

Agenda

Environmental Protection Commission

Tuesday, January 17, 2023

Teleconference: 631-618-4607 PIN: 484 733 354#

Video Conference: <https://meet.google.com/rzo-uidn-tvg>

502 East 9th Street, Des Moines, Iowa 50319

DNR 2 North Conf Room

Tuesday, January 17, 2023

10:00 AM – EPC Business Meeting

If you are unable to attend the business meeting, comments may be submitted for public record to Alicia Plathe at Alicia.Plathe@dnr.iowa.gov or 502 East 9th St, Des Moines IA 50319 up to 24 hours prior to the business meeting.

1	Approval of Agenda	
2	Approval of the Minutes (Packet Page 3)	
3	Monthly Reports (Packet Page 7)	Ed Tormey (Information)
4	Director's Remarks	Kayla Lyon (Information)
5	Adopted and Filed-Air Quality Rules Update-Chapters 20, 22, 23, 25 and 28 (Packet Page 20)	Jessica Reese McIntyre (Decision)
6	Contract with Iowa Department of Agriculture and Land Stewardship (IDALS)- North Raccoon River Watershed 2022 (Packet Page 33)	Kyle Ament (Decision)
7	Contract with Iowa Department of Agriculture and Land Stewardship (IDALS)- Protect Dry Run Creek Watershed Improvement Project (Packet Page 37)	Miranda Haes (Decision)
8	Contract with Iowa Department of Agriculture and Land Stewardship (IDALS)-Big Hollow Lake Project (Packet Page 40)	Miranda Haes (Decision)
9	Notice of Intended Action-567 IAC Chapter 135-Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (Packet Page 43)	Keith Wilken James Gastineau (Decision)
10	General Discussion <ul style="list-style-type: none">Chapter 1-Operation of Environmental Protection Commission Rules (Packet Page 52)	
11	Items for Next Month's Meeting <ul style="list-style-type: none">Tuesday, February 21, 2023, Wallace BuildingTuesday, March 21, 2023, Wallace Building	

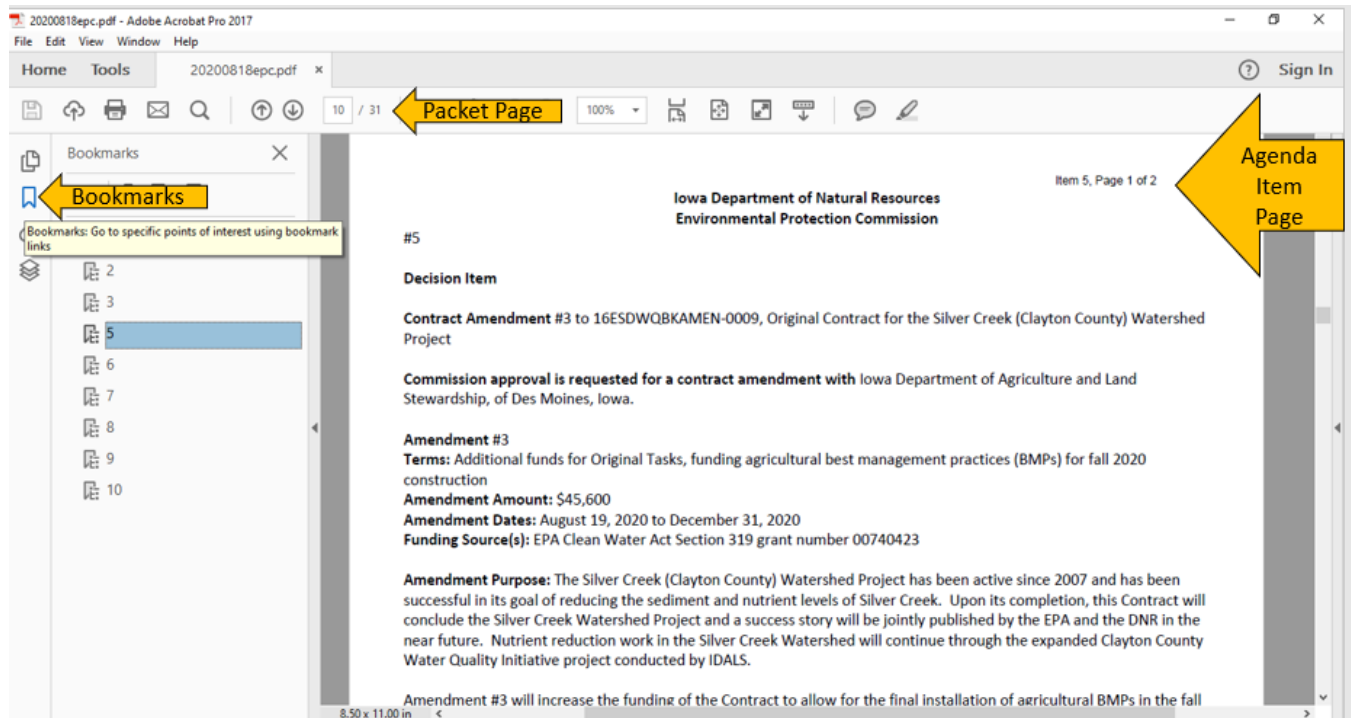
For details on the EPC meeting schedule, visit <http://www.iowadnr.gov/About-DNR/Boards-Commissions>

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

Any person with special requirements such as those related to mobility or hearing impairments who wishes to participate in the public meeting should promptly contact the DNR or ADA Coordinator at 515-725-8200, Relay Iowa TTY Service 800-735-7942, or Webmaster@dnr.iowa.gov to advise of specific needs.

Utilize bookmarks to transition between agenda items or progress forwards and backwards in the packet page by page with the Packet Page number on the agenda.

The upper right-hand corner will indicate the Agenda Item Number and the page of the agenda item.



**MINUTES OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING**

December 13, 2022

**Video Teleconference
and
Wallace State Office Building**

Approved by the Commission **TBD**

RECORD COPY
File Name <u>Admin 01-05</u>
Sender's Initials <u>ap</u>

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Meeting Minutes

CALL TO ORDER

The meeting of the Environmental Protection Commission (Commission or EPC) was called to order by Chairperson Harold Hommes at 10:05am on December 13, 2022 via a combination of in-person and video/teleconference attendees.

COMMISSIONERS PRESENT

- Rebecca Dostal
- Stephanie Dykshorn-virtual
- Ralph Lents
- Amy Echard-virtual
- Lisa Gochenour-virtual
- Harold Hommes
- Patricia Foley

COMMISSIONERS ABSENT

- Brad Bleam
- Mark Stutsman

APPROVAL OF AGENDA

Motion was made by Rebecca Dostal to approve the agenda as presented. Seconded by Patricia Foley.

The Chairperson asked for the Commissioners to approve the agenda by saying aye. There were no nay votes.

AGENDA APPROVED AS PRESENTED

APPROVAL OF MINUTES

Motion was made by Patricia Foley to approve the November 16, 2022 EPC minutes as presented. Seconded by Ralph Lents.

Rebecca Dostal-aye, Stephanie Dykshorn-aye, Mark Stutsman-absent, Patricia Foley-aye, Brad Bleam-absent, Lisa Gochenour-aye, Amy Echard-aye, Ralph Lents-aye, Harold Hommes-aye. Motion passes.

APPROVED AS PRESENTED

MONTHLY REPORTS

- Ed Tormey noted that seven more Iowa facilities were affected with Avian Influenza, bringing the total cases this Fall to 11. Nineteen facilities were infected in Iowa during the Spring of 2022.
- Mr. Tormey reported that DNR received an appreciation award from the North American Lake Management Society for restoration efforts at Black Hawk Lake.
- Tim Hall presented an update on the Iowa drought. Mr. Hall’s briefing covered the drought’s three-year history, the drought’s current status, and what we can expect in the Spring of 2023.

INFORMATION

DIRECTOR’S REMARKS

- Deputy Director Moon shared his experience on a recent tour facilitated by the Iowa Wastewater and Waste to Energy Research Program. The program partners with the Iowa City wastewater treatment plant and offers research on new wastewater treatment plant and digester technologies, with a goal of maximizing operations and outputs for both.

ADOPTED AND FILED-CHAPTER 107-BEVERAGE CONTAINER DEPOSITS

Amie Davidson presented the final rule amending 567 Iowa Administrative Code Chapter 107, Beverage Container Deposits. Amie clarified that, if approved, the rule would be fully effective as of January 1, 2023.

Public Comments – None

Written Comments – None

Motion was made by Rebecca Dostal to approve the item as presented. Seconded by Ralph Lents.

Rebecca Dostal-aye, Stephanie Dykshorn-aye, Mark Stutsman-absent, Patricia Foley-aye, Brad Bleam-absent, Lisa Gochenour-aye, Amy Echard-aye, Ralph Lents-aye, Harold Hommes-aye. Motion passes.

APPROVED AS PRESENTED

PRESENTATION: MOVING TOWARDS A BETTER UNDERSTANDING OF BACTERIAL IMPAIRMENTS AT PUBLIC BEACHES IN IOWA

Jason Palmer and Claire Hruby gave a presentation on bacterial impairments at public beaches in Iowa, including research performed to determine current testing methods, detailed information on advisory thresholds and meanings, and goals for the program moving forward.

Public Comments – None

Written Comments – None

INFORMATION

CONTRACT WITH IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP (IDALS)-EASTER LAKE WATERSHED PROJECT 2022 GRANT

Kyle Ament requested Commission approval for a contract with IDALS to provide funding and support for the ongoing Easter Lake Watershed Project.

Public Comments – None

Written Comments – None

Motion was made by Rebecca Dostal to approve the item as presented. Seconded by Stephanie Dykshorn.

Rebecca Dostal-aye, Stephanie Dykshorn-aye, Mark Stutsman-aye, Patricia Foley-aye, Brad Bleam-aye, Lisa Gochenour-aye, Amy Echard-aye, Ralph Lents-aye, Harold Hommes-aye. Motion passes.

APPROVED AS PRESENTED

CLEAN WATER AND DRINKING WATER STATE REVOLVING LOAN FUND-FY 2023 INTENDED USE PLAN THIRD QUARTER UPDATE

Theresa Enright requested Commission approval for the Clean Water State Revolving Loan Fund and Drinking Water State Revolving Loan Fund Intended Use Plans Third Quarter Update for SFY 2023.

Public Comments – None

Written Comments – None

Motion was made by Rebecca Dostal to approve the item as presented. Seconded by Ralph Lents.

Rebecca Dostal-aye, Stephanie Dykshorn-aye, Mark Stutsman-aye, Patricia Foley-aye, Brad Bleam-aye, Lisa Gochenour-aye, Amy Echard-aye, Ralph Lents-aye, Harold Hommes-aye. Motion passes.

APPROVED AS PRESENTED

GENERAL DISCUSSION

- Alicia Plathe announced the meeting dates for January 2023 and February 2023.

ADJOURN

The Chairperson adjourned the Environmental Protection Commission meeting at 12:00 pm on December 13, 2022.

