

**MINUTES OF THE MARCH 2011 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC), originally scheduled for Friday, March 11, 2011, was held on Monday, March 14, 2011, in Room 102, State Capitol, Des Moines, Iowa.
- Members present: Representative Dawn Pettengill, Chair, and Senator Wally Horn, Vice Chair; Senators Merlin Bartz, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives Rick Olson, Janet Petersen, and Linda Upmeyer were present. Representative David Heaton was not present.
- Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Brenna Findley, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Rep. Pettengill convened the meeting at 8:30 a.m.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report.

EDUCATIONAL EXAMINERS BOARD George Mauer represented the board.

ARC 9381B Proposed 22.3 pertains to the school business official authorization. Mr. Mauer stated that the education department was responsible for developing the standards for school business official preparation programs with input from constituents throughout the state. The board has developed the requirements for the school business official authorization.

EDUCATION DEPARTMENT Carol Greta represented the department.

ARC 9379B Proposed ch 81 concerns standards for school business official preparation programs. Sen. Kibbie inquired about whether the credentialing of school business officials will ensure that a school district’s financial status will be disclosed to the school board. Ms. Greta stated that the need for such disclosure was the impetus for the development of the preparation programs. Ms. Greta confirmed for Sen. Horn that the treasurer of the school board is an officer of the board but is not a school business official.

ARC 9374B Proposed amendments to 36.14(1) remove the religious beliefs-based exemption to the requirement that all secondary students who desire to participate in interscholastic athletics undergo a physical examination prior to such participation. Ms. Greta reported that the department researched the issue and determined that there is no basis for the exemption, and as a matter of public safety, the language allowing the exemption should be removed.

ARC 9376B No action on amendments to ch 41 pertaining to special education.

ARC 9375B No action on amendments to 41.604, which clarify that enforcement actions taken by the department are mandatory, not permissive.

ARC 9372B Proposed amendments to 43.32 pertain to school bus driver training. Rep. Pettengill reported that a citizen had expressed concern about the stringency of the requirements for substitute school bus drivers. Sen. Courtney inquired about whether the requirements for permanent and substitute school bus drivers are the same and stated that the requirements for substitute school bus drivers should not be less stringent than those for permanent school bus drivers. Ms. Greta will provide the committee with information regarding the requirements for permanent and substitute school bus drivers.

ARC 9373B The proposed amendment to 96.4(2)“h” conforms the rules to comply with Generally Accepted Accounting Principles (GAAP) by removing the reference to unreserved, undesignated fund balances, a classification that no longer exists, pursuant to Statement 54 issued by the Governmental Accounting Standards Board (GASB 54). In response to an inquiry by Rep. Pettengill, Ms. Greta stated that this amendment does not change the accounting requirements of school districts; it only removes the name of an accounting category.

Education Department (cont'd)

ARC 9377B Amendments to ch 102 pertain to procedures for charging and investigating incidents of abuse of students by school employees. Sen. Horn inquired about the extent of confidentiality protection afforded an employee when a complaint is made and is determined to be unfounded. Ms. Greta responded that if the complaint is unfounded, the report is not added to the employee's file and that, though disclosure of information to the public by the student's family is outside the scope of these rules, nothing in these rules would harm an innocent employee. Rep. Upmeyer asked why such complaints are not handled by the department of human services (DHS). Ms. Greta responded that DHS can investigate only complaints against caretakers of children but school employees are not considered to be caretakers of children. Ms. Greta added that Iowa Code section 280.17 sets forth procedures by which allegations against school employees may be investigated and acted upon.

ARC 9378B No action on amendments to ch 103 concerning restraint, physical confinement and detention of students. Ms. Greta stated that, at the suggestion of the committee, proposed Item 3, which could be interpreted to adopt standards by reference into the future, was not adopted.

