Iowa State Implementation Plan Revision For the 2010 NO2 National Ambient Air Quality Standards

Iowa Department of Natural Resources
Environmental Services Division
Air Quality Bureau
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July 23, 2013

Table of Contents

Submittal Letter 3
Background 4
Statutory and Regulatory Requirements 5
Section 110(a)(2)(A) Emission limits and other control measures 5
Section 110(a)(2)(B) Ambient air quality monitoring/data system 6
Section 110(a)(2)(C) Program for enforcement of control measures 7
Section 110(a)(2)(D) Interstate transport 9
Section 110(a)(2)(E) Adequate authority and resources 10
Section 110(a)(2)(F) Stationary source monitoring system 12
Section 110(a)(2)(G) Emergency power 13
Section 110(a)(2)(H) Future SIP revisions 15
Section 110(a)(2)(I) Nonattainment areas 16
Section 110(a)(2)(J) Consultation with government officials; Public notification; PSD and visibility protection 17
Section 110(a)(2)(K) Air quality modeling/data 19
Section 110(a)(2)(L) Permitting fees 20
Section 110(a)(2)(M) Consultation/participation by affected local entities 21
Legal Authority 22
Iowa Code § 455B.133 Duties. 22
Iowa Code § 455B.134 Director — duties — limitations. 26
567 Iowa Administrative Code Chapters for Air Quality 30
Public Comment & Hearing 31
Public Participation Responsiveness Summary 31
APPENDICES 35
Appendix A: Iowa's 2010 NO2 NAAQS Adoption 36
Appendix B: Rulemaking and Public Participation Process 43

Fields of Opportunities

STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
CHUCK GIPP, DIRECTOR

July 23, 2013

Karl Brooks
Regional Administrator
U.S. Environmental Protection Agency Region VII
11201 Renner Blvd
Lenexa, KS 66219

Dear Regional Administrator Brooks:

The Iowa Department of Natural Resources (DNR) requests revisions to the Iowa State Implementation Plan (SIP) to address implementation of the 2010 National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide and sulfur dioxide.

The notice of public comment period and public hearing for the nitrogen dioxide SIP was published in the Legal Notices section of the Des Moines Register on April 6, 2013. The public hearing was held on May 8, 2013. One comment was received during the public comment period.

The notice of public comment period and public hearing for the sulfur dioxide SIP was published in the Legal Notices section of the Des Moines Register on June 12, 2013. The public hearing was held on July 15, 2013. One comment was received during the public comment period.

The public was also notified of both SIPs by posting the public hearing on the State of Iowa Public Meeting Calendar. List serve emails were sent to over 500 stakeholders. Responsiveness summaries for each SIP are included. A copy of this information is included in the Public Comment and Hearing section of the SIP submittals.

If you have any questions regarding this submittal, please contact Jim McGraw at (515) 242-5167 or Wendy Walker at (515) 281-6061.

Sincerely,

Chuck Gipp

Chuck Gipp
Director
Iowa Department of Natural Resources

Enclosures

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Background

The Clean Air Act (CAA) requires the U.S. Environmental Protection Agency (EPA) to set National Ambient Air Quality Standards (NAAQS) for specific pollutants known as criteria pollutants. The law also requires EPA to periodically review and update the standards as necessary to ensure they provide adequate health and environmental protection.

Each time EPA establishes a new or revises an existing NAAQS each state must adopt and submit a State Implementation Plan (SIP) for the implementation, maintenance, and enforcement of that NAAQS. The SIP must demonstrate that the state meets the requirements of each applicable element of Section 110(a)(2) of the CAA. Since many of these elements pertain to the basic infrastructure of air quality management programs, such as having the necessary legal authority and adequate resources, this SIP is often referred to as an "Infrastructure SIP." The Infrastructure SIP is required by Section 110(a)(1) of the CAA and is due three years after any NAAQS is added or revised. Iowa's Infrastructure SIP for the 2010 nitrogen dioxide (NO2) was due on January 22, 2013.

The NO2 NAAQS has both a primary and secondary standard. EPA promulgated a 1-hour, primary standard of 100 parts per billion (ppb) on January 22, 2010, while simultaneously retaining the annual average standard of 53 ppb. This revision to the primary standard was published in the Federal Register on February 9, 2010 (75 FR 6474-6537). In a separate action EPA retained the 53 ppb annual average secondary NO2 NAAQS on March 20, 2012 (77 FR 20218-20272) and did not include the 1-hour standard as a secondary standard. Iowa was designated unclassifiable/attainment on January 20, 2012 (77 FR 9532-9588).

This document is organized by addressing each pertinent section of CAA section 110(a)(2) requirements and the DNR's legal authorities and public comment and hearing. The appendices at the end of the document provide additional information on the administrative rule adoptions for this SIP, the administrative rule process, and the public participation process.

This SIP revision demonstrates that the DNR has the necessary plans, programs, and statutory authority to implement the requirements of Section 110 of the CAA as they pertain to the 2010 NAAQS for NO2. Under the current SIP and Iowa Code 455B.133 the state has the necessary infrastructure, resources, and general authority to implement the 2010 NO2 NAAQS.

Statutory and Regulatory Requirements

Section 110(a)(2)(A) Emission limits and other control measures

"(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;" (42 USC 7410(a)(2)(A))[1]

The DNR fulfills the requirements of 110(a)(2)(A) through Iowa law, administrative rules, permits, and consent orders. The DNR is the designated agency to prevent, abate, or control air pollution (Iowa Code 455B.132). The Environmental Protection Commission (EPC) is the governing commission for the environmental services portion of the DNR (Iowa Code 455A.6).

The EPC has the duty and authority to develop plans for the abatement, control, and prevention of air pollution, which includes emission limits and schedules for compliance. The EPC is required to adopt, amend, or repeal rules as necessary to obtain approval of the state implementation plan (SIP) under section 110 of the federal CAA. Further, the EPC is charged with adopting, amending, or repealing ambient air quality standards necessary to protect the public health and welfare. EPC also shall adopt, amend or repeal emissions limits relating to the maximum quantities of air contaminants that may be emitted from an air contaminant source (Iowa Code 455B.133(1-4)).

Administrative rules establish procedures for compliance with emission limits and variance provisions (567 Iowa Administrative Code (IAC) Chapter 21). The 2010 NAAQS for NO2 was adopted by the EPC into 567 IAC Chapter 28 and became effective on November 24, 2010 (Appendix A). The DNR has an established process for performing administrative rulemakings (Appendix B).

Iowa has statutory and regulatory authority to establish additional emissions limitations and other measures, as necessary to address attainment and maintenance of the NO2 standard. The Iowa SIP adequately addresses the requirements of section 110(a)(2)(A) for the 2010 NO2 NAAQS. Specific emissions limits or other control measures necessary to resolve NO2 nonattainment or monitored NAAQS violations are not part of and thus are not included in the infrastructure SIP.

[1] The Clean Air Act was incorporated into the United States Code as Title 42, Chapter 85. More information about the Clean Air Act is available at http://www.epa.gov/air/caa/.

Section 110(a)(2)(B) Ambient air quality monitoring/data system

"(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

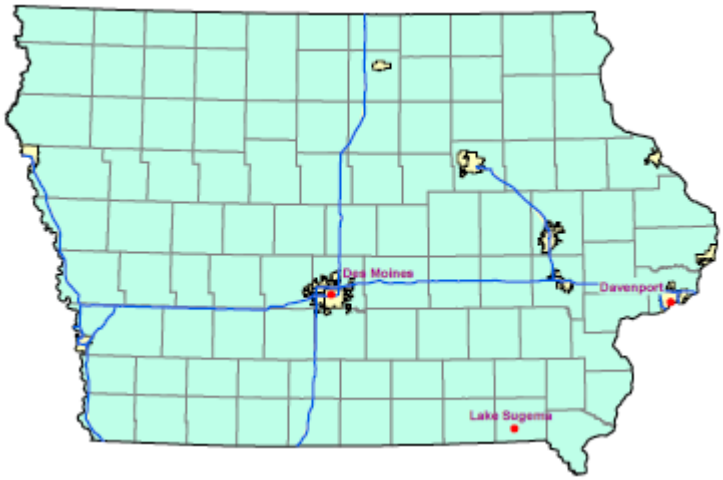
(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;" (42 USC 7410(a)(2)(B))

The DNR ambient air quality monitoring program meets the requirements of 110(a)(2)(B). The Iowa Code requires the DNR Director to monitor air quality (455B.134(4)). Ambient air monitoring is implemented with agreements with the University of Iowa's State Hygienic Laboratory, the Linn County Local Program, and the Polk County Local Program. The ambient air quality monitoring program collects air monitoring data, quality assures the results, and reports the data. DNR submits an annual monitoring network plan to EPA for approval, including plans for its NO2 monitoring network, as required by 40 CFR 58.10. Prior to submission, Iowa provides the plans for public review on DNR's web site at http://www.iowadnr.gov/InsideDNR/RegulatoryAir/MonitoringAmbientAir.aspx.

The DNR currently operates NO2 monitors at the locations depicted in Figure 1. Iowa is currently in attainment with the NO2 NAAQS.

Figure 1. Iowa NO2 Monitoring Network



Elevated NO2 levels are expected near major roadways, and the NAAQS includes a requirement to install a microscale near-roadway monitor in each Metropolitan Statistical Area (MSA) with a population of 500,000 or more, by January 2013. Iowa was required to operate one near roadway monitor in the Des Moines MSA. An NO2 roadside monitor located at 6011 Rollins Avenue in Des Moines commenced operation on January 1, 2013.

