Iowa Department of Natural Resources
Environmental Protection Commission

ITEM **10** **DECISION**

TOPIC **Final Rule: Chapter 22 - Controlling Pollution - Title V Fee Cap**

The Department is requesting the Commission adopt an amendment to Chapter 22, "Controlling Pollution" of the 567 Iowa Administrative Code.

The purpose of this rulemaking is to increase the maximum dollar per ton fee (a.k.a. "fee cap") specified in 567 Iowa Administrative Code subrule 22.106(1). The maximum fee that the Commission is currently allowed (by rule) to charge annually from sources subject to the Title V operating permit program is $39 per ton.

The Title V fee is required for those facilities with potential emissions that exceed the major stationary source thresholds. A major stationary source, also referred to as a Title V facility, is a facility that has the potential to emit 100 tons per year (tpy) or more of any air pollutant; or the potential to emit 10 tpy or more of any individual hazardous air pollutant; or the potential to emit 25 tpy or more of any combination of hazardous air pollutants. Currently Iowa has 273 Title V facilities. Examples of Title V facilities include electric utilities, grain processors, cement plants, and manufacturing operations.

The Title V fee is based on the first 4,000 tons of each regulated air pollutant emitted each year from each major stationary source in the state. Regulated air pollutants that Title V fees are paid on include: particulate matter equal to or less than 10 micrometers in diameter (PM_{10}) and particulate matter equal to or less than 2.5 micrometers in diameter ($PM_{2.5}$), sulfur dioxide (SO_2), nitrogen oxides (NO_x), volatile organic compounds (VOC), lead (Pb), and 187 hazardous air pollutants (HAP). The Title V fee is used to support the development and administration of activities associated with major sources subject to the Title V Operating Permit Program.

The Department provides an estimated Title V fee each year at the March Commission meeting. Annually on March 31, Title V facilities are required to submit to the Department annual emissions statements for the previous calendar year. The Department totals these emissions and provides that information to the Commission no later than the May meeting to set the fee based on the program budget. Title V funds not expended within a state fiscal year are applied to the next year to reduce the fee.

The Commission approved a Notice of Intended Action at the September meeting for a maximum fee cap of $62. The Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on October 8, 2008, as ARC 7220B. A public hearing was held on November 12, 2008. The Department received one written comment prior to the end of the public comment period on November 13, 2008. One written comment was also received at the

public hearing. No oral comments were received. The commenter recommended a fee cap increase that was consistent with a budget projection for a time period shorter than five years. The Department reviewed the fee cap projections for a shorter timeframe. Based on this review the Department has revised the proposed fee cap from $62 to $56 which is estimated to provide sufficient funding for three years instead of the original proposal of five years. A public participation responsiveness summary is attached to this agenda item.

The fee cap increase will allow for expected decreases in actual emission rates coupled with expected increases in basic costs for personnel and services, over at least the next three state budget cycles. The fee cap was last raised in April 2003 from $29 to $39. The 2003 fee cap increase was anticipated to provide for program increases for three state fiscal years. Through on-going implementation of best fiscal management practices, the prior fee cap increase provided for an additional three years of program growth for a total of six years (SFY 2004-2009).

An administrative rule fiscal impact statement is attached.

Wendy Rains, Environmental Specialist Senior
Air Quality Bureau
Environmental Services Division

November 17, 2008

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 22, "Controlling Pollution" of the Iowa Administrative Code.

The purpose of this amendment is to increase the maximum dollar per ton fee specified in 567 Iowa Administrative Code subrule 22.106(1). This is the maximum fee that the Environmental Protection Commission can establish on the first 4,000 tons of actual emissions of each regulated air pollutant emitted annually from sources subject to the Title V operating permit program. There are currently 273 sources in the state that are subject to this program.

The Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on October 8, 2008, as ARC 7220B. A public hearing was held on November 12, 2008. The Department received one written comment prior to the end of the public comment period on November 13, 2008. One written comment was also received at the public hearing. No oral comments were received. Based on consideration of the comments received, the Department reviewed the fee cap for a shorter timeframe. The Department has revised the proposed fee cap from $62 to $56 which is estimated to provide sufficient funding for three years instead of the original proposal of five years. A public participation responsiveness summary is available from the Department upon request.

Budget projections and estimates of actual emissions indicate that the annual Title V fee will have to be increased above $39 per ton to maintain the current level of service in state fiscal years 2010 through 2012. The Department will continue to work with interested parties to examine alternate fee scenarios.

The increase from $39 per ton to $56 per ton is based on budget projections for the next three state fiscal years and estimates of the actual emissions during this period. Basing the maximum fee on budget projections for the next three state fiscal years should prevent the need for the Commission to change the maximum dollar per ton fee provision in subrule 22.106(1) again for at least this period of time. The need to increase the maximum fee to maintain the current level of services is the result of the combination of projected increases in staff salaries due to negotiated contract increases, including indirect costs, increased equipment and operating costs for the state's ambient air monitoring network, and projected decreases in actual emissions.