ADJOURNED

**Monthly Waiver Report
December 2022**

Item #	DNR Reviewer	Facility/City	Program	Subject	Decision	Date	Agency
1	Julie Duke	John Deere	Air Quality Construction	Request to exceed permitted NOx limit to verify that the implemented repairs are adequate to maintain compliance	Approved	11.17.22	22aqw244
2	Julie Duke	Green Plains Superior LLC	Air Quality Construction	Request to increase limits prior to permit issuance	Approved	11.17.22	22aqw245
3	Julie Duke	Tyson Fresh Meats	Air Quality Construction	Request to operate temp boiler while existing is repaired	Approved	11.28.22	22aqw246
4	Danjin Zulic	Ajinomoto AHI	Air Quality Construction	Waiver of Initial Stack Test Requirement.	Approved	11.29.22	22aqw247
5	Karen Kuhn	ADM Clinton	Air Quality Construction	Waiver of Initial Stack Test Requirement.	Approved	11.30.22	22aqw248
6	Chad A. Stobbe	Louisa County Solid Waste Transfer Station	SD	The Louisa County Regional Solid Waste Agency is requesting to modify facility operations and recycling storage in lieu of needing to construct an unnecessary berm or flood wall to address a 100-year flooding event.	Approved	12.1.22	22sdw249
7	Lucas Tenborg	3M Knoxville	Air Quality Construction	The facility requested the variance to start construction on utilities, existing building modification and support building construction for the new EU prior to the construction permit being issued.	Approved	12.2.22	22aqw250
8	Rachel Quill	Oertel Metal Works	Air Quality Construction	Waiver of Initial Stack Test Requirement.	Approved	12.2.22	22aqw251
9	Mark Fields	Grain Processing Corporation	Air Quality Construction	Request to extend stack testing due date on EP 318.0 to allow repairs needed to reach maximum capacity of the Gluten Dryers.	Approved	12.5.22	22aqw252
10	Nate Tatar	River Valley Cooperative - Wilton	Air Quality Construction	Waiver of Initial Stack Test Requirement.	Approved	12.6.22	22aqw253
11	Danjin Zulic	Engineering Services & Products Co	Air Quality Construction	Waiver of Initial Stack Test Requirement.	Approved	12.5.22	22aqw254
12	Melinda McCoy	Rembrandt Enterprises, Inc.	NPDES	The facility requests a reduced raw waste monitoring frequency of 1 time per week (instead of 3 times per week) at outfall 010 for BOD5, TSS, and pH.	Approved	12.7.22	22npw255
13	Karen Kuhn	3M Knoxville	Air Quality Construction	Waiver of Initial Stack Test Requirement.	Approved	12.8.22	22aqw256
14	Michael Hermsen	TrinityRail Maintenance Services, Inc.	Air Quality Construction	Waiver of Initial Stack Test Requirement.	Approved	12.8.22	22aqw257
15	Susan Johnson	Land Quality Bureau	Solid Waste	The facility will wash, dewater and bag, grit and bar screens instead of liming as directed in IAC 109.11(3).	Approved	12.9.22	22sdw258

**IOWA DEPARTMENT OF NATURAL RESOURCES
LEGAL SERVICES BUREAU**

DATE: December 16, 2022
TO: Environmental Protection Commission
FROM: Tamara McIntosh
SUBJECT: Summary of Administrative Penalties (August 27, 2022 – December 16, 2022)

The following administrative penalties are being collected by DRF:

NAME	PROGRAM	AMOUNT (remaining)
Jon Knabel	AQ/SW	\$1,037.33
Randy Wise; Wise Construction	AQ/SW	\$2,081.32
Gary Eggers	SW/WW	\$10,000.00
Dennis R. Phillips; Marty's Convenience Mart	UT	\$9,954.53
Frank Robak	UT	\$10,000.00
Randy Cates	AQ/SW	\$10,000.00
Jeff Gray dba Grayz Metal Recycling	AQ/SW	\$918.53
Jayson Schlafke	AFO	\$3,000.00
Strickler Farms, LTD	AFO	\$2,592.78
Steve Seelye	AQ	750.00
Amy Knapp	WW	\$4,500.00
Amy Knapp	WS	\$4,000.00
Brandon Stewart	AQ/SW	\$2,100.00
Total		\$60,934.49

The following administrative penalties are DUE (and being collected by DNR):

NAME	PROGRAM	AMOUNT (remaining)
Sport Wade, Inc.	UT	\$10,000.00
Recycling Services	WW/HC/SW	\$7,000.00
Michael Pearson	WW	\$5,000.00
Lu Jen Farms	AFO	\$5,000.00
Blue Hyll Dairy Farm, LLC	AFO	\$6,500.00
Michael Matthews	AQ	\$4,630.00
Bar K Cattle, LLC	AFO	\$5,000.00
Robert Bryant	AFO	\$2,000.00
Amritdeep Kaur – Pari, Inc.	UT	\$7,000.00
Amritdeep Kaur – Cissy's II	UT	\$8,890.00
Ronald Stratton	FP	\$5,000.00
Jaymaharaj, L.L.C. and Monaj Desai	HC	\$7,000.00
CJ's Construction, Inc.	WW	\$5,000.00
RAM Development	AQ	\$500.00
Tyler Investment Company, Inc.	WW	\$10,000.00
Harold Chapman	WW	\$1,350.00
North Iowa Custom Finishing, Inc.	AFO	\$4,100.00
ReNew Trient I, LLC dba NuOrganics, LLC	WW	\$8,000.00
Jason Larabee	AFO	\$7,500.00
Larrell DeJong	AFO	\$4,000.00
Rodney Ballhagen	AQ/SW	\$100.00
Wright Materials Company	AQ	\$2,500.00

Tim Peters and TNT Disposal	SW	\$10,000.00
David Omar Mercado	SW	\$10,000.00
Regancrest Holsteins, LLC	AFO	\$1,500.00
Ray Steffens	AFO	\$3,000.00
Opal Eggs	AFO	\$6,000.00
Upcountry Fab LLC/Alexander Buck	AQ/SW	\$1,530.00
Nick and Ray Ohl	AQ	\$3,000.00
Jacob Wagoner/Wagoner Construction	AQ	\$4,000.00
S.E. Iowa Metals Recycling, Inc. and Phil Feinberg	AQ/SW	\$10,000.00
Digital Print Enterprises LLC	WW	\$1,000.00
Brookstone Specialty Servicing, Inc.	WW	\$10,000.00
Daniel and Linda Troyer	AQ/WW	\$500.00
Tim Bomgaars	AFO	\$3,000.00
Scott Ellsworth	AFO	\$5,000.00
Ronald L. Lanksink Revocable Trust & Elizabeth A. Lanksink Revocable Trust	AFO	\$3,000.00
North Filter Media	AQ	\$10,000.00
Sunrise Village LLC and Havenpark Management LLC	WW	\$8,000.00
TK Development	WW	\$3,500.00
Total		\$209,100.00

The following administrative penalties have been COLLECTED:

NAME	PROGRAM	AMOUNT (Collected)
Steger Construction	WW	\$3,500.00
S & V LLC	AFO	\$750.00
Freedom Junk Removal & Dumpster LLC	SW/AG	\$2,200.00
Hanson & Sons Tire & Auto Repair	SW	\$4,000.00
Southwest Iowa Renewable Energy, LLC	AQ	\$10,000.00
Rodney Ballhagen	AQ/SW	\$800.00
Milan Hageman	AFO/WW	\$2,280.00
Concise Earth Construction LLC	WW	\$7,000.00
City of Blue Grass	WW	\$1,500.00
Steven Kerns	AFO/AG	\$3,000.00
Daniel and Linda Troyer	AQ/WW	\$3,500.00
Hudson Heights Development LLC	WW	\$5,000.00
Buch Ag Pumping, LLC	WW	\$4,500.00
Mike Hejlik	AFO	\$2,000.00
Jon Sieck	WW	\$4,000.00
Stricker Farms	AFO	\$1,407.22 (Revenue)
Richard Spees	AQ	\$3,454.00
City of Altoona	WW	\$4,000.00
Black Soil Dairy, LLC	AFO	\$10,000.00
Benjamin Martin	WW	\$3,000.00
Cody Dornbier	AFO	\$3,000.00
John McDermott	AFO	\$2,000.00
Nicholas Grobe	AFO	\$2,000.00
Scott Tapper	AFO	\$5,000.00
First Interstate Bank	AFO	\$10,000.00
Smith Waste Solutions, LLC	AFO	\$4,000.00

Ronald Reicks	WW	\$2,366.37 (restitution)
Dustin Reicks	WW	\$2,366.36 (restitution)
Strahan Construction Inc.	WW	\$6,000.00
Watts Group, Inc.	WW	\$3,000.00
LCNJ Farms LLC	AFO	\$1,100.00
G Lee Pattison	AFO	\$5,000.00
Sean Dolan	AFO	\$2,000.00
Turner Ag Consulting Company LLC	AFO	\$2,000.00
Dutch Square Farms	AFO	\$1,000.00
Daniel Staudt	AFO	\$3,000.00
Michael Staudt	AFO	\$3,000.00
Wendl Feedlot, Inc.	AFO	\$2,000.00
Dean Wood	AQ	\$3,000.00
Total		\$137,723.95

**IOWA DEPARTMENT OF NATURAL RESOURCES
LEGAL SERVICES BUREAU**

DATE: December 16, 2022
TO: Environmental Protection Commission
FROM: Tamara McIntosh
SUBJECT: Enforcement Report Update (August 27, 2022 – December 16, 2022)

The following new enforcement actions were taken during this reporting period:

Individual/Entity (County)	Program	Alleged Violation	Type of Order/Action	Penalty Amount Due	Date
City of Blue Grass	WW	Prohibit discharge	Consent	\$1,500.00	9/7/22
Thomas Feltz	SW	Removal of penalty	Amendment	0	9/12/22
Plum River Fault Line Golf, Inc. and Meadowcrest Farms, Ltd.	WW	Order rescission	Rescission	0	9/18/22
Iowa Development Group, Inc.	WW	Storm water permit	Consent	\$7,000.00	9/22/22
Ronald L. Lanksink Revocable Trust and Elizabeth A. Lanksink Revocable Trust	AFO	Manure management plan	Unilateral	\$3,000.00	9/23/22
Daniel and Linda Faye Troyer	AQ/SW	Open burning and Improper solid waste disposal	Consent	\$4,000.00	9/23/22
Nate Zuiderveen	AFO	Prohibited discharge	Consent	\$10,000.00	9/30/22
Steger Construction, Inc.	WW	Storm water permit	Consent	\$3,500.00	10/3/22
Mike Hejlik	AFO	Manure management plan	Consent	\$2,000.00	10/5/22
City of Altoona	WW	Storm water permit	Consent	\$4,000.00	10/5/22
Hudson Heights, LLC	WW	Storm water permit	Consent	\$5,000.00	10/5/22
Buch Farms, LLC	WW	Prohibited discharge	Consent	\$4,500.00	10/5/22

Hoksbergen Farms Land, Inc.; Hoksbergen Farm Irrevocable Trust; Farmers National Company; First Interstate Bank fka Great Western Bank	AFO	Prohibited discharge	Consent	\$10,000.00	10/13/22
Jon Sieck	WW	Storm water permit	Consent	\$4,000.00	10/13/22
Scott Tapper	AFO	Manure management plan and Certified manure applicator	Consent	\$5,000.00	10/19/22
Nick Grobe	AFO	Manure management plan	Consent	\$2,000.00	10/19/22
John McDermott	AFO	Manure management plan	Consent	\$2,000.00	11/2/22
Cody Dornbier	AFO	Manure management plan	Consent	\$3,000.00	11/2/22
Northern Filter Media, Inc.	AQ	Construction permit	Consent	\$10,000.00	11/2/22
Strahan Construction Company, Inc.	WW	Prohibited discharge	Consent	\$6,000.00	11/8/22
Smith Waste Solutions, L.L.C.	AFO	Certified manure applicator	Consent	\$4,000.00	11/9/22
Sunrise Village LLC and Havenpark Management LLC	WW	Prohibited discharge	Consent	\$8,000.00	11/9/22
TK Development, LLC	WW	Prohibited discharge	Consent	\$3,500.00	11/9/22
WKFC Farms, Inc.	AFO	Manure management plan	Consent	\$2,000.00	11/14/22
Watts Development Group, Inc.	WW	Prohibited discharge	Consent	\$3,000.00	11/14/22
Sean Dolan	AFO	Manure management plan	Consent	\$2,000.00	11/15/22
Jeff Hoeg	AQ/SW	Open burning and Improper solid waste disposal	Consent	\$1,300.00	11/22/22
Arlen Near	AQ	Open burning	Consent	\$5,000.00	11/30/22
G. Lee Pattison	AFO	Prohibited discharge	Consent	\$5,000.00	12/7/22