Section 110(a)(2)(C) Program for enforcement of control measures

"(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter;" (42 USC 7410(a)(2)(C))

Enforcement Program
Iowa statute requires the DNR to enforce the requirements of control measures necessary to meet the requirements of Section 110(a)(2)(C). The EPC approves administrative rules that establish the schedule or range of civil penalties (Iowa Code 455B.109, 567 IAC Chapter 10). The DNR Director has the duty and authority to issue orders consistent with administrative rules to control air pollution, including NO2, or ensure compliance with NO2 permit conditions (Iowa Code 455B.134(9); 455B.138). The State of Iowa may seek judicial review and legal action to enforce the rules and regulations (Iowa Code 455B.140-141). Criminal penalties may also be sought by the State of Iowa (Iowa Code 455B.146A).

The DNR's compliance program has staff in both the central office and six field offices to ensure that industry, businesses, institutions, and individuals are in compliance with state and federal air quality regulations.

Minor New Source Review
DNR is required to implement a SIP approved pre-construction permit program (40 CFR 51.160-164). Iowa Code 455B.134(3)(a) requires that "[n]o air contaminant source shall be installed, altered…, or placed in use unless a construction permit…has been issued for the source." In accordance with statute DNR regulations require a permit for the construction of any new or existing non-exempt stationary source which emits or may emit any air pollutant (567 IAC 22.1). The DNR's pre-construction permit program reviews design and performance objectives for sources of air contaminants to determine their likely compliance with state and federal requirements. New facilities must be designed to meet emissions standards and shall not cause or contribute to a violation of ambient air quality standards for NO2. DNR is prohibited from issuing a permit if the project would result in violation of emission limits or other provisions in the SIP (567 IAC Chapters 22-23 and 33).

Prevention of Significant Deterioration
DNR is required to implement a SIP approved prevention of significant deterioration (PSD) program (Iowa Code 455B.133(6); 37 FR 10842, 50 FR 37176, and 72 FR 27056). Iowa's regulations addressing NO2 PSD requirements include those found in 567 IAC 33. DNR has addressed all current PSD requirements for all regulated NSR pollutants.

Operating Permit
The DNR also is required to implement a fully approved operating permit program (Iowa Code 455B.133(8), 567 IAC Chapter 22) which is commonly known as Title V. A Title V facility, also referred to as a major stationary source of air pollutants, is a facility that has the potential to emit 100 tons per year (tpy) or more of any air pollutant subject to regulation; or the potential to

emit 10 tpy or more of any individual hazardous air pollutant; the potential to emit 25 tpy or more of any combination of hazardous air pollutants; or the potential to emit equal to or greater than 100,000 tpy CO2e, and 100 tpy GHGs mass basis.

A Title V operating permit incorporates into one document all of the pre-construction permits and state and federal regulatory requirements of the air quality program for each facility that is a major source of air pollution. The operating permit includes provisions describing how compliance with each requirement will be maintained on a continuous basis. Facilities are required to provide semi-annual emissions monitoring reports and an annual compliance certification report. The Title V operating permit provides a comprehensive review of a facility's requirements under the Act.

Therefore, Iowa has satisfied the requirements of Section 110(a)(2)(C) of the CAA for the 2010 NO2 NAAQS through its approved PSD/NSR program.

Section 110(a)(2)(D) Interstate transport

"(D) contain adequate provisions—

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement);" (42 USC 7410(a)(2)(D))

It is not appropriate to address Section 110(a)(2)(D)(i)(I) at this time due to recent court decisions, ongoing litigation, and associated regulatory uncertainty. DNR participates in EPA's conference calls and meetings on interstate transport. DNR looks forward to working with EPA in a collaborative approach to find a final, equitable solution to address interstate transport.

The visibility requirements of section 110(a)(2)(D)(i)(II) are being addressed under the regional haze program. The DNR submitted the initial regional haze SIP to EPA in March 2008.

The Department's implementation of the SIP approved pre-construction review and PSD program prevents source emissions in Iowa from interfering with any other state's part C program (as required by 110(a)(2)(D)(i)(II)) and fulfills the notification requirements of section 110(a)(2)(D)(ii).

Section 110(a)(2)(E) Adequate authority and resources

"(E) provide

(i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof),
(ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and
(iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;"
(42 USC 7410(a)(2)(E))

The DNR has adequate personnel, funding, and authority to fulfill the requirements of the SIP. Detailed information on authority is listed above in the portion on Section 110(a)(2)(A). There are no legal impediments to implementing the 2010 NO2 NAAQS. The program's budget is funded by the State General Fund, the State Environment First Fund, EPA grants authorized under CAA section 103 and 105, and Title V fees. More information on Title V fees is provided under CAA Section 110 (a)(2)(L). EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to implement the SIP.

As indicated earlier, the EPC was established in Iowa Code 455A.6. Members of the EPC must comply with ethics, gift restrictions, and conflict of interest requirements as outlined in Iowa law (Iowa Code 68B, 69). The Governor's Office provides annual training to new board and commission members to explain the requirements. Additional information relating to State Boards is listed below.

The Iowa Constitution, Article 1 § 2 states: "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it." The Environmental Protection Commission (EPC) is a governmental body required to serve for the protection, security, and benefit of the people, and therefore is subject to Article 1 § 2.

The EPC complies with the public interest requirement in EPA's "Guidance to States for Meeting Conflict of Interest Requirements" (March 2, 1978). EPA's guidance defined the following: "representing the public interest" means does not own a controlling interest in, have 5% or more of his or her capital invested in, serve as an attorney for, act as a consultant for, serve as an officer or director of, or hold any other official or contractual relationship with any person subject to permits or enforcement orders under the Clean Air Act or any trade or business association of which such a person is a member. Iowa Code Chapter 68B requires EPC members to meet all of these provisions.

The EPC is established in Iowa Code 455A.6 with the authority to establish policy for the department, adopt rules, hear appeals in contested cases, and approve budget requests. As members of a commission, EPC commissioners must comply with ethics, gift restrictions, and conflict of interest requirements as outlined in Iowa Code 68B and the rules promulgated in the Iowa Administrative Code § 351 for Iowa Code § 68B. (Appendix B). Iowa Code 68B requires the following items:

- A commissioner or immediate family member shall not derive any benefit from taking any official action or performing any official duty. (§ 68B.2A(1)(b))
- A commissioner shall not engage in outside employment that is subject to official control, inspection, review, audit, or enforcement authority. (§ 68B.2A(1)(c))
- If a conflict as described in Iowa Code § 68B.2A(1)(c) exists, the commissioner shall either cease the outside employment or activity or disclose the conflict and refrain from taking any official action. (§ 68B.2A(2))
- A commissioner or immediate family member shall not receive gifts from a restricted donor (§ 68B.22)

In addition, the Iowa Administrative Code § 351 states the following:

- A commissioner shall not directly or indirectly sell or lease any goods or services to individuals, associations, or corporations subject to the regulatory authority of the commissioner. (§ 351-6.11)
- A commissioner shall not receive compensation in any form, or enter into any type of agreement to receive compensation in any form, to appear on behalf or render services against the interest of the state in relation to any case, proceeding, application, or other matter before the commission. (§ 351-6.14(2))

DNR has delegated the duties for the abatement, control, and prevention of air pollution to the Linn County Health Department Air Quality Division and the Polk County Public Works Air Quality Division, for each of their respective counties (Iowa Code 455B.144-146). Linn County and Polk County programs were initially approved into the SIP in 1989 (54 FR 33526, 54 FR 33528).

DNR and the Linn & Polk County Local Programs annually negotiate and sign comprehensive letters of agreement or contracts. Program emphasis is placed on the collection and assessment of information regarding air quality, the permitting of sources of air emissions, the enforcement of emission limits and the attainment and maintenance of ambient air quality standards. Funding for activities in the scope of work under each contract is paid for by a portion of the DNR's EPA grants under sections 103 and 105 of the CAA, and Title V fees. DNR conducts biennial program reviews. No additional measures or revisions to delegations between DNR and the Linn and Polk County Local Programs are required for the Linn and Polk County Local Programs to implement the NO2 standard in their respective counties.

Section 110(a)(2)(F) Stationary source monitoring system

"(F) require, as may be prescribed by the Administrator—

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;" (42 USC 7410(a)(2)(F))

Administrative rules (567 IAC Chapter 25) provide detailed requirements for owners or operators of stationary sources to monitor emissions. Stack testing observation (Iowa Code 455B.134(4)) ensures the quality of emissions data. The data quality may be assured through field test audits and reviewing test reports. The field audits consist of making sure the correct methodology is followed, approving on-site variations, ensuring the tested emission source is operating in an acceptable manner, and answering questions posed by the testing group and the facility. The report review verifies the test results by checking the calculations and lab analysis. A stack test summary is generated and the compliance status of the emission point is determined.

DNR also receives and reviews annual compliance certifications and semi-annual monitoring reports required under the Title V program (Iowa Code 455B.133(8), 567 IAC Chapter 22). Information collected though emission inventories are submitted to EPA in accordance with the federal Air Emissions Reporting rule.

Iowa uses this information to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with emission regulations and additional EPA requirements. The reports are available to the public at the DNR's Records Center during normal business hours with some reports available electronically. DocDNA is the DNR's electronic records system for many public records. A link to DocDNA and the access information is on our website at hww.iowadnr.gov/InsideDNR/RegulatoryAir/PublicRecordsAirQuality.aspx. The information is at the bottom of the page under Online Searches, and DocDNA.

Section 110(a)(2)(G) Emergency power

"(G) provide for authority comparable to that in section 7603 of this title and adequate contingency plans to implement such authority;" (42 USC 7410(a)(2)(G))

The DNR Director has the authority to issue an emergency order if any person is causing air pollution which requires immediate action to protect public health and safety, as codified in Iowa Code 455B.139, which is listed below.