ENVIRONMENTAL PROTECTION COMMISSION Jim McGraw, Wendy Walker, Jon Tack, Courtney Cswercko, Lori McDaniel, and Wayne Gieselmann represented the commission. Other interested parties included Mike Ralston on behalf of the Iowa Association of Business and Industry.

ARC 9366B Proposed amendments to chs 22 and 33 and proposed ch 30 pertain to five options for the funding of the Title V air quality program. Mr. McGraw stated that the specific purpose of the rule making is to gain stakeholder input regarding the five options related to the scope, services, and funding options available to address the budget challenges of the program. He noted that, under the federal Clean Air Act, the Title V fee is required to be paid by facilities with potential emissions that exceed major stationary source thresholds and that the fee is required to be sufficient to cover all reasonable direct and indirect costs to develop and administer the program requirements. He added that, in the current fee structure, the Title V fee increases as emissions decrease.

Mr. Ralston expressed appreciation for the department's efforts in developing alternative proposals and involving stakeholders in the discussion but expressed opposition to all five options. He requested that the current fee cap remain at \$56 per ton for one year while other solutions are explored and that the ARRC request a formal regulatory analysis of the rule making.

Discussion pertained to the funding of the Title V program and the rationale for the five proposed options; the overall air quality program budget; the implications of the decrease in emissions and the proposed increase in fees; federal authority for the use of the fees; alternatives for funding the program and related issues; and the impact on jobs. Ms. Walker offered to provide the committee with the current Title V program budget.

Motion Rep. Upmeyer moved a formal regulatory analysis on ARC 9366B.

Discussion pertained to the purpose of the regulatory analysis; the difference between an informal and a formal regulatory analysis; the impact of a regulatory analysis on stakeholders and on the department; and whether the five options would be included in the analysis.

Motion carried On a voice vote of 9 to 0, the motion carried.

Sen. Kibbie requested that the department provide the committee with a summary of public comment. In response to an inquiry from Rep. Petersen, Mr. Royce, in the request for the regulatory analysis, will ask for information about the structure of Title V programs in other states.

Environmental Protection Commission (cont'd)

ARC 9365B

Amendments to chs 60, 64, and 66 allow for the use of a new General Permit No. 7 to authorize discharge of biological pesticides and chemical pesticides which leave a residue to waters of the United States. Mr. Tack explained this permit is required because the U.S. Sixth Circuit Court of Appeals, in its January 7, 2009, decision, vacated the U.S. EPA's final rule that exempted pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from the Clean Water Act (CWA) permitting requirements. As a result, a permit is required when a pesticide is applied in, on or near waters of the United States. The states and EPA have until April 9, 2011, to issue final general NPDES permits for pesticide applications. Mr. Tack stated that the permit has broadened the authorization to require all applicators to implement Best Management Practices (BMPs) that include following label instructions, conducting regular equipment calibration and maintenance, and monitoring application sites and reporting any adverse impacts to DNR. Larger applicators (e.g., DOT and DNR) have additional requirements that are based on thresholds and include submittal of a Notice of Intent (NOI) for coverage under the permit, submittal of annual activity reports, and the preparation of pesticide discharge management plans. Mr. Tack stated that the rule is timed to be in place prior to the projected expiration of the stay on April 9, 2011, and prior to the effective date of the federal requirement. He added that EPA has requested an extension to September 2011; thus, DNR has delayed the actual requirements under the permit, such as the NOI, to October 2011, but has not delayed the permit itself. As a result, in the public interest, authorization is in place to provide applicators with permit coverage prior to final federal action.

In response to an inquiry by Sen. Kibbie, Mr. Tack stated that the permit requirements will not affect DNR or county conservation board practices regarding mosquito control, but more extensive records will be required of DNR. Sen. Kibbie inquired further regarding applications of mosquito repellent lakeside by individuals. In response, Ms. Cswercko stated that small applications by individuals and smaller applicators would be protected under the permit thresholds.