Dan and Mike Staudt	AFO	Certified manure applicator	Consent	\$6,000.00	12/7/22
Brian Wendl	AFO	Prohibited discharge	Consent	\$2,000.00	12/7/22
Brian Erickson dba Dutch Square Farms, LLC	AFO	Prohibited discharge	Consent	\$1,000.00	12/8/22
Dean Wood	AQ	Open burning and Improper solid waste disposal	Consent	\$3,000.00	12/8/22
Michael Arends	AQ	Open burning and improper solid waste disposal	Unilateral	\$10,000.00	12/13/22
Knuth Farms, Inc.	AFO	Manure management plan	Consent	\$3,000.00	12/14/22
City of Eagle Grove	WW	Amend completion dates	Amendment	0	12/15/22
C-6 Zero Iowa, LLC; C-6 Zero Holdings, LLC; and Howard Brand	AQ, HC, SW, WW	Improper disposal and Hazardous condition	Emergency Unilateral	0	12/15/22
Grand Total				\$145,300.00	

**IOWA DEPARTMENT OF NATURAL RESOURCES
LEGAL SERVICES BUREAU**

DATE: January 2023
TO: Environmental Protection Commission
FROM: Tamara McIntosh
SUBJECT: Contested Cases (September 2022 – December 2022)

Date Received	Name Of Case	Action Appealed	Program	Assigned Attorney	Status
6/10/13	Mike Jahnke	Dam Application	FP	Schoenebaum	<p>Hearing held 7/30/14. ALJ upheld the permit issued by the Department. Mr. Jahnke appealed but on 11/3/14 he asked that his appeal be put on hold until April, 2015. For various reasons has asked that the appeal be postponed. Sept. 2017 – Mr. Jahnke called and asked that his appeal be put on hold until Spring 2018. September 2018 Mr. Jahnke called and asked that the matter be postponed to Spring '19. Jan. 2019 no changes, matter was postponed to Spring 2019.</p> <p>April 2019 – no change; matter postponed to Spring 2019.</p> <p>July 2019 – No changes.</p> <p>10/25/19 – Mr Jahnke has called many times to discuss his ongoing medical problems and his families' each time he asks for the matter not to be placed on the agenda and asks for a delay. He again asked for a delay until Spring.</p> <p>1/24/20 – Mr. Jahnke called again and explain ongoing medical problems and that he cannot be present for a winter meeting and asked that the matter continue to be delayed.</p> <p>5/25/20 to the present – no changes</p>
11/9/17	IA Regional Utilities Association	Permit Issuance	WW	Poppelreiter (Crotty)	<p>10/25/18 –Negotiating before setting a hearing date. A final meeting with facility's new director is expected before the end of 2018.</p> <p>01/24/19 –Negotiating before setting a hearing date. Meeting with permittee 1/24/19. Permittee must discuss options with Board. Decision from Permittee on whether to withdraw appeal or move forward with hearing is expected in Spring 2019. April 2019 – Waiting on permittee to decide</p>

					<p>whether to set a hearing or withdraw appeal. 10/25/19 – Permittee and DNR still in negotiations re: engineering proposals at the facility. No change in the appeal status. 1/24/20 – Finalizing the report on the progress they have made and will meet with DNR's Wastewater staff in February to discuss settlement options.</p> <p>5/25/20 – No Changes</p> <p>11/18/2020 - Ongoing negotiations with IRUA. No hearing set as yet. Looking into alternative solutions.</p> <p>3/25/2021 - Continuing discussions with IRUA. Both parties are interested in non-litigation solutions. No hearing set.</p> <p>5/27/21 to the present – No Changes</p>
11/3/21	Chamness Tech. Inc.	Order	SW	Scott	<p>9/13/21 – Order issued seeking revocation of composting permit following multiple years of non-compliance and settlement negotiations seeking compliance.</p> <p>11/3/2021 – Appeal Received</p> <p>Hearing set for April 19 and 20.</p> <p>Appeal withdrawn 4/14/2022. AO became effective on that date. Permit revoked. Closure plan negotiated between the parties became effective July 1, 2022 and currently in force.</p> <p>Still in effect; clean-up deadline Jan 1, 2023</p>

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**IOWA DEPARTMENT OF NATURAL RESOURCES
LEGAL SERVICES BUREAU**

DATE: January 2023
TO: Environmental Protection Commission
FROM: Tamara McIntosh
SUBJECT: Attorney General Referrals (September 2022 – December 2022)

Name, Location and Region Number	Program	Alleged Violation	DNR Action	Status	Date
City of Sioux City (3)	Wastewater	Inadequate wastewater treatment	Referred to Attorney General	Referred Petition Filed Answer Filed by City Trial scheduled for May 9 2023 (5 days) Discovery Served	6/27/16 1/07/22 2/21/22 4/8/22 6/23/22
Global Fiberglass Solutions, LLC	Solid Waste	Illegal Stockpile	Referred to Attorney General	Referred	7/7/21
JDog and Justin Pollard Cambridge (5)	Solid Waste	Open Dumping; Open Burning	Referred to Attorney General	Referred Petition Filed Answer Court Ordered Stay due to Pollard filing for bankruptcy Court Granted Relief From Stay Discovery Served Motion for Partial Summary Judgment Filed Hearing on MSJ scheduled 9/7/21 Trial Scheduled for 10/6/21 Consent Decree Approved - \$19,800 penalty to be repaid over 3 years.	6/16/20 10/1/20 10/14/20 11/3/20 2/25/21 4/23/21
Steven Kerns Clearfield (4)	Animal Feeding Operation	Manure release; Composting dead animals	Referred to Attorney General	Referred Tolling Agreement through August 17, 2020 Consent Decree Approved - \$23,000 penalty and injunctive relief to be repaid over 2 years Satisfaction of Judgment Filed	10/15/19 9/4/20 11/7/22
Sierra Club (5)	Animal Feeding Operation	Petition for Judicial Review	DNR Named Respondent	Petition filed in Clayton County Motion to Dismiss Filed Petition Dismissed without Prejudice Petition Re-filed in Polk County Motion to Dismiss Filed Hearing on Motion to Dismiss Petition to Intervene by Trout Unlimited Intervenor Petition for Judicial Review (PJR) Order Granting Intervention Motion to Dismiss Intervenor PJR Hearing on Motion to Dismiss Order Denying Motion to Dismiss	9/23/21 10/18/21 10/24/21 10/27/21 11/22/21 1/6/22 1/6/22 1/6/22 1/25/22 2/15/22 3/22/22

				Sierra Club (SC) Motion to Present Additional Evidence DNR Answer to Intervenor PJR DNR Answer to SC PJR Hearing on Motion to Present Additional Evidence Order allowing discovery but denying expert testimony Order setting hearing for 12/9/22 SC Motion to Compel Deposition of Jared Walz Motion to Compel Deposition Granted Order setting hearing on petition for judicial review for 1/20/23 Sierra Club Brief Filed Intervenor Joinder in Brief Filed DNR Brief Filed Supreme Beef Brief Filed	3/28/224/ 4/224/4/2 2 4/7/22 4/22/22 4/28/22 6/2/22 8/19/22 9/17/22 10/31/22 11/15/22 11/15/22 12/15/22 12/15/22
Peters, Mercado, and TNT Disposal LLC (6)	Solid Waste	Open Dumping	Referred to Attorney General	Petition filed in Scott County Motion for Default Entry Entry of Default Application for Order to Show Cause Show Cause Hearing	6/15/22 8/18/22 8/22/22 11/21/22 1/6/23
Apex Construction Group Cedar Rapids (1)	Air Quality	Asbestos	Referred to Attorney General	Referred	11/15/22
Shane and Michelle Larsen	Animal Feeding Operation	Failure to submit MMP; illegal land application	Referred to Attorney General	Referred	10/11/22

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

ITEM

#5

DECISION

TOPIC

Adopted and Filed: Air Quality Rules Update - Chapters 20, 22, 23, 25, and 28

The Commission is requested to approve this Adopted and Filed rulemaking to amend Chapter 20, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 22 “Controlling Pollution,” Chapter 23, “Emission Standards for Contaminants,” Chapter 25, “Measurement of Emissions,” and Chapter 28, “Ambient Air Quality Standards,” of the Iowa Administrative Code (IAC).

Purpose of Rule Changes

The rulemaking adopts several new and revised federal air quality standards. The Iowa Administrative Code (IAC) amendments are identical to the federal regulations and do not impose any regulations on Iowa businesses not already required by federal law. Additionally, the rule changes will ensure that Iowa is consistent with federal law and not any more stringent.

Adopting EPA’s amendments provides certainty to affected businesses and other interested stakeholders. The updates also allow the Department, rather than the EPA, to be the primary agency to implement the air quality requirements in Iowa and to provide compliance assistance and outreach to affected facilities.

The rulemaking implements a portion of the Department’s 5-year rules review plan to accomplish the requirements of Iowa Code section 17A.7(2).

Summary of Rule Changes

The IAC amendments adopt updated federal new source performance standards (NSPS) and air toxics standards, also known as National Emissions Standards for Hazardous Air Pollutants (NESHAP). These federal standards are mandatory so they apply whether they are adopted into state regulation or not; however, by incorporating these terms into state rules, the Department can continue to be a delegated authority under the federal Clean Air Act. Please refer to Table 1 in the attached Adopted and Filed rulemaking (page 6) for more information on the specific NESHAP standards for adoption.

The IAC amendments also adopt minor corrections to federal test methods, a new hazardous air pollutant promulgated by EPA, and the 2015 National Ambient Air Quality Standards (NAAQS) for ozone.

Public Comments and Public Hearing

The Department received no public comments on the Notice of Intended Action at the public hearing held on December 5, 2022, and did not receive any written comments before the December 5 public comment deadline. The Department is not proposing any changes to the final rules from what was published in the Notice of Intended Action.

If the Commission approves the final rules, the Adopted and Filed rules will be published on February 8, 2023, and will become effective on March 15, 2023.

The Adopted and Filed rulemaking is attached.

Jessica Reese McIntyre, Environmental Specialist
Program Development and Support Section, Air Quality Bureau
Environment Services Division
January 17, 2023

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby amends Chapter 20, “Scope of Title—Definitions,” Chapter 22, “Controlling Pollution,” Chapter 23, “Emission Standards for Contaminants,” Chapter 25, “Measurement of Emissions,” and Chapter 28, “Ambient Air Quality Standards,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.133 and 455B.134.

Purpose and Summary

This rule making adopts several new mandatory federal air quality standards. The amendments are identical to the federal regulations, and the amendments do not impose any regulations on Iowa businesses not already required by federal law. Additionally, the adoption of these amendments will ensure that Iowa’s administrative rules are consistent with federal regulations and not any more stringent.

More specifically, the amendments adopt updated federal new source performance standards (NSPS) and air toxics standards, also known as National Emissions Standards for Hazardous Air Pollutants (NESHAP). These standards apply whether they are adopted into state regulation or not; however, by incorporating these terms into the administrative rules, the

Department of Natural Resources (Department) can continue to be a delegated authority under the Clean Air Act (CAA). This allows the Department, rather than the U.S. Environmental Protection Agency (EPA), to be the primary compliance and implementation agency in Iowa.

