

TO: Honorable Governor Chester J. Culver  
Mark Brandsgard, Chief Clerk of the House  
Michael Marshall, Secretary of the Senate  
Ron Parker, Senate Democrat Caucus  
Peter Matthes, Senate Republican Caucus  
Joseph Romano, House Democrat Caucus Staff  
Jeff Mitchell, House Republican Caucus Staff  
Jamie Cashman, Governor's Office

FROM: The Environmental Protection Commission

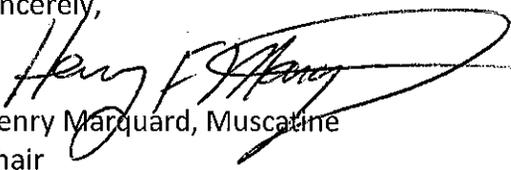
DATE: January 13, 2009

SUBJECT: Annual Report and Recommendations

The Iowa Environmental Protection Commission (EPC) respectfully submits its Annual Report and Recommendations to the Governor and General Assembly of Iowa pursuant to Iowa Code Chapter 455B 105(5). The report presents what it considers the major activities and accomplishments of the EPC for 2008. More importantly, the Commission submits its recommendations for policy and legislative changes for 2009. These recommendations reflect the issues that the Commission has worked on over the past year and equally important reflect many of the comments we have heard from the citizens of Iowa during our commission meetings and during formal public comment periods of our rules.

We thank you for your consideration of the report and its recommendations. The Commission stands ready to answer any questions you may have on the report and its recommendations.

Sincerely,



Henry Marquard, Muscatine  
Chair

Iowa Environmental Protection Commission:

*Charlotte Hubbell, Des Moines*  
*Susan Heathcote, Des Moines*  
*David Petty, Eldora*  
*Marty Stimson, Cedar Rapids*  
*Suzanne Morrow, Storm Lake*  
*Paul Johnson, Decorah*  
*Shearon Elderkin, Cedar Rapids*  
*Gene Ver Steeg, Inwood*

**Report to the Governor and General Assembly**  
Iowa Environmental Protection Commission  
January 13, 2009

Pursuant to Code of Iowa Section 455B 105(5) the Iowa Environmental Protection Commission (Commission) submits the following report to Governor Culver and the Iowa General Assembly. As specified in the statute, this report discusses the accomplishments and status of the programs administered by the Environmental Services Division of the Department of Natural Resources. Specifically, the report will make legislative recommendations for consideration by the Governor and General Assembly based on Commission observations regarding the state of the environment in the past year. The report also takes into account comments and concerns the Commission frequently hears from Iowa citizens.

In issuing this report and making these recommendations, the Commission encourages the Governor and the General Assembly to continue to consider Iowa's natural resources and the protection thereof when developing statewide policies for economic development. The Commission believes the protection of the environment is consistent with and, in fact, promotes the development of a strong economy and enhances the quality of life necessary to any viable community. The Commission's recommendations are based on the understanding that proper environmental management and economic growth are compatible goals for the State of Iowa.

**Major Accomplishments of the Department and Commission in 2008**

The Department of Natural Resources faced unprecedented challenges in responding to extreme weather events in 2008. The Department's work in limiting environmental problems caused by flooding should be recognized for going beyond the call of duty and providing an extraordinary level of service during these events.

The Commission dealt with a number of major issues through rulemaking. In April the Water Recreational Use Assessment and Use Attainability rules and protocol were adopted. In a process involving public surveys, contact with local units of government and working with civic organizations, the DNR and EPC amassed considerable data at over 3000 stream locations on the actual uses. In accordance with the Legislature's directives, 295 stream segments of the estimated 1000 required were reclassified in the final rule under the water quality standards.

In March, working with agricultural and environmental groups the Commission adopted rules dealing with the spreading of liquid manure on soybean fields. Responding to manure runoff contributing to high ammonia levels in Iowa rivers last spring, the Commission directed the DNR to begin rule making on the placement of manure on frozen ground. We received the first draft of these rules in December 2008.

