

Agenda

Environmental Protection Commission

Tuesday, November 15, 2011
DNR Air Quality Building
7900 Hickman Road
Windsor Heights, IA

10:00 AM – Meeting begins

10:30 AM – Public Participation¹

1:00 PM – Referral to the Attorney General – Kyle Dudden (Grundy County)

Agenda topics

- | | | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| 1 | Approval of Agenda | |
| 2 | Approval of Minutes | |
| 3 | Director's Remarks | |
| 4 | Budget Summary for FY 2012 | Jennifer Nelson
(Information) |
| 5 | Contract with Iowa Department of Transportation for Electronic Records Management System | Rick Hindman
(Decision) |
| 6 | Final Rule - Chapters 22 and 33:
Air Quality Program Rules – PSD and Title V Programs: Three-Year Deferral of Biogenic CO ₂ Emissions | Christine Paulson
(Decision) |
| 7 | Notice of Termination: Chapter 22, Controlling Pollution, Chapter 30, Fees, and Chapter 33, Special Regulations and Construction Permit Requirements for Major Stationary Sources – Prevention of Significant Deterioration (PSD) of Air Quality. | Wendy Walker
(Decision) |
| 8 | Notice of Intended Action – Chapter 111 “Solid Waste Environmental Management Systems’ Annual Reports” | Brian Tormey
(Decision) |
| 9 | Contract – IT Database Contract Amendment for Wastewater Permits Application (NPDS) | Adam Schnieders
(Decision) |
| 10 | Adopted and Filed – Drinking Water and Laboratory Certification Programs – 567 IAC - Chapters 40, 41, 42, 43, and 83 | Shelli Grapp
(Decision) |
| 11 | Amendment #1 to ESD7152CHende100132, Water Use Database Design and Development Contract | Shelli Grapp
(Decision) |
| 12 | 2012 EPC Dates | Jerah Sheets
(Decision) |
| 13 | Referrals to the Attorney General <ul style="list-style-type: none">• Kyle Dudden (Grundy County) – Animal Feeding Operations | Ed Tormey
(Decision) |
| 14 | Monthly Reports | Bill Ehm
(Information) |
| 15 | General Discussion <ul style="list-style-type: none">• Commission Annual Report | |
| 16 | Items for Next Month's Meeting <ul style="list-style-type: none">• December 20, 2011 – Windsor Heights• Proposed January 17, 2012 – Windsor Heights | |

For details on the EPC meeting schedule, visit

<http://www.iowadnr.gov/InsideDNR/BoardsCommissions.aspx>.

¹ Comments during the public participation period regarding proposed rules or notices of intended action are not included in the official comments for that rule package unless they are submitted as required in the Notice of Intended Action.

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

6

DECISION

TOPIC

**Final Rule - Chapters 22 and 33:
Air Quality Program Rules – PSD and Title V Programs: Three-
Year Deferral of Biogenic CO₂ Emissions**

The Department is requesting that the Commission adopt amendments to Chapter 22, “Controlling Pollution,” and Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” of the Iowa Administrative Code.

The purpose of this rule making is to ensure that certain stationary sources of carbon dioxide (CO₂) emissions in Iowa are regulated in the same manner as specified in recently amended federal regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 7, 2011, as ARC 9736B. A public hearing was held on October 11, 2011. The Department did not receive any comments at the public hearing. The Department received two sets of written comments before the close of the public comment period on October 11, 2011. The submitted comments and the Department’s response to the comments are summarized in the attached public responsiveness summary.

The Department did not make any changes to the final rules from what was published in the Notice.

Background

EPA recently finalized regulations deferring for a three-year period the counting of CO₂ emissions from biological processes and materials (biogenic CO₂) toward PSD and Title V permitting thresholds. Biogenic emissions of CO₂ include fermentation processes at ethanol plants and combustion of biomass such as wood or other vegetative matter at power plants or industrial facilities.

During this deferral period, EPA plans to work in conjunction with federal partners, technical experts, and an independent scientific panel to conduct a comprehensive scientific assessment of biogenic CO₂ emissions from stationary sources. At the end of the deferral period, EPA either may decide to exempt counting biogenic CO₂ emissions from PSD or Title V permitting thresholds or may instead decide to include these emissions. If EPA decides to include biogenic CO₂ emissions, EPA has indicated in the preamble to the federal regulations that it will not conduct a “look-back” at facilities that, during the deferral period, did not count CO₂ emissions from biogenic sources towards PSD applicability.