In more detail, this rule making adopts the following eight amendments:

Item 1 amends rule 567—20.2(455B), definition of “EPA reference method,” to adopt the most current EPA methods for measuring air pollutant emissions, performance testing (sometimes called “stack testing”), and continuous monitoring. EPA’s revisions to 40 Code of Federal Regulations (CFR) Part 60 to correct regulations for source testing of emissions was published in the Federal Register on February 16, 2021 (86 Fed. Reg. 9470 (Feb. 16, 2021)). EPA states that its final amendments correct errors for one of the test methods in 40 CFR Part 60, Appendix A. Adopting EPA’s updates ensures that state reference testing methods match current federal reference methods and are no more stringent than the federal methods.

The amendment in Item 2 is adopted concurrently with the amendment in Item 1. It revises the definition of “EPA reference method” in rule 567—22.100(455B) to similarly reflect updates to EPA testing and monitoring methods, which are the methods that apply to the Title V Operating Permit rules in Chapter 22.

The amendment in Item 3 adds a new chemical to the definition of “hazardous air pollutant” in rule 567—22.100(455B). On January 5, 2022, EPA published a final rule to add 1-Bromopropane (1-BP) to the CAA’s list of hazardous air pollutants (HAP). The addition of 1-BP, also known as n-propyl bromide, is the first time the EPA has added a new compound to the HAP list since the U.S. Congress provided the original HAP list in the 1990 CAA Amendments.

A wide variety of industries may be impacted by the listing of 1-BP, which is primarily used as a cleaning solvent in solvent cleaning machines or as an applied solvent (e.g., wipe

cleaning). 1-BP also has reported uses in both the manufacturing process and the final cleaning of metal and plastic parts.

A facility must include 1-BP in its potential emissions HAP inventory in construction permit applications as of February 4, 2022. Actual emissions of 1-BP are not required to be reported in Title V or minor source emissions inventories until 2023, for the 2022 emissions year. At this time, the Department is aware of only one facility that has reported actual or potential emissions of 1-BP.

More information on the short- and long-term regulatory impacts of EPA's listing of 1-BP is available in the Department's electronic air quality newsletter, which was sent to over 25,000 subscribers on January 25, 2022, and is available on the Department's website at www.iowadnr.gov/About-DNR/DNR-News-Releases/ArticleID/3885/EPA-adds-1-bromopropane-1-BP-to-the-Clean-Air-Act-List-of-Hazardous-Air-Pollutants.

The amendments in Items 4, 5, and 6 adopt changes to the federal NSPS and NESHAP. The CAA obligates EPA to issue standards to control air pollution. The NSPS and NESHAP set federal standards and deadlines for industrial, commercial, or institutional facilities to meet uniform standards for equipment operation and air pollutant emissions.

Because the NSPS and NESHAP adopted by reference are federal regulations, affected sources are subject to the federal requirements regardless of whether the Commission adopts the standards into the administrative rules. However, the CAA allows a state or local agency to implement NSPS and NESHAP as a delegated authority. Upon adoption of the standards, the Department becomes the delegated authority for the specific NSPS or NESHAP and is the primary implementation agency in Iowa. Two local agencies, those in Polk County and Linn County, implement these standards within their counties.

The administrative rules, including all compliance deadlines, are identical to the federal NSPS and NESHAP as of a specific federal publication date. With delegation authority and adoption of the federal standards into the administrative rules and the rules of Polk County and Linn County, the Department has the ability to make applicability determinations for facilities, rather than referring these decisions to EPA.

Stakeholders affected by NSPS and NESHAP typically prefer for the Department, rather than EPA, to be the primary implementation agency in Iowa. Upon adoption of the new and amended standards, the Department will work with affected facilities to provide any needed compliance assistance. Additionally, affected area sources that are small businesses are eligible for free technical assistance through the Iowa Air Emissions Assistance Program.

In more detail, Item 4 amends subrule 23.1(2) to adopt by reference changes EPA made to the NSPS. As described in the amendment for Item 1 above, EPA corrected an error to a test method in 40 CFR Part 60, Appendix A. Additionally, on January 19, 2021, EPA amended the NSPS for Volatile Organic Liquid Storage Vessels (40 CFR Part 60, Subpart Kb). These amendments will allow facilities with certain equipment to elect to comply with the corresponding NESHAP requirements in lieu of the NSPS requirements.

Risk and technology reviews for NESHAP (40 CFR Part 63)

Most of EPA's amendments adopted in subrule 23.1(4) address the risk and technology reviews required under the CAA. The CAA requires EPA to address air toxics emissions from large industrial facilities (major sources) in two phases.

The first phase of review is technology-based, where EPA develops standards for controlling the emissions of air toxics from sources in an industry group or "source category" (for example, industrial boilers). These maximum achievable control technology (MACT) standards

are based on emissions levels that controlled and low-emitting sources in an industry are already achieving.

The second phase of review is a risk-based approach called residual risk. In this step, EPA must determine whether more health-protective standards are necessary. Within eight years of setting the MACT standards, the CAA requires EPA to assess the remaining health risks from each source category to determine whether the MACT standards protect public health with an ample margin of safety and protect against adverse environmental effects. On this same schedule, the CAA also requires EPA to review the standards and, if necessary, revise them to account for improvements in air pollution controls or prevention. The combined review of public health risk and air pollution control is called the “risk and technology review” (RTR).

Impact of the NESHAP amendments

For most of the recent NESHAP RTR updates, EPA has determined that the risks from emissions from affected source categories are acceptable and that there are no new cost-effective controls available. However, the updates do include revisions to the requirements for periods of startup, shutdown, and malfunction (SSM) and require electronic reporting of performance test results and compliance reports.

In some cases, EPA made minor amendments to correct errors, clarify requirements, and provide technical updates. EPA also provided additional flexibilities in several of the final NESHAP RTRs, such as alternative testing methods or reduced monitoring. A few of the recent and upcoming NESHAP RTRs do include more substantive requirements for pollution control and monitoring.

Table 1 below identifies the EPA amendments to the NESHAP source categories adopted by reference in amendments in Item 5 and Item 6. The standards are identified by source category

and are listed in order of publication date in the Federal Register. The table also indicates the subpart in 40 CFR Part 63, as well as the associated paragraph in subrule 23.1(4). Additionally, the table indicates the number of facilities that the Department estimates are currently affected by the specific standard. The Commission is adopting standards that currently do not affect any Iowa sources in case a new facility of that type is constructed in the future.

Table 1
Federal NESHAP Amendments Adopted by Reference

NESHAP: Affected Source Category	Date Published in Federal Register	40 CFR 63 Subpart/Subrule 23.1(4) Paragraph	Estimated Iowa Facilities Affected
Chemical Preparations Industry (Area Source)	12/30/2009*	BBBBBBB/"fb"	1
General Provisions	3/26/2021	A/"a"	N/A
Flexible Polyurethane Foam Fabrication Operations	11/18/2021	MMMMM/"dm"	0
Surface Coating of Automobiles and Light-Duty Trucks	11/19/2021	III/"ci"	0
Surface Coating of Metal Cans	11/19/2021	KKKK/"ck"	0
Boat Manufacturing	11/19/2021	VVVV/"cv"	0
Refractory Products Manufacturing	11/19/2021	SSSS/"ds"	0
Carbon Black Production and Cyanide Chemicals Manufacturing	11/19/2021	YY/"ay"	0
List of Hazardous Air Pollutants (Addition of 1-Bromopropane (1-BP))	1/5/2022	A/"a"	N/A
Mercury Cell Chlor-Alkali Plants	5/6/2022	IIII/"di"	0

*The Commission did not adopt this NESHAP (Subpart BBBBBBB) upon EPA's finalizing it because there were no affected Iowa facilities at that time. Recently, the Department became aware of one facility that is subject to this NESHAP. The Commission is now adopting the NESHAP to have the Department become the delegated authority for this federal regulation.

Item 7 amends subrule 25.1(9) to adopt the changes EPA made to the federal test methods for measuring emissions, as explained above for Item 1.

Item 8 amends rule 567—28.1(455B) to adopt the National Ambient Air Quality Standards (NAAQS) for ozone that were published in the Federal Register on October 26, 2015 (80 Fed. Reg. 65291-65468 (Oct. 26, 2015)). The Commission did not adopt the 2015 ozone NAAQS at the time of EPA promulgation due to active litigation of the 2015 standards. The substantive issues in the legal challenges have since been resolved, and the Commission is now adopting the 2015 ozone NAAQS. All areas in Iowa are currently attaining the 2015 ozone NAAQS.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 2, 2022, as **ARC 6631C**.

A public hearing was held by virtual meeting/teleconference on December 5, 2022, at 1:00 p.m. No public comments were received.

The adopted amendments are identical to those proposed in the Notice of Intended Action.

Adoption of Rule Making

This rule making was adopted by the Commission on January 17, 2023

Fiscal Impact

After analysis and review of this rule making, these amendments will have no fiscal impact on the State of Iowa and a neutral impact on regulated facilities, the general public, and county and local governments. Some of the amendments may benefit the private sector because they streamline current air quality programs. Affected businesses and the public benefit from up-to-date air quality requirements and increased effectiveness. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, the amendments will have an overall neutral impact on private sector jobs. Some of these amendments may benefit the private sector because they streamline current air quality programs. For the amendments specified in Items 4, 5, and 6, the Commission has determined that there may be job impacts on Iowa businesses. However, the amendments are only implementing federally mandated regulations, thus any resulting impact originates at the federal level. These amendments are identical to the federal regulations and will not impose any regulations on Iowa businesses not already required by federal law. In some cases, the revised federal standards being adopted provide more flexibility and potential cost savings for affected businesses, offering a positive impact on private sector jobs. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on March 15, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule **567—20.2(455B)**, definition of “EPA reference method,” as follows:

“*EPA reference method*” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through ~~October 7, 2020~~ February 16, 2021); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through December 2, 2020).

2. No change.

ITEM 2. Amend rule **567—22.100(455B)**, definition of “EPA reference method,” as follows:

“*EPA reference method*” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through ~~October 7, 2020~~ February 16, 2021); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through December 2, 2020).

2. No change.

ITEM 3. Amend rule **567—22.100(455B)**, definition of “Hazardous air pollutant,” by adding the following **new** chemical in alphabetical order:

cas #	chemical name
106945	1-Bromopropane

ITEM 4. Amend subrule 23.1(2), introductory paragraph, as follows:

23.1(2) *New source performance standards.* The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~October 7, 2020~~, February 16, 2021, are adopted by reference, except §60.530 through §60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. A different date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

ITEM 5. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~November 3, 2020~~, May 6, 2022, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. A different date for adoption by reference may be included with the subpart designation in parentheses or as indicated in this introductory paragraph. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods

(Appendix A ~~as amended or corrected through December 2, 2020~~), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (Fbio) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in rule 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4)“a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 6. Adopt the following new paragraph **23.1(4)“fb”**:

fb. National emission standards for hazardous air pollutants for area sources: chemical preparations industry. This standard applies to chemical preparations at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart BBBBBBB)

ITEM 7. Amend subrule 25.1(9) as follows:

25.1(9) Methods and procedures. Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are as follows:

a. Performance test (stack test). A stack test shall be conducted according to EPA

reference methods as specified in 40 CFR 51, Appendix M (as amended or corrected through October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through ~~October 7, 2020~~ February 16, 2021); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through December 2, 2020). The owner of the equipment or the owner's authorized agent may use an alternative methodology if the methodology is approved by the department in writing before testing. Each test shall consist of at least three separate test runs. Unless otherwise specified by the department, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs.

b. and *c.* No change.