> ***455B.139 Emergency orders.***
> *If the director has evidence that any person is causing air pollution and that such pollution creates an emergency requiring immediate action to protect the public health and safety, or property, the director may, without notice, issue an emergency order requiring such person to reduce or discontinue immediately the emission of air contaminants. A copy of the emergency order shall be served by personal service. An emergency order issued by the director may be appealed to the commission. After hearing on appeal, the commission may affirm, modify or rescind the order of the director.*

Listed below is are the first two paragraphs the text of USC § 7603. The bolded text highlights the comparability between Iowa Code 455B.139 and 42 USC § 7603.

> *Notwithstanding any other provision of this chapter,* ***the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary.***
>
> ***If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment****.*

Administrative rules (567 IAC Chapter 26) have been developed to prevent the excessive buildup of air contaminants and have been previously approved into the SIP (74 FR 68761). Once an air pollution episode is declared, the administrative rules (567 IAC 26.2(2)"d") allow the declaration to remain in effect until the criteria for that level are no longer met and the director may change the episode level as meteorological factors and air contaminants change. These provisions are comparable to the third paragraph of USC § 7603 listed below. The bolded text below specifically highlights the comparability between 567 IAC Chapter 26 and the third paragraph of 42 USC § 7603.

> *Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based.* ***Any order issued by the***

> ***Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period.*** *Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.*

DNR's authority is comparable to that of EPA under Section 303 and meets the applicable contingency plan requirements of 40 CFR 51.150-153.

Section 110(a)(2)(H) Future SIP revisions

"(H) provide for revision of such plan—

> *(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and*
> *(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;"* (42 USC 7410(a)(2)(H))

Iowa is required to adopt, amend, or repeal rules pertaining to the evaluation, abatement, control, and prevention of air pollution which may be necessary to ensure that Iowa complies with section 110 of the federal CAA (Iowa Code 455B.133(2)). This includes a requirement to revise rules as necessary to respond to a revised NAAQS and to respond to EPA findings of substantial inadequacy.

Section 110(a)(2)(I) Nonattainment areas

"(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas);" (42 USC 7410(a)(2)(I))

Not applicable at this time.

Section 110(a)(2)(J) Consultation with government officials; Public notification; PSD and visibility protection

"(J) meet the applicable requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection);" (42 USC 7410(a)(2)(J))

§ 7421. Consultation

> *"In carrying out the requirements of this chapter requiring applicable implementation plans to contain—*
> *(1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of air pollution, or*
> *(2) any measure referred to—*
>> *(A) in part D of this subchapter (pertaining to nonattainment requirements), or*
>> *(B) in part C of this subchapter (pertaining to prevention of significant deterioration),*
>
> *and in carrying out the requirements of section 7413 (d)[...] of this title (relating to certain enforcement orders), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal land manager having authority over Federal land to which the State plan applies, effective with respect to any such requirement which is adopted more than one year after August 7, 1977, as part of such plan. Such process shall be in accordance with regulations promulgated by the Administrator to assure adequate consultation. The Administrator shall update as necessary the original regulations required and promulgated under this section (as in effect immediately before November 15, 1990) to ensure adequate consultation. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan referred to in this subsection may petition for judicial review of such action on the basis of a violation of the requirements of this section."* (42 USC 7421)

DNR has the duty and authority and resources to meet the requirements of section 7421 including consultation for transportation controls, air quality maintenance plan requirements, or preconstruction review. The DNR also is required to provide a satisfactory process of consultation with local government, designated organizations of elected officials of local governments such as council of governments, and applicable federal land managers to carry out the consultation requirements of section 7421 (455B.133(1,4)).

The DNR provides a copy of a PSD permit to EPA prior to the start of the public comment process. Public notifications of proposed PSD projects are published in the Des Moines Register's Legal Publications and in the legal publication section of the newspaper with the largest circulation in the area of the PSD source. The notification contains the notice of application; preliminary determination; degree of increment consumption; opportunity for comment at a public hearing as well as written comment. A copy of the notice of public comment is then sent to the applicant; the regional EPA office, the DNR Field Office; and

officials and agencies having an interest in the proposed construction. Examples of such officials and agencies include but are not limited to the following: chief executives of the city and county (i.e. mayor, city administrator, board of supervisors, health department); any comprehensive regional land use planning agency; state or federal land manager and any Indian governing body whose lands may be affected by the emissions from the source or modification (567 Chapter 33.3(17)).

> § 7427. Public notification
> *"(a) Warning signs; television, radio, or press notices or information*
> *Each State plan shall contain measures which will be effective to notify the public during any calendar*[2] *on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures which can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Such measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio, or press notices or information."* (42 USC 7427(a))

DNR has the duty, authority, and resources to meet the requirements of section 7427(a) to notify the public regarding exceedances of the NAAQS which include public awareness measures which can be taken to prevent exceedances (455B.133(2), 455B.134(7)). The DNR utilizes press releases, online reports, and list serves to notify the public of exceedances. Awareness messages are included in these outreach methods as well as in public meetings.

DNR holds quarterly air quality client contact meetings to focus on current and upcoming air program issues and changes. The meetings provide an open forum for stakeholders and the general public to discuss new state and federal air quality rules or air program developments and are a good source of information for anyone who works with or has an interest in activities related to air quality.

The DNR's Environmental Services Division (ESD) holds a monthly client contact group meeting prior to the EPC meetings. The ESD client contact group is an open forum to discuss issues related to all of the department's environmental programs.

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[2] So in original. Probably should be "calendar year". (http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00007427----000-.html#FN-1)

Section 110(a)(2)(K) Air quality modeling/data

"(K) provide for—

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;" (42 USC 7410(a)(2)(K))

The DNR has the authority to conduct air dispersion modeling to complete an ambient air impact analyses (Iowa Code 455B.133 (1-2)). Air dispersion modeling analyses are used to predict ground level ambient air concentrations of pollutants and compare those levels to ambient air quality standards. DNR is prohibited from issuing a permit if the project would result in or significantly contribute to a violation of the ambient air quality standards (567 IAC 22.3(1)) or other provisions in the federally approved SIP (567 IAC Chapters 22-23 and 33).

Air dispersion modeling allows the impacts of the pollution from a proposed air pollution source to be determined before a source is constructed or modified. The air dispersion modeling is conducted with an EPA approved model that uses mathematical formulations and information about the source emissions along with the local terrain and meteorological data to predict pollutant concentrations at locations selected by the user.

Modeling is conducted in accordance with Department's modeling guidelines and with Appendix W of 40 CFR Part 51. DNR has the authority to collect and report data to EPA, upon request (Iowa Code 455B.134 (5, 7)).

Section 110(a)(2)(L) Permitting fees

"(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover—

> *(i) the reasonable costs of reviewing and acting upon any application for such a permit, and*
>
> *(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),"* (42 USC 7410(a)(2)(L))

The Title V program requires permit holders to pay a fee sufficient to cover all reasonable direct and indirect costs required to develop and administer the Title V program requirements (42 U.S.C. 7661a). The CAA (Section 502(b)(3)(A)) and the Code of Federal Regulations (40 CFR 70.9) outlines expected Title V program activities and allows states some flexibility in how they design their Title V programs and fee schedules. DNR uses the EPA guidance, "Matrix of Title V-Related and Air Grant Eligible Activities" to determine which program activities are necessary for the development and implementation of a Title V operating permit program (455B.133(8)).

In Iowa, the Title V fee is currently based on the first 4,000 chargeable tons of each regulated air pollutant emitted each year from each major stationary source. No fees are paid for emissions in excess of 4,000 tons of each regulated air pollutant or on carbon monoxide or other pollutants exempt from fees by IAC 22.100. Fees are deposited into the air contaminant source fund (Iowa Code 455B.133B).

Each March, the DNR presents an estimated or proposed budget to cover the reasonable cost of administering the Title V program, to the EPC. Each May, the EPC sets the Title V fee. The DNR calculates the Title V fee by dividing the estimated budget for the upcoming state fiscal year by the chargeable emissions as reported by facilities each March 31. The annual fee must be set at or below the maximum Title V fee, which can be changed through administrative rulemaking (567 IAC 22.106(1)).

Section 110(a)(2)(M) Consultation/participation by affected local entities

"(M) provide for consultation and participation by local political subdivisions affected by the plan." (42 USC 7410(a)(2)(M))

DNR has delegated authority to Linn County Health Department Air Quality Division and the Polk County Public Works Air Quality Division (Local Programs) to conduct programs for the abatement, control, and prevention of air pollution in their respective county (Iowa Code 455B.144-146).

The Local Programs are required to meet all the requirements of 567 IAC Chapter 27 to keep their status. The Local Programs issue permits, perform compliance inspections, respond to air quality complaints, and maintain a network of monitors for ambient air in each respective county.

The Local Programs have adopted air quality ordinances to implement federal, state, and local air pollution control requirements. The ordinances cannot be less stringent than federal or state standards; however, they can be more stringent. The ordinances are incorporated into the SIP in the same manner that the IAC is incorporated into the SIP.

Each year DNR negotiates an agreement to pass through federal funds and provide Title V funds sufficient to implement the programs. Revenue from local fee systems provides additional funding and required match to a portion of the pass through federal funds. The contracts are approved by the EPC for each new state fiscal year. DNR conducts biennial audits to ensure the Local Programs are meeting all requirements of the contract.

Both the DNR and the Local Programs' administrative processes provide a public comment period. The comment period provides an opportunity for other local political subdivisions that may be affected by the plan to comment.

DNR frequently holds public meetings, like the quarterly air quality client contact meetings. The open forum allows stakeholders and the general public to dialogue on a variety of topics. The DNR also communicates using press releases, online reports, and list serves. Rulemakings are also published on the DNR's website and in the Iowa Administrative Bulletin.