This amendment is intended to implement Iowa Code section 455B.133.

This amendment will be effective on February 4, 2008.

The following amendment is adopted.

ITEM 1: Amend subrule **22.106(1)** as follows:

22.106(1) Fee established. Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on or before July 1 of each year. The fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide

an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than ~~$39~~ $56 per ton without adopting the change pursuant to formal rule making.

_____
Date

_____
Richard A. Leopold, Director

Administrative Rule Fiscal Impact Statement

Date: November 13, 2008

Agency: Natural Resources
IAC Citation: 567 IAC Chapter 22.100 (455B)
Rules Contact: Anne Preziosi

Summary of the Rule: Sources subject to the Title V operating permit program pay an annual fee on the first 4,000 tons of actual emissions of each air pollutant emitted. This rule increases the maximum dollar per ton fee (a.k.a. "fee cap") specified in 567 IAC 22.106(1), that the Environmental Protection Commission is allowed to set, from the current $39 per ton to $56 per ton. The effect of the rule adoption will be to allow the Environmental Protection Commission to set a Title V fee for SFY 2010 that falls between $39 and $56 per ton.

Fill in this box if the impact meets these criteria:

_X_ No Fiscal Impact to the State.
___ Fiscal Impact of less than $100,000 annually or $500,000 over 5 years.
___ Fiscal Impact cannot be determined.

Brief Explanation:
Resetting the Title V fee cap does not directly result in a fiscal impact to the State. Any subsequent actual increases in the amount of the Title V fee under the new fee cap will only be as necessary to cover the reasonable costs required to administer the Title V program as required under the Clean Air Act.

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

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

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

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	Year 1 (FY 2009)	Year 2 (FY 2010)
Revenue by Each Source:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
TOTAL REVENUE		
Expenditures:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
TOTAL EXPENDITURES		
NET IMPACT		

_X_ This rule is required by State law or Federal mandate.
Please identify the state or federal law:
Section 502 of the Clean Air Act Amendments of 1990 created the Title V program. The fee program is authorized in Iowa Code § 455B.133B. The Iowa DNR adopted this program under 567 IAC 22.106(1).

___ Funding has been provided for the rule change.
Please identify the amount provided and the funding source:

_X_ Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:
The agency will not need additional funding to implement a change to the Title V fee cap.

Fiscal impact to persons affected by the rule:
Owners or operators of approximately 280 air pollutant sources that are subject to the Title V operating permit program will be affected. These are major sources that actually (or have the potential to) emit 100 or more tons/year of a regulated air pollutant or 10 tons per year (25 tons per year combined) of any hazardous air pollutant. The fiscal impact to an individual facility will depend on the actual air emissions reported for the facility each calendar year and what the fee is actually set at by the Environmental Protection Commission in any given year.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):
A county or local government owned facility already subject to the Title V operating permit program, like a municipal electric utility, would be subject to this increase.

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

Agency Representative preparing estimate: Wendy Rains
Telephone Number: 515-281-6061

PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY

FOR

567 IOWA ADMINISTRATIVE CODE CHAPTER 22 CONTROLLING POLLUTION

TITLE V FEE CAP

Introduction
The Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on October 8, 2008, as ARC 7220B. A public hearing was held on November 12, 2008. Three people from MidAmerican Energy attended the hearing. They provided one written comment at the public hearing and one written comment before the public comment period closed on November 13, 2008. A summary of the comments and the department's response is provided below.

Public Comment:
A summary of written comments submitted by Jon Kallen, MidAmerican Energy, 666 Grand Avenue, Des Moines, IA 50309, as follows:

IDNR proposes to exceed the current emissions fee cap of $39 per ton of emissions with potential increases to $50.25 in state fiscal year (SFY) 2010, $51.65 in SFY 2011, $55.30 in SFY 2012, $58.50 in SFY 2013, and $61.80 in SFY 2014. MidAmerican Energy (MidAmerican) has specific concerns about the amount of this proposed increase in the emissions fee cap in the Title V budget. Furthermore, these increases would place Iowa's Title V emissions fees at the top of all states with delegated air programs.

IDNR has stated that any increase in the cost per ton of emissions fees in the Title V budget will be offset by reductions in source emissions related to added pollution controls put in place because of the Clean Air Interstate Rule (CAIR). Specifically, the IDNR contends that with the projected decrease in emissions it is necessary to address the future Title V program funding deficit with an increase in per ton emissions fees. However, the proposed budget only shows a decrease in tonnage from 224,000 tons in SFY 2009 to 216,000 tons in SFY 2014, which is a small decrease and insufficient to justify such a large per ton fee increase. A loss in 8,000 tons of emissions (at $39 per ton) may yield lost revenues of approximately $312,000. However, almost doubling the per ton emissions fee for 8,000 tons of emissions represents a disproportionate increase.