In June, the Commission adopted rules relating to technical standards, corrective action requirements and risk assessment regarding underground storage tanks. To supplement these rules, the Commission and DNR worked with the UST Board and stakeholders to initiate a new assessment study of public water supply wells to assure protection of drinking water sources. This five-year study will be funded through a 28E agreement with the UST Board. We believe this action will provide a more accurate assessment of the risk from underground storage tanks and greater security to our ground water sources.

The Commission is responding through rulemaking to changes in the USEPA's Clean Air Interstate Rules and Clean Air Mercury Rules resulting from litigation against the USEPA. The Commission and DNR remain concerned that these sources remain problematic and will try to mitigate the impact caused by uncertainty in Federal rules. The Commission and DNR remain concerned and active in working with the USEPA on air quality issues and the EPA's establishment of non-attainment areas in Scott and Muscatine Counties.

### **Sustainable Environmental Funding**

During the 2008 session, the Legislature passed Senate Joint Resolution 2002 that would create a permanent source of funding for natural resources by amending the state's constitution. The amendment would allocate 3/8 of one cent on any future sales and use tax increase to support parks and recreation, protect Iowa's soil and water, and enhance wildlife, fish and natural areas. We request that the Legislature pass this bill for a second time, as required by the state constitution, so that a public referendum may be held.

### **Recommendations for Legislative Action**

In addition to recommendations contained elsewhere in this report, the Commission recommends that the General Assembly take legislative action in the following areas:

#### **Confined Animal Feeding Operations**

Confined animal feeding operations continue to be the number one concern voiced by citizens of the state at Commission meetings. Time and again we hear complaints about air quality, water quality, concentration of feeding operations in certain areas of the state and declining property values in areas where confined animal feeding operations are located. Serious questions exist about application rates of manure on land that is heavily tilled and which is designed to carry water off the land as quickly as it falls. Livestock manure can be a source of nutrients for farmlands but the DNR does not have the adequate staff to monitor and enforce manure management plans.

The Commission recommends the General Assembly increase the DNR's authority to require the placement of additional requirements on construction permits where there are significant concentrations of confined animal feeding operations upstream of urban areas where those urban areas rely on the watershed for drinking water. Such additional authority should include:

- Management practices to eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff.
- Consideration of the concentration of confined animal feeding operations in such areas and imposition of such additional restrictions as needed, and
- Consideration of the designation of nearby waters as impaired waters and imposition of such additional restrictions as needed.

In 2008 the Legislature authorized additional efforts to control livestock odor (HF2688). We believe this was a good initial step and urge the Legislature to provide appropriate funding to implement the provisions of the Act.

#### Bio Fuels

The need to balance environmental protection and economic development will become extremely important as the State continues to develop its bio-fuels industry. We recommend the Legislature establish a committee that would set criteria for producing bio-fuels in ways that do not damage the environment through soil erosion, excessive nutrient loading or releasing more greenhouse gases than are saved in the process.

#### Clean Water

All life is dependent upon clean, uncontaminated water. A watershed-based approach is one way to achieve this goal. Contamination from industry, agriculture, municipalities and residences is growing faster than our ability to set and enforce standards. The DNR's 2008 draft report of impaired waters required under provisions of the Clean Water Act identifies 441 water bodies in the state that are impaired. As monitoring increases and standards become more stringent, we continue to add more impaired waters to the list than we remove due to restoration. Critical wetland loss and urban and agricultural run-off have increased pollution and sediment loads in our waters. The Commission recommends:

- Increase penalties for permit holders that have two or more wastewater bypass events in a year. Standards should allow the DNR to consider unusual weather or other conditions. The DNR should have the authority to order specific remedies including shutting down of facilities where the facility owner fails to take corrective measures after two bypass events.