Legal Authority

The DNR is the primary state agency responsible for protecting the environment, as indicated in the Iowa Code § 455A. The Environmental Protection Commission, established in the Iowa Code § 455A.6, is the governing commission for the environmental protection portion of the DNR and complies with Clean Air Act §128(a)(1) and (a)(2) through Iowa Code § 4.4(5) and Iowa Code chapter 68B, subchapters I-III. The DNR's authority is provided under Iowa Code § 455B.133 and § 455B.134 which are listed below. Additional information on the Iowa Code is at http://www.legis.iowa.gov/IowaLaw/statutoryLaw.aspx.

Iowa Code § 455B.133 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the abatement, control, and prevention of air pollution in this state, recognizing varying requirements for different areas in the state. The plans may include emission limitations, schedules and timetables for compliance with the limitations, measures to prevent the significant deterioration of air quality and other measures as necessary to assure attainment and maintenance of ambient air quality standards.

2. Adopt, amend, or repeal rules pertaining to the evaluation, abatement, control, and prevention of air pollution. The rules may include those that are necessary to obtain approval of the state implementation plan under section 110 of the federal Clean Air Act as amended through January 1, 1991.

3. Adopt, amend, or repeal ambient air quality standards for the atmosphere of this state on the basis of providing air quality necessary to protect the public health and welfare and to reduce emissions contributing to acid rain pursuant to Tit. IV of the federal Clean Air Act Amendments of 1990.

4. Adopt, amend, or repeal emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted from any air contaminant source. The standards or limitations adopted under this section shall not exceed the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended through January 1, 1991. This does not prohibit the commission from adopting a standard for a source or class of sources for which the United States environmental protection agency has not promulgated a standard. This also does not prohibit the commission from adopting an emission standard or limitation for infectious medical waste treatment or disposal facilities which exceeds the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended through January 1, 1991. The commission shall not adopt an emission standard or limitation for infectious medical waste treatment or disposal facilities prior to January 1, 1995, which exceeds the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act, as amended through January 1, 1991, for a hospital, or a group of hospitals, licensed under chapter 135B which has been operating an infectious medical waste treatment or disposal facility prior to January 1, 1991.

a. (1) The commission shall establish standards of performance unless in the judgment of the commission it is not feasible to adopt or enforce a standard of performance. If it is not feasible to adopt or enforce a standard of performance, the commission may adopt a design, equipment, material, work practice or operational standard, or combination of those standards in order to establish reasonably available control technology or the lowest achievable emission rate in nonattainment areas, or in order to establish best available control technology in areas subject to prevention of significant deterioration review, or in order to adopt the emission limitations promulgated by the administrator of the United States environmental protection agency under section 111 or 112 of the federal Clean Air Act as amended through January 1, 1991.

(2) If a person establishes to the satisfaction of the commission that an alternative means of emission limitation will achieve a reduction in emissions of an air pollutant at least equivalent to the reduction in emissions of the air pollutant achieved under the design, equipment, material, work practice or operational standard, the commission shall amend its rules to permit the use of the alternative by the source for purposes of compliance with this paragraph with respect to the pollutant.

(3) A design, equipment, material, work practice or operational standard promulgated under this paragraph shall be promulgated in terms of a standard of performance when it becomes feasible to promulgate and enforce the standard in those terms.

(4) For the purpose of this paragraph, the phrase *"not feasible to adopt or enforce a standard of performance"* refers to a situation in which the commission determines that the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

b. If the maximum standards for the emission of sulfur dioxide from solid fuels have to be reduced in an area to meet ambient air quality standards, a contract for coal produced in Iowa and burned by a facility in that area that met the sulfur dioxide emission standards in effect at the time the contract went into effect shall be exempted from the decreased requirement until the expiration of the contract period or December 31, 1983, whichever first occurs, if there is any other reasonable means available to satisfy the ambient air quality standards. To qualify under this subsection, the contract must be recorded with the county recorder of the county where the burning facility is located within thirty days after the signing of the contract.

c. The degree of emission limitation required for control of an air contaminant under an emission standard shall not be affected by that part of the stack height of a source that exceeds good engineering practice, as defined in rules, or any other dispersion technique. This paragraph shall not apply to stack heights in existence before December 30, 1970, or dispersion techniques implemented before that date.

5. Classify air contaminant sources according to levels and types of emissions, and other characteristics which relate to air pollution. The commission may require, by rule, the owner or operator of any air contaminant source to establish and maintain such records, make such reports,

install, use and maintain such monitoring equipment or methods, sample such emissions in accordance with such methods at such locations and intervals, and using such procedures as the commission shall prescribe, and provide such other information as the commission may reasonably require. Such classifications may be for application to the state as a whole, or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

6. *a.* Require, by rules, notice of the construction of any air contaminant source which may cause or contribute to air pollution, and the submission of plans and specifications to the department, or other information deemed necessary, for the installation of air contaminant sources and related control equipment. The rules shall allow the owner or operator of a major stationary source to elect to obtain a conditional permit in lieu of a construction permit. The rules relating to a conditional permit for an electric power generating facility subject to chapter 476A and other major stationary sources shall allow the submission of engineering descriptions, flow diagrams and schematics that quantitatively and qualitatively identify emission streams and alternative control equipment that will provide compliance with emission standards. Such rules shall not specify any particular method to be used to reduce undesirable levels of emissions, nor type, design, or method of installation of any equipment to be used to reduce such levels of emissions, nor the type, design, or method of installation or type of construction of any manufacturing processes or kinds of equipment, nor specify the kind or composition of fuels permitted to be sold, stored, or used unless authorized by subsection 4 of this section.

b. The commission may give technical advice pertaining to the construction or installation of the equipment or any other recommendation.

7. Commission rules establishing maximum permissible sulfate content shall not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

8. *a.* Adopt rules consistent with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, which require the owner or operator of an air contaminant source to obtain an operating permit prior to operation of the source. The rules shall specify the information required to be submitted with the application for a permit and the conditions under which a permit may be granted, modified, suspended, terminated, revoked, reissued, or denied. For sources subject to the provisions of Tit. IV of the federal Clean Air Act Amendments of 1990, permit conditions shall include emission allowances for sulfur dioxide emissions. The commission may impose fees, including fees upon regulated pollutants emitted from an air contaminant source, in an amount sufficient to cover all reasonable costs, direct and indirect, required to develop and administer the permit program in conformance with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. Affected units regulated under Tit. IV of the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, shall pay operating permit fees in the same manner as other sources subject to operating permit requirements, except as provided in section 408 of the federal Act. The fees collected pursuant to this subsection shall be deposited in the air contaminant source fund created pursuant to section 455B.133B, and shall be utilized solely to cover all reasonable costs required to develop and administer the programs required by Tit. V of the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, including the permit

program pursuant to section 502 of the federal Act and the small business stationary source technical and environmental assistance program pursuant to section 507 of the federal Act.

b. Adopt rules allowing the department to issue a state operating permit to an owner or operator of an air contaminant source. The state operating permit granted under this paragraph may only be issued at the request of an air contaminant source and will be used to limit its potential to emit to less than one hundred tons per year of a criteria pollutant as defined by the United States environmental protection agency or ten tons per year of a hazardous air pollutant or twenty-five tons of any combination of hazardous air pollutants.

c. Adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous sources to the extent that the sources are representative of a class of facilities which can be identified and conditioned by a single permit.

9. Adopt rules allowing asphalt shingles to be burned in a fire set for the purpose of bona fide training of public or industrial employees in fire fighting methods only if a notice is provided to the director containing testing results indicating that the asphalt shingles do not contain asbestos. Each fire department shall be permitted to host two fires per year as allowed under this subsection.

10. Adopt rules allowing a city to conduct a controlled burn of a demolished building subject to the requirements that are in effect for the proper removal of all asbestos-containing materials prior to demolition and burning. The rules shall include provisions that a burn site have controlled access, that a burn site be supervised by representatives of the city at all times, and that the burning be conducted only when weather conditions are favorable with respect to surrounding property. For a burn site located outside of a city, the rules shall include a provision that a city may undertake not more than one such controlled burn per day and that a burn site be limited to an area located at least six-tenths of a mile from any inhabited building. For burn sites located within a city, the rules shall include a provision that a city may undertake not more than one such controlled burn in every six-tenths-of-a-mile-radius circle in each calendar year. The rules shall prohibit a controlled burn of a demolished building in Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City, or any other area where area-specific state implementation plans require the control of particulate matter.

[C71, §136B.4; C73, 75, 77, 79, 81, §455B.12; 82 Acts, ch 1124, §1]
C83, §455B.133
91 Acts, ch 242, §1; 91 Acts, ch 255, §8; 92 Acts, ch 1163, §87 – 89; 93 Acts, ch 137, §3; 94 Acts, ch 1040, §1; 95 Acts, ch 2, §1; 2002 Acts, ch 1162, §45; 2002 Acts, 2nd Ex, ch 1003, §241, 262; 2004 Acts, ch 1138, §1; 2010 Acts, ch 1061, §180

Iowa Code § 455B.134 Director — duties — limitations.

The director shall:

1. Publish and administer the rules and standards established by the commission. The department shall furnish a copy of such rules or standards to any person upon request.

2. Provide technical, scientific, and other services required by the commission or for the effective administration of this division II and chapter 459, subchapter II.

3. Grant, modify, suspend, terminate, revoke, reissue or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment, and conditional permits for electric power generating facilities subject to chapter 476A and other major stationary sources, subject to the rules adopted by the commission. The department shall furnish necessary application forms for such permits.

a. No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction or conditional permit has been issued for the source.

b. The condition of expected performance shall be reasonably detailed in the construction or conditional permit.

c. All applications for permits other than conditional permits for electric generating facilities shall be subject to such notice and public participation as may be provided by rule by the commission. Upon denial or limitation of a permit other than a conditional permit for an electric generating facility, the applicant shall be notified of such denial and informed of the reason or reasons therefor, and such applicant shall be entitled to a hearing before the commission.

