
LEGAL UPDATE

Legal Services Division



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ENVIRONMENTAL PROTECTION COMMISSION MEETING — MAY 22, 2024

Legal Updates, prepared by the nonpartisan Legal Services Division of the Legislative Services Agency, provide summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic and are intended for use primarily by legislators, legislative staff, and other persons interested in legislative matters. The reader is cautioned against using information contained in a legal update to draw conclusions as to the legality of a particular behavior or set of circumstances and should not be interpreted as advocating a particular course of action.

Date and Location. The Environmental Protection Commission met on May 22, 2024, at the Bridge View Conference Center in Ottumwa. The meeting was also accessible telephonically.

Consent Agenda Items. In adopting the agenda, the commission consented to the approval of the following agenda items:

- The contract with University of Northern Iowa, Iowa Waste Reduction Center, to provide technical assistance and training to the Iowa Waste Exchange program and its representatives.

Contracts. The commission renewed and awarded the following contracts:

- A renewed contract with University of Northern Iowa, Iowa Waste Reduction Center, to provide technical assistance and training for the Iowa Waste Exchange program for K-12 schools with food waste audits and cafeteria waste sorts, marketing assistance, hazardous materials and waste technical assistance, and hosting and developing meetings and trainings.
- A renewed contract with the State Hygienic Laboratory at the University of Iowa to provide sampling and analytical services for the ambient biological monitoring and assessment program through biological assessments of Iowa streams to determine ecological status and health to satisfy requirements of the Clean Water Act.
- A renewed contract with the State Hygienic Laboratory at the University of Iowa to collect water quality data from 60 monthly sites around the state to satisfy requirements of the Clean Water Act, complete nutrient loading assessments, and conduct quarterly assessments of more expensive testing such as pesticides and pharmaceuticals that were previously tested every 3 or 20 years.
- A six-month contract with Shive-Hattery, Inc., to monitor water in Big Creek State Park and Brushy Creek State Park, track the flow and the amount of water going into the creeks, determine how to redirect and treat the contaminated water, and conduct a three-phase project to redirect and treat the contaminated water.
- A contract under the Solid Waste Alternatives Program Contract with J. Pettiecord, Inc., to purchase and operate a compost turner and a wood grinder at an organics compost facility to reduce an estimated 20 million pounds of compost from landfills annually.

Grant Programs. Under the Derelict Building Grant Program the commission approved the following applications for grants:

- The cities of Coon Rapids, Glidden, Rockford, Greene, New Market, and Menlo for funds to be used for the abatement and proper disposal of asbestos and the deconstruction or renovation of existing structures.

Under Environmental System Proposals the commission approved the following applications for grants:

- For the Dubuque Metropolitan Area Solid Waste Agency (DMASWA) to install a per- and polyfluoroalkyl substances (also known as “forever chemicals”) removal system at the DMASWA landfill to demonstrate the effectiveness of the system and evaluate the scope and costs for installing a full-scale pretreatment system to improve water quality.
- For the Iowa City Landfill & Recycling Center to purchase a self-propelled, ride-over compost turner for the city compost facility to increase processing capacity.
- For the Waste Commission of Scott County (WCSC) to establish prairie plantings on stormwater drainage swale on the WCSC recycling campus to reduce sediment runoff, transplant 40 swamp white oak trees that are unlikely to survive in their current location, and install an irrigation system at the landfill facility.

Litigation Report for NEW Cooperative, Inc. Mr. Bradley Adams, Legal Services Bureau of the Department of Natural Resources (DNR), requested the commission refer the case relating to NEW Cooperative, Inc. (NCI), and the release of nitrogen fertilizer into the East Nishnabotna River to the Attorney General’s Office to pursue litigation against NCI. Mr. Adams explained that a valve controlling a 500,000-gallon nitrogen tank in Red Oak, Iowa, released approximately 265,000 gallons of fertilizer that entered a stormwater ditch and flowed into the East Nishnabotna River. The release caused excess nitrogen levels in the water, damaged fish gill tissue, and prevented fish from respirating over a 50-mile stretch of the river. He reported that minnows and shiners were the most affected species, and largemouth bass, carp, frogs, snakes, and mussels were also affected. Mr. Adams stated that the release of fertilizer is an extreme outlier compared to other cases involving unauthorized discharges of fertilizer, and he does not consider the statutory \$10,000 penalty appropriate for the State of Iowa to make a full financial recovery or to mitigate the harm to the East Nishnabotna River. He stated that NCI has violated Iowa law in the following manner: discharging pollutants into water of the state; not keeping waters free from substances attributable to wastewater discharges or agricultural practices which are acutely toxic to human, animal, or plant life; and polluting water of this state, necessitating restitution to the DNR for injury caused to a wild animal by the pollution. He also asserts that under state law, NCI qualifies as having control of a hazardous substance and consequently, NCI is strictly liable to the state or a political subdivision for certain costs related to the cleanup of a released hazardous substance.

NCI, a 50-year-old company owned by over 12,000 farmers across the state, did not oppose DNR’s request for the case to be referred to the Attorney General’s Office for litigation. The site of the fertilizer release came into NCI’s possession six months prior to the event in question. NCI explained that the type of fertilizer solution that was released typically crystalizes in the winter. On March 8, 2024, employees had been working to unclog the fertilizer tank. NCI explained that over the weekend temperatures rose to 80 degrees and likely caused the line to unclog. The open valve was discovered around 5 a.m. on March 11, 2024, when employees of NCI promptly notified DNR’s Field Office 4 of the fertilizer release. NCI has worked with the commission to develop a plan to remove the affected soil, and has already removed two feet of soil along the affected portions of the East Nishnabotna River.

NCI stated it will continue to work with the commission to come to an agreement and work to restore the East Nishnabotna River.

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