ITEM 8. Amend rule 567—28.1(455B) as follows:

567—28.1(455B) Statewide standards. The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 Code of Federal Regulations Part 50 (1972) and as amended at 38 Federal Register 22384 (September 14, 1973), 43 Federal Register 46258 (October 5, 1978), 44 Federal Register 8202, 8220 (February 9, 1979), 52 Federal Register 24634-24669 (July 1, 1987), 62 Federal Register 38651-38760, 38855-38896 (July 18, 1997), 71 Federal Register 61144-61233 (October 17, 2006), 73 Federal Register 16436-16514 (March 27, 2008), 73 Federal Register 66964-67062 (November 12, 2008), 75 Federal Register 6474-6537 (February 9, 2010), 75 Federal Register 35520-35603 (June 22, 2010), ~~and~~ 78 Federal Register 3086-3287 (January 15, 2013), and 80 Federal Register 65291-65468 (October 26, 2015). The department shall implement these rules in a time frame and schedule consistent with implementation schedules in federal laws and regulations.

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

Iowa Department of Natural Resources
Environmental Protection Commission

#6

Decision Item**Contract with Iowa Department of Agriculture and Land Stewardship (IDALS) – North Raccoon River Watershed 2022**

Commission approval is requested for a Contract with IDALS, of Des Moines, Iowa.

Contract Terms:

Amount: Not to exceed \$96,000

Dates: January 18, 2023 to June 30, 2024

DNR shall have the option to extend this Contract for up to six years from the beginning date of the original contract by executing a signed amendment prior to the expiration of this Contract.

Funding Source(s): U.S. EPA Clean Water Act Section 319 grant to DNR (Grant Number 00740429)

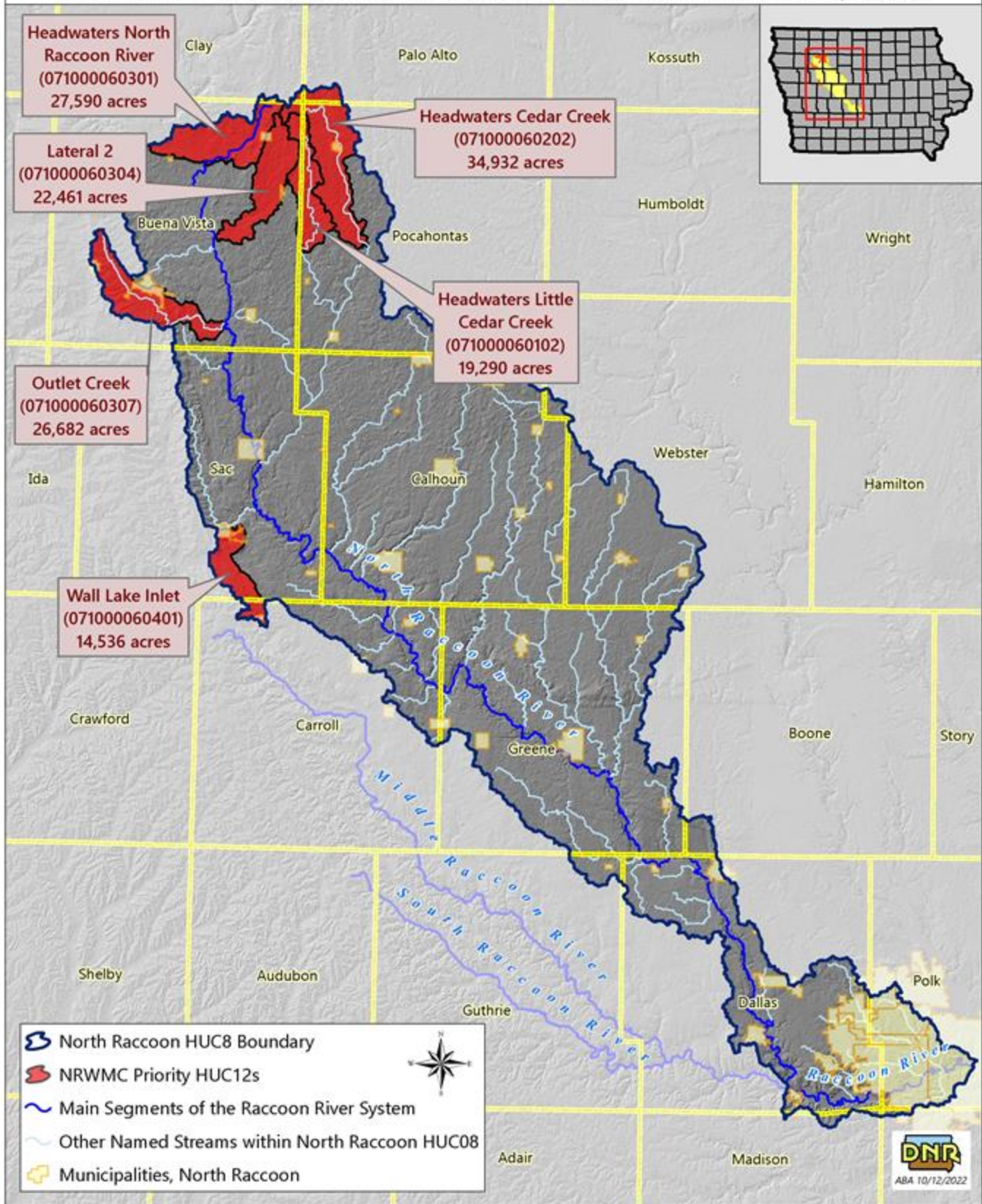
Statutory Authority: Funds are administered by DNR under statutory authority granted by Iowa Code section 455B.103.

Contract Background:

The DNR has identified nonpoint source pollution in the North Raccoon River as a primary cause of impairment for nitrate-nitrogen and *E. coli* in two segments of the Raccoon River (IA 04-RAC-1116 and IA 04-RAC-1117). To help address these impairments, a watershed plan was completed and approved in 2022, with a nitrate reduction goal of 48.1%.

This Contract provides funding and support for a new water quality project in the North Raccoon River Watershed to begin the implementation of the watershed plan. This Project is contracted through IDALS and carried out by the Sac County Soil and Water Conservation District. The Project will initially work to focus in the six priority sub watersheds outlined in the watershed plan, below.

NORTH RACCOON WATERSHED MANAGEMENT COALITION, PRIORITY HUC12 IMPLEMENTATION WATERSHEDS, 2022



Contract Purpose:

The purpose of this Contract is to designate Section 319 funding to support this Project. This Contract will work to carry out the goals of the Project for the stated Contract term. The partners involved in this Project are the DNR, Sac and Carroll County Soil and Water Conservation Districts, IDALS – Division of Soil Conservation, Iowa Soybean Association and the Natural Resources Conservation Service. Each partner will provide financial support and/or technical assistance to help ensure the successful completion of the activities proposed in this Project.

The Project will work with partner organizations who are currently working in the North Raccoon watershed to implement nitrate reducing best management practices in the six priority sub watersheds. This Project will assist with the funding of both bioreactors and cover crops. Agricultural practices implemented through this Contract will result in a nitrogen reduction of 702 lbs./year. Project funds will also be used to host field days, promote practices and programs via mixed media, and raise Project awareness.

Selection Process Summary:

Intergovernmental contracting with IDALS is authorized under 11 IAC 118.4. Contracts with state universities and other public agencies for laboratory work, scientific field measurement and environmental quality evaluation services necessary to implement Iowa Code Chapter 455B is authorized under Iowa Code section 455B.103(3).

Contract History:

The DNR has contracted with IDALS to administer Section 319-funded watershed projects since the early 1990s. The purpose of the contracts with IDALS is to provide funds and project management support to IDALS, which then enters into subsequent agreements with soil and water conservation districts to implement the specific watershed implementation project activities. This is the first Section 319 funded contract for the North Raccoon River Watershed Project.

STATEMENT OF WORK

- Task 1. **Submit and Carry Out Project Activities** – Contractor shall submit annual Work Plan and Budget consistent with EPA-Approved Project Implementation Plan. **Timeframe** – No later than May 1 of each year
- Task 2. **Quarterly Financial Reports** – Summarize expenses each quarter. **Timeframe** – 10/15, 1/15, 4/15 yearly
- Task 3. **Quarterly Progress Reports** – Summarize activities each quarter. **Timeframe** – 10/15, 1/15, 4/15 yearly
Note: Quarterly reports are superseded by annual reports for the expected 7/15 report as follows
- Task 4. **Annual Progress Report** – Summarize activities, progress, project costs, water monitoring data (if applicable), and water quality improvements (load reductions) made during the previous fiscal period.
Timeframe – No later than August 1 of each year
- Task 5. **Final Project Report** – Total Section 319 funds expended by the Project, summary of other funds, summary of accomplishments and objectives, comparison of actual accomplishments to objectives established by annual work plans and project implementation plan, summary of water quality improvements (load reductions), explanation of unmet objectives, and all other reporting requirements in the Section 319 guidance document. **Timeframe** – Due no later than 30 days prior to the expiration of this Contract.

Budget Item	Amount of 319 Funds
Travel/Training:	\$500
Supplies:	\$500
Inform./Outreach:	\$5,000
Practices	
Cover Crops	\$50,000
Bioreactors	\$40,000
Total:	\$96,000

Kyle Ament, Watershed Basin Coordinator, Water Quality Bureau
Environmental Services Division
January 17, 2023

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

#7

Decision Item

Contract with Iowa Department of Agriculture and Land Stewardship (Protect Dry Run Creek Watershed Improvement Project)

Commission approval is requested for a Contract with Iowa Department of Agriculture and Land Stewardship, of Des Moines, IA.

Contract Terms:

Amount: Not to exceed \$255,996

Dates: February 1, 2023 – January 31, 2026.

DNR shall have the option to extend this Contract for up to six years from the beginning date of the original contract by executing a signed amendment prior to the expiration of this contract.

Funding Source(s): U. S. Environmental Protection Agency (EPA) Clean Water Act (CWA) Section 319 funds.

Statutory Authority: EPA Section 319 and Iowa Code section 455B.103.

Contract Background: Dry Run Creek is a 15,177-acre watershed comprising about 30 miles of stream. The watershed drains from the primarily rural and agricultural areas of Black Hawk County into the industrial, commercial, and residential areas of Cedar Falls, then outlets into the Cedar River. The DNR designated the Dry Run Creek watershed as impaired for low quantity and quality of aquatic life and for high levels of bacteria. As designated in the Dry Run Creek Watershed Management Plan (as created in 2009 and updated in 2017), the goal of the project is to reduce the connected impervious surfaces located throughout the watershed through infiltration-based practices. The Black Hawk Soil and Water Conservation District has arranged for the installation of 16,000 square feet of bioretention cells, 31,000 square feet of permeable pavement, 30 acres of native prairie, and a stream restoration project to accomplish this goal. The District also plans to work with residents to implement rain gardens, permeable paver driveways, soil quality restoration, and native prairie establishments; and with rural landowners and producers to install conservation practices such as grassed waterways, cover crops, and conservation tillage. These practices will help improve the quality of water in Dry Run Creek for aquatic creatures and the residents of Cedar Falls.

Contract Purpose: The purpose of this Contract is to designate Section 319 funding to support the Protect Dry Run Creek Watershed Improvement Project. This Contract will work to carry out the goals of the Dry Run Creek Watershed Management Plan for the stated Contract term.

Statement of Contract Work/Task:

Task 1: Submit to DNR the Annual Work Plan and Budget

Task 2: Carry Out Project Activities in the Project Workplan

Task 3: Provide Quarterly Financial Report

Task 4: Provide Quarterly Progress Report

Task 5: Submit Annual Report

Task 6: Submit Final Project Report

Selection Process Summary: Statute or federal grant contracting with IDALS is authorized by 11 IAC 117.5(5) and 118.7, which allows for agreements with entities without competition when the law or federal grant requires them. In addition, intergovernmental contracting with IDALS is authorized under 11 IAC 118.4. Contracts with public agencies for laboratory work, scientific field measurement and environmental quality evaluation services necessary to implement Iowa Code Chapter 455B is authorized under Iowa Code section 455B.103(3).