> *d.* (1) All applications for conditional permits for electric power generating facilities shall be subject to such notice and opportunity for public participation as may be consistent with chapter 476A or any agreement pursuant thereto under chapter 28E. The applicant or intervenor may appeal to the commission from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the director or by the commission upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the commission. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawings and an application for a construction permit for control equipment that will meet the emission limitations established in the conditional permit.
>
> (2) In applications for conditional permits for electric power generating facilities, the applicant shall quantify the potential to emit greenhouse gas emissions due to the proposed project.

e. A regulated air contaminant source for which a construction permit or conditional permit has been issued shall not be operated unless an operating permit also has been issued for the source. However, if the facility was in compliance with permit conditions prior to the requirement for an operating permit and has made timely application for an operating permit, the facility may

continue operation until the operating permit is issued or denied. Operating permits shall contain the requisite conditions and compliance schedules to ensure conformance with state and federal requirements including emission allowances for sulfur dioxide emissions for sources subject to Tit. IV of the federal Clean Air Act Amendments of 1990. If construction of a new air contaminant source is proposed, the department may issue an operating permit concurrently with the construction permit, if possible and appropriate.

f. (1) Notwithstanding any other provision of division II of this chapter or chapter 459, subchapter II, the following siting requirements shall apply to anaerobic lagoons and earthen waste slurry storage basins:

(a) Anaerobic lagoons, constructed or expanded on or after June 20, 1979, but prior to May 31, 1995, or earthen waste slurry storage basins, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995, which are used in connection with animal feeding operations containing less than six hundred twenty-five thousand pounds live animal weight capacity of animal species other than beef cattle or containing less than one million six hundred thousand pounds live animal weight capacity of beef cattle, shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. Anaerobic lagoons or earthen waste slurry storage basins, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or more live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or more live animal weight capacity of beef cattle, shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. For the purpose of this paragraph the determination of live animal weight capacity shall be based on the average animal weight capacity during a production cycle and the maximum animal capacity of the animal feeding operation.

(b) Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is one hundred thousand gallons per day or less shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is greater than one hundred thousand gallons per day shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. These separation distances apply to the construction of new facilities and the expansion of existing facilities.

(2) A person may build or expand an anaerobic lagoon or an earthen waste slurry storage basin closer to a residence not owned by the owner of the anaerobic lagoon or to a public use area than is otherwise permitted by subparagraph (1) of this paragraph, if the affected landowners enter into a written agreement with the anaerobic lagoon owner to waive the separation distances under such terms the parties negotiate. The written agreement

becomes effective only upon recording in the office of the recorder of deeds of the county in which the residence is located.

g. All applications for construction permits or prevention of significant deterioration permits shall quantify the potential to emit greenhouse gas emissions due to the proposed project.

4. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state or any part thereof.

5. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.

6. Provide technical assistance to political subdivisions of this state requesting such aid for the furtherance of air pollution control.

7. Collect and disseminate information, and conduct educational and training programs, relating to air pollution and its abatement, prevention, and control.

8. Consider complaints of conditions reported to, or considered likely to, constitute air pollution, and investigate such complaints upon receipt of the written petition of any state agency, the governing body of a political subdivision, a local board of health, or twenty-five affected residents of the state.

9. Issue orders consistent with rules to cause the abatement or control of air pollution, or to secure compliance with permit conditions. In making the orders, the director shall consider the facts and circumstances bearing upon the reasonableness of the emissions involved, including but not limited to, the character and degree of injury to, or interference with, the protection of health and the physical property of the public, the practicability of reducing or limiting the emissions from the air pollution source, and the suitability or unsuitability of the air pollution source to the area where it is located. An order may include advisory recommendations for the control of emissions from an air contaminant source and the reduction of the emission of air contaminants.

10. Encourage voluntary cooperation by persons or affected groups in restoring and preserving a reasonable quality of air within the state.

11. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions.

12. Review and evaluate air pollution control programs conducted by political subdivisions of the state with respect to whether the programs are consistent with the provisions of division II of this chapter and chapter 459, subchapter II, and rules adopted by the commission.

13. Hold public hearings, except when the evidence to be received is confidential pursuant to section 455B.137, necessary to accomplish the purposes of division II of this chapter and chapter 459, subchapter II. The director may issue subpoenas requiring the attendance of witnesses and

the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as in civil actions.

14. Convene meetings not later than June 1 during the second calendar year following the adoption of new or revised federal ambient air quality standards by the United States environmental protection agency to review emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted from any air contaminant source as provided in section 455B.133, subsection 4. By November 1 of the same calendar year, the department shall submit a report to the governor and the general assembly regarding recommendations for law changes necessary for the attainment of the new or revised federal standards.

[C71, §136B.4, 136B.5; C73, 75, 77, 79, §455B.12, 455B.13; C81, §455B.13; 82 Acts, ch 1124, §2, 3]
C83, §455B.134
86 Acts, ch 1245, §1899; 90 Acts, ch 1153, §2, 3; 91 Acts, ch 255, §11 - 13; 93 Acts, ch 137, §4; 95 Acts, ch 195, §14; 2007 Acts, ch 120, §2, 3; 2010 Acts, ch 1115, §1; 2011 Acts, ch 25, §49, 50
For regulations establishing separation distances between anaerobic lagoons or earthen manure storage structures constructed or expanded on or after May 31, 1995, and various locations and objects, see chapter 459
For regulations governing the construction of earthen storage structures within agricultural drainage well areas, see chapter 460
Subsection 3, paragraph d, subparagraph (2) amended
Subsection 3, paragraph g amended

567 Iowa Administrative Code Chapters for Air Quality

Chapters 20-29, 31, and 33-34 of 567 Iowa Administrative Code contain the administrative rules that allow for the implementation of the relevant air quality laws contained in Iowa statute and the CAA, including Section 110.

- Chapter 20 provides general definitions and rules of practice.
- Provisions for compliance schedules are found in Chapter 21.
- Standards and procedures for the permitting of emission sources, periodic monitoring, and requirements for nonattainment areas are found in Chapter 22.
- Air emission standards for contaminants are found in Chapter 23.
- Chapter 24 provides for the reporting of excess emissions and the equipment maintenance and repair requirements.
- Testing and sampling requirements for new and existing sources are found in Chapter 25.
- Chapter 26 identifies air pollution emergency episodes and the preplanned abatement strategies for emergency air pollution episodes..
- Conditions that political subdivisions must meet in order to secure acceptance of a local air pollution control program are set forth in Chapter 27.
- Chapter 28 identifies the state's adopted ambient air quality standards.
- Qualifications for observers of visible emission are found in Chapter 29.
- Chapter 31 contains the conformity of general federal actions to the Iowa state implementation plan or federal implementation plan.
- Chapter 33 contains special regulations and construction permit requirements for major stationary sources and includes the requirements for PSD.
- Provisions for air quality emissions trading programs are found in Chapter 34.

The Environmental Protection Commission adopted the 2010 NO2 NAAQS on September 21, 2010. The final rule was published in the Iowa Administrative Bulletin on October 20, 2010 in Volume XXXIII, Number 8, ARC 9154B. The rule was effective on November 24, 2010. A copy of this publication is in Appendix A. The adoption of the 2010 NO2 NAAQS is item 12 of the rulemaking.

Public Comment & Hearing

The notice of public hearing was published in the Des Moines Register on April 6, 2013. The information was also on the Des Moines Register website. The public hearing was posted on the State of Iowa Public Meeting Calendar. A list serve notice was sent out on April 4, 2013 to over 500 members. Copies of the public notices are included.

No oral or written comments were received at the public hearing. Written comments were submitted via email from EPA Region 7 during the public comment period. The Department's responses to EPA's comments follow. No significant changes were made to the SIP document as a result of the comments.

Public Participation Responsiveness Summary

1) Comment: 110(a)(2)(C): Programs for enforcement of control measures and for construction or modification of stationary sources. EPA would not be able to approve any infrastructure SIP unless the State addresses all requirements of the Prevention of Significant Deterioration (PSD) program. Additionally, this portion of the SIP might be improved by explaining how the appropriate Iowa Code and Iowa Administrative Code chapters specifically address the enforcement provisions and the minor and major source permitting programs for the revised NO2 standard.

Department Response: In the submittal letter for the 2006 PM2.5 infrastructure SIP, the DNR will request to withdraw components of the September 18, 2012 SIP revision request that pertain to the January 22, 2013, U.S. Court of Appeals decision.

The statutes and regulations that pertain to the enforcement provisions and the minor and major source permitting programs of the revised NO2 standards include, for example, Iowa Code 455B.109 which authorizes civil penalties for non-compliance, 567 IAC 22.1 which requires stationary sources of NO2 to obtain a preconstruction permit, and 567 IAC 33 which contains regulations pertaining to NO2 PSD permit program requirements. The DNR has reorganized and clarified the information provided in the SIP in response to EPA's comment in an effort to better show how the Iowa Code and IAC specifically address the enforcement provisions and the permitting programs for the revised NO2 standard.

2) Comment: 110(a)(2)(D): Interstate and International Transport. The Cross-State Air Pollution Rule (CSAPR) was not intended to address the 2010 NO2 NAAQS. Given that CSAPR is now stayed pending a petition for rehearing of the Court's decision, EPA will review Iowa's SIP in accordance with the November 19, 2012 memo issued by Gina McCarthy.

Department Response:
No response required.

3) Comment: 110(a)(2)(E): Adequate Personnel, Funding, and Authority. EPA has identified a consistency issue on how the SIP addresses Section 128 of the federal Clean Air Act (CAA) and wants to work the DNR to resolve the issue. EPA also suggested clarifications regarding NO2 implementation with the Linn & Polk County Local Programs.

Department Response:
The DNR will review EPA's comments concerning Section 128 and will respond, as appropriate, in a future amendment to the SIP or other manner. To assist with future review, the DNR has incorporated Appendix C from the public comment version into the body of this document. No additional measures are required by the Linn and Polk County Local Programs to implement the NO2 standard in their respective counties. The SIP text associated with Iowa's implementation of the requirements for 110(a)(2)(E) that has been delegated to local programs has been modified to note this statement.

