Iowa Environmental Council

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September 24, 2024

Erik Day
Iowa Department of Natural Resources
6200 Park Ave
Des Moines, IA 50321

RE: Iowa DNR Regulatory Analysis – Chapters 38 and 49

Dear Mr. Day:

The Iowa Environmental Council (IEC) offers the following comments on the proposed revisions to 567 Iowa Administrative Code Chapter 38 and 49. These comments represent the views of the Iowa Environmental Council, an alliance of more than 100 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 wetlands, lakes, rivers, and streams throughout the state.

We are concerned that DNR's regulatory analysis and the associated changes will create unnecessary risks to public health. We encourage DNR to ensure protection of well users and to improve usability of the rules.

Regulatory Analysis

The Regulatory Analysis noted that "without standards for construction of private wells in Iowa, the groundwater resources of the state are unprotected and at risk of contamination."[1] Unfortunately, the regulatory analysis did not quantify the economic costs that result from widespread well contamination. IEC provided information regarding economic costs of drinking water in comments on Chapter 65 and in a subsequent report entitled *The Costs of CAFOs*.[2]

The costs of water contamination, particularly nitrate, are significant for Iowans. Rural Iowans can pay as much as $1,200 per person per year for nitrate treatment of drinking water.[3]

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[1] Regulatory Analysis at 2.
[2] Iowa Environmental Council (Nov. 2023), available at https://www.iaenvironment.org/webres/File/The%20Costs%20of%20CAFOS%20-%20White%20Paper%2011_10_23.pdf.
[3] "Rural Iowans Bear Brunt of Water Treatment Costs for Nitrate Pollution from Farms and CAFOs." Union of Concerned Scientists, 14 Jan. 2021, www.ucsusa.org/about/news/rural-iowans-bear-brunt-water-treatment-costs-nitrate-pollution-farms-and-cafos.

Water contamination also carries significant health impacts. As IEC wrote:[4]

> A 2019 analysis published in Environmental Research assessed the potential health impacts of nitrate exposure at a large scale, calculating the disease cases attributable to elevated nitrate in drinking water. The analysis concluded that each year, "2,939 cases of very low birth weight, 1,725 cases of very preterm birth, and 41 cases of neural tube defects could be related to nitrate exposure from drinking water." In addition, the estimate of nitrate attributable cancer cases per year ranged from 2,300 to 12,594. This risk is not evenly distributed across the country. As applied to Iowa, the estimated annual cancer cases attributed to nitrate range from 2.3 to 10.43 per 100,000 people, or as many as 313 cases statewide each year. . . . 4 if medical costs are applied proportionally, Iowa's medical costs attributable to nitrate in drinking water range from $6.25 million to $37.5 million per year. . . . Iowa's proportional share [of indirect losses] would be $35 million to $167.5 million per year.

A significant share of these costs results from private well contamination, because public water supplies must limit their nitrate under the Safe Drinking Water Act.[5] If more wells become contaminated, including by faulty casing or other construction defects, Iowans could become sick from pathogens.

Alternatively, Iowans could face higher costs from point-of-use water treatment systems. Point-of-use treatment costs can costs hundreds of dollars per year to install and operate.[6] Finding alternative sources can cost people thousands of dollars per year.[7]

These costs of poor health are directly attributable to poor drinking water quality under existing well construction requirements in chapters 38 and 49. Weakening these standards would increase costs by allowing greater contamination of drinking water sources. If anything, Iowa DNR should be strengthening the standards rather than reducing the "regulatory burdens" that Iowans depend on to protect their health.

IEC encourages DNR to include additional economic information in its final Regulatory Analysis.

Section 49.2, Definitions

The Regulatory Analysis states that the revised rule provides "efficiencies in the rules,"[8] but changes to the definitions will make the rules less efficient.

The proposed definitions section incorporates definitions from four other rule chapters and four statutes. Other chapters of rule list out the definitions from each referenced chapter, making it far

[4] *The Costs of CAFOs* at 4 (internal citations omitted).
[5] 40 C.F.R. § 141.62(b).
[6] *The Costs of CAFOs* at 6.
[7] *Id.*
[8] Regulatory Analysis at 1.

easier for a reader to know (a) whether a word is a defined term and (b) where to find the definition. DNR should undertake this approach for chapter 38.

49.3, Applicability

The regulatory analysis identifies "current and future private well owners" as beneficiaries of the proposed rule.[9] However, the proposed rules would create a new exception directly undermining those beneficiaries. The proposed rule creates an exception for reconstructed wells to avoid meeting separation distances in 49.3(1)"a". This exception increases the risk of well contamination and potential future costs for well owners.

DNR's rationale is that it "remove[s] a regulatory burden" and clarifies requirements.[10] While this may remove a burden for well reconstruction, it increases future burdens by increasing the risk of future well contamination. As noted above, Iowans face enormous health costs from contaminated water. Creating an exception that increases those costs is irrational and unjustified.

49.23, Ground heat exchange closed-loop borehole systems

Although most language changes in the chapter sought to simplify or clarify language, not all did so. Paragraph (8) of this subpart 49.23 requires submission of "an aerial, engineering document, or map" with the location and GPS coordinates of the installed system. The paragraph does not provide criteria for which of the three options the installer must submit, nor does it specify who to submit them to. Because the requirement is written in passive voice, it fails to specify who DNR will hold responsible if no one submits the information. IEC recommends rephrasing this paragraph to clarify submission requirements.

Conclusion

We appreciate DNR's efforts to evaluate the need for rules and to make the rules more accessible consistent with Executive Order 10, but that effort cannot undermine the protection of the state's natural resources. We encourage DNR to adopt IEC's recommended changes.

Sincerely,

/s/ Michael R. Schmidt

Michael R. Schmidt
Staff Attorney
Iowa Environmental Council

[9] Regulatory Analysis at 2.
[10] "Chapter 49 Proposed Changes (as of 7/29/2024) (with Chpt. 38)," Iowa DNR, at 4, available at https://www.iowadnr.gov/LinkClick.aspx?fileticket=4lngJ4ftpqQ%3d&portalid=3.