,” the kinds of fires that must be reported, malfunctions of fire alarm or sprinkler systems, falls by ambulatory and nonambulatory patients, and reportable injuries. Parties expressed concern that these rules expand reporting requirements for all facilities, are overly burdensome and will not result in improved care. Members discussed unintended consequences and expenses that may result from overregulation or inconsistency with federal laws and regulations. Sen. Kibbie asked that the governor’s office be involved in the resolution of concerns before the rules are adopted.

ARC 6691B No action on the amendment to 51.14(4)“e” to remove the sunset date on the requirement for authentication of standing orders for hospital pharmaceutical services.

EDUCATIONAL EXAMINERS BOARD Excused from review at this meeting.

NATURAL RESOURCE COMMISSION Excused from review at this meeting.

HUMAN SERVICES DEPARTMENT Excused from review at this meeting.

Committee business The minutes of the April 2008 meeting were approved.

The next meeting was tentatively scheduled for Wednesday, June 11, 2008, at 9 a.m.

Adjourned The meeting was adjourned at 12:10 p.m.

Respectfully submitted,

Kathleen K. West

APPROVED:

Chair Michael Connolly

Vice Chair Philip Wise