- As a result of the 2008 floods, considerable destruction of soil conservation and erosion structures occurred. Soil conservation programs were not fully funded before the floods. We recommend that the legislature provide additional funding to repair and reconstruct soil erosion prevention structures. In that funding, money should be set aside for the creation of additional wetlands for both flood and water quality purposes.
- We recommend the Legislature fund efforts to develop flood plain mapping for the entire state and enact policies to address flood plain and watershed management in accordance with the Rebuild Iowa Advisory Commission's recommendations.

The Commission recognizes that there are many sources of contamination in a watershed and that the watersheds of the Raccoon and Des Moines rivers are under considerable environmental stress. This has led to a decrease of water quality which is adversely affecting the drinking water quality of the Des Moines area. In 2008 the Legislature created the Water Resources Coordinating Council (HF 2400). We would urge the legislature to fund the work of the Council in studying the sources of contamination in these watersheds and that the Council make recommendations to the appropriate agencies including the DNR and EPC to resolve these issues.

#### Clean Air and Climate Change

Despite passage of the Clean Air Act in 1970, air pollution continues to be a major problem nationwide. Here in Iowa, the southeast quadrant of the state from Iowa City to Muscatine and the area around Council Bluffs have been declared by the EPA to be in non-attainment of federal air pollution standards for PM 2.5. Advisories have been issued for consumption of fish due to mercury contamination in five Iowa lakes and four river segments due in large part to air deposition of mercury. Changes in land use, in particular, clearing land for agricultural purposes, contributes to carbon dioxide emissions, the gas most responsible for climate change. Implementing a clean energy plan will create tens of thousands of jobs and create billions of dollars of economic growth. Iowa should be at the forefront of those efforts.

The Commission recommends that the General Assembly:

- Develop and adopt a plan to increase energy efficiency in government, business and residential use.
- Adopt more tax incentives for the production of wind, solar and other renewable energy and adopt a target use of 20% renewable fuels by 2015.

- Regulate greenhouse gases as pollutants in accordance with a recent US Supreme Court ruling.
- Establish a moratorium on the construction of coal generating power plants in the state unless it is required that the owner/operator utilize best available control technologies in the control of pollutants such as sulfur dioxide, nitrogen oxide, PM 2.5 and mercury which are produced when coal is burned.
- Provide tax incentives for a new generation of biofuels based on cellulosic materials that will replace diesel and gasoline in the transportation and energy sectors.
- Modify the anti-stringency rule contained in Iowa Code 455B.133(4) to provide the Commission with some regulatory flexibility in addressing unusual circumstances. In 2007, the Commission was required to relax air pollution standards for ethanol plants due to this requirement when the sense of the Commission was that such action was not in the interest of the citizens of the state. The uncertainty of regulation following the DC Circuit Court's vacature of the Clean Air Interstate Rule and the Clean Air Mercury Rule is another area where such flexibility could be used. Such action would allow the Commission to reach an "Iowa solution".

### **Enforcement and Administration**

The Commission recognizes that the state is in a difficult budget situation. We also recognize that the DNR's budgets and finances were badly strained in responding to 2008 weather events. In budgeting, the legislature should provide the Department with a sufficient budget for an effective environmental enforcement program and sufficient funds for the Department to operate its permitting programs in a timely and efficient manner.

### **Conclusion**

It is clear from public comment before the Commission that Iowans want and expect clean air and water. It is also evident that Iowans are concerned about other global environmental issues, such as climate change and declining biodiversity. The Commission believes that Iowans, working in a partnership of individuals, government and business representatives, will meet the challenges of environmental stewardship in the 21<sup>st</sup> Century while recognizing the responsibilities that arise as we position Iowa to become the renewable capital of the United States.

The Commission thanks the Governor and the General Assembly for the opportunity to submit this report and invites further inquiry and conversation about the issues raised herein.

Submitted by: Iowa Environmental Protection Commission  
Dated: January 13, 2009

By:

A handwritten signature in black ink, appearing to read "Henry F. Marquard". The signature is written in a cursive style with a large, sweeping loop at the end.

Henry Marquard, Chair  
Iowa Environmental Protection Commission

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