Further, while there is the potential for a decrease in overall fees for some larger facilities, many of these reductions for large stationary sources will still keep actual emissions over the 4,000 ton cap; therefore there will not be any resulting decrease in revenue. Emissions fees paid to the IDNR will actually increase substantially under the proposed increases in the per ton emissions fee.

MidAmerican is supportive of a modest emissions fee cap of $50.25 to ensure that the air quality program has sufficient resources to fund a robust program. If future IDNR budget projections demonstrate the need to raise the fee cap above the $50.25 per ton of emissions, the IDNR still has the option to initiate a rulemaking to request additional funding.

Department Response:
MidAmerican references the draft Title V budget for state fiscal year (SFY) 2010 – 2014. A draft budget for the next five years was prepared in order to develop the fee cap proposal. As explained in the rule preamble, in stakeholder meetings, at the DNR-MidAmerican meeting on July 24, 2008, at Departmental Client Contact meetings, and to the Administrative Rules Review Committee on November 7, 2008, the quoted increases are draft projections based on a five year budget using the worst case scenarios for the Title V program. The Department is not proposing to increase the Title V fee for SFY 2010 or any other year based on the projection. The Title V fee for SFY 2010 will be presented to the Department's Environmental Protection Commission in March 2009 for information and May 2009 for decision. The estimated SFY 2010 fee will not be known until February 2009.

MidAmerican indicates the proposal would create the highest fee among delegated programs. This is an inaccurate characterization and is incorrect. The proposal is to raise the maximum fee cap based on a five year projection. It does not establish the fee. The Title V program was created by the 1990 Clean Air Act Amendments. The Department's Title V program, the structure for assessing fees, and the fee cap were developed by a workgroup of affected stakeholders, including MidAmerican, in the early 1990s. Title V programs in other States typically do not have a maximum fee cap. States created their Title V programs based on EPA guidelines but customized the program to fit the needs of the State. It is very difficult to compare Title V programs from one State to another due to the program customization. For example, some states require fees for applications and modifications in conjunction with annual emission fees. Other states require annual emissions fees on potential emissions rather than actual emissions which results in higher revenues for the same dollar per ton fee. It should be noted that the State of Nebraska, which has a Title V fee structure very similar to the Department's, charged $57 per ton of actual emissions in 2008 while the Department's projected fee for 2009 is $50.25 per ton.

MidAmerican states that it is disproportionate to double the fee for an 8,000 ton decrease in actual emissions. Again, this proposal is to raise the maximum fee and not the fee itself. While the level of actual emissions is an important factor in establishing the Title V fee each year, the Title V budget is not based on a single factor. The Department's Title V program charges an annual fee based on the program's budgetary demands. The fee must provide for programmatic increases such as personnel expenses, program regulatory requirements, equipment expenses, decreased (or increased) emissions, and other factors associated with developing and administering programs for major sources. It is therefore not possible to correlate an individual factor, like an 8,000 ton projected emissions decease, directly to the change in the fee or fee cap.

The program has seen an increase in regulatory demands that impact major sources, a decline in the number of facilities triggering the program, and a decline in actual emissions over the last few years. The trend of declining emissions is anticipated to continue in the future across all

sectors. It is not based solely on electrical generation units or on federal requirements such as the Clean Air Interstate Rule.

While emissions decreases are always desirable, a decrease in emissions does not correlate to a decrease in the program requirements. For example, emissions decreases do not impact the on-going need to operate and update the ambient air monitoring network, collect and process emissions inventories, conduct compliance activities, and complete planning and program development activities.

MidAmerican recommends a fee cap that worse-case projections indicate would only be adequate for one state fiscal year. They also advise that additional future rulemakings can be initiated to raise the cap again as necessary. Additional rulemakings remove staff from working on actual major source programmatic requirements and require stakeholders to rearrange schedules and priorities to participate in workgroup discussions. This recommendation is also contrary to the Department's efforts and the request of many industry stakeholders to reduce the number of rulemakings conducted each year.

It is important to emphasize that any Title V fees remaining at the end of a state fiscal year are applied to the next year. Staff estimate the ending Title V fund balance as part of the annual budget process. Remaining Title V funds are not diverted to other program areas.

Recommended Actions

The commenter recommended a fee cap increase that was consistent with a budget projection for a time period shorter than five years. The Department reviewed the fee cap projections for a shorter timeframe, including the latest refinements to the budgetary projections based on federal funding uncertainties, upcoming regulations and grant opportunities. Based on these considerations, the Department will modify the text of the adoption in Chapter 22 to reflect a maximum fee of $56. This fee cap level is projected to provide sufficient funds for the next three state fiscal years rather than the five state fiscal years proposed in the Notice of Intended Action.