Rep. Upmeyer inquired about whether public comment was incorporated into the rules. In response, Ms. Cswercko stated that, as a result of department outreach, both internal and external stakeholders had been actively involved in the development of the permit before the Notice of Intended Action was published. Ms. Cswercko also noted that DNR answered many inquiries from individual applicators by telephone after the publication of the Notice and that one threshold was raised because of public comment.

In response to Ms. Findley's inquiry about the reason for finalizing the rule before the federal rule is finalized, Mr. Tack stated that having the permit in place grants authorization to and affords protection for applicators and is the safest way to proceed given the uncertainty of final federal action. Ms. Findley inquired further regarding the effect of the permit on farmers' field application of pesticides that may result in runoff. In response, Mr. Tack stated that the permit applies to direct application of pesticides that leave a residue to waters of the United States and affords protection to farmers for crop field application in two ways: first, CWA exempts agricultural storm water and that exemption would normally apply to a pesticide that runs off a field; and second, if the first stipulation is disputed, the runoff could be considered a discharge to water of a pesticide authorized under the permit because the application is authorized when label directions and other requirements have been followed.

Rep. Pettengill asked that the two provisions more stringent than those of the federal permit be clarified. In response, Mr. Tack explained that, in accordance with state statute, the permit includes a requirement that prior approval be obtained before application of pesticides to sources of drinking water and that an event that causes a hazardous condition, such as a pesticide spill, be reported within six hours of the event as already required by state statute.

Environmental Protection Commission (cont'd)

ARC 9371B Proposed 61.3(4) establishes a sampling procedure based on criteria necessary to support recreational uses in lakes, specifically, swimming. Ms. McDaniel explained that the two criteria are measures of the transparency of the water: (1) Secchi disk depth of one meter or greater; and (2) chlorophyll-a at no higher than 25 micrograms per liter ($\mu\text{g/l}$). Ms. McDaniel stated that each lake on a comprehensive list of Iowa lakes was reviewed individually. After review, a lake was included in the list in the rule if the lake has a maintained beach, appears on the list of significant publicly owned lakes or has a mean depth of more than three meters (9.9 feet). Mr. Gieselman noted that, because nutrient levels have been found not to correlate with algae levels, a descriptive system for measuring clarity has been proposed.

Discussion pertained to the purpose of the rule; the procedure for sampling, including its initiation by request or based on an indication of the lake's impairment, issues related to the affected lakes, and an explanation of the criteria; and the effect of sampling, including its priority, its impact on economic development and on required DNR staffing, and related fiscal issues.

In response to inquiries from the committee, Ms. McDaniel agreed to provide information related to the number of beach closures in a season; to explain whether, when bacteria are used as a criterion, the clarity of the water is also monitored; and to provide statistics regarding the causes of impairment in the watersheds of the lakes under consideration.

Motion Rep. Upmeyer moved a formal regulatory analysis on ARC 9371B. In a substitute motion, Sen. Kibbie moved an informal regulatory analysis on ARC 9371B.

In response to Sen. Courtney, Mr. Royce compared a formal regulatory analysis with an informal regulatory analysis. Rep. Upmeyer requested that, if an informal regulatory analysis were chosen, it be completed before the rule is filed. Mr. Gieselman assured the committee that the informal regulatory analysis will be made available to the committee prior to the adoption of the final rule. Rep. Upmeyer agreed to the substitute motion.

Motion carried On a voice vote of 9 to 0, the substitute motion carried.

ARC 9364B Proposed amendments to ch 64 pertain to the reissuance of NPDES General Permit No. 5 for mining and processing facilities. Mr. Tack stated that the department has worked with the regulated community to develop the general permit.

NATURAL RESOURCE COMMISSION Sherry Arntzen represented the commission.

ARC 9363B Proposed amendments to ch 14 pertain to concessions. In response to an inquiry by Sen. Bartz, Ms. Arntzen clarified the reasons for changes in firewood sales, including firewood labeling requirements identified by the department of agriculture and land stewardship.