Contract History:

The DNR has contracted with IDALS to administer Section 319-funded watershed projects since the early 1990s. The purpose of the contracts with IDALS is to provide funds and project management support to IDALS, which then enters

into subsequent agreements with soil and water conservation districts to implement the specific watershed implementation project activities.

Contracts for watershed projects overlap to enable project work to continue without interruption, as new contracts are executed with each new Section 319 grant award. In this manner, project coordinators who work with farmers and landowners to implement conservation practices within watersheds can do so continuously between contracts. Projects typically spend their oldest contract dollars first before utilizing new contract funds.

Below is a list of contracts with IDALS over the previous five years that support the Protect Dry Run Creek Watershed Improvement Project:

- Contract #1:** Dry Run Creek Sub-Watershed Retrofit and Bank Stabilization Project–ESD7148KAment100072: 9/28/2009-6/30/2011, \$245,782
- Contract #2:** Dry Run Creek Watershed Improvement – ESD7150KAment110319: 4/20/2011 – 12/31/2015, \$675,412
- Contract #3:** Dry Run Creek Watershed Project (Phase 1C) – 16ESDWQMStev-007: 1/1/2017 – 7/31/2020, \$281,550
- Contract #4:** Dry Run Creek Watershed Improvement Project – 19ESDWQBMStev-03: 05/21/2019 – 8/31/2021, \$319,774
- Contract #5:** Dry Run Creek Watershed Improvement Project - 21ESDWQBJBALK-0001 6/18/2021 – 6/30/2023 \$476,500

Partnerships Summary:

The DNR’s primary partnerships for this Contract include:

- Iowa Department of Agriculture and Land Stewardship Division of Soil Conservation and Water Quality
- Black Hawk Soil and Water Conservation District
- US Department of Agriculture Farm Service Agency and Natural Resources Conservation Service
- US Environmental Protection Agency
- Dry Run Creek Advisory Board
- City of Cedar Falls
- University of Northern Iowa
- Participating landowners of the Dry Run Creek Watershed

Miranda Haes, Northeast Iowa Basin Coordinator, Watershed Improvement Section
Environmental Services Division
December 9, 2022

Dry Run Creek Project Proposed Budget (2-year budget)	Contract Amount (DNR 319 Costs)	Match Funding Share (State/Local)	Leveraged Funds (Non-Match)
Staffing/Admin Support (Top Line Costs)	\$80,746.00		
Watershed Practice Support* (Bottom Line Costs)	\$175,250.00	\$434,250.00	\$144,293.00
Totals	\$255,996.00	\$434,250.00	\$144,293.00
Overall Proposed Project Total	\$834,539.00		

*Practices targeted by the project include, but are not limited to: residential raingardens, soil quality restoration, native prairie turf establishment, permeable pavement driveways and alleys as well as a bioretention cell.

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

ITEM #8

DECISION

Contract with Iowa Department of Agriculture and Land Stewardship (Big Hollow Lake Project)

Recommendation:

Commission approval is requested for a service contract with Iowa Department of Agriculture and Land Stewardship of Des Moines, IA.

Contract Terms:

Amount: Not to exceed \$97,250

Dates: February 1, 2023 to January 31, 2026.

DNR shall have the option to extend this Contract for up to six years from the beginning date of the original contract by executing a signed amendment prior to the expiration of this contract.

Funding Source(s): U. S. Environmental Protection Agency (EPA) Clean Water Act (CWA) Section 319 funds.

Statutory Authority: EPA Section 319 and Iowa Code section 455B.103.

Contract Background: The Big Hollow Lake Watershed consists of 4,600 acres that outlet into Big Hollow Lake, a 178-acre lake that is owned and operated by the Des Moines County Conservation Board. The lake is surrounded by a 798-acre recreation area that offers a wide variety of recreation opportunities for the outdoor enthusiast. The park is the most-visited recreation area in the county and one of the most popular county parks in the region, hosting between 40,000 and 50,000 visitors per year on average. In 2016, the lake was added to the Iowa 303(d) impaired waters list due to algal blooms and violation of state pH standards. With the WMP completed and approved by EPA in February of 2022, the next phase of this project will be to hire a project coordinator and begin implementing best management plans (BMP's) within the project area. As this is the first year of the project being active, the project coordinator will focus on landowner/farmer outreach and interest, educational opportunities regarding the project, and assisting landowners with applications and funding for BMP's.

Contract Purpose: The purpose of this Contract is to designate Section 319 funding to support the Big Hollow Lake Watershed Project. This Contract will work to carry out the goals of the Big Hollow Lake Watershed Management Plan for the stated Contract term.

Statement of Contract Work/Task:

Task 1: Submit to DNR the Annual Work Plan and Budget

Task 2: Carry Out Project Activities in the Project Workplan

Task 3: Provide Quarterly Financial Report

Task 4: Provide Quarterly Progress Report

Task 5: Submit Annual Report

Task 6: Submit Final Project Report

Selection Process Summary:

Statute or federal grant contracting with IDALS is authorized by 11 IAC 117.5(5) and 118.7, which allows for agreements with entities without competition when the law or federal grant requires them. In addition, intergovernmental contracting with IDALS is authorized under 11 IAC 118.4. Contracts with public agencies for laboratory work, scientific field measurement and environmental quality evaluation services necessary to implement Iowa Code Chapter 455B is authorized under Iowa Code section 455B.103(3).

Contract History:

The DNR has contracted with IDALS to administer Section 319-funded watershed projects since the early 1990s. The purpose of the contracts with IDALS is to provide funds and project management support to IDALS, which then enters

into subsequent agreements with soil and water conservation districts to implement the specific watershed implementation project activities. This is the first contract regarding the Big Hollow Lake Watershed Project.

Partnerships Summary:

The DNR's primary partnerships for this Contract include:

- Iowa Department of Agriculture and Land Stewardship Division of Soil Conservation and Water Quality
- Des Moines County Soil and Water Conservation District
- Des Moines County Conservation
- US Department of Agriculture Farm Service Agency and Natural Resources Conservation Service
- US Environmental Protection Agency
- Participating landowners of the Big Hollow Lake Watershed

Miranda Haes, Northeast Iowa Basin Coordinator, Watershed Improvement Section
Environmental Services Division
January 17, 2023

Big Hollow Lake Project Proposed Budget (2-year budget)	Contract Amount (DNR 319 Costs)	Match Funding Share (State/Local)	Leveraged Funds (Non-Match)
Staffing/Admin Support (Top Line Costs)	\$79,250		
Watershed Practice Support* (Bottom Line Costs)	\$18,000	\$52,995	\$4,995
Totals	\$97,250	\$52,995	\$4,995
Overall Proposed Project Total	\$155,240		

*Practices targeted by the project include, but are not limited to: cover crops, no-till, terraces, and grade stabilization structures.

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

ITEM

#9

DECISION

TOPIC

Notice of Intended Action – 567 IAC Chapter 135 – Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks

The Commission is requested to approve this Notice of Intended Action to amend 567 Iowa Administrative Code (IAC) Chapter 135- Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks.

This proposed rulemaking aligns the rules with the 2022 Iowa Acts, House File 2128, which amended Iowa Code Chapter 455G. This legislation requires that all new, replacement, or converted gasoline or diesel fuel storage and dispensing infrastructure be compatible with E-85 and B-20, respectively.

During the informal rulemaking process comments from two stakeholders were received. The comments received from one stakeholder were incorporated into the rule changes. The comments received from a second stakeholder were not incorporated as the comments conflicted with the language used in House File 2128.

Timeline for rulemaking

- A Proposed Rule will come to the Commission as a Notice of Intended Action for decision, January 17, 2023.
- A public hearing is not yet scheduled but anticipated to be held on February 28, 2023
- Proposed end date for collecting written comments, February 28, 2023
- Estimated return to Commission for proposed Adopted and Filed rule, March 21, 2023

Keith Wilken, Supervisor
James Gastineau, Environmental Specialist Senior
Underground Storage Tank Section
Land Quality Bureau
Environmental Services Division

December 27, 2022

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rule making related to biofuel compatibility with Underground Storage Tanks and providing opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 135, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in 2022 Iowa Acts, House File 2128, section 32 (signed by Governor Kim Reynolds on May 17, 2022).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code Chapter 455G, as amended by 2022 Iowa Acts, House File 2128.

Purpose and Summary

Chapter 135 regulates underground storage tanks used for the storage of regulated substances. This proposed rulemaking will align the administrative rules with 2022 Iowa Acts, House File 2128, which amended Iowa Code Chapter 455G this past legislative session. The legislation requires that all new, replacement, or converted gasoline or diesel fuel storage and dispensing infrastructure be compatible with E-85 and B-20, respectively.

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa. A copy of the fiscal impact statement is available from the Department of Natural Resources (Department) upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 28, 2023. Comments should be directed to:

Keith Wilken, Supervisor
Underground Storage Tank Section
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
keith.wilken@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk and be directed to the appropriate hearing location.

February 28, 2023
1:00 PM

Wallace State Office Building
Conference Room 5W
502 East Ninth Street
Des Moines Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **135.4(3)“b”** as follows:

b. Owners and operators must have a UST installer licensed under 567—Chapter 134, Part C, submit the department's checklist for equipment compatibility for the UST system to the department at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated substance identified by the department.

ITEM 2. Adopt the following **new** paragraph **135.4(3)“c”**:

c. A retail dealer, as defined in Iowa Code section 214A.1, must show compliance with the requirements of Iowa Code sections 455G.32 and 455G.33, if applicable, by submitting and maintaining the applicable reporting and record keeping documentation listed in 567—135.4(5)“a”(10) and (11) and 567—135.4(5)“b”(12) and (13).

ITEM 3. Adopt the following **new** subparagraph **135.4(5)“a”(10)**:

(10) Documentation establishing compatibility and capability as required in Iowa Code section 455G.32, if applicable.

ITEM 4. Adopt the following **new** subparagraph **135.4(5)“a”(11)**:

(11) Documentation establishing compatibility and capability as required in Iowa Code section 455G.33, if applicable.

ITEM 5. Adopt the following **new** subparagraph **135.4(5)“b”(12)**:

(12) Documentation establishing compatibility and capability as required in Iowa Code section 455G.32, if applicable.

ITEM 6. Adopt the following **new** subparagraph **135.4(5)“b”(13)**:

(13) Documentation establishing compatibility and capability as required in Iowa Code section 455G.33, if applicable.

Administrative Rules
GOVERNOR'S OFFICE PRECLEARANCE FORM

Agency:	Environmental Protection Commission (Commission) / Iowa Department of Natural Resources (Department)	
IAC Citation:	567 IAC Chapter 135	
Agency Contact:	Keith Wilken, 515-681-0794; Keith.Wilken@dnr.iowa.gov	
Statutory Authority:	Iowa Code Chapter 455G as amended by 2022 Iowa Acts, Iowa House File 2128	
Preclearance Requested Review Deadline:	December 12, 2022	
Purpose of Proposed Rule: Chapter 135 regulates underground storage tanks used for the storage of regulated substances. This proposed rulemaking will align the administrative rules with 2022 Iowa Acts, House File 2128, which amended Iowa Code Chapter 455G this past legislative session. The legislation requires that all new, replacement, or converted gasoline or diesel fuel storage and dispensing infrastructure be compatible with E-85 and B-20, respectively.		
Need for Proposed Rule: These proposed amendments are necessary to implement Iowa Code sections 455G.32 and 33, as created by 2022 Iowa Acts, Iowa House File 2128.		
Summary of Informal Rulemaking Activities related to the Proposed Rule (e.g., stakeholder input): The proposed rule changes were provided to Petroleum Marketers Management Insurance Company (PMMIC); Fuel Iowa; Midwest Liquid Systems, Inc.; Unified Contracting Services, Inc.; Partners in Petroleum Equipment Company (PIPECO); UST Testing Services, Inc.; Tanknology; Seneca Companies, Inc.; Casey's General Stores, Inc.; Kum & Go, L.C.; Kwik Trip, Inc.; Hy-Vee, Inc.; Yesway; and Quik Trip Corporation. Comments were received from two stakeholders. The proposed rule was revised from the informal comment version to address comments.		