4) Comment: 110(a)(2)(G): Emergency Power. EPA suggested DNR enhance the submittal to show how the SIP compares with EPA under CAA Section 303 and meets the applicable contingency plan requirements for emergency episodes.

Department Response:
SIP- approved administrative rules (567 IAC Chapter 26) are comparable to current federal regulations. Additionally, Iowa Code section 455B.139 provides "If the director has evidence that any person is causing air pollution and that such pollution creates an emergency requiring immediate action to protect the public health and safety, or property, the director may, without notice, issue an emergency order requiring such person to reduce or discontinue immediately the emission of air contaminants."

The SIP revision has been amended to include the applicable text of both Iowa Code 455B.139 and 567 IAC Chapter 26 to assist in comparison with CAA Section 303.

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R858 Public Notice
Iowa Department of Natural Resources

The Iowa Department of Natural Resources (DNR) is requesting public comment on the State of Iowa's state implementation plan (SIP) for the national ambient air quality standards (NAAQS) for nitrogen dioxide (NO2).

The state implementation plan has been written to fulfill the requirements of Section 110 of the federal Clean Air Act (CAA). Section 110(a) of the CAA requires each state to adopt and submit a plan for the implementation, maintenance, and enforcement of each NAAQS within 3 years of promulgation to the Administrator of the U.S. Environmental Protection Agency (EPA).

The NO2 NAAQS has both a primary and secondary standard. EPA promulgated a 1-hour, primary standard of 100 parts per billion (ppb) on January 22, 2010, while simultaneously retaining the annual average standard of 53 ppb. This revision to the primary standard was published in the Federal Register on February 9, 2010 (75 FR 6474-6537). In a separate action EPA retained the 53 ppb annual average secondary NO2 NAAQS on March 20, 2012 (77 FR 20218-20272) and did not include the 1-hour standard as a secondary standard. Iowa was designated unclassifiable/attainment for the 1-hour NO2 NAAQS on January 20, 2012 (77

Sat

FR 9532-9588).

An electronic copy of the SIP may be viewed at www.iowacleanair.com , click on Stakeholder Involvement, and select Public Input. Any person may make written comments on this proposed SIP revision on or before May 8, 2013. Written comments should be directed to Wendy Walker, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa, 50324, fax 515-242-5094, or by electronic mail to Wendy.Walker@dnr.iowa.gov.

A public hearing will be held on May 8, 2013, at 1:00 p.m. in the conference rooms at the Iowa DNR's Air Quality Bureau office located at 7900 Hickman Road, Suite 1, Windsor Heights, Iowa. All comments must be received no later than May 8, 2013.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact Wendy Walker at 515-281-6061 to advise of any specific needs.

A responsiveness summary will be prepared by the Iowa DNR following the close of the public comment period. The responsiveness summary will include any written or oral comments received during the public participation process and the Iowa DNR's response to the comments. The completed responsiveness summary will be forwarded to EPA and made available to the public upon request.

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0406	CSW	1000	WALKER/NO2-R858PUBLICNOTICEI	1	1	93.00	93.00		43.43
0430	CSW	1000	JOHNDEERE-R272PUBLICNOTICEIO	1	1	70.00	70.00		32.69
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IDNR AIR QUALITY

CURRENT	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	OVER 120 DAYS	TOTAL DUE
160.18	.00	.00	.00	.00	160.18

CONTRACT TYPE	CONTRACT QUANTITY	EXPIRATION DATE	CURRENT USAGE	TOTAL USAGE	QUANTITY REMAINING	SALESPERSON
						WALSH

ALL ACCOUNTS ARE DUE 15 DAYS AFTER THE END OF THE BILLING PERIOD

CUSTOMER NUMBER	CUSTOMER NAME	INVOICE NUMBER	DUE DATE
22054401	IOWA D N R	0007010219	05/20/13

DES MOINES REGISTER MEDIA
A GANNETT COMPANY
715 Locust St.
Des Moines, IA 50309

BILLING INQUIRIES: (877)556-0332
E-MAIL: desm@ccc.gannett.com

A LATE PAYMENT FEE OF 1 1/2% PER BILLING PERIOD WILL BE ADDED FOR PAST DUE BALANCES.

APPENDICES

Appendix A: Iowa's 2010 NO2 NAAQS Adoption

IOWA ADMINISTRATIVE BULLETIN

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CONTENTS IN THIS ISSUE

Pages 570 to 655 include **ARC 9151B** to **ARC 9170B**

AGENDA
Administrative rules review committee 563

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Notice, Grain transaction participation fee for grain dealers and warehouse operators, amendments to chs 90 to 94 **ARC 9165B** 570
Filed Emergency After Notice, Cattle and bison—pre-entry permits and tuberculosis tests, 65.2(3), 65.4(3) **ARC 9151B** 632

ALL AGENCIES
Agency identification numbers 568
Citation of administrative rules. 561
Schedule for rule making. 562

DELAY
Natural Resource Commission[571]
Procedures for sale of nursery stock, 71.2(2)"c" 656

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]["umbrella"
Notice, Water quality certification, 61.2(2)"g" **ARC 9153B** 581
Notice, Underground storage tanks—review procedures and acceptance of reports from certified groundwater professionals, 135.9(11), 135.10(11), 135.12 **ARC 9152B** 583
Filed, Air quality, 23.1(2), 23.1(4), 23.1(5), 24.1(2), 24.1(3), 28.1 **ARC 9154B** 649

HUMAN SERVICES DEPARTMENT[441]
Notice Terminated, Replacement of electronic benefits transfer (EBT) cards, 65.4(2)"b" **ARC 9155B** 586
Notice, HCBS waiver services, amendments to chs 78 to 80 **ARC 9170B** 586
Notice, Nursing facilities; quality improvement initiative grants, 81.50(7), 81.52(4), ch 166 **ARC 9157B** 615

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]["umbrella"
Notice, Individual accident and health insurance—rate hearings, 36.20 **ARC 9168B** 619
Filed Emergency, Individual accident and health insurance—rate hearings, 36.20 **ARC 9158B** 633
Filed, Coordination of benefits, rescind 38.1 to 38.11, 38.19; amend 38.12(1) **ARC 9164B** 654
Filed, Securities regulation—duties, procedures, electronic filing of forms, amendments to ch 50 **ARC 9169B** 654

IOWA FINANCE AUTHORITY[265]
Notice, Low-income housing tax credit program—qualified allocation plan, 12.1, 12.2 **ARC 9160B** 620
Notice, HOME partnership program, 39.2 to 39.9 **ARC 9159B** 621
Notice, Shelter assistance fund, ch 41 **ARC 9163B** 626
Notice, Emergency shelter grants program, ch 42 **ARC 9167B** 626

ARC 9154B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 23, "Emission Standards for Contaminants," Chapter 24, "Excess Emission," and Chapter 28, "Ambient Air Quality Standards," Iowa Administrative Code.

The primary purpose of the amendments is to update state air quality rules by adopting new federal requirements, including adoption of new national ambient air quality standards (NAAQS) and adoption of new federal air toxics standards. The amendments also provide the option to submit initial excess emission reports by E-mail.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 16, 2010, as **ARC 8845B**. A public hearing was held on July 19, 2010. No oral or written comments were presented at the hearing. One set of written comments was received prior to the close of the public comment period on July 20, 2010. 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 of Intended Action.

Item 1 amends the introductory paragraph of subrule 23.1(2), the provisions that adopt by reference the federal new source performance standards (NSPS) contained in 40 CFR Part 60. The NSPS program requires new and existing facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for air pollutant emissions. NSPS requirements vary depending on the processes, activities or equipment being regulated, and whether the processes, activities or equipment is considered to be new or existing.

This amendment adopts by reference federal amendments to two existing new source performance standards. EPA promulgated amendments to an additional NSPS that the Department did not adopt, as explained in more detail below.

On April 28, 2009, EPA finalized amendments to the NSPS for nonmetallic mineral processing plants (Subpart OOO). This NSPS affects facilities such as aggregate processing plants or concrete batch plants which commence construction, modification, or reconstruction on or after April 22, 2008. These amendments include new emission limits, additional testing and monitoring requirements, changes to simplify the notification requirements for all affected facilities, changes to definitions, and various clarifications.

The Department estimates that approximately 200 portable and fixed plants are subject to the original NSPS Subpart OOO requirements. However, these facilities are only subject to the requirements in the new federal amendments if the facilities commenced construction, modification or reconstruction after April 22, 2008. The Department is aware of only a few facilities that are affected by the new NSPS requirements at this time. More facilities may become subject to the new requirements in the future. The Department is working with individual facilities regarding the new Subpart OOO requirements as facilities submit permit applications for construction, modification, or reconstruction.

On October 8, 2009, EPA finalized amendments to the NSPS coal preparation and processing plants (40 CFR 60 Subpart Y). This NSPS affects facilities that prepare and process coal, such as electric utilities and industrial operations. The federal amendments include revisions to the emission limits for particulate matter and opacity standards for thermal dryers, pneumatic coal cleaning equipment, and coal handling equipment. The revised limits apply to affected facilities that commence construction, modification, or reconstruction on or after April 28, 2008. The federal amendments also establish a sulfur dioxide (SO_2) emission limit and a combined nitrogen oxide (NO_x) and carbon monoxide (CO) emissions limit for thermal dryers. In addition, the federal amendments establish work practice standards to control fugitive coal dust emissions from open storage piles. The SO_2 limit, the NO_x/CO limit, and the work practice standards apply to affected facilities that commence construction, modification, or reconstruction on or after May 27, 2009.