INSURANCE DIVISION Angela Burke Boston represented the division.

ARC 9398B Proposed 15.11(6) and 36.13 pertain to individual health insurance coverage for children under the age of 19. Ms. Burke Boston stated that the most significant provisions are the open enrollment period and what constitutes discriminatory practices.

Discussion pertained to the timing of the open enrollment period; the references to adults rather than children in the language of the rule, especially in regard to qualifying events; and the adequacy of a single public hearing.

Sen. Kibbie requested that the division provide to the committee a summary of public comment should statutory changes to the Patient Protection and Affordable Care Act, as the Act relates to Iowa, be necessary during this legislative session. After discussion regarding the public hearing, Mr. Royce pointed out that Iowa Code section 17A.4 allows the ARRC to request a public hearing. Rep. Pettengill requested that the division conduct additional public hearings via the ICN and that the division present additional information regarding the rule at the April meeting. Ms. Burke Boston concurred with the need to reexamine and revise the language of the rule and to consider adding public hearings via the ICN.

PUBLIC HEALTH DEPARTMENT Jim Goodrich represented the department.

- ARC 9355B Amendments to ch 92 pertain to the Iowa fatality review committee. Rep. Petersen expressed concern about the case-by-case review of child deaths. Following discussion, Rep. Pettengill requested that a special review of this topic be placed on the agenda of the May meeting and that affected parties be invited to attend.
- ARC 9356B No action on amendments to 130.3 pertaining to emergency medical service advisory council representatives.
- ARC 9357B No action on amendments to ch 132 concerning the removal of references to basic care.
- ARC 9358B No action on 143.16 to 143.18, which pertain to fire department response with automated external defibrillators.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Wendy Rickman represented the department.

- ARC 9361B Proposed amendments to chs 11 and 76 pertain to collection of unpaid premiums assessed for medical assistance. In response to an inquiry by Rep. Pettengill, Ms. Freudenberg stated that, by proposing amendments that are intended to implement legislation not yet passed, the department is being proactive.
- ARC 9350B No action on amendments to ch 47, promoting awareness of the benefits of a healthy marriage program.
- ARC 9399B No questions on proposed amendments to chs 77 to 79 and 88 regarding the transitioning of remedial services from a fee-for-service program administered by the Iowa Medicaid enterprise to administration by the Iowa Plan for Behavioral Health, which is a managed care program under contract to Iowa Medicaid.
- ARC 9367B No questions on proposed amendments to chs 78, 79, and 90 related to coverage and payment provisions for Medicaid case management services. Ms. Freudenberg stated that the language requiring targeted case management providers to have a 24-hour on-call system will be removed before the amendments are adopted.
- ARC 9351B No action on amendments to ch 97 pertaining to the electronic submission of child support payments to the collection services center.
- ARC 9352B No action on amendments to ch 99 concerning review, adjustment, and modification of court orders for child and medical support.
- ARC 9368B Proposed amendments to chs 105, 114 and 115 pertain to foster group care facilities and juvenile shelter and detention facilities. Sen. Bartz expressed concern about liability issues that could arise from a possible conflict between the defined terms in Item 1 and the specified prohibitions in Item 3. In response, Ms. Rickman stated that the rules reflect current training and practice. Rep. Olson inquired about the purpose for reducing current training and practice to a rule, to which Ms. Rickman replied that the purpose is to align the rules for foster group care facilities and juvenile shelter and detention facilities with existing rules for other facilities.
- ARC 9348B No questions on proposed ch 155, child abuse prevention program.
- ARC 9353B No questions on proposed amendments to ch 172, family-centered child welfare services.

Committee business The minutes of the February 11, 2011, meeting were approved.
 The next meeting was scheduled for Monday, April 11, 2011, at 8:30 a.m.
 Adjourned The meeting was adjourned at 11:25 a.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Wally Horn