**Administrative Rules
JOBS IMPACT STATEMENT**

1. BACKGROUND INFORMATION

Agency:	Environmental Protection Commission (Commission) / Iowa Department of Natural Resources (Department)
IAC Citation:	567 IAC Chapter 135
Agency Contact:	Keith Wilken, 515-681-0794; Keith.Wilken@dnr.iowa.gov
Statutory Authority:	Iowa Code Chapter 455G as amended by 2022 Iowa Acts, Iowa House File 2128
Objective:	Update rules to implement 2022 Iowa Acts, House File 2128
Summary:	Require all new, replacement, or converted gasoline or diesel fuel storage and dispensing infrastructure be compatible with E-85 and B-20, respectively.

2. JOB IMPACT ANALYSIS

<input type="checkbox"/> <i>Fill in this box if impact meets these criteria:</i>
<input checked="" type="checkbox"/> No Job Impact on private sector jobs and employment opportunities in the State. <i>(If you make this determination, you must include the following statement in the preamble to the rule: "After analysis and review of this rulemaking, no impact on jobs has been found.")</i>
Explanation: The Department does not anticipate any jobs impact to private industry from this rule. Because this rule is implementing the new state law, any jobs impact would originate with the legislation.

<input type="checkbox"/> <i>Fill in this box if impact meets either of these criteria:</i>
<input type="checkbox"/> Positive Job Impact on private sector jobs and employment opportunities in the State.
<input type="checkbox"/> Negative Job Impact on private sector jobs and employment opportunities in the State.
<i>Description and quantification of the nature of the impact the proposed rule will have on private sector jobs and employment opportunities:</i>
<i>Categories of jobs and employment opportunities that are affected by the proposed rule:</i>
<i>Number of jobs or potential job opportunities:</i>
<i>Regions of the state affected:</i>
<i>Additional costs to the employer per employee due to the proposed rule: (if not possible to determine, write "Not Possible to Determine.")</i>

3. COST-BENEFIT ANALYSIS

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

Because this rule is implementing new state law, any cost-benefits would originate with the legislation.
--

4. FISCAL IMPACT

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

5. PREAMBLE

The information collected and included in this Jobs Impact Statement must be included in the preamble of the proposed rule, written in paragraph form. For rules that have no impact on jobs (see the first box in number 2 above), the following statement must be included in the preamble: "After analysis and review of this rulemaking, no impact on jobs has been found."

Administrative Rule Fiscal Impact Statement

Agency: Environmental Protection Commission (Commission) / Iowa Department of Natural Resources (Department)
IAC Citation: 567 IAC Chapter 135
Agency Contact: Keith Wilken, 515-681-0794; Keith.Wilken@dnr.iowa.gov
Summary of the Rule: Require all new, replacement, or converted gasoline or diesel fuel storage and dispensing infrastructure be compatible with E-85 and B-20, respectively.
<input type="checkbox"/> Fill in this box if impact meets these criteria:
<input checked="" type="checkbox"/> No Fiscal Impact to the State.
<input type="checkbox"/> Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.
<input type="checkbox"/> Fiscal Impact cannot be determined.
Brief Explanation: No fiscal impact to the State is expected from this proposed rule change. Existing staff will implement the new regulatory scheme.

Assumptions:		
<i>Describe how estimates were derived:</i>		
<i>Estimated Impact to the State by Fiscal Year</i>		
	<u>Year 1 (FY)</u>	<u>Year 2 (FY)</u>
Revenue by Each Source:		
GENERAL FUND	\$0	\$0
FEDERAL FUNDS	\$0	\$0
Other (specify)	\$0	\$0
TOTAL REVENUE	<u>\$0</u>	<u>\$0</u>
Expenditures:		
GENERAL FUND	\$0	\$0
FEDERAL FUNDS	\$0	\$0
Other (specify) Air Contaminant Fee	\$0	\$0
TOTAL EXPENDITURES	<u>\$0</u>	<u>\$0</u>
NET IMPACT		
<input checked="" type="checkbox"/> This rule is required by State law or Federal mandate. <i>Please identify the state or federal law:</i> 2022 Iowa Acts, Iowa House File 2128 made significant changes to Iowa Code Chapter 455G. This rulemaking is necessary to align the rules with the new legislation.		
<input type="checkbox"/> Funding has been provided for the rule change. <i>Please identify the amount provided and the funding source:</i>		
<input checked="" type="checkbox"/> Funding has not been provided for the rule. <i>Please explain how the agency will pay for the rule change:</i> There will be no additional costs due to the rule change.		
Fiscal impact to persons affected by the rule: None		
Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6): None		

TITLE I
GENERAL

CHAPTER 1

OPERATION OF ENVIRONMENTAL PROTECTION COMMISSION

[Prior to 12/3/86, see Water, Air and Waste Management[900] Ch 2]

567—1.1(17A,455A) Scope. This chapter governs the conduct of business by the environmental protection commission. Rule-making proceedings held as part of commission meetings and contested case proceedings involving the commission are governed by other rules of the department.

567—1.2(17A,455A) ~~Time of meetings.~~ Meeting Logistics. The commission shall meet at least quarterly, and usually meets monthly. The director, the chairperson, or a majority of the commission may establish meetings. ~~Normally, the time of the next meeting will be determined in the current commission meeting.~~ The location of the meeting shall be specified in the agenda.

567—1.3(17A,455A) ~~Place of meetings.~~ ~~Meetings are generally held in the Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa. The commission may meet at other locations from time to time; if so, the meeting place will be specified in the agenda.~~

567—1.4 1.3(17A,455A) Notification of meetings. The director of the department shall provide public notice of all meeting dates, locations, and ~~tentative~~ agendas.

1.4(1) 1.3(1) Form of notice. Notice of meetings is given by posting the tentative agenda and by distribution upon request. The agenda lists the time, date, place, and topics to be discussed at the meeting. The agenda ~~shall~~ may include a specific time for the public to address the commission on any issue related to the duties and responsibilities of the commission, except as otherwise provided in these rules.

1.4(2) 1.3(2) Posting of agenda. Agenda. The tentative agenda for each meeting will be posted at ~~the department's offices on the fourth and fifth floors, Henry A. Wallace Building, at least and on the department's website, normally~~ seven days prior to the meeting. The agenda will be provided to anyone who files a request with the department. Agenda The final agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. Any additions to the agenda after posting and distribution will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The commission may adopt additions to the agenda at the meeting only if good cause exists requiring expeditious discussion or action. The reasons and circumstances necessitating agenda additions, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

1.4(3) Distribution of agenda. ~~Agenda will be mailed to anyone who files a request with the director. The request should state whether the agenda for a particular meeting is desired, or whether the requester desires to be on the department's mailing list to receive the agenda for all meetings of the environmental protection commission.~~

1.4(4) Amendment to agenda. ~~Any amendments to the agenda after posting and distribution under subrules 1.4(2) and 1.4(3) will be posted, but will not be mailed. The amended agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The commission may adopt amendments to the agenda at the meeting only if good cause exists requiring expeditious discussion or action. The reasons and circumstances necessitating agenda amendments, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.~~

1.4(5) 1.3(3) Supporting material. Written materials provided to the commission with the agenda may be examined ~~and copied as provided by the public.~~ Copies of the materials may be distributed at the discretion of the director ~~to persons requesting the materials.~~ The director may require a fee to

cover the reasonable cost to the department to provide the copies, in accordance with rules of the department.

567—~~1.5~~ 1.4(17A,455A) Attendance and participation by the public.

~~1.5(1)~~ 1.4(1) *Attendance.* All meetings are open to the public. The commission may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

~~1.5(2)~~ 1.4(2) *Participation.*

a. Items on agenda. Presentations to the commission may be made at the discretion of the chairperson.

b. Items not on agenda. ~~Because Iowa Code section 21.4 requires the commission to give notice of its agenda, the commission discourages persons from raising matters not on the agenda. The commission will not act on a matter not on the agenda, except in accordance with subrule 1.3(2).~~ Persons who wish to address the commission on a matter not on the agenda should file a request with the director to place that matter on the agenda of the subsequent meeting.

c. Meeting decorum. The chairperson may limit participation as necessary for the orderly conduct of agency business.

~~1.5(3)~~ 1.4(3) *Use of cameras and recording devices.* Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices discontinued if they cause interference, and may exclude those persons who fail to comply with that order.

567—~~1.6~~ 1.5(17A,455A) Quorum and voting requirements.

~~1.6(1)~~ 1.5(1) *Quorum.* Five or more commissioners present at a meeting constitute a quorum.

~~1.6(2)~~ 1.5(2) *Voting.*

a. Voting requirements if eight or nine commissioners are currently appointed. If eight or nine commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of five or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

b. Voting requirements if seven or fewer commissioners are currently appointed. If seven or fewer commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of four or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

c. Voting requirements to ~~close a meeting~~ go into closed session. Notwithstanding paragraph ~~1.6(2)“a” or 1.6(2)“b,”~~ 1.5(2)“a” or 1.5(2)“b,” a vote to ~~close a meeting~~ go into closed session shall require the concurrence of six or more members of the commission, or the concurrence of all members present if less than six members are present.

567—~~1.7~~ 1.6(17A,455A) Conduct of meeting.

~~1.7(1)~~ 1.6(1) *General.* Meetings will be conducted in accordance with Robert’s Rules of Order unless otherwise provided in these rules. Voting shall be by voice or by roll call. Voting shall be by voice unless a voice vote is inconclusive, a member of the commission requests a roll call, or the vote is on a motion to close a portion of a meeting. The chairperson shall announce the result of the vote.

~~1.7(2)~~ 1.6(2) *Voice votes.* All commission members present should respond when a voice vote is taken. The response shall be aye, nay, or abstain.

a. All members present shall be recorded as voting aye on any motion when there are no nay votes or abstentions heard.

b. Any member who abstains shall state at the time of the vote the reason for abstaining. The abstention and the reason for it shall be recorded in the minutes.

~~1.7(3)~~ 1.6(3) *Provision of information.* The chairperson may recognize any agency staff member for the provision of information relative to an agenda item.

567—~~1.8~~ 1.7(17A,455A) Minutes, transcripts, and recordings of meetings.

~~1.8(1) 1.7(1) *Audio Recordings.* The director shall may record ~~by mechanized means~~ each meeting and shall record each closed session, and shall retain the recording for at least one year~~

~~1.8(2) 1.7(2) *Transcripts.* The department does not routinely prepare transcripts of meetings. The department will have transcripts of meetings, except for closed sessions, prepared upon receipt of a request for a transcript and payment of a fee to cover the cost to the department of preparing the transcript.~~

~~1.8(3) 1.7(2) *Minutes.* The director shall keep minutes of each meeting. Minutes shall be reviewed and approved by the commission, and retained permanently by the director. The approved minutes shall be signed by the director and the chairperson and secretary of the commission.~~

567—~~1.9~~ 1.8(17A,455A) Officers and duties.

~~1.9(1) 1.8(1) *Officers.* The officers of the commission are the chairperson, the vice chairperson, and the secretary.~~

~~1.9(2) 1.8(2) *Duties.* The chairperson shall preside at meetings, and shall exercise the powers conferred upon the chairperson. The vice chairperson shall perform the duties of the chairperson when the chairperson is absent or when directed by the chairperson. The secretary shall ~~supervise the preparation of minutes,~~ make recommendations to the commission on approval or revision of the minutes; and act as parliamentarian.~~

567—~~1.10~~ 1.9(17A,455A) Election and succession of officers.

