Iowa State Implementation Plan Revision
For the 2010 SO2
National Ambient Air Quality Standards

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DATE

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Submittal Letter

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 SO2 standard is due on June 3, 2013.

The NAAQS for sulfur dioxide, also known as SO2, has both a primary and secondary standard. EPA promulgated a new 1-hour, primary standard of 75 parts per billion (ppb) on June 3[1], 2010. The action also revoked the existing primary standards of 140 ppb over 24-hours and 30 ppb over a year. The primary standard was published in the Federal Register on June 22, 2010 (75 FR 35520-35603). EPA retained the secondary SO2 NAAQS on March 20, 2012 (77 FR 20218-20272).

This document is organized by addressing each pertinent section of CAA section 110 (a)(2) requirements and the DNR's legal authorities and administrative rules. The appendix at the end of the document provides additional information on the administrative rule process, public hearing information and the response to public comments.

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 SO2. Under the current SIP and Iowa Code 455B.133 the state has the necessary infrastructure, resources, and general authority to implement the 2010 SO2 NAAQS.

[1] EPA's SO2 NAAQS rulemaking was signed June 2 but was not publicly disseminated until June 3, 2010. EPA treats June 3, 2010, as the promulgation date.

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))[2]

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 National Ambient Air Quality Standards (NAAQS) for SO2 will be adopted by the EPC in 2013. DNR will send a separate request to revise the SIP once the rule is effective. The DNR has an established process for performing administrative rulemakings (Appendix A).

Iowa has statutory and regulatory authority to establish additional emissions limitations and other measures, as necessary to address attainment and maintenance of the SO2 standard. The Iowa SIP adequately addresses the requirements of section 110(a)(2)(A) for the 2010 SO2 NAAQS. Specific emissions limits or other control measures necessary to resolve SO2 nonattainment or monitored NAAQS violations are not part of and thus are not included in the infrastructure SIP.

[2] 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 annual monitoring network plan to EPA for approval, including plans for its SO2 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 operates monitors in the largest metropolitan statistical areas; monitors to measure background concentrations and regional transport; and population-oriented monitors near specific industrial sites.

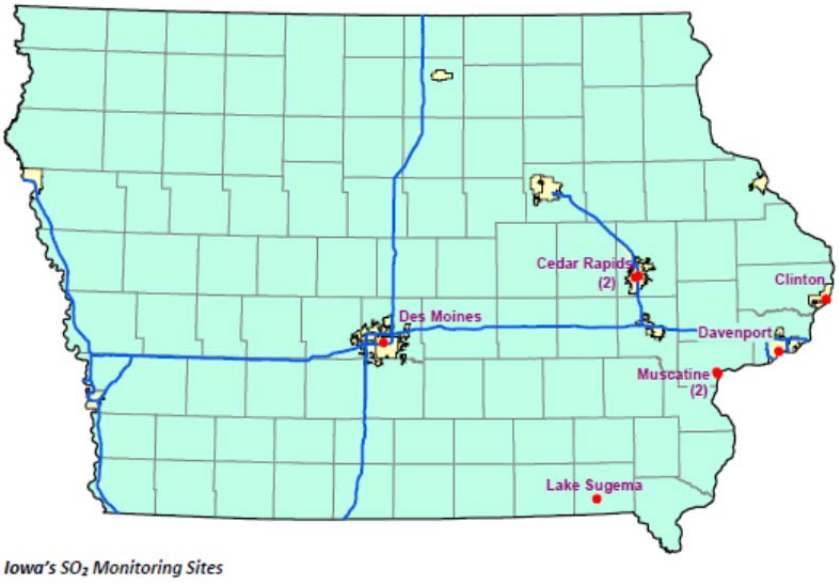

Figure 1. Iowa SO2 Monitoring Network.

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))

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 SO2, or ensure compliance with SO2 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.

DNR is required to implement a SIP approved pre-construction permit and prevention of significant deterioration (PSD) program (Iowa Code 455B.133(6); 37 FR 10842, 50 FR 37176, and 72 FR 27056). The 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 SO2. 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).

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.

DNR has addressed all current PSD requirements for all regulated NSR pollutants. The last change for PSD requirements made by EPA was for PM2.5. Amendments to Iowa's rules to implement changes to the federal PM2.5 program were completed in 2012. The amendments included adoption of EPA's May 16, 2008 published final rules setting PSD significant emissions rates for PM2.5 and addressed PM2.5 precursors. It also included adoption of EPA's October 20, 2010 published final rules setting PSD increments for PM2.5. A SIP revision request for this rulemaking was submitted to EPA on September 18, 2012.

Additional amendments to Iowa's rules (also completed in 2012) revised the definitions of "EPA reference method," "particulate matter," "standard conditions," and "total suspended particulate" to match federal regulations. EPA's revisions to stack test methods to establish procedures for measuring PM2.5 were adopted by reference in this rulemaking, as well as updates to adoption dates for the most current EPA reference methods for other pollutant emissions measurements. The SIP revision relating to this rulemaking was submitted to EPA on November 15, 2012.

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 SO2 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 SO2 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.

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 (Iowa Code 455B.139). 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). 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*[3] *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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[3] 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. 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 20-29, 31, 33-34

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 preplanned abatement strategies.
- 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.

Public Comment & Hearing

Appendix A: 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. An example of the rulemaking process is listed below:

1. **Job Impact Statement & Informal Stakeholder Input:** Gather stakeholder input for the Job Impact Statement (JIS) to comply with Executive Order 71. The Environmental Services Division Administrator will inform the EPC of the proposed rulemaking which begins the informal stakeholder engagement process.
2. **Governor's Office pre-clearance:** Submit the JIS and the draft Notice of Intended Action to the Governor's office for approval.
3. **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 Iowa Administrative Bulletin (IAB).
4. **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.
5. **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.
6. **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.
7. **Final Publication:** The adopted and filed rulemaking will be published in the IAB.
8. **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.
9. **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.