Final Rules and Proposed Effective Date

The Department is requesting the Commission's permission to adopt final rules that will implement EPA's deferral of biogenic CO₂ emissions. The final amendments are identical to the amendments proposed in the Notice of Intended Action.

Failing to adopt these amendments would make Iowa's administrative rules more stringent than federal regulations, which is prohibited by state code (Iowa Code Section 455B.133(4)). Failing to adopt these amendments will also create regulatory uncertainty for sources that emit large amounts of biogenic emissions, such as ethanol plants and landfills, because biogenic CO₂ emissions would have to be considered in Iowa air permitting, but may not be considered in other states' permitting.

The Department has four pending permitting projects in-house that are potentially affected by this rulemaking. If biogenic CO₂ emissions are not deferred, these projects would very likely need to go through PSD review for greenhouse gas emissions.

Because of the urgency expressed by stakeholders to expedite this rulemaking, the Department proposed in the Notice of Intended Action to waive the normal effective date of the final rules. These amendments will confer a benefit to affected facilities in the state such as ethanol plants and landfills. Several facilities with pending permitting projects are waiting to initiate construction in anticipation of these rules. Therefore, the Department is requesting permission for the adopted rules to become effective immediately upon filing with the Administrative Code on **November 16, 2011** (pursuant to Iowa Code section 17A.5(2)“b”(2)).

The Department's response to comments, the jobs impact statement, and the fiscal impact statement are attached.

Christine Paulson
Environmental Specialist Senior
Program Development Section, Air Quality Bureau
Memo date: October 24, 2011

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 22, “Controlling Pollution,” and Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” Iowa Administrative Code.

The purpose of this rule making is to ensure that certain stationary sources of carbon dioxide (CO₂) emissions in Iowa are regulated in the same manner as specified in recently amended federal regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on September 7, 2011, as **ARC 9736B**. A public hearing was held on October 11, 2011. The Department did not receive any comments at the public hearing. The Department received two sets of written comments before the close of the public comment period on October 11, 2011. The submitted comments and the Department’s response to the comments are summarized in the public responsiveness summary available from the Department. The Department did not make any changes to the adopted amendments from those published under Notice.

The U.S. Environmental Protection Agency (EPA) recently finalized regulations deferring for a three-year period the counting of CO₂ emissions from biological processes and materials (biogenic CO₂) toward Title V and PSD permitting thresholds. Biogenic emissions of CO₂ include fermentation processes at ethanol plants and combustion of biomass such as wood or other vegetative matter at power plants or industrial facilities.

During this deferral period, EPA plans to work in conjunction with federal partners, technical experts, and an independent scientific panel to conduct a comprehensive scientific

assessment of biogenic CO₂ emissions from stationary sources. At the end of the deferral period, EPA either may decide to exempt CO₂ emissions from biogenic sources or may instead decide to include these emissions. If EPA decides to include CO₂ emissions from biogenic sources, it has indicated in the preamble to the federal regulations that it will not conduct a “look-back” at facilities that, during the deferral period, did not count CO₂ emissions from biogenic sources toward PSD applicability.

This rule making amends the state’s Title V and PSD air quality rules so that the state rules match the federal regulations deferring biogenic CO₂ emissions (see references to the corresponding federal amendments in the item statements below). The adopted amendments are identical to the amendments proposed in the Notice of Intended Action.

Failing to adopt these amendments would make Iowa’s administrative rules more stringent than federal regulations, which is prohibited by state code (Iowa Code section 455B.133(4)). Failing to adopt these amendments will also create regulatory uncertainty for sources that emit large amounts of biogenic emissions, such as ethanol plants and landfills, because biogenic CO₂ emissions would have to be considered in Iowa air permitting, but may not be considered in other states’ permitting.

The Department has four pending permitting projects in-house that are potentially affected by this rule making. If biogenic CO₂ emissions are not deferred, these projects would very likely need to go through PSD review for greenhouse gas emissions.

Item 1 amends rule 567—22.100(455B), the definitions for the Title V program.