The Department estimates that approximately 50 facilities are subject to the original Subpart Y requirements. However, only facilities that undergo construction, modification or reconstruction on or after the dates noted above are subject to the new requirements. At this time, the Department has identified only a few facilities that are affected by the new NSPS requirements. More facilities may be subject to the new requirements in the future. The Department is working with individual facilities that may be subject to the new Subpart Y requirements as facilities submit permit applications for construction, modification, or reconstruction.

On October 6, 2009, EPA amended the NSPS and emission guidelines for new hospital/infectious/medical waste incinerators (HMIWI) (Subparts Ce and Ec). The Department is not adopting these new federal amendments because Iowa no longer has any operating incinerators affected under the HMIWI regulations, and the Department anticipates that no new HMIWI will be constructed in Iowa. Many HMIWI throughout the United States have shut down because less expensive alternative waste disposal options are available. The Department is not required to adopt federal NSPS for which there are no affected facilities and for which there are no affected facilities reasonably expected to exist in the future. The Department is taking additional rule-making action regarding the currently adopted HMIWI regulations, as explained under Item 3 and Item 6.

Item 2 amends paragraph 23.1(2)"sss" to revise the explanation accompanying the adoption by reference of the NSPS for municipal waste combustors (Subpart Eb). When the Department adopted EPA's 2006 amendments to this NSPS through a prior rule making, the Department did not at that time modify the explanatory text to be consistent with the federal amendments. This amendment modifies the text so that it is identical to the current federal regulations.

Item 3 amends paragraph 23.1(2)"ttt" to add a note rescinding adoption by reference of the federal NSPS regulations for HMIWI (Subpart Ec). As explained above, the state does not have any HMIWI affected under NSPS Subpart Ec and does not expect to have any affected HMIWI in the future.

Item 4 amends the introductory paragraph of subrule 23.1(4), the emission standards for hazardous air pollutants for source categories, also known as national emission standards for hazardous air pollutants or NESHAP, to adopt recent amendments that EPA made to 40 CFR Part 63. The NESHAP program requires facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for hazardous air pollutants (HAP). NESHAP requirements for source sectors vary depending on the processes, activities or equipment being regulated.

The NESHAP affect both new and existing major sources and area sources. Area sources are usually smaller commercial or industrial operations. Specifically, area sources have potential emissions less than 10 tons per year (tpy) of any single hazardous air pollutant (HAP) and less than 25 tpy of any combination of HAP and are classified as minor sources for HAP. Facilities that have potential HAP emissions greater than or equal to these levels are classified as major sources. HAP are sometimes also known as "air toxics."

This rule making includes adoption of new or amended NESHAP potentially impacting some facilities or businesses that previously had few, if any, air quality requirements. Because of the potential impacts to small businesses and previously unregulated facilities, the Department is developing implementation strategies in conjunction with this rule making. The strategies include cooperative efforts with the University of Northern Iowa (UNI), Iowa Air Emissions Assistance Program; Iowa Department of Economic Development (IDED); the Linn County and Polk County local air quality programs; and other interested associations and organizations to provide outreach and compliance assistance to stakeholders.

The Department's outreach strategies are specific to each rule and depend on a number of factors, including: the estimated number of facilities and small businesses affected, the compliance date of the rule, the requirements of the rule (such as emissions control, work practices standards, etc.), and current level of air quality knowledge (such as air permits or active industry associations). As Department resources allow, outreach may include informational meetings, workshops, fact sheets, guides, and Internet-based tools. It is hoped that this rule making, in conjunction with current and future efforts of the Department and its compliance assistance partners, will result in reductions in air toxics and other

air pollutant emissions, while minimizing the regulatory burden to small businesses and other affected facilities.

EPA promulgated amendments to the reciprocating internal combustion engine (RICE) NESHAP on March 3, 2010. The NESHAP amendments primarily impact existing stationary compression ignition (CI) engines (diesel-fueled engines) at major and area sources. Affected, existing engines must comply with the NESHAP requirements by May 3, 2013.

NESHAP requirements are set to reduce air toxics, and, in this case, formaldehyde is the targeted HAP. EPA set standards in the NESHAP to reduce carbon monoxide (CO), which is being used as a surrogate for reducing formaldehyde emissions. Emissions of particulate matter (including fine particles (PM2.5)), sulfur dioxide (SO_2), and volatile organic compounds (VOC)) are also expected to be reduced by 2013.

The NESHAP requirements vary depending on the size of the engine, whether the engine is classified as "emergency" or "non-emergency," and whether the engine is located at a major source or an area source. Emergency engines and engines rated at 100 horsepower (HP) or less at major sources and 300 HP or less at area sources are not subject to emission limits, monitoring or performance testing requirements. Rather, emergency engines and small engines are required to implement management/maintenance practices on a set schedule, including changing oil and oil filters, inspecting the air cleaner, and inspecting hoses and belts.

Owners or operators of non-emergency engines must install a closed crankcase ventilation system and use ultra low sulfur fuel. Further, owners or operators of non-emergency engines are required to meet standards for CO emissions by either meeting a numerical emission limit or by reducing CO emissions by at least 70 percent. EPA expects that most owners or operators of non-emergency engines will need to install control equipment, most likely a diesel oxidation catalyst (DOC), to meet the CO emissions requirements. Facility staff will be required to monitor set parameters to ensure that the catalyst is operating correctly. Facility staff will also be required to conduct an initial performance test (stack test) for CO, and conduct periodic tests on a specified schedule thereafter.

EPA estimates that 80 percent of the estimated 900,000 affected RICE engines nationwide will be classified as emergency engines. These estimates appear to be accurate and possibly an underestimate for engines at industrial or commercial facilities that do not supply power to the grid as part of a financial arrangement with another entity. Therefore, the Department expects that the vast majority of engines at these facilities will meet the NESHAP definition of "emergency."

However, the Department expects that a lower percentage of engines located at municipal utilities may be classified as emergency. Based on current discussions with EPA and with stakeholders, the Department expects that approximately one-third (~33 percent) of these engines will meet the definition of "emergency." This estimate for municipal utilities also includes other institutional, industrial or commercial facilities that supply power to the grid as part of a financial arrangement with another entity, such as an investor-owned utility or a cooperative utility.

Regulated entities, municipal utilities in particular, have expressed concern about the potential costs of complying with the NESHAP for engines that do not qualify as "emergency." The Department has been working closely with Iowa Association of Municipal Utilities (IAMU), Southern Iowa Municipal Electric Cooperative Association (SIMECA), Resale Power Group of Iowa (RPGI), individual municipalities, and others to address these concerns. The Department is pressing EPA to get expeditious answers to specific questions and scenarios associated with engine classification. The Department is also working closely with stakeholders to identify alternative emissions reductions options, such as use of biodiesel and making certain types of engine modifications that may meet the NESHAP requirements and may also cost considerably less than engine control retrofits.

The Department is conservatively estimating that two-thirds (~67 percent) of the stationary CI engines at major sources providing power to the grid, including investor-owned utilities, cooperatives, and larger municipal utilities, will be subject to the NESHAP emission standards. The Department is also estimating that up to 67 percent of the engines at area sources providing power to the grid, including engines at municipal utilities and other institutional, commercial or industrial facilities, will be subject to the

NESHAP emission standards. Since this 67 percent estimate is across the power generation source sector, some facilities may have more of their engines impacted, while some may have fewer.

Based on U.S. Department of Energy data from 2008, major source emissions inventories, and the assumption that approximately 67 percent of engines at power-supplying facilities will be classified as "non-emergency," the Department estimates that up to 314 engines will be subject to emission standards, monitoring and testing requirements.

Items 5, 6 and **7** amend subrule 23.1(4) by adopting new paragraphs "ev," "fa," "fb," "fc," and "fd" to adopt by reference new NESHAP for new and existing area sources. The Department adopts by reference three newly promulgated NESHAP for area sources, as explained in more detail below.

On October 29, 2009, EPA finalized the area source NESHAP for chemical manufacturing (Subpart VVVVVV). This NESHAP affects area sources under several chemical manufacturing sectors, including pharmaceutical production, agricultural chemicals and pesticides manufacturing, and organic chemical manufacturing, that emit one or more of 15 specific HAP. The NESHAP includes management practices and, in some cases, add-on control, to reduce emissions from process vessels, storage tanks, transfer racks, heat exchange systems and wastewater. Existing facilities have until October 29, 2012, to be in compliance with the NESHAP.

The Department estimates that there may be up to 100 facilities subject to this NESHAP. However, many facilities may not be emitting the affected HAP in regulated quantities or may elect to discontinue use prior to the NESHAP compliance date. Many other facilities are already following management practices under other federal standards that are identical or similar to the NESHAP requirements. In the near term, the Department expects to work individually with facilities on NESHAP applicability, particularly as these facilities submit permit applications for review. Over the next six months, the Department and its compliance assistance partners will determine if a more extensive NESHAP outreach strategy is appropriate.

On December 3, 2009, EPA finalized the area source NESHAP for paint and allied products manufacturing (Subpart CCCCCCC). This NESHAP affects area sources that manufacture paint, ink or adhesive and that process, use, or generate materials containing chromium, lead, nickel or cadmium, benzene or methyl chloride. Affected facilities are required to operate particulate control equipment to control metal air toxics and must use management practices to control volatile air toxic emissions. Existing facilities have until December 3, 2012, to comply with the NESHAP requirements.

Currently, the Department estimates that 50 facilities may be subject to this NESHAP. However, many facilities may not use, or may elect to discontinue use of, the affected HAP before the NESHAP compliance date. In the near term, the Department expects to work individually with facilities on NESHAP applicability, particularly as these facilities submit permit applications for review. Over the next year, the Department and its compliance assistance partners will determine if a more extensive NESHAP outreach strategy is appropriate.