~~1.10(1) 1.9(1) *Elections.* Officers shall be elected annually during May.~~

~~1.10(2) 1.9(2) *Succession.*~~

~~a. If the chairperson does not serve out the elected term, the vice chairperson shall succeed the chairperson for the remainder of the term. A special election shall be held to elect a new vice chairperson to serve the remainder of the term.~~

~~b. If the vice chairperson does not serve out the elected term, a special election shall be held to elect a new vice chairperson to serve the remainder of the term.~~

~~c. If the secretary does not serve out the elected term, a special election shall be held to elect a new secretary to serve the remainder of the term.~~

567—~~1.11~~ (68B) Sales of goods and services.

~~—1.11(1) *Prohibition.* An official shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the department unless the department consents as provided in this rule.~~

~~—1.11(2) *Definitions.*~~

~~“*Association*” means any profit or nonprofit entity that is not a “corporation” or an “individual” as defined in this rule, but does not include any “unit of government” as defined in this rule.~~

~~“*Commission*” means the environmental protection commission.~~

~~“*Corporation*” means “corporation” and “foreign corporation” as defined in Iowa Code sections 490.140 and 504A.2, but does not include any “unit of government” as defined in this rule.~~

~~“*Department*” means the department of natural resources.~~

~~“*Goods*” means personal property, tangible and intangible.~~

~~“*Individual*” means a human being and includes any individual doing business as a sole proprietorship.~~

~~“*Official*” means a member of the environmental protection commission.~~

~~“*Sale*” or “*sell*” means the process in which goods or services are provided in exchange for money or other valuable consideration. The term does not include purchases of goods or services, nor outside employment activities that constitute an employer-employee relationship.~~

~~“*Services*” means action, conduct or performance which furthers some end or purpose or which assists or benefits someone or something.~~

“Unit of government” means “United States,” “state” and “governmental subdivision” as defined in Iowa Code section 490.140.

~~— 1.11(3) *Application for consent.* An application for consent must be signed by the official requesting consent and submitted as specified in subrule 1.11(4). The application must provide a clear statement of all relevant facts concerning the sale, specify the amount of compensation and how compensation is to be determined, and indicate the time period or number of transactions for which consent is requested. The application must also explain why the sale would not create a conflict of interest or provide financial gain by virtue of the applicant’s position within the department.~~

~~— 1.11(4) *Consent procedure.* Applications for consent must be submitted to the director who will schedule the matter as an informational item at a meeting of the commission. When the informational item is considered, the applicant may explain the application and entertain questions. The director shall schedule the matter to be decided at the second meeting following its consideration as an informational item, at which time the commission shall consider written comments which have been filed with the director and entertain any oral comments. The commission shall approve or deny the application by voting in the same manner as it determines other matters, except that the applicant shall not vote.~~

~~— 1.11(5) *General conditions of consent.* Consent shall not be given to an official unless all of the following conditions are met:~~

~~— a. This condition is satisfied if either of the following paragraphs is met:~~

~~— (1) The duties or functions performed by the official are not related to the regulatory authority of the department over the individual, association or corporation; or~~

~~— (2) The duties or functions performed by the official are not affected by the selling of goods or services to the individual, association or corporation.~~

~~— b. The selling of the goods or services by the official does not include acting as an advocate to the department on behalf of the individual, association or corporation receiving the goods or services.~~

~~— c. The selling of goods or services does not result in the official selling or leasing a good or service to the department on behalf of the individual, association or corporation.~~

~~— 1.11(6) *Class prohibitions and consent.*~~

~~— a. The commission concludes that the sales of goods and services described in this paragraph, as a class, constitute the sale of a good or service which affects an official’s functions. The department will not consent to sales which fall within the following categories unless there are unique facts surrounding a particular sale which clearly satisfy the conditions listed in subrule 1.11(5).~~

~~Sales which are prohibited by rule:~~

~~— (1) Sales of department information or the sale of services necessary to gather department information, including but not limited to solicitation lists.~~

~~— (2) Services utilized in the preparation of applications, reports, or other documents which may be approved or reviewed by the commission.~~

~~— b. The commission concludes that sales of goods or services described in this paragraph do not, as a class, constitute the sale of a good or service which affects an official’s functions. Application and department approval are not required for these sales unless there are unique facts surrounding a particular sale which would cause that sale to affect the official’s duties or functions, would give the buyer an advantage in its dealings with the department, or otherwise present a conflict of interest.~~

~~Sales for which consent is granted by rule:~~

~~— (1) Nonrecurring sales of goods and services if the official is not engaged for profit in the business of selling those goods or services.~~

~~— (2) Sale of farm products at market prices to a buyer ordinarily engaged in the business of purchasing farm products.~~

~~— (3) Sales of goods to general public at an established retail or consignment shop.~~

~~— (4) Sale of legal, mechanical, or other services at market or customary prices. However, if an official’s client or customer has a matter for decision before the commission, the official shall not participate in the discussion and voting on that matter unless consent has been obtained pursuant to~~

subrules 1.11(3) and 1.11(4)-

— ~~(5) Sale of goods at wholesale prices to a buyer ordinarily engaged in the business of purchasing wholesale goods for retail sale.~~

— ~~(6) Sale of creative works of art, including but not limited to sculpture and literary products, at market, auction, or negotiated prices. However, if an official's customer has a matter for decision before the commission directly or indirectly involving that good, the official shall not participate in the discussion and voting on that matter unless consent has been obtained pursuant to subrules 1.11(3) and 1.11(4).~~

— ~~(7) Sale of goods to general public at market or franchiser established prices. However, if an official's customer has a matter for decision before the commission, the official shall not participate in the discussion and voting on that matter unless consent has been obtained pursuant to subrules 1.11(3) and 1.11(4).~~

— ~~1.11(7) *Effect of consent.* The consent must be in writing. The consent is valid only for the activities and period described in it and only to the extent that material facts have been disclosed and the actual facts are consistent with those described in the application. Consent can be revoked at any time by written notice to the official.~~

— ~~1.11(8) *Public information.* The application and consent are public records, open for public examination, except to the extent that disclosure of details would constitute a clearly unwarranted invasion of personal privacy or trade secrets and the record is exempt from disclosure under Iowa law.~~

— ~~1.11(9) *Effect of other laws.* Neither this rule nor any consent provided under it constitutes consent for any activity which would constitute a conflict of interest at common law or which violates any applicable statute or rule. Despite department consent under these rules, a sale of goods or services to someone subject to the jurisdiction of the agency may violate the gift law, bribery and corruption laws. It is the responsibility of the official to ensure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.~~

These rules are intended to implement Iowa Code sections 17A.3(1)“a₂” ~~68B.4~~ and 455A.6.

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TITLE I
GENERAL
CHAPTER 1
OPERATION OF ENVIRONMENTAL PROTECTION COMMISSION
[Prior to 12/3/86, see Water, Air and Waste Management[900] Ch 2]

567—1.1(17A,455A) Scope. This chapter governs the conduct of business by the environmental protection commission. Rule-making proceedings held as part of commission meetings and contested case proceedings involving the commission are governed by other rules of the department.

567—1.2(17A,455A) Meeting Logistics. The commission shall meet at least quarterly, and usually meets monthly. The director, the chairperson, or a majority of the commission may establish meetings. The location of the meeting shall be specified in the agenda.

567—1.3(17A,455A) Notification of meetings. The director of the department shall provide public notice of all meeting dates, locations, and agendas.

1.3(1) Form of notice. Notice of meetings is given by posting the tentative agenda and by distribution upon request. The agenda lists the time, date, place, and topics to be discussed at the meeting. The agenda may include a specific time for the public to address the commission on any issue related to the duties and responsibilities of the commission, except as otherwise provided in these rules.

1.3(2) Agenda. The tentative agenda for each meeting will be posted at the Henry A. Wallace Building and on the department's website, normally seven days prior to the meeting. The agenda will be provided to anyone who files a request with the department. The final agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. Any additions to the agenda after posting and distribution will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The commission may adopt additions to the agenda at the meeting only if good cause exists requiring expeditious discussion or action. The reasons and circumstances necessitating agenda additions, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

1.3(3) Supporting material. Written materials provided to the commission with the agenda may be examined by the public. Copies of the materials may be distributed at the discretion of the director. The director may require a fee to cover the reasonable cost to the department to provide the copies, in accordance with rules of the department.

567—1.4(17A,455A) Attendance and participation by the public.

1.4(1) Attendance. All meetings are open to the public. The commission may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

1.4(2) Participation.

a. Items on agenda. Presentations to the commission may be made at the discretion of the chairperson.

b. Items not on agenda. The commission will not act on a matter not on the agenda, except in accordance with subrule 1.3(2). Persons who wish to address the commission on a matter not on the agenda should file a request with the director to place that matter on the agenda of the subsequent meeting.

c. Meeting decorum. The chairperson may limit participation as necessary for the orderly conduct of agency business.

1.4(3) Use of cameras and recording devices. Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices discontinued if they cause interference, and may exclude those persons

who fail to comply with that order.

567—1.5(17A,455A) Quorum and voting requirements.

1.5(1) Quorum. Five or more commissioners present at a meeting constitute a quorum.

1.5(2) Voting.

a. Voting requirements if eight or nine commissioners are currently appointed. If eight or nine commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of five or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

b. Voting requirements if seven or fewer commissioners are currently appointed. If seven or fewer commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of four or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

c. Voting requirements to go into closed session. Notwithstanding paragraph 1.5(2)"a" or 1.5(2)"b," a vote to go into closed session shall require the concurrence of six or more members of the commission, or the concurrence of all members present if less than six members are present.

567—1.6(17A,455A) Conduct of meeting.

1.6(1) General. Meetings will be conducted in accordance with Robert's Rules of Order unless otherwise provided in these rules. Voting shall be by voice or by roll call. Voting shall be by voice unless a voice vote is inconclusive, a member of the commission requests a roll call, or the vote is on a motion to close a portion of a meeting. The chairperson shall announce the result of the vote.

1.6(2) Voice votes. All commission members present should respond when a voice vote is taken. The response shall be aye, nay, or abstain.

a. All members present shall be recorded as voting aye on any motion when there are no nay votes or abstentions heard.

b. Any member who abstains shall state at the time of the vote the reason for abstaining. The abstention and the reason for it shall be recorded in the minutes.

1.6(3) Provision of information. The chairperson may recognize any agency staff member for the provision of information relative to an agenda item.

567—1.7(17A,455A) Minutes, transcripts, and recordings of meetings.

1.7(1) Audio Recordings. The director may record each meeting and shall record each closed session.

1.7(2) Minutes. The director shall keep minutes of each meeting. Minutes shall be reviewed and approved by the commission.

567—1.8(17A,455A) Officers and duties.

1.8(1) Officers. The officers of the commission are the chairperson, the vice chairperson, and the secretary.

1.8(2) Duties. The chairperson shall preside at meetings, and shall exercise the powers conferred upon the chairperson. The vice chairperson shall perform the duties of the chairperson when the chairperson is absent or when directed by the chairperson. The secretary shall make recommendations to the commission on approval or revision of the minutes, and act as parliamentarian.

567—1.9(17A,455A) Election and succession of officers.

1.9(1) Elections. Officers shall be elected annually during May.

1.9(2) Succession.

a. If the chairperson does not serve out the elected term, the vice chairperson shall succeed the chairperson for the remainder of the term. A special election shall be held to elect a new vice chairperson to serve the remainder of the term.

b. If the vice chairperson does not serve out the elected term, a special election shall be held to elect a new vice chairperson to serve the remainder of the term.

c. If the secretary does not serve out the elected term, a special election shall be held to elect a new secretary to serve the remainder of the term.

These rules are intended to implement Iowa Code sections 17A.3(1)“*a*” and 455A.6.

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