Title V requires that an affected facility obtain a Title V operating permit. The Title V operating permit, which is renewed every five years, contains all air emission control requirements that apply to the facility, including the requirements established through

construction permitting.

Specifically, Item 1 revises the definition of “subject to regulation.” The amendment to this definition is identical to the federal amendment (see 40 CFR 70.2, definition of “subject to regulation,” as amended on July 20, 2011). The amendment states that CO₂ emissions from biogenic sources (explained in the amendment) are deferred from counting toward Title V program applicability for a period of three years, until July 21, 2014.

Item 2 amends the introductory paragraph of rule 567—33.1(455B) to update the date of the new federal PSD amendments being implemented through this rule making.

Item 3 amends subrule 33.3(1), the definitions for the PSD program.

New source review (NSR) is a federal term for review and preconstruction permitting of new or modified stationary sources of air pollution. The PSD program is a component of NSR that includes procedures to ensure that air quality standards are maintained. In general, the PSD program requires that an affected facility obtain a PSD permit specifying how the facility will control emissions. The permit requires the facility to apply Best Available Control Technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost and effectiveness of the control. The specific nature of the project determines whether it is subject to PSD requirements for GHGs.

Specifically, Item 3 amends the definition of “subject to regulation” for the PSD program. The definition includes the definition for “tpy CO₂ equivalent emissions (CO₂e).” The amendment to this definition is identical to the federal amendment (see 40 CFR 52.21(b)(49) as amended on July 20, 2011). The amendment states that CO₂ emissions from biogenic sources (explained in the amendment) are deferred from counting toward PSD program applicability for a period of three years, until July 21, 2014.

The jobs impact of these amendments cannot be determined. Insufficient information exists to determine what impact the amendments will have on private sector jobs and employment opportunities in the state. The Department requested stakeholder input and did not receive any information regarding job impacts in the state. However, affected facilities will experience reduced regulatory burden from these amendment because these facilities will not be subject to the Title V or PSD programs during the deferral period. Therefore, facilities affected by these amendments should experience a positive impact on jobs.

The amendments will confer a benefit to affected facilities in the state such as ethanol plants and landfills. Several facilities with pending permitting projects are waiting to initiate construction in anticipation of final and effective amendments. Therefore, pursuant to the provisions of Iowa Code section 17A.5(2)“b”(2), the adopted amendments will become effective immediately upon filing with the Administrative Rules Coordinator on November 16, 2011.

These amendments are intended to implement Iowa Code section 455B.133.

These amendments become effective on November 16, 2011.

The following amendments are adopted.

ITEM 1. Amend rule **567—22.100(455B)**, definition of “Subject to regulation,” numbered paragraph “2,” as follows:

2. The term “tpy CO₂ equivalent emissions (CO₂e)” shall represent an amount of GHGs emitted and shall be computed by multiplying the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009) and summing the resultant value for each to compute a tpy CO₂e.

For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

ITEM 2. Amend rule 567—33.1(455B), introductory paragraph, as follows:

567—33.1(455B) Purpose. This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through ~~November 29, 2005~~ July 20, 2011. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment NSR program applies. The requirements for the nonattainment NSR program are set forth in 567—22.5(455B) and 567—22.6(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

ITEM 3. Amend subrule **33.3(1)**, definition of “Subject to regulation,” numbered paragraph “2,” as follows:

2. For purposes of paragraphs “3,” “4,” and “5,” the term “tpy CO₂ equivalent emissions (CO₂e)” shall represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009); ~~and~~ For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO₂e.

Date

Roger L. Lande, Director

**Administrative Rules
JOBS IMPACT STATEMENT**

1. BACKGROUND INFORMATION

Agency:	Iowa Department of Natural Resources
IAC Citation:	567 IAC Chapters 22and 33
Agency Contact:	Christine Paulson at (515) 242-5154
Statutory Authority:	Iowa Code, Section 455B.133 and United States Clean Air Act (CAA) Title I Part C (CAA §160-169b; USC § 7470-7492) and (CAA §501-507; USC §7661a)