On January 5, 2010, EPA finalized the area source NESHAP for prepared feeds manufacturing (Subpart DDDDDDD). This NESHAP affects area sources that produce animal feed products and use materials that contain chromium (Cr) or manganese (Mn). Affected facilities must apply management practices in the area of the facility where materials containing chromium or manganese are stored, used or handled. Facilities that produce more than 50 tons per day of feed will also be required to operate control equipment to reduce chromium and manganese emissions from pelleting and pelleting cooling operations. Existing facilities will have until January 5, 2012, to comply with the NESHAP requirements.

The Department estimates that approximately 250 facilities meet the definition of prepared feeds manufacturing under the NESHAP. The Department is working closely with its compliance assistance partners at the University of Northern Iowa (UNI) Air Emission Assistance Program and the Iowa Department of Economic Development (IDED) and with the Agribusiness Association of Iowa (AAI) to determine how many facilities will be subject to the NESHAP.

Based on discussion with AAI and the National Grain and Feed Association (NGFA), a voluntary survey conducted by UNI, and NESHAP initial notifications submitted to the Department, the Department estimates that up to 40 percent of potentially affected facilities (~100) may meet one of the

NESHAP exemptions. Most of these facilities either do not use Mn or Cr or will be able to modify the additives and pre-mixes to reduce Mn or Cr below the regulated concentrations.

Based on the sources of information described above, the Department estimates that 50 of the 150 NESHAP-affected facilities have pelleting operations and have daily feed production exceeding 50 tons and, therefore, may be subject to the cyclone control, operation and monitoring requirements.

The Department has not adopted two other recently promulgated area source NESHAP, the NESHAP for asphalt processing and asphalt roofing manufacturing (Subpart AAAAAAA) and the NESHAP for chemical preparation (Subpart BBBBBBB). Iowa does not have any facilities subject to these NESHAP and is unlikely to have any subject facilities in the future.

Items 8 and **9** amend paragraph 23.1(5)"b" to rescind the emission guidelines for existing HMIWI. EPA originally promulgated emission guidelines for existing HMIWI in 1997 and the Department adopted these emission guidelines in 1998. At that time, Iowa had two operating HMIWI affected under the emission guidelines. These two HMIWI have since shut down.

This rule making rescinds the existing emission guidelines because the Department is not required to retain federal emission guidelines for which the state has no subject facilities and for which the Department can reasonably expect not to have any subject facilities in the future.

Item 10 amends subrule 24.1(2), the requirements for oral reporting of excess emissions. The amendment changes the description in this subrule to "initial report of excess emissions" and also adds the option for the owner or operator to submit the required excess emissions information to the Department by electronic mail (E-mail).

In some cases, E-mail will be a more accurate and efficient method for owners and operators to provide these reports. E-mail reporting will eliminate Department staff time in transcribing the initial report and will enable staff to more efficiently input the information into reports and databases. Since E-mail may not be available or convenient in all cases, owners and operators will still be allowed to make an initial report of excess emissions in person or by telephone.

Owners and operators must still follow up their initial excess emissions report with a written, hard-copy report. This amendment does not allow an E-mail option for written excess emissions reporting at this time due to EPA's requirements under the federal cross-media electronic reporting rule (CROMERR). CROMERR requires special electronic verification that the Department has not yet established for excess emissions reports. The Department hopes to provide an electronic option for these reports in the future.

Item 11 amends subrule 24.1(3), the provisions for a written report of excess emissions. The amendment changes the term "oral" report to "initial" report to be consistent with the amendment described in Item 10. This amendment does not allow an E-mail option for written excess emissions reporting at this time due to EPA's requirements under CROMERR. CROMERR requires special electronic verification that the Department has not yet established for excess emissions reports.

Item 12 amends rule 567—28.1(455B) to adopt by reference new national ambient air quality standards (NAAQS). On February 9, 2010, EPA strengthened the NAAQS for nitrogen dioxide (NO_2) by adding a new 1-hour standard to more adequately protect public health and welfare. EPA set the new 1-hour NO_2 standard at the level of 100 parts per billion (ppb). In addition to establishing an averaging time and level, EPA also set a new "form" for the standard. The form is the air quality statistic used to determine if an area meets the standard. The form for the 1-hour NO_2 standard is the 3-year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations. EPA retained, with no change, the current annual average NO_2 standard of 53 ppb.

EPA expects to designate areas as attaining or not attaining the new standard by January 2012 using NO_2 monitoring data from the current communitywide monitoring network. Once the expanded network of NO_2 monitors required under the new standard is fully deployed and three years of data have been collected, EPA intends to redesignate areas in 2016 or 2017, as appropriate, based on the air quality data from the new monitoring network. The Department will need to complete and submit revisions to the state implementation plan (SIP) for NO_2 by January 2013. The SIP revision will include any rule changes necessary to implement the new standard.

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

These amendments shall become effective on November 24, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [23.1, 24.1, 28.1] is being omitted. These amendments are identical to those published under Notice as **ARC 8845B**, IAB 6/16/10.

[Filed 9/23/10, effective 11/24/10]
[Published 10/20/10]
[For replacement pages for IAC, see IAC Supplement 10/20/10.]

ARC 9164B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code chapters 509 and 514, the Insurance Division hereby amends Chapter 38, "Coordination of Benefits," Iowa Administrative Code.

The rules in Chapter 38 are in accordance with the model provisions for coordination of benefits as promulgated by the National Association of Insurance Commissioners. The amendments to the rules eliminate an outdated division of the chapter and update and clarify duties and procedures.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 11, 2010, as **ARC 9006B**. A public hearing was held on September 3, 2010, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. No comments were received; no changes were made to the amendments published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 509 and 514.

These amendments shall become effective November 24, 2010.

The following amendments are adopted.

ITEM 1. Rescind and reserve **191—Chapter 38, Division I**.

ITEM 2. Amend subrule 38.12(1) as follows:

38.12(1) The purpose of this ~~division~~ chapter is to adopt the new model provisions for coordination of benefits (COB) as promulgated by the National Association of Insurance Commissioners (NAIC).

ITEM 3. Rescind and reserve rule **191—38.19(509,514)**.

[Filed 10/1/10, effective 11/24/10]
[Published 10/20/10]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/20/10.

ARC 9169B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 502.605, the Insurance Division hereby amends Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

The rules in Chapter 50 provide duties and procedures to follow for the regulation of securities offerings and those who engage in the securities business in Iowa. The amendments to the rules update and clarify duties and procedures.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 11, 2010, as **ARC 9010B**. A public hearing was held on September 3, 2010, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. Comments were received that requested the deletion

Appendix B: Rulemaking and Public Participation Process

The DNR's rulemaking process is governed by Iowa Code § 17A, also referred to as the Iowa Administrative Procedure Act (IAPA). The IAPA details the procedures and format of state agency rulemakings. All rulemakings must be adopted within 180 days following either the published notice or the last date of the oral presentations on the proposed rule, whichever is later. Administrative rules are approved by the Environmental Protection Commission (EPC) as authorized under Iowa Code 455A.6.

Additional requirements associated with the rulemaking process are contained in Executive Orders (EO) 71 and 80. EO 71 requires agencies to take steps to minimize the adverse impact on jobs and the development of new employment opportunities before proposing a rule. Documentation of these steps is completed by submitting a Jobs Impact Statement to the Administrative Rules Coordinator prior to publication of notice of intended action. The Jobs Impact Statement is published as part of the preamble to the notice of rulemaking in the Iowa Administrative Bulletin (IAB). Agencies accept comments and information from stakeholders to assist in preparing the Jobs Impact Statement.

EO 80 directs agencies to create stakeholder groups for specific rulemaking activities if requested to do so by the agency director or the Administrative Rules Coordinator. Stakeholder group members are determined by the agency in consultation with the Administrative Rules Coordinator. Stakeholder groups are advisory and do not constitute agencies for rulemaking purposes. Stakeholder groups solicit input from the public and submit formal recommendations to the DNR.

An example of the rulemaking process is listed below:

1. **EO80 Stakeholder Group**: Determine need for stakeholder group in conjunction with the DNR Director and the Administrative Rules Coordinator. Form and participate in the EO80 stakeholder group if the group is determined to be necessary.
2. **Job Impact Statement & Informal Stakeholder Input:** Gather stakeholder input for the Job Impact Statement (JIS) to comply with Executive Order 71. Inform the EPC of plans associated with the proposed rulemaking.
3. **Governor's Office pre-clearance:** Submit the JIS and the draft Notice of Intended Action to the Governor's office for approval.
4. **Notice of Intended Action:** After preclearance, the DNR proposes the rulemaking through a Notice of Intended Action. A fiscal impact statement is included with this document. If approved by the EPC, the proposed rulemaking will be published in the IAB.
5. **Public Comment Period and Public Hearing(s):** The IAB indicates the length of the comment period, the agency contact, and the details of the public hearing(s). The minimum amount of time for the public comment period and public hearing date is 30 days for rules that the DNR plans to submit in a SIP revision.
6. **Initial Administrative Rules Review:** At some point during the rulemaking process, the proposed rule is reviewed by the Iowa General Assembly's Administrative Rules

Review Committee (ARRC). The DNR provides an overview of the rulemaking and responds to questions at the ARRC's public meeting.

7. **Adopted and Filed:** After the close of the public comment period, the DNR returns to the EPC to request adoption of the rulemaking. A summary of public comments and responses are included with the proposed rulemaking. If adopted, the rulemaking is published in the IAB.
8. **Final Publication:** The adopted and filed rulemaking will be published in the IAB.
9. **Final Administrative Rules Review:** Upon publication of the final rulemaking, the ARRC conducts their final review at their public meeting. The ARRC does have the discretion to object to a rule. The ARRC may also delay the effective date of a proposed rule pending additional review by the Iowa General Assembly.
10. **Rule Effective:** Typically, the rulemaking becomes effective 35 days after final publication in the IAB. The DNR can propose a later effective date, if necessary.