Objective:	The purpose of this rule making is to ensure that certain stationary sources of carbon dioxide (CO ₂) emissions in Iowa are regulated in the same manner as specified in recently amended federal regulations.
Summary:	<p>The U.S. Environmental Protection Agency (EPA) recently finalized regulations deferring for a three-year period the counting of CO₂ emissions from biological processes and materials (biogenic CO₂) toward Title V and PSD permitting thresholds. Biogenic emissions of CO₂ include fermentation processes at ethanol plants and combustion of biomass such as wood or other vegetative matter at power plants or industrial facilities.</p> <p>The rule making amends the state’s Title V and PSD air quality rules such that the state rules are identical to the federal amendments. Affected facilities will experience reduced regulatory burden because of this rule making because they will not be subject to the Title V or PSD programs during the deferral period.</p>

2. JOB IMPACT ANALYSIS

<input checked="" type="checkbox"/> <i>Fill in this box if impact meets these criteria:</i>
<input type="checkbox"/> No Job Impact on private sector jobs and employment opportunities in the State.
<input checked="" type="checkbox"/> Job Impact cannot be determined.
Explanation: Insufficient information exists to determine what impact the amendments will have on private sector jobs and employment opportunities in the State. The Department requested stakeholder input and did not receive any information regarding jobs impacts in the state. Affected facilities will experience reduced regulatory burden because of this rule making because they will not be subject to the Title V or PSD programs during the deferral period.

<input type="checkbox"/> <i>Fill in this box if impact meets either of these criteria:</i>
<input checked="" type="checkbox"/> Positive Job Impact on private sector jobs and employment opportunities in the State.

<p>_____</p> <p>_____ Negative Job Impact on private sector jobs and employment opportunities in the State.</p> <p>Description and quantification of the nature of the impact the proposed rule will have on private sector jobs and employment opportunities:</p> <p>Facilities affected by these amendments will experience a reduced regulatory burden, which should create a positive job impact.</p>
<p>Categories of jobs and employment opportunities that are affected by the proposed rule:</p> <p>If affected, jobs at ethanol plants, landfills, and some power plants.</p>
<p>Number of jobs or potential job opportunities:</p> <p>Not possible to determine.</p>
<p>Regions of the state affected:</p> <p>All regions of the state.</p>
<p>Additional costs to the employer per employee due to the proposed rule: (if not possible to determine, write "Not Possible to Determine.")</p> <p>There are no additional costs due to the amendments.</p>

3. COST-BENEFIT ANALYSIS

The Agency has taken steps to minimize the adverse impact on jobs and the development of new employment opportunities before proposing a rule. See the following Cost-Benefit Analysis:

No other less intrusive or expensive method exists for achieving the purpose of these amendments.

4. FISCAL IMPACT

Please see the Fiscal Impact Statement for an identification and description of costs the Department anticipates state agencies, local governments, the public, and the regulated entities, including regulated businesses and self-employed individuals, will incur from implementing and complying with the proposed rule.

Administrative Rule Fiscal Impact Statement

Date: October 24, 2011

Agency: Department of Natural Resources

IAC Citation: 567 IAC 22 and 33

Agency Contact: Anne Preziosi

Summary of the Rule: The purpose of this rule making is to ensure that certain stationary sources of carbon dioxide (CO₂) emissions in Iowa are regulated in the same manner as specified in recently amended federal regulations.

The U.S. Environmental Protection Agency (EPA) recently finalized regulations deferring for a three-year period the counting of CO₂ emissions from biological processes and materials (biogenic CO₂) toward Title V and PSD permitting thresholds. Biogenic emissions of CO₂ include fermentation processes at ethanol plants and combustion of biomass such as wood or other vegetative matter at power plants or industrial facilities.

The rule making will amend the state's Title V and PSD air quality rules to implement the federal amendments.

Fill in this box if the impact meets these criteria:

No Fiscal Impact to the State.

Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.

Fiscal Impact cannot be determined.

Brief Explanation: These amendments will likely provide a positive fiscal impact to the state because fewer facilities will need to go through Title V and PSD review.

Fill in the form below if the impact does not fit the criteria above:

Fiscal Impact of \$100,000 annually or \$500,000 over 5 years.

* Fill in the rest of the Fiscal Impact Statement form.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2011)</u>	<u>Year 2 (FY 2012)</u>
Revenue by Each Source:		
GENERAL FUND	0\$	0\$
FEDERAL FUNDS	0\$	0\$
Other (specify)	0\$	0\$
	<hr/>	<hr/>
	0\$	0\$
TOTAL REVENUE		
Expenditures:		
GENERAL FUND	0\$	0\$
FEDERAL FUNDS	0\$	0\$
Other (specify) Air Contaminant Fee		
	<hr/>	<hr/>
TOTAL EXPENDITURES		

NET IMPACT

This rule is required by State law or Federal mandate.

Please identify the state or federal law:

Iowa Code, Section 455B.133 and United States Clean Air Act (CAA) Title I Part C (CAA §160-169b; USC § 7470-7492) and (CAA §501-507; USC §7661a), as codified in 40 Code of Federal Regulations 51.166, 52.21 and 70.2

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

The Department will utilize existing resources at this time.

Fiscal impact to persons affected by the rule:

It is difficult to estimate the fiscal impact to businesses and/or individuals based on the uncertainties listed above. However, facilities will experience reduced regulatory burden because of this rule making because a part of the regulatory requirements of the Title V and PSD Programs will be deferred for three years.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):

There is no expected fiscal impact to counties or other local governments.

* If additional explanation is needed, please attach extra pages.

Agency Representative preparing estimate: Christine Paulson

Telephone Number: 515-242-5154

**PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY
FOR
567 IOWA ADMINISTRATIVE CODE
CHAPTER 22 “CONTROLLING POLLUTION,” AND
CHAPTER 33 “SPECIAL REGULATIONS AND CONSTRUCTION PERMIT
REQUIREMENTS FOR MAJOR STATIONARY SOURCES – PREVENTION OF
SIGNIFICANT DETERIORATION (PSD) OF AIR QUALITY”**

Introduction

The purpose of this rule making is to ensure that certain stationary sources of carbon dioxide (CO₂) emissions in Iowa are regulated in the same manner as specified in recently amended federal regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on September 7, 2011, as **ARC 9736B**. A public hearing was held on October 11, 2011. The Department did not receive any comments at the public hearing. The Department received two sets of written comments before the close of the public comment period on October 11, 2011.

Public Comment

Submitted by e-mail from John Hanson, Marion, Iowa:

“The following is my public comment on the Three Year Deferral of Biogenic CO₂ emissions. I am opposed to deferral. This is a matter of public and environmental health and no deferral is warranted.”

Department Response

The Department does not believe that implementing a three-year deferral for biogenic CO₂ emissions will endanger public or environmental health. Rather, the deferral will allow EPA the necessary time to conduct a comprehensive study of biogenic CO₂. Implementing the deferral will also ensure the facilities with biogenic CO₂ emissions have regulatory certainty. Failing to adopt these amendments would make Iowa’s administrative rules more stringent than federal regulations, which is prohibited by state code (Iowa Code Section 455B.133(4)).

Recommended Action

No action recommended

Public Comment

Submitted by e-mail attachment from Monty Shaw, Executive Director, Iowa Renewable Fuels Association (IRFA).

Summary of IRFA comments

“...IRFA supports this rulemaking and urges EPC to proceed with this action as quickly as possible in order to assure that the State of Iowa’s rules are not applied inconsistently with or more stringently than the federal rules...”

IRFA agrees with both the purpose of the rulemaking and the consequences of failing to proceed with the rulemaking in a timely manner as stated by EPC. In addition, IRFA cautions that regulated parties, including ethanol plants, could be subject to unnecessary consideration of biogenic emissions in permitting activities until this rulemaking is completed, which underscores the importance of adopting this rulemaking as soon as possible...

Finally, IRFA agrees with the conclusions of Iowa DNR's draft fiscal impact statement, which assert that 'these amendments will likely provide a positive fiscal impact to the state because fewer facilities will need to go through PSD and Title V review.' Similarly, IRFA agrees with EPC's conclusions in the Notice of Intended Action, which state that "the Department estimates that affected facilities will experience reduced regulatory burden as a result of this rule making because they will not be subject to the PSD or Title V programs during the deferral period. Therefore, facilities affected by this rule making should experience a positive impact on jobs' ...

IRFA supports this rule making and emphasizes the importance and urgency of moving forward with this effort as soon as possible to prevent unnecessary consideration of biogenic emissions in current and future permitting activities in Iowa, which would be inconsistent with and more stringent than the federal regulations..."

Department Response

No response needed

Recommended